

A Bill for an Act Relating to Mergers.

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

SECTION 1. Chapter 414, Hawaii Revised Statutes, is amended by adding to part XII two new sections to be appropriately designated and to read as follows:

“§414-A Definitions. As used in this part:

“Merger” means the procedure authorized by this part in which one domestic or foreign entity combines with one or more domestic or foreign entities resulting in either one surviving entity or one new entity.

“Organizing articles” means:

- (1) For a corporation or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership, limited liability partnership, or limited partnership, the registration statement; and
- (3) For a limited liability company, the articles of organization.

“Other business entity” means a nonprofit corporation, limited liability company, general partnership, limited partnership, or limited liability partnership.

§414-B Foreign mergers. Filings for mergers between foreign entities registered in this State shall be subject to section 414-315(d). Section 414-315(d) shall not apply to mergers between foreign entities that occurred during the period July 1, 2001, to June 30, 2003.”

SECTION 2. Chapter 414D, Hawaii Revised Statutes, is amended by adding to part X a new section to be appropriately designated and to read as follows:

“§414D-A Foreign mergers. Filings for mergers between foreign entities registered in this State shall be subject to section 414D-203(d). Section 414D-203(d) shall not apply to mergers between foreign entities that occurred during the period July 1, 2001, to June 30, 2003.”

SECTION 3. Chapter 425, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART A. MERGERS

§425-A Definitions. As used in this part:

“Merger” means the procedure authorized by this part in which one domestic or foreign entity combines with one or more domestic or foreign entities resulting in either one surviving entity or one new entity.

“Organizing articles” means:

- (1) For a corporation or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership, limited liability partnership, or limited partnership, the registration statement; and
- (3) For a limited liability company, the articles of organization.

“Other business entity” means a corporation, a limited liability company, or a limited partnership.

§425-B Foreign mergers. Filings for mergers between foreign entities registered in this State shall be subject to section 425-D(d). Section 425-D(d) shall not apply to mergers between foreign entities that occurred during the period July 1, 2001, to June 30, 2003.

§425-C Merger of general partnerships and limited liability partnerships. (a) Pursuant to a plan of merger, a domestic general partnership, foreign general partnership, domestic limited liability partnership, or foreign limited liability partnership may merge with one or more domestic professional corporations or with one or more general partnerships, limited liability partnerships, or other business entities formed or organized under the laws of this State, any state or territory of the United States, any foreign jurisdiction, or any combination thereof, with one of the domestic professional corporations, domestic or foreign general partnerships or limited liability partnerships, or other business entities whether domestic or foreign, being the surviving entity, as provided in the plan; provided that the merger is permitted by the law of the state or country under whose law each foreign entity that is a party to the merger is organized.

(b) The plan of merger shall set forth:

- (1) The name and jurisdiction of formation or organization of each entity that is a party to the merger;
- (2) The name of the surviving entity with or into which the other entity or entities will merge;
- (3) The terms and conditions of the merger;
- (4) The manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or in part;
- (5) The street address of the surviving entity’s principal place of business, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service; and
- (6) Amendments, if any, to the organizing articles of the surviving entity or, if no such amendments are desired, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger.

(c) A plan of merger may:

- (1) Amend the partnership agreement of a general partnership or limited liability partnership; or
- (2) Adopt a new partnership agreement, for a general partnership or limited liability partnership if it is the surviving entity in the merger.

Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant this subsection shall be effective upon the effective date of the merger. This subsection shall not limit the accomplishment of a merger or of any of the matters referred to in this subsection by any other means provided for in a general partnership’s or limited liability partnership’s partnership agreement or other agreement, or as otherwise permitted by law; provided that the partnership agreement of any constituent partnership or limited liability partnership to the merger (including a partnership or a limited liability partnership formed for the purpose of consummating a merger) shall be the partnership agreement of the surviving general partnership or limited liability partnership.

(d) A plan of merger may set forth other provisions relating to the merger.

(e) A plan of merger shall be approved:

- (1) In the case of a domestic general partnership or limited liability partnership that is a party to the merger, unless otherwise provided by the partnership agreement, by the vote of all partners; and
- (2) In the case of a foreign general partnership or foreign limited liability partnership that is a party to the merger, by the vote required for approval of a merger by the laws of the state or foreign jurisdiction in which the foreign general partnership or foreign limited liability partnership is organized.

(f) If a foreign general partnership or foreign limited liability partnership is the surviving entity of a merger, it shall not do business in this State until an application for a certificate of authority is filed with the director if the foreign general partnership or foreign limited liability partnership is not already authorized to do business in the State.

(g) The surviving entity shall furnish a copy of the plan of merger, on request and without cost, to any member, shareholder, or partner of any entity that is a party to the merger.

(h) A plan of merger may provide that at any time prior to the time that the plan becomes effective, the plan may be terminated by the partners of any partnership or limited liability partnership notwithstanding approval by all or any of the constituent parties. If the plan of merger is terminated after the filing of the articles but before the plan has become effective, a certificate of termination shall be filed with the director. A plan of merger may allow the partners of the constituent partnerships to amend the plan at any time prior to the time that the plan becomes effective; provided that an amendment made subsequent to the adoption of the plan by the partners of any constituent partnership shall not:

- (1) Alter or change the amount or kind of shares, securities, cash, property, or rights to be received in exchange for or on conversion of all or any of the interests of the constituent partnership; or
- (2) Alter or change any term of the organizing articles of the surviving entity to be effected by the merger.

If the plan of merger is amended after the articles are filed with the director but before the plan has become effective, a certificate of amendment shall be filed with the director.

(i) A merger takes effect on the filing date of the articles of merger, or on the date subsequent to the filing as set forth in the articles of merger; provided that the effective date shall not be more than thirty days from the filing date.

§425-D Articles of merger. (a) After approval of the plan of merger, unless the merger is terminated, articles of merger shall be signed on behalf of each general partnership or limited liability partnership, and each entity that is a party to the merger and delivered to the director for filing. The articles shall set forth:

- (1) The name and jurisdiction of formation or organization of each entity that is a party to the merger, and the name, address, and jurisdiction of organization of the entity with or into which they propose to merge, which is hereinafter designated as the surviving entity;
- (2) A statement that the plan of merger was approved by each entity that is a party to the merger;
- (3) A statement indicating any changes in the organizing articles of the surviving entity to be given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger;
- (4) The future effective date (which shall be a date certain) of the merger if it is not to be effective upon the filing of the articles of merger;

provided that the effective date shall not be more than thirty days from the filing date; and

- (5) A statement that includes:
 - (A) An agreement that the surviving entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;
 - (B) An irrevocable appointment of a resident of this State as its agent to accept service of process in any such proceeding, that includes the resident's street address in this State; and
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving entity.
- (b) If the articles of merger provide for a future effective date, and:
 - (1) The plan of merger is amended to change the future effective date;
 - (2) The plan of merger permits the amendment of the articles of merger to change the future effective date without an amendment to the plan of merger; or
 - (3) The plan of merger is amended to change any other matter contained in the articles of merger so as to make the articles of merger inaccurate in any material respect, prior to the future effective date;

then the articles of merger shall be amended by filing with the director a certificate of amendment that identifies the articles of merger and sets forth the amendment to the articles of merger.

