

CHAPTER 38

AN ACT concerning certain corporations, amending N.J.S.14A:15-2, and supplementing Title 14A of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.14A:13-6.1 Foreign corporations, filing, application, certificate of authority; definition.

1. (1) Following a conversion under applicable law of an other business entity, which was authorized to transact business in this State, to a foreign corporation, the foreign corporation shall file in the filing office an application executed on behalf of the corporation setting forth:

- (a) the name of the corporation and the jurisdiction of its incorporation;
- (b) the name of the other business entity, which was authorized to transact business in this State;
- (c) the ten digit identification number;
- (d) the date of the conversion of the other business entity to the foreign corporation;
- (e) the date of the authorization of the other business entity to transact business in this State;
- (f) the address of the main business or headquarters office of the corporation;
- (g) the address of the registered office of the corporation in this State and the name of its registered agent in this State at that address, together with a statement that the registered agent is an agent of the corporation upon whom process against the corporation may be served; and
- (h) the character of the business it is to transact in this State, together with a statement that it is authorized to transact business in the jurisdiction of its incorporation.

(2) Attached to the application shall be a certificate setting forth that the corporation is in good standing under the laws of the jurisdiction of its incorporation, executed by the official of that jurisdiction who has custody of the records pertaining to corporations and dated not earlier than 30 days prior to the filing of the application, but of a date subsequent to the conversion. If that certificate is in a foreign language, a translation thereof under oath of the translator shall be attached thereto.

(3) Upon the filing of the application, the filing office shall issue to the foreign corporation a certificate of authority to transact business in this State.

(4) As used in this section, "filing office" means the Division of Revenue and Enterprise Services in the Department of the Treasury, or other State office as designated by law.

C.14A:11A-1 Definitions; foreign corporation, conversion, domestic corporation, certificate, approved plan.

2. (1) As used in this section:

"Filing office" means the Division of Revenue and Enterprise Services in the Department of the Treasury, or other State office as designated by law.

"Other entity" means a partnership, limited liability company, statutory trust, business trust or association, real estate investment trust, common-law trust, national association, or any other unincorporated business, not including a sole proprietorship, whether organized under the laws of this State or under the laws of any other state or territory of the United States or the District of Columbia, the United States or any foreign country or other foreign jurisdiction, or a foreign corporation.

(2) Any other entity may, upon the authorization of conversion in accordance with this section, convert to a domestic corporation.

(3) Prior to filing a certificate of conversion to corporation with the filing office, a plan of conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity

and the conduct of its business and in accordance with applicable law, as appropriate, and a certificate of incorporation shall be approved by the same authorization required to approve the conversion.

(4) Any other entity may convert to a domestic corporation by complying with subsection (3) of this section and filing in the filing office:

(a) A certificate of conversion to corporation that has been executed in accordance with subsection (10) of this section and filed in accordance with N.J.S.14A:1-6; and

(b) A certificate of incorporation that has been executed, acknowledged and filed in accordance with N.J.S.14A:1-6.

(5) The certificate of conversion to corporation shall state:

(a) The date on which and jurisdiction where the other entity was first created, incorporated, formed or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic corporation;

(b) The name of the other entity immediately prior to the filing of the certificate of conversion to corporation;

(c) The name of the corporation as set forth in its certificate of incorporation filed in accordance with subsection (4) of this section;

(d) The future effective date or time, which shall be a date or time certain, of the conversion if it is not to be effective upon the filing of the certificate of conversion, which is not to exceed 90 days after the date of filing; and

(e) That the plan of conversion has been approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business and in accordance with applicable law, as appropriate.

(6) Upon the effective time of the certificate of conversion to corporation and the certificate of incorporation, the other entity shall be converted to a domestic corporation and the corporation shall thereafter be subject to all of the provisions of this title, except that notwithstanding subsection (2) of N.J.S.14A:2-7, the existence of the corporation shall be deemed to have commenced on the date the other entity commenced its existence in the jurisdiction in which the other entity was first created, formed, incorporated or otherwise came into being.

