

ACT 15

S.B. NO. 1650

A Bill for an Act Relating to Consolidation and Merger of Corporations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Purpose. The purpose of this Act is to clarify certain provisions for merger and consolidation to long-standing corporate practice interpreting the applicable provisions of the Hawaii Revised Statutes. Recent legal decisions have questioned some of these practices and this bill clarifies these decisions.

SECTION 2. Section 417-3, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 417-3 Agreement; approval of board of directors. The board of directors of each constituent corporation shall prepare for consideration by the stockholders a proposed merger or consolidation agreement which shall set forth that the constituent corporations are to become a single new corporation, or that one or more of the constituent corporations are to be merged into a specified constituent corporation; the terms and conditions of the merger or consolidation and the mode of carrying the same into effect; the names and addresses of the first directors and officers of the surviving or consolidated corporation and their respective terms of office; the amount of the capital stock of the surviving or consolidated corporation, and if the privilege of subsequent extension of the capital stock is asked for, the limit of the extension; the preferences, voting powers, restrictions, and qualifications of all classes of stock of the surviving or consolidated corporation, if there is to be more

than one class of stock; and the manner and basis of converting the shares of each of the constituent corporations into shares of the surviving or consolidated corporation.

The agreement may also provide for the distribution or exchange of cash or any other property, [or] assets or shares of stock of any other corporation held as an asset by [of] any constituent corporation, in whole or in part, in lieu of or partially in lieu of shares of the surviving or consolidated corporation to stockholders of the constituent corporations or any class of them; but nothing in this part shall be deemed to authorize the distribution or exchange of cash, or other property, [or] assets or shares of stock of any other corporation held as an asset by any constituent corporation to the stockholders of any constituent corporation (except in payment of dissenting stockholders for their shares under sections 417-19 to 417-30) unless after giving effect to any such distribution or exchange of cash, or other property, [or] assets or shares of stock of any other corporation held as an asset by any constituent corporation, the liabilities of the surviving or consolidated corporation, including those derived by it from the constituent corporations, plus the amount of the capital stock of the surviving or consolidated corporation do not exceed the value of the remaining assets and property of the surviving or consolidated corporation, and unless the liabilities of the surviving or consolidated corporation, including those derived by it from the constituent corporations, are less in amount than one-half the value of the remaining assets and property of the surviving or consolidated corporation.

The agreement may also provide the time or conditions, upon the happening of which the agreement shall be executed and filed as herein provided. The agreement may also provide that the name of the consolidated corporation shall be the same as the name of a constituent corporation.

If the agreement is for a consolidation, it shall state therein or incorporate as part thereof, by reference and exhibit number, complete articles of association as is required by chapter 416 in the case of the formation of new corporations (except that the name of the incorporators and the affidavit referred to in section 416-15 shall not be required). These articles of association shall be deemed to be the articles of association of the consolidated corporation upon the filing of consolidation agreement in the office of the director of regulatory agencies as hereinafter provided. The articles of association of the consolidated corporation may contain all the powers and privileges that could be lawfully conferred or obtained in original articles of association.

If the agreement is for a merger, it shall state any matters with respect to which the articles of the surviving corporation are proposed to be amended, and shall set forth or incorporate as part thereof, by reference and exhibit number, the proposed articles of association as amended, and the articles shall be deemed to be the amended articles of association of the surviving corporation upon the filing of the merger agreement in the office of the director as hereinafter provided. The amended articles of association of the surviving corporation may provide for the extension of the term of its corporate existence, and may contain all the powers and privileges that could be lawfully conferred or obtained in original articles of association.

Prior to its execution, the proposed merger or consolidation agreement shall be approved by the board of directors of each constituent corporation. The approval may be given either before or after the approval or authorization of the stockholders as herein provided."

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SECTION 3. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 4. This Act shall take effect upon approval.

(Approved April 23, 1979.)