If the articles of merger provide for a future effective date and if the plan of merger is terminated prior to the future effective date, the articles of merger shall be terminated by filing with the director a certificate of termination that identifies the articles of merger and states that the plan of merger has been terminated.

(c) Articles of merger shall operate as an amendment to the general partnership's or limited liability partnership's organizing articles.

(d) Articles of merger shall act as a statement of dissolution or as an application for withdrawal for the respective domestic or foreign general partnership or domestic or foreign limited liability partnership that is not the surviving entity in the merger; provided that:

- (1) If the surviving entity is a foreign entity registered in this State, it shall file with the director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the entity was organized no later than sixty days after the merger is effective; or
- (2) If a nonsurviving entity is registered in this State and the surviving entity is not registered in this State, a nonsurviving entity shall file with the director an application for withdrawal no later than sixty days after the merger is effective.

§425-E Effect of merger. (a) When a merger takes effect:

- (1) The separate existence of each entity that is a party to the merger, other than the surviving entity, terminates;
- (2) All property owned by each of the entities that are parties to the merger vests in the surviving entity;
- (3) All debts, liabilities, and other obligations of each entity that is a party to the merger become the obligations of the surviving entity;
- (4) An action or proceeding pending by or against an entity that is party to a merger may be continued as if the merger had not occurred or the

surviving entity may be substituted as a party to the action or proceeding; and

- (5) Except as prohibited by other law, all rights, privileges, immunities, powers, and purposes of every entity that is a party to a merger become vested in the surviving entity.

(b) If a surviving entity fails to appoint or maintain an agent designated for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the designated office, service of process may be made upon the surviving entity by sending a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

- (1) The date the surviving entity receives the process, notice, or demand;
- (2) The date shown on the return receipt, if signed on behalf of the surviving entity; or
- (3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.

(c) A partner of a surviving partnership or limited liability partnership shall be liable for all obligations of a party to the merger for which the partner was personally liable prior to the merger.

(d) Unless otherwise agreed, a merger of a general partnership or limited liability partnership that is not the surviving entity in the merger shall not require the general partnership or limited liability partnership to wind up its business under this chapter or pay its liabilities and distribute its assets pursuant to this chapter.

§425-F Dissenters' rights. The shareholders of a domestic corporation that is a party to a merger authorized by section 425-C shall have the rights of dissenting shareholders in the manner provided in part XIV of chapter 414."

SECTION 4. Chapter 425D, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

“ARTICLE A. MERGERS

§425D-A Definitions. As used in this part:

“Merger” means the procedure authorized by this part in which one domestic or foreign entity combines with one or more domestic or foreign entities resulting in either one surviving entity or one new entity.

“Organizing articles” means:

- (1) For a corporation or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership, limited liability partnership, or limited partnership, the registration statement; and
- (3) For a limited liability company, the articles of organization.

“Other business entity” means a corporation, limited liability company, general partnership, or limited liability partnership.

§425D-B Foreign mergers. Filings for mergers between foreign entities registered in this State shall be subject to section 425D-D(d). Section 425D-D(d) shall not apply to mergers between foreign entities that occurred during the period July 1, 2001, to June 30, 2003.

§425D-C Merger. (a) Pursuant to a plan of merger, a domestic limited partnership may merge with one or more domestic professional corporations or with one or more limited partnerships or other business entities formed or organized under the laws of this State, any state or territory of the United States, any foreign

jurisdiction, or any combination thereof, with one of the domestic professional corporations, domestic or foreign limited partnerships, or other business entities whether domestic or foreign, being the surviving entity, as provided in the plan; provided that the merger is permitted by the law of the state or country under whose law each foreign entity that is a party to the merger is organized.

(b) The plan of merger shall set forth:

- (1) The name and jurisdiction of formation or organization of each entity that is a party to the merger;
 - (2) The name of the surviving entity with or into which the other entity or entities will merge;
 - (3) The terms and conditions of the merger;
 - (4) The manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or in part;
 - (5) The street address of the surviving entity's principal place of business, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service; and
 - (6) Amendments, if any, to the organizing articles of the surviving entity or, if no amendments are desired, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger.
- (c) A plan of merger may:
- (1) Amend the partnership agreement of the limited partnership; or
 - (2) Adopt a new partnership agreement, for a limited partnership if it is the surviving entity in the merger.

Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to this subsection shall be effective upon the effective date of the merger. This subsection shall not limit the accomplishment of a merger or of any of the matters referred to in this subsection by any other means provided for in a limited partnership's partnership agreement or other agreement, or as otherwise permitted by law; provided that the partnership agreement of any constituent limited partnership to the merger (including a limited partnership formed for the purpose of consummating a merger) shall be the partnership agreement of the surviving limited partnership.

- (d) A plan of merger may set forth other provisions relating to the merger.
- (e) A plan of merger shall be approved:
 - (1) In the case of a domestic limited partnership that is a party to the merger, unless otherwise provided by the partnership agreement, by the vote of all general partners and by the limited partners; provided that if there is more than one class of limited partners, then by each class of limited partners, in either case, by limited partners who own more than fifty per cent of the then current percentage owned by all of the limited partners or by the limited partners in each class as appropriate; and
 - (2) In the case of a foreign limited partnership that is a party to the merger, by the vote required for approval of a merger by the laws of the state or foreign jurisdiction in which the foreign limited partnership is organized.

(f) If a foreign limited partnership is the surviving entity of a merger, it shall not do business in this State until an application for a certificate of authority is filed with the director if the foreign limited partnership is not already authorized to do business in the State.

(g) The surviving entity shall furnish a copy of the plan of merger, on request and without cost, to any member, shareholder, or partner of any entity that is a party to the merger.

(h) A plan of merger may provide that at any time prior to the time that the plan becomes effective, the plan may be terminated by the partners of any limited partnership notwithstanding approval by all or any of the constituent parties. If the plan of merger is terminated after the filing of the articles but before the plan has become effective, a certificate of termination shall be filed with the director. A plan of merger may allow the partners of the constituent partnerships to amend the plan at any time prior to the time that the plan becomes effective; provided that an amendment made subsequent to the adoption of the plan by the partners of any constituent partnership shall not:

- (1) Alter or change the amount or kind of shares, securities, cash, property, or rights to be received in exchange for or on conversion of all or any of the interests of such the partnership; or
- (2) Alter or change any term of the organizing articles of the surviving entity to be effected by the merger.