(7) The conversion of any other entity to a domestic corporation shall not be deemed to affect any obligations or liabilities of the other entity incurred prior to its conversion to a domestic corporation or the personal liability of any person incurred prior to conversion.

(8) When any other entity has been converted to a domestic corporation pursuant to this section, the domestic corporation shall, for all purposes of the laws of the State of New Jersey, be deemed to be the same entity as the converting other entity. When any conversion shall have become effective under this section, for all purposes of the laws of the State of New Jersey, all of the rights, privileges and powers of the other entity that has converted, and all property, real, personal and mixed, and all debts due to that other entity, as well as all other things and causes of action belonging to that other entity, shall remain vested in the domestic corporation to which that other entity has converted and shall be the property of that domestic corporation and the title to any real property vested by deed or otherwise in that other entity shall not revert or be in any way impaired by reason of this act; but all rights of creditors and all liens upon any property of that other entity shall be preserved unimpaired, and all debts, liabilities and duties of the other entity that has converted shall remain attached to the domestic corporation to which that other entity has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by

it in its capacity as a domestic corporation. The rights, privileges, powers and interests in property of the other entity, as well as the debts, liabilities and duties of the other entity, shall not be deemed, as a consequence of the conversion, to have been transferred to the domestic corporation to which that other entity has converted for any purpose of the laws of the State of New Jersey.

(9) Unless otherwise agreed for all purposes of the laws of the State of New Jersey or as required under applicable non-New Jersey law, the converting other entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of that other entity and shall constitute a continuation of the existence of the converting other entity in the form of a domestic corporation.

(10) The certificate of conversion to corporation shall be signed by any person who is authorized to sign the certificate of conversion to corporation on behalf of the other entity.

(11) In connection with a conversion hereunder, rights or securities of, or interests in, the other entity which is to be converted to a domestic corporation may be exchanged for or converted into cash, property, or shares of stock, rights or securities of that domestic corporation or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, or shares of stock, rights or securities of or interests in another domestic corporation or other entity or may be cancelled.

C.14A:11A-2 Definitions; domestic corporation, conversion, other entity, certificate, approved plan, written notice.

3. (1) As used in this section:

“Filing office” means the Division of Revenue and Enterprise Services in the Department of the Treasury, or other State office as designated by law.

“Other entity” means a partnership, limited liability company, statutory trust, business trust or association, real estate investment trust, common-law trust, national association, or any other unincorporated business, not including a sole proprietorship, whether organized under the laws of this State or under the laws of any other state or territory of the United States or the District of Columbia, the United States or any foreign country or other foreign jurisdiction, or a foreign corporation.

(2) A domestic corporation may, upon the authorization of conversion in accordance with this section, convert to any other entity.

(3) The board of directors of the corporation which desires to convert under this section shall adopt a resolution approving a plan of conversion, specifying the type of other entity into which the corporation shall be converted and shall direct that the conversion be submitted to a vote at a meeting of shareholders. Written notice shall be given not less than 20 nor more than 60 days before that meeting to each shareholder of record, whether or not entitled to vote at that meeting, in the manner provided in the “New Jersey Business Corporation Act” for the giving of notice of meetings of shareholders. At each meeting, a vote of the shareholders shall be taken on the proposed plan of conversion. The conversion shall be approved upon receiving the affirmative vote of the holders of all shares of outstanding stock, whether voting or nonvoting. The conversion shall also be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business and in accordance with applicable law, as appropriate.

(4) A domestic corporation that converts to any other entity that will be domiciled in this State shall file with the filing office a certificate of conversion that states:

(a) the name of the corporation, and if it wishes to change its name, the proposed new name;

(b) the future effective date or time, which shall be a date or time certain, of the conversion if it is not to be effective upon the filing of the certificate of conversion, which is not to exceed 90 days after the date of filing; and

(c) that the conversion was adopted pursuant to the provisions of subsection (3) of this section.

