

RCW 23B.11A.040 Approval of plan of merger or share exchange.

In the case of a domestic corporation that is a party to a merger or the acquired entity in a share exchange, the plan of merger or share exchange must be approved in the following manner:

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

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

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

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

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

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

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

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

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

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

(a) Such corporation will survive the merger;

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

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

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