If the plan of merger is amended after the articles are filed with the director but before the plan has become effective, a certificate of amendment shall be filed with the director.

(i) A merger takes effect upon the filing date of the articles of merger, or on the date subsequent to the filing as set forth in the articles of merger; provided that the effective date shall not be more than thirty days from the filing date.

§425D-D Articles of merger. (a) After approval of the plan of merger, unless the merger is terminated, articles of merger shall be signed on behalf of each limited partnership, and each entity that is a party to the merger and delivered to the director for filing. The articles shall set forth:

- (1) The name and jurisdiction of formation or organization of each entity that is a party to the merger, and the name, address, and jurisdiction of organization of the entity with or into which they propose to merge, which is hereinafter designated as the surviving entity;
 - (2) A statement that the plan of merger was approved by each entity that is a party to the merger;
 - (3) A statement indicating any changes in the organizing articles of the surviving entity to be given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger;
 - (4) The future effective date (which shall be a date certain) of the merger if it is not to be effective upon the filing of the articles of merger; provided that the effective date shall not be more than thirty days from the filing date; and
 - (5) A statement that includes:
 - (A) An agreement that the surviving entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;
 - (B) An irrevocable appointment of a resident of this State as its agent to accept service of process in any such proceeding, and includes the resident's street address in this State; and
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving entity.
- (b) If the articles of merger provide for a future effective date, and:

- (1) The plan of merger is amended to change the future effective date;
- (2) The plan of merger permits the amendment of the articles of merger to change the future effective date without an amendment to the plan of merger; or
- (3) The plan of merger is amended to change any other matter contained in the articles of merger so as to make the articles of merger inaccurate in any material respect, prior to the future effective date;

then the articles of merger shall be amended by filing with the director a certificate of amendment that identifies the articles of merger and sets forth the amendment to the articles of merger.

If the articles of merger provide for a future effective date and if the plan of merger is terminated prior to the future effective date, the articles of merger shall be terminated by filing with the director a certificate of termination that identifies the articles of merger and states that the plan of merger has been terminated.

(c) Articles of merger shall operate as an amendment to the limited partnership's organizing articles.

(d) Articles of merger shall act as a statement of dissolution or as an application for withdrawal for the respective domestic or foreign limited partnership that is not the surviving entity in the merger; provided that:

- (1) If the surviving entity is a foreign entity registered in this State, it shall file with the director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the foreign entity was organized no later than sixty days after the merger is effective; or
- (2) If a nonsurviving entity is registered in this State and the surviving entity is not registered in this State, a nonsurviving entity shall file with the director an application for withdrawal no later than sixty days after the merger is effective.

§425D-E Effect of merger. (a) When a merger takes effect:

- (1) The separate existence of each entity that is a party to the merger, other than the surviving entity, terminates;
- (2) All property owned by each of the entities that are parties to the merger vests in the surviving entity;
- (3) All debts, liabilities, and other obligations of each entity that is a party to the merger become the obligations of the surviving entity;
- (4) An action or proceeding pending by or against an entity that is party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and
- (5) Except as prohibited by other law, all rights, privileges, immunities, powers, and purposes of every entity that is a party to a merger become vested in the surviving entity.

(b) If a surviving entity fails to appoint or maintain an agent designated for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the designated office, service of process may be made upon the surviving entity by sending a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

- (1) The date the surviving entity receives the process, notice, or demand;
- (2) The date shown on the return receipt, if signed on behalf of the surviving entity; or
- (3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.

(c) A general partner or limited partner of a surviving limited partnership shall be liable for all obligations of a party to the merger for which the general partner or limited partner was personally liable prior to the merger.

(d) Unless otherwise agreed, a merger of a limited partnership that is not the surviving entity in the merger shall not require the limited partnership to wind up its business under this chapter or pay its liabilities and distribute its assets pursuant to this chapter.

§425D-F Dissenters' rights. The shareholders of a domestic corporation that is a party to a merger authorized by section 425D-C shall have the rights of dissenting shareholders in the manner provided in part XIV of chapter 414."

SECTION 5. Chapter 428, Hawaii Revised Statutes, is amended by adding to part IX a new section to be appropriately designated and to read as follows:

"§428-B Foreign mergers. Filings for mergers between foreign entities registered in this State shall be subject to section 428-905(d). Section 428-905(d) shall not apply to mergers between foreign entities that occurred during the period July 1, 2001, to June 30, 2003."

SECTION 6. Section 414-311, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~414-311] Merger. (a) ~~[One or more corporations]~~ Pursuant to a plan of merger adopted by the board of directors and approved by the shareholders (if required under section 414-313), a domestic or foreign corporation may merge ~~[into another corporation if the board of directors of each corporation adopts and its shareholders (if required by section 414-313) approve a plan of merger.]~~ with one or more domestic professional corporations, or with one or more corporations or other business entities formed or organized under the laws of this State, any state or territory of the United States, any foreign jurisdiction, or any combination thereof, with one of the domestic professional corporations, domestic or foreign corporations, or other business entities whether domestic or foreign, being the surviving entity, as provided in the plan; provided that the merger is permitted by the law of the state or country under whose law each foreign entity that is a party to the merger is organized.

(b) The plan of merger ~~[must]~~ shall set forth:

(1) ~~[The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;]~~ The name and jurisdiction of formation or organization of each entity that is a party to the merger;

(2) The name of the surviving entity with or into which the other entity or entities will merge;

~~[(2)]~~ (3) The terms and conditions of the merger; ~~[and]~~

~~[(3)]~~ (4) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or in part[-

~~(e) The plan of merger may set forth:];~~

(5) The street address of the surviving entity's principal place of business or, if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service; and

~~[(4)]~~ (6) Amendments, if any, to the organizing articles of ~~[incorporation of]~~ the surviving ~~[corporation; and]~~ entity or, if no amendments

are desired, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger.

~~[(2) Other]~~ (c) A plan of merger may set forth other provisions relating to the merger.

(d) If a foreign corporation survives a merger, it shall not do business in this State until an application for a certificate of authority is filed with the department director if the foreign corporation is not already authorized to do business in the State.

(e) The surviving entity shall furnish a copy of the plan of merger, on request and without cost, to any member, shareholder, or partner of any entity that is a party to the merger.”

SECTION 7. Section 414-312, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~414-312~~] Share exchange.~~ (a) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders (if required by section 414-313) approve the exchange.