(5) If a corporation shall convert in accordance with this section to any other entity organized, formed or created under the laws of a jurisdiction other than the State of New Jersey, the corporation shall file with the filing office a certificate of conversion executed in accordance with N.J.S.14A:1-6, which certifies:

(a) the name of the corporation, and if it has been changed, the name under which it was originally incorporated;

(b) the date of filing of its original certificate of incorporation with the filing office;

(c) the name and jurisdiction of the other entity to which the corporation shall be converted;

(d) that the conversion has been approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business and in accordance with applicable law, as appropriate; and

(e) the future effective date or time, which shall be a date or time certain, of the conversion if it is not to be effective upon the filing of the certificate of conversion, which is not to exceed 90 days after the date of filing.

(f) If the other entity is to transact business in this State, it shall comply with the provisions of this act with respect to foreign entities, and, whether or not it is to transact business in this State, the certificate of conversion required by this section shall, in addition to other required information, set forth:

(i) an agreement by that other entity that it may be served with process in this State in any proceeding for the enforcement of any obligation of the converting corporation; and

(ii) an irrevocable appointment by that other entity of the filing office of this State as its agent to accept service of process in any proceeding for the enforcement of any obligation of the converting corporation, and the post office address, within or without this State, to which the filing office shall mail a copy of the process in that proceeding.

(g) In the event of service upon the filing office in accordance with paragraph (f) of subsection (5) of this section, the filing office shall forthwith notify the corporation that has converted out of the State of New Jersey by letter, directed to the corporation that has converted out of the State of New Jersey at the address so specified, unless that corporation shall have designated in writing to the filing office a different address for that purpose, in which case it shall be mailed to the last address designated. The letter shall be sent by a mail or courier service, and the filing office shall maintain a record of the mailing or deposit with the courier. The letter shall enclose a copy of the process and any other papers served on the filing office pursuant to this subsection. It shall be the duty of the plaintiff to serve process and any other papers in duplicate, to notify the filing office that service is being effected pursuant to this subsection and to pay the filing office the sum of \$75.00 for the use of the State, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The filing office shall maintain an alphabetical record of any 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 filing office shall not be required to retain the information longer than five years from receipt of the service of process.

(6) Upon the filing in the filing office of a certificate of conversion to a non-New Jersey entity in accordance with subsection (5) of this section or upon the future effective date or time of the certification of conversion to a non-New Jersey entity and payment to the filing office of all fees prescribed under this title, the filing office shall certify that the corporation has filed all documents and paid all fees required by this title, and thereupon the corporation shall cease to exist as a domestic corporation at the time the certificate of conversion becomes effective in accordance with N.J.S.14A:1-6. The certificate of the filing office shall be prima facie evidence of the conversion by such corporation out of the State of New Jersey.

(7) The conversion of a corporation out of the State of New Jersey in accordance with this section and the resulting cessation of its existence as a domestic corporation pursuant to a certificate of conversion to a non-New Jersey entity shall not be deemed to affect any obligations or liabilities of the corporation incurred prior to conversion or the personal liability of any person incurred prior to conversion, nor shall it be deemed to affect the choice of law applicable to the corporation with respect to matters arising prior to conversion.

(8) Unless otherwise provided in the plan of conversion adopted in accordance with this section, the converting corporation shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not constitute a dissolution of the corporation.

(9) In connection with a conversion of a domestic corporation to an other entity pursuant to this section, shares of stock of the domestic corporation which is to be converted may be exchanged for or converted into cash, property rights or securities of, or interest in, the other entity to which the domestic corporation is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, shares of stock, rights or securities of, or interest in, another domestic corporation or other entity or may be cancelled.

