

In a statutory conversion an existing entity changes its form, the jurisdiction of its governing statute or both. For example, a limited partnership organized under the laws of one jurisdiction might convert to:

- a limited liability company (or other form of entity) organized under the laws of the same jurisdiction,
- a limited liability company (or other form of entity) organized under the laws of another jurisdiction, or
- a limited partnership organized under the laws of another jurisdiction (referred to in some statutes as “domestication”).

In contrast to a merger, which involves at least two entities, a conversion involves only one. The converting and converted organization are the same entity. See Section 1105(a). For this Act to apply to a conversion, either the converting or converted organization must be a limited partnership subject to this Act. If the converting organization is a limited partnership subject to this Act, the partners of the converting organization are subject to the duties and obligations stated in this Act, including Sections 304 (informational rights of limited partners), 305(b) (limited partner’s obligation of good faith and fair dealing), 407 (informational rights of general partners), and 408 (general partner duties).

Subsection (a)(2) – Given the very broad definition of “organization,” Section 1101(8), this Act authorizes conversions involving non-profit organizations. This provision is intended as an additional safeguard for that context.

Subsection (b)(3) – A plan of conversion may provide that some persons with interests in the converting organization will receive interests in the converted organization while other persons with interests in the converting organization will receive some other form of consideration. Thus, a “squeeze out” conversion is possible. As noted above, if the converting organization