(b) The plan of exchange ~~[must]~~ shall set forth:

- (1) The name of the corporation whose shares will be acquired and the name of the acquiring corporation;
- (2) The terms and conditions of the exchange; and
- (3) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring corporation or any other corporation or for cash or other property in whole or in part.

(c) The plan of exchange may set forth other provisions relating to the exchange.

(d) The corporation whose shares will be acquired shall be a domestic corporation, whether or not the law of the state or country under whose law the acquiring corporation is incorporated permits a share exchange.

~~[(d)]~~ (e) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.”

SECTION 8. Section 414-313, Hawaii Revised Statutes, is amended to read as follows:

“§414-313 Action plan. (a) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger (except as provided in subsection (h)) or share exchange for approval by its shareholders.

(b) For a plan of merger or share exchange to be approved:

- (1) The board of directors ~~[must]~~ shall recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and
- (2) The shareholders entitled to vote ~~[must]~~ shall approve the plan.

(c) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders’ meeting in accordance with section 414-125.

The notice ~~[must]~~ shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.

(e) With respect to corporations incorporated on or after July 1, 1987, at such a meeting, a vote of the shareholders shall be taken on the proposed plan. The plan shall be approved upon receiving the affirmative vote of the holders of a majority of each class of the shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Any class of shares of any such corporation shall be entitled to vote as a class if any such plan contains any provision that, if contained in a proposed amendment to articles of incorporation, would entitle that class of shares to vote as a class and, in the case of an exchange, if the class is included in the exchange.

(f) With respect to corporations incorporated before July 1, 1987, at such meeting, a vote of the shareholders shall be taken on the proposed plan. The plan shall be approved upon receiving the affirmative vote of the holders of three-fourths of all the issued and outstanding shares of stock having voting power even though their right to vote is otherwise restricted or denied by the articles, bylaws, or resolutions of any such corporation. The articles of incorporation may be amended by the vote set forth in the preceding sentence to provide for a lesser proportion of shares, or of any class or series thereof, than is provided in the preceding sentence, in which case the articles of incorporation shall control; provided that the lesser proportion shall be not less than the proportion set forth in subsection (e).

(g) Separate voting by voting groups is required:

- (1) On a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under section 414-284; or
- (2) On a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

(h) Action by the shareholders of the surviving corporation on a plan of merger is not required if:

- (1) The articles of incorporation of the surviving corporation will not differ (except for amendments enumerated in section 414-282) from the articles of incorporation before the merger;
- (2) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;
- (3) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty per cent the total number of voting shares of the surviving corporation outstanding immediately before the merger; and
- (4) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty per cent the total number of participating shares outstanding immediately before the merger.

(i) As used in subsection (h):

“Participating shares” means shares that entitle their holders to participate without limitations in distributions.

“Voting shares” means shares that entitle their holders to vote unconditionally in elections of directors.

(j) After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned (subject to any contractual rights), without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors. A plan of merger may provide that at any time prior to the time that the plan becomes effective, the plan may be terminated by the board of directors of any constituent corporation notwithstanding approval of the plan by the stockholders of all or any of the constituent corporations. If the plan of merger is terminated after the filing of the articles but before the plan has become effective, a certificate of termination shall be filed with the department director. A plan of merger may allow the boards of directors of the constituent corporations to amend the plan at any time prior to the time that the plan becomes effective; provided that an amendment made subsequent to the adoption of the plan by the stockholders of any constituent corporation shall not:

- (1) Alter or change the amount or kind of shares, securities, cash, property, or rights or any of them to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of the constituent corporation;
- (2) Alter or change any term of the organizing articles of the surviving entity to be effected by the merger; or
- (3) Alter or change any of the terms and conditions of the plan if the alteration or change would adversely affect the holders of any class or series thereof of the constituent corporation.

If the plan of merger is amended after the articles are filed with the department director but before the plan has become effective, articles of amendment shall be filed with the department director.

(k) A merger or share exchange takes effect on the filing date of the articles of merger or share exchange, or on the date subsequent to the filing as set forth in the articles of merger or share exchange; provided that the effective date shall not be more than thirty days from the filing date.”

SECTION 9. Section 414-315, Hawaii Revised Statutes, is amended to read as follows:

“§414-315 Articles of merger or share exchange. (a) After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the department director for filing articles of merger or share exchange setting forth:

- (1) For a merger, the name and jurisdiction of each entity that is a party to the merger and the name, address, and jurisdiction of the surviving entity with or into which they propose to merge, which is hereinafter designated as the surviving entity;
- (2) For a share exchange, the name of the corporation whose shares will be acquired and the name of the acquiring corporation;
- (+)] (3) A statement that the plan of merger or share exchange has been approved by [the board of directors of] each [corporation] entity involved in the merger or share exchange;

- (2) (4) If shareholder approval was not required, a statement to that effect;
- (3) (5) If approval of the shareholders of one or more corporations party to the merger or share exchange was required:
 - (A) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and
 - (B) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group; [and

(4) (6) If a merger, a statement indicating ~~the~~ any changes in the organizing articles ~~of incorporation~~ of the surviving ~~corporation~~ entity to be ~~effectuated~~ given effect by the merger[

~~(b) A merger or share exchange takes effect upon the effective time and date of the filing of articles of merger or share exchange, or upon the time and date subsequent to the filing as set forth in the articles of merger or share exchange; provided not more than thirty days elapse from the date of filing.]; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger; and~~

(7) A statement that includes:

- (A) An agreement that the surviving entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;
- (B) An irrevocable appointment of a resident of this State as its agent to accept service of process in any such proceeding, that includes the resident's street address in this State; and
- (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving entity.

(b) If the articles of merger provide for a future effective date, and:

- (1) The plan of merger is amended to change the future effective date;
- (2) The plan of merger permits the amendment of the articles of merger to change the future effective date without an amendment to the plan of merger; or
- (3) The plan of merger is amended to change any other matter contained in the articles of merger so as to make the articles of merger inaccurate in any material respect, prior to the future effective date;

then the articles of merger shall be amended by filing with the department director articles of amendment that identify the articles of merger and set forth the amendment to the articles of merger.

If the articles of merger provide for a future effective date and if the plan of merger is terminated prior to the future effective date, the articles of merger shall be terminated by filing with the department director a certificate of termination that identifies the articles of merger and states that the plan of merger has been terminated.

(c) Articles of merger operate as an amendment to the corporation's articles of incorporation.