(10) When a corporation has been converted to the other entity pursuant to this section, the other entity shall, for all purposes of the laws of the State of New Jersey, be deemed to be the same entity as the corporation. When any conversion shall have become effective under this section, for all purposes of the laws of the State of New Jersey, all of the rights, privileges and powers of the corporation that has converted and all property, real, personal and mixed, and all debts due to that corporation, as well as all other things and causes of action belonging to that corporation, shall remain vested in the other entity to which that corporation has converted and shall be the property of that other entity, and the title to any real property vested by deed or otherwise in that corporation shall not revert or be in any way impaired by reason of this act; but all rights of creditors and all liens upon any property of that corporation shall be preserved unimpaired, and all debts, liabilities and duties of the corporation that has converted shall remain attached to the other entity to which that corporation has converted and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as that other entity. The rights, privileges, powers and interest in property of the corporation that has converted, as well as the debts, liabilities and duties of that corporation, shall not be deemed, as a consequence of the conversion, to have been transferred to the other entity to which that corporation has converted for any purpose of the laws of the State of New Jersey.

(11) No vote of shareholders of a corporation shall be necessary to authorize a conversion if no shares of the stock of that corporation shall have been issued prior to the adoption by the board of directors of the resolution approving the conversion.

4. N.J.S.14A:15-2 is amended to read as follows:

Filing fees of the State Treasurer.

14A:15-2. On filing any certificate or other papers relative to corporations in the Department of the Treasury, there shall be paid to the State Treasurer, filing fees as follows:

(1) Certificate of incorporation and amendments thereto:

(a) for filing the original certificate of incorporation..... \$125.00

(b) for filing a certificate of amendment of the certificate of incorporation, including any number of amendments..... \$75.00

(c) for filing a certificate of abandonment of one or more amendments of the certificate of incorporation..... \$75.00

(d) for filing a certificate of merger or a certificate of consolidation..... \$75.00

(e) for filing a certificate of abandonment of a merger or consolidation..... \$75.00

(2) Restated certificate of incorporation:

for filing a restated certificate of incorporation, including any amendments of the certificate of incorporation concurrently adopted..... \$75.00

(3) Dissolution of corporation:

(a) for filing a certificate of dissolution..... \$75.00

(b) for filing a certificate of revocation of dissolution proceedings..... \$75.00

(4) Admission and withdrawal of foreign corporation:

(a) for filing an application for a certificate of authority to transact business in this State and issuing a certificate of authority..... \$125.00

(b) for filing an application for an amended certificate of authority to transact business in this State and issuing an amended certificate of authority..... \$75.00

(c) for filing an application for withdrawal from this State and issuing a certificate of withdrawal..... \$75.00

(d) for filing a certificate of change of post-office address to which process may be mailed by the State Treasurer..... \$25.00

(e) for filing a certificate, order or decree with respect to the dissolution of a foreign corporation, the termination of its existence, or the cancellation of its authority, and issuing a certificate of withdrawal..... \$75.00

(5) Registered office and registered agent:

(a) for filing a certificate of change of address of registered office, or change of registered agent, or both..... \$25.00

(b) (i) for filing a certificate of change of address of registered agent, where such certificate effects a change in the address of the registered office of one to 499 corporations or of 500 or more corporations in cases where the filing information is not transmitted to the State Treasurer in a machine readable format agreeable to the Division of Revenue and Enterprise Services, for each corporation named in the certificate..... \$25.00

(ii) for filing a certificate of change of address of registered agent, where such certificate effects a change in the address of the registered office of 500 or more corporations in cases where the filing information is transmitted to the State Treasurer in a machine readable format agreeable to the Division of Revenue and Enterprise Services..... \$5,000.00

(iii) In addition to the fee imposed pursuant to subparagraph (ii) of this paragraph, the State Treasurer may assess an additional fee not to exceed those administrative costs associated with the technical transmission of the filing information.

(c) for filing an affidavit of resignation of a registered agent..... \$25.00

(6) Annual report:

for each such report required to be filed..... \$75.00

(7) Tax clearance certificate from the Director of the Division of Taxation: for each such certificate required to be filed..... \$20.00

(8) for filing a certificate of conversion.....75.00

5. This act shall take effect on the 180th day following enactment.

Approved May 8, 2023.