(d) Articles of merger shall act as articles of dissolution or an application for a certificate of withdrawal for the respective domestic or foreign corporation that is not the surviving entity in the merger; provided that:

- (1) If the surviving entity is a foreign entity registered in this State, it shall file with the department director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the foreign entity was organized no later than sixty days after the merger is effective; or
- (2) If a nonsurviving entity is registered in this State and the surviving entity is not registered in this State, the nonsurviving entity shall file with the department director an application for a certificate of withdrawal no later than sixty days after the merger is effective.”

SECTION 10. Section 414-316, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§414-316**~~]]~~ **Effect of merger or share exchange.** (a) When a merger takes effect:

- (1) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;
- (2) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment;
- (3) The surviving corporation has all liabilities of each corporation party to the merger;
- (4) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;
- (5) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger and indicated in the articles of merger; and
- (6) The shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property are converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under part XIV.

(b) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights under part XIV.

(c) If a surviving entity fails to appoint or maintain an agent designated for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the designated office, service of process may be made upon the surviving entity by sending a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

- (1) The date the surviving entity receives the process, notice, or demand;
- (2) The date shown on the return receipt, if signed on behalf of the surviving entity; or
- (3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.”

SECTION 11. Section 414-318, Hawaii Revised Statutes, is amended to read as follows:

“§414-318 Merger of subsidiary corporations. (a) Any corporation owning at least ninety per cent of the outstanding shares of each class of two or more corporations may adopt a plan of merger pursuant to section 414-314 that shall be delivered to the department director for filing including articles of merger. The articles of merger shall be signed by the parent corporation and the surviving subsidiary corporation. The plan of merger shall set forth:

- (1) The name of the parent corporation owning at least ninety per cent of the shares of the subsidiary corporations, the name of any nonsurviving subsidiary corporation, and the name of the surviving subsidiary corporation; and
- (2) The manner and basis of converting the shares of any nonsurviving subsidiary corporation into shares, obligations, or other securities of the surviving subsidiary corporation or of any other corporation or, in whole or in part, into cash or other property.

(b) A copy of the plan of merger shall be mailed to each shareholder of record of any nonsurviving subsidiary corporation, except the parent corporation.

(c) On or after the thirtieth day after the mailing of a copy of the plan of merger to shareholders of any nonsurviving subsidiary corporation or upon the waiver thereof by the holders of all outstanding shares, the articles of merger shall be delivered to the department director for filing. Articles of merger shall set forth:

- (1) A statement that the plan of merger has been approved by the board of directors of the parent corporation;
- (2) The number of outstanding shares of each class of any nonsurviving subsidiary corporation and the number of the shares of each class owned by the parent corporation; and
- (3) The date a copy of the plan of merger is mailed to shareholders of any nonsurviving subsidiary corporation entitled to receive the plan of merger.

(d) Mergers under this section shall also be subject to sections 414-313(k) and 414-315(a), (b), and (d).”

SECTION 12. Section 414D-14, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

““Corporation” means a nonprofit corporation unless otherwise specified.

“Merger” means the procedure authorized by this part in which one domestic or foreign entity combines with one or more domestic or foreign entities resulting in either one surviving entity or one new entity.

“Profit corporation” means a corporation organized for profit and registered under chapter 414.”

SECTION 13. Section 414D-201, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§414D-201[.] Approval of plan of merger.~~ Merger. (a) ~~[One or more nonprofit corporations may merge into a business or nonprofit corporation, if the] Pursuant to a plan of merger [is] approved as provided in section 414D-202[-], a domestic or foreign corporation may merge with one or more profit or nonprofit corporations organized under the laws of this State, any state or territory of the United States, any foreign jurisdiction, or any combination thereof, with one of the domestic or foreign corporations being the surviving corporation, as provided in the~~

plan; provided that the merger is permitted by the law of the state or country under whose law each foreign corporation that is a party to the merger is organized.

(b) The plan of merger shall set forth:

- (1) The name and jurisdiction of each corporation planning to merge and the name of the surviving corporation into which each plans to merge;
- (2) The terms and conditions of the [planned] merger; [and]
- (3) The manner and basis[~~-, if any, of~~] for converting memberships of each merging corporation into memberships, obligations, or securities of the surviving or any other corporation or into cash or other property in whole or part;

~~(e) The plan of merger may set forth:~~;

- (4) The street address of the surviving corporation's principal place of business, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service; and

- [~~(4) -Any amendments~~] (5) Amendments, if any, to the articles of incorporation or bylaws of the surviving corporation to be effected by the planned merger[; and] or, if no amendments are desired, a statement that the articles of incorporation of the surviving corporation shall not be amended pursuant to the merger.

~~[(2) Other]~~ (c) A plan of merger may set forth other provisions relating to the [planned] merger.

(d) If a foreign corporation survives a merger, it shall not do business in this State until an application for a certificate of authority is filed with the department director if the foreign corporation is not already authorized to do business in the State.

(e) The surviving corporation shall furnish a copy of the plan of merger, on request and without cost, to any member or shareholder of any corporation that is a party to the merger.'

SECTION 14. Section 414D-202, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~414D-202[~~] Action on plan by board, members, and third persons.~~

(a) Unless this chapter, the articles, the bylaws, or the board of directors or members (acting pursuant to subsection (c)) require a greater vote or voting by class, a plan of merger to be adopted shall be approved:

- (1) By the board;
- (2) By the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and
- (3) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 414D-188 for an amendment to the articles or bylaws.

(b) If the corporation does not have members, the merger [~~must~~] shall be approved by a majority of the directors in office at the time the merger is approved. In addition, the corporation shall provide notice of any directors' meeting at which the approval is to be obtained in accordance with section 414D-145(c). The notice [~~must~~] shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed merger.

(c) The board may condition its submission of the proposed merger, and the members may condition their approval of the merger, on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to its members of the

proposed membership meeting in accordance with section 414D-105. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(e) If the board seeks to have the plan approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(f) Voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under section 414D-184 or 414D-187. The plan shall be approved by a class of members by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(g) After a merger is adopted, and at any time before articles of merger are filed, the planned merger may be abandoned (subject to any contractual rights) without further action by members or other persons who approved the plan in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors. A plan of merger may provide that at any time prior to the time that the plan becomes effective, the plan may be terminated by the board of directors of any constituent corporation notwithstanding approval of the plan by the stockholders of all or any of the constituent corporations. If the plan of merger is terminated after the filing of the articles but before the plan has become effective, a certificate of termination shall be filed with the department director. A plan of merger may allow the boards of directors of the constituent corporations to amend the plan at any time prior to the time that the plan becomes effective; provided that an amendment made subsequent to the adoption of the plan by the stockholders of any constituent corporation shall not:

- (1) Alter or change the amount or kind of shares, securities, cash, property, or rights or any of them to be received in exchange for or on conversion of all or any of the interests of the constituent corporation;
- (2) Alter or change any term of the organizing articles of the surviving entity to be effected by the merger; or
- (3) Alter or change any of the terms and conditions of the plan if the alteration or change would adversely affect the holders of any interest of the constituent corporation.

If the plan of merger is amended after the articles are filed with the department director but before the plan has become effective, articles of amendment shall be filed with the department director.

(k)¹ A merger takes effect on the filing date of the articles of merger, or on the date subsequent to the filing as set forth in the articles of merger; provided that the effective date shall not be more than thirty days from the filing date.”

SECTION 15. Section 414D-203, Hawaii Revised Statutes, is amended to read as follows:

“~~[§414D-203]~~ **Articles of merger.** (a) After a plan of merger is approved by the board of directors~~[-]~~ and, if required by section 414D-202, by the members and any other persons, the surviving or acquiring corporation shall deliver to the department director articles of merger setting forth:

- (1) The plan of merger;
- (2) If approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;
- (3) If approval by members was required:
 - (A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and
 - (B) The total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class;
- (4) If approval of the plan by some person or persons other than the members or the board is required pursuant to section 414D-202, a statement that the approval was obtained~~[-]~~;
- (5) If a merger, a statement indicating any changes in the organizing articles of the surviving entity to be given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger; and
- (6) A statement that includes:
 - (A) An agreement that the surviving entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;
 - (B) An irrevocable appointment of a resident of this State as its agent to accept service of process in any such proceeding, that includes the resident's street address in this State; and
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving entity.
- (b) If the articles of merger provide for a future effective date, and:
 - (1) The plan of merger is amended to change the future effective date;
 - (2) The plan of merger permits the amendment of the articles of merger to change the future effective date without an amendment to the plan of merger; or
 - (3) The plan of merger is amended to change any other matter contained in the articles of merger so as to make the articles of merger inaccurate in any material respect, prior to the future effective date;

then the articles of merger shall be amended by filing with the department director articles of amendment that identify the articles of merger and set forth the amendment to the articles of merger.

If the articles of merger provide for a future effective date and if the plan of merger is terminated prior to the future effective date, the articles of merger shall be terminated by filing with the department director a certificate of termination that identifies the articles of merger and the plan of merger and states that the plan of merger has been terminated.

(c) Articles of merger operate as an amendment to the corporation’s articles of incorporation.

(d) Articles of merger shall act as articles of dissolution or an application for a certificate of withdrawal for the respective domestic or foreign corporation that is not the surviving entity in the merger; provided that:

- (1) If the surviving entity is a foreign entity registered in this State, it shall file with the department director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the entity was organized no later than sixty days after the merger is effective; or
- (2) If the nonsurviving entity or entities is or are registered in this State and the surviving entity is not registered in this State, the nonsurviving entity or entities shall file with the department director a certificate of withdrawal no later than sixty days after the merger is effective.’’

SECTION 16. Section 414D-204, Hawaii Revised Statutes, is amended to read as follows:

“~~[§414D-204]~~ **Effect of merger.** (a) When a merger takes effect:

- (1) Every corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;
- (2) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment subject to any and all conditions to which the property was subject prior to the merger;
- (3) The surviving corporation has all liabilities and obligations of each corporation party to the merger;
- (4) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased; and
- (5) The articles of incorporation and bylaws of the surviving corporation are amended to the extent provided in the plan of merger.

(b) If a surviving entity fails to appoint or maintain an agent designated for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the designated office, service of process may be made upon the surviving entity by sending a copy of the process by registered or certified mail, return receipt requested, to the surviving corporation at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

- (1) The date the corporation receives the process, notice, or demand;
- (2) The date shown on the return receipt, if signed on behalf of the corporation; or
- (3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.’’

SECTION 17. Section 415A-16, Hawaii Revised Statutes, is amended to read as follows:

“~~[§415A-16]~~ **Merger and consolidation.** (a) ~~A professional corporation may merge or consolidate with another corporation, domestic or foreign, only if every shareholder of each corporation is qualified to be a shareholder of the surviving or new corporation.~~

(b) ~~Upon the merger or consolidation of a professional corporation, if the surviving or new corporation, as the case may be, is to render professional services in this State, it shall comply with this chapter.]~~ **share exchange.** A professional corporation involved in a merger or share exchange shall be subject to the provisions for mergers and share exchanges set forth in chapter 414.

SECTION 18. Section 425-192, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A domestic partnership or limited liability partnership may adopt a plan of conversion and convert to a foreign partnership, limited liability partnership, or any other entity if:

- (1) The domestic partnership or limited liability partnership acts on and its partners approve a plan of conversion in the manner prescribed by sections ~~[425-191]~~ 425-C and 428-904 to 428-906 and the conversion is treated as a merger to which the converting entity is a party and not the surviving entity;
- (2) The conversion is permitted by and complies with the laws of the state or country in which the converted entity is to be incorporated, formed, or organized; and the incorporation, formation, or organization of the converted entity complies with such laws;
- (3) At the time the conversion becomes effective, each partner of the converting entity, unless otherwise agreed to by that partner, owns an equity interest or other ownership interest in, and is a shareholder, partner, member, owner, or other security holder of, the converted entity; and
- (4) The converted entity shall be incorporated, formed, or organized as part of or pursuant to the plan of conversion.”

SECTION 19. Section 425-195, Hawaii Revised Statutes, is amended to read as follows:

“~~[§425-195]~~ **Effect of conversion.** When a conversion becomes effective:

- (1) The converting entity shall continue to exist without interruption, but in the organizational form of the converted entity;
- (2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;
- (3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to the conversion;
- (4) The rights of creditors of the converting ~~[entity]~~ shall continue against the converted entity and shall not be impaired or extinguished by the conversion;
- (5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity, without any need for substitution of parties;
- (6) The partnership interests, and other forms of ownership in the converting entity that are to be converted into partnership interests, or other forms of ownership, in the converted entity as provided in the plan of conversion shall be converted;
- (7) A shareholder, partner, member, or other owner of the converted entity, shall be liable for the debts and obligations of the converting entity that

existed before the conversion takes effect only to the extent that such shareholder, partner, member, or other owner:

- (A) Agreed in writing to be liable for such debts or obligations;
 - (B) Was liable under applicable law prior to the effective date of the conversion for such debts or obligations; or
 - (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity;
- (8) If the converted entity is a foreign partnership, limited liability partnership, or other entity, the converted entity shall appoint a resident of the State as its agent, for service of process in a proceeding to enforce any obligation or rights of dissenting partners of the converting domestic partnership or limited liability partnership; and
- (9) If the converting partnership is a domestic partnership, or limited liability partnership, section [425-191] 425-C shall apply as if the converted entity were the survivor of a merger with the converting entity.”

SECTION 20. Section 425D-1110, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A domestic limited partnership may adopt a plan of conversion and convert to a foreign limited partnership or any other entity if:

- (1) The domestic limited partnership acts on and its partners approve a plan of conversion in the manner prescribed by sections [425-191] 425-C and 428-904 to 428-906, as if the conversion is treated as a merger to which the converting entity is a party and not the surviving entity;
- (2) The conversion is permitted by and complies with the laws of the state or country in which the converted entity is to be incorporated, formed, or organized; and the incorporation, formation, or organization of the converted entity complies with such laws;
- (3) At the time the conversion becomes effective, each partner of the converting entity, unless otherwise agreed to by that partner, owns an equity interest or other ownership interest in, and is a shareholder, partner, member, owner, or other security holder of, the converted entity; and
- (4) The converted entity shall be incorporated, formed, or organized as part of or pursuant to the plan of conversion.”

SECTION 21. Section 425D-1113, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~425D-1113] **Effect of conversion.** When a conversion becomes effective:

- (1) The converting entity shall continue to exist without interruption, but in the organizational form of the converted entity;
- (2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;
- (3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to the conversion;

- (4) The rights of creditors of the converting [{}entity{}] shall continue against the converted [{}entity{}] and shall not be impaired or extinguished by the conversion;
- (5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity without any need for substitution of parties;
- (6) The partnership interests and other forms of ownership in the converting entity that are to be converted into partnership interests, or other forms of ownership, in the converted entity as provided in the plan of conversion shall be converted;
- (7) A shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that such shareholder, partner, member, or other owner:
 - (A) Agreed in writing to be liable for such debts or obligations;
 - (B) Was liable under applicable law prior to the effective date of the conversion for such debts or obligations; or
 - (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity;
- (8) If the converted entity is a foreign limited partnership or other entity, the converted entity shall appoint a resident of this State as its agent for service of process in a proceeding to enforce any obligation or rights of dissenting limited partners of the converting domestic limited partnership; and
- (9) If the converting partnership is a domestic limited partnership, section [425D-1109] 425D-C shall apply as if the converted entity were the survivor of a merger with the converting entity.’’

SECTION 22. Section 428-901, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

““Merger” means the procedure authorized by this part in which one domestic or foreign entity combines with one or more domestic or foreign entities resulting in either one surviving entity or one new entity.

“Organizing articles” means:

- (1) For a corporation or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership, limited liability partnership, or limited partnership, the registration statement; and
- (3) For a limited liability company, the articles of organization.

“Other business entity” means a corporation, a general partnership, a limited partnership, or a limited liability partnership.”

SECTION 23. Section 428-904, Hawaii Revised Statutes, is amended to read as follows:

“~~[E]§428-904[E]~~ **Merger.** (a) Pursuant to a plan of merger [approved under subsection (c), one or more domestic or foreign limited liability companies, one or more domestic or foreign general or limited partnerships, and one or more domestic or foreign corporations may be merged into a domestic or foreign limited liability company.], a domestic or foreign limited liability company may merge with one or more domestic professional corporations, or with one or more limited liability companies or other business entities formed or organized under the laws of this State, any state or territory of the United States, any foreign jurisdiction, or any combination thereof, with one of the domestic professional corporations, domestic

or foreign limited liability companies, or other business entities whether domestic or foreign, being the surviving entity as provided in the plan; provided that the merger is permitted by the law of the state or country under whose law each foreign entity that is a party to the merger is organized.

(b) ~~[A]~~ The plan of merger shall set forth:

- (1) The name and jurisdiction of formation or organization of each entity that is a party to the merger;
- (2) The name of the surviving ~~[limited liability company]~~ entity with or into which the other entity or entities will merge;
- (3) The terms and conditions of the merger;
- (4) The manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving ~~[company,]~~ entity, or into money or other property in whole or in part;
- (5) The street address of the surviving ~~[company's]~~ entity's principal place of business, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service; and
- (6) Amendments, if any, to the organizing articles ~~[of organization]~~ of the surviving ~~[company-]~~ entity or, if no amendments are desired, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger.

(c) A plan of merger may:

- (1) Amend the operating agreement of a limited liability company; or
- (2) Adopt a new operating agreement for a limited liability company if it is the surviving entity in the merger.

Any amendment to a limited liability company agreement or adoption of a new limited liability company agreement made pursuant to this subsection shall be effective upon the effective date of the merger. This subsection shall not limit the accomplishment of a merger or of any of the matters referred to in this subsection by any other means provided for in a limited liability company agreement or other agreement or as otherwise permitted by law; provided that the limited liability company agreement of any constituent limited liability company to the merger (including a limited liability company formed for the purpose of consummating a merger or consolidation) shall be the limited liability company agreement of the surviving or resulting limited liability company.

(d) A plan of merger may set forth other provisions relating to the merger.
~~[(e)]~~ (e) A plan of merger shall be approved:

- (1) In the case of a limited liability company that is a party to the merger, by the members representing the percentage of ownership specified in the operating agreement, but not fewer than the members holding a majority of the ownership, or if provision is not made in the operating agreement, by all the members; and
- (2) In the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company is organized[;]
- ~~(3) In the case of a corporation that is a party to the merger, by the vote required for approval of a merger by the laws of the state or foreign jurisdiction in which the corporation is organized;~~
- ~~(4) In the case of a domestic limited partnership that is a party to the merger, by all of the partners;~~
- ~~(5) In the case of a foreign limited partnership that is a party to the merger, by the vote required for approval of a merger by the laws of the state or~~

foreign jurisdiction in which the foreign limited partnership is organized;

- (6) In the case of a domestic general partnership that is a party to the merger, by the vote of all partners; and
- (7) In the case of a foreign general partnership that is a party to the merger, by the vote required for approval of a merger by the laws of the state or foreign jurisdiction in which the foreign general partnership is organized.

(d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(e) The merger shall be effective upon the filing of the articles of merger with the director or at such later date and time as the articles may provide, but not more than thirty days after the filing.

(f) If a foreign limited liability company is the surviving entity of a merger, it shall not do business in this State until an application for a certificate of authority is filed with the director if the foreign limited liability company is not already authorized to do business in the State.

(g) The surviving entity shall furnish a copy of the plan of merger, on request and without cost, to any member, shareholder, or partner of any entity that is a party to the merger.

(h) A plan of merger may provide that at any time prior to the time that the plan becomes effective, the plan may be terminated by the members or managers of any limited liability company notwithstanding approval by all or any of the constituent parties. If the plan of merger is terminated after the filing of the articles but before the plan has become effective, a certificate of termination shall be filed with the director. A plan of merger may allow the members or managers of the constituent limited liability companies to amend the plan at any time prior to the time that the plan becomes effective; provided that an amendment made subsequent to the adoption of the plan by the members or managers of any constituent limited liability company shall not:

- (1) Alter or change the amount or kind of shares, securities, cash, property, or rights to be received in exchange for or on conversion of all or any of the interests of the constituent company; or
- (2) Alter or change any term of the organizing articles of the surviving entity to be effected by the merger.

If the plan of merger is amended after the articles are filed with the director but before the plan has become effective, a certificate of amendment shall be filed with the director.

(i) A merger takes effect on the filing date of the articles of merger or on the date subsequent to the filing as set forth in the articles of merger; provided that the effective date shall not be more than thirty days from the filing date.”

SECTION 24. Section 428-905, Hawaii Revised Statutes, is amended to read as follows:

“§428-905 Articles of merger. (a) After approval of the plan of merger under section [428-904(e),] 428-904(e), unless the merger is [abandoned] terminated under section [428-904(d),] 428-904(h), articles of merger shall be signed on behalf of each limited liability company and each other entity that is a party to the merger and delivered to the director for filing. The articles shall set forth ~~and contain~~:

- (1) The name and jurisdiction of formation or organization of each of the entities that are parties to the merger, and the name, address, and jurisdiction of organization of the limited liability company into which

- they propose to merge, which is hereinafter designated as the surviving ~~[company;] entity;~~
- (2) A statement that the plan of merger was approved by each entity that is a party to the merger;
 - ~~[(3) As to each entity, the total authorized votes and the number voted for and against the plan;~~
 - (4) (3) A statement indicating [the] any changes in the organizing articles [of organization] of the surviving [company] entity to be [effected] given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger;
 - ~~[(5) The effective date and time of the merger, which shall be not earlier than the date and time of filing of the articles of merger and not later than thirty days after the filing of the articles of merger; and]~~
 - (4) The future effective date (which shall be a date certain) of the merger if it is not to be effective upon the filing of the articles of merger; provided that the effective date shall not be more than thirty days from the filing date; and
 - ~~[(6) If the surviving company is a foreign limited liability company, it shall file with the director;]~~
 - (5) A statement that includes:
 - (A) An agreement that the surviving ~~[company] entity~~ may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;
 - (B) An irrevocable appointment of a resident of this State as its agent to accept service of process in any such proceeding, ~~[and include] that includes~~ the resident's street address in this State; and
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving ~~[company-] entity.~~

~~[(b) If a foreign limited liability company is the surviving company of a merger, it shall not do business in this State until an application for that authority is filed with the director.~~

~~(e) The surviving company shall furnish a copy of the plan of merger, on request and without cost, to any member, shareholder, or partner of any entity that is a party to the merger.]~~

(b) If the articles of merger provide for a future effective date, and:

- (1) The plan of merger is amended to change the future effective date;
- (2) The plan of merger permits the amendment of the articles of merger to change the future effective date without an amendment to the plan of merger; or
- (3) The plan of merger is amended to change any other matter contained in the articles of merger so as to make the articles of merger inaccurate in any material respect, prior to the future effective date;

then the articles of merger shall be amended by filing with the director a certificate of amendment that identifies the articles of merger and sets forth the amendment to the articles of merger.

If the articles of merger provide for a future effective date and if a plan of merger is terminated prior to the future effective date, the articles of merger shall be terminated by filing with the director a certificate of termination that identifies the articles of merger and states that the plan of merger has been terminated.

~~(d)~~ (c) Articles of merger operate as an amendment to the limited liability company's organizing articles ~~[of organization]~~.

(d) Articles of merger shall act as a statement of dissolution or as an application for withdrawal for the respective domestic or foreign limited liability company that is not the surviving entity in the merger; provided that:

- (1) If the surviving entity is a foreign entity registered in this State, it shall file with the director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the foreign entity was organized no later than sixty days after the merger is effective; or
- (2) If a nonsurviving entity is registered in this State and the surviving entity is not registered in this State, a nonsurviving entity shall file with the director an application for withdrawal no later than sixty days after the merger is effective.'

SECTION 25. Section 428-906, Hawaii Revised Statutes, is amended to read as follows:

~~“[§428-906] Effect of merger.~~ (a) When a merger takes effect:

- (1) The separate existence of each entity that is a party to the merger, other than the surviving ~~[company;] entity,~~ terminates;
 - (2) All property owned by each of the entities that are parties to the merger vests in the surviving ~~[company;] entity;~~
 - (3) All debts, liabilities, and other obligations of each entity that is a party to the merger become the obligations of the surviving ~~[company;] entity;~~
 - (4) An action or proceeding pending by or against an entity that is party to a merger may be continued as if the merger had not occurred or the surviving ~~[company] entity~~ may be substituted as a party to the action or proceeding; and
 - (5) Except as prohibited by other law, all rights, privileges, immunities, powers, and purposes of every entity that is a party to a merger become vested in the surviving ~~[company.] entity.~~
- (b) If ~~[the] a surviving [foreign limited liability company] entity~~ fails to appoint or maintain an agent designated for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the designated office, service of process may be made upon the surviving ~~[foreign limited liability company] entity~~ by sending a copy of the process by registered or certified mail, return receipt requested, to the surviving ~~[company] entity~~ at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:
- (1) The date the ~~[company] surviving entity~~ receives the process, notice, or demand;
 - (2) The date shown on the return receipt, if signed on behalf of the ~~[company;] surviving entity;~~ or
 - (3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.
- (c) A member of ~~[the] a surviving limited liability company~~ shall be liable for all obligations of a party to the merger for which the member was personally liable prior to the merger.
- (d) Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the merger ~~[does] shall~~ not require the limited liability company to wind up its business under this chapter or pay its liabilities and distribute its assets pursuant to this chapter.

ACT 41

~~[(e) Articles of merger shall serve as articles of termination for a limited liability company that is not the surviving company in the merger.]”~~

SECTION 26. Section 414-317, Hawaii Revised Statutes, is repealed.

SECTION 27. Section 414-319, Hawaii Revised Statutes, is repealed.

SECTION 28. Section 414D-205, Hawaii Revised Statutes, is repealed.

SECTION 29. Section 425-191, Hawaii Revised Statutes, is repealed.

SECTION 30. Section 425D-1109, Hawaii Revised Statutes, is repealed.

SECTION 31. In codifying references to new parts or sections, added to the Hawaii Revised Statutes, the revisor of statutes shall substitute appropriate part, article, or section numbers for the letters used in the designation of the new part, article, or sections.

SECTION 32. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 33. This Act shall take effect on July 1, 2003.

(Approved April 23, 2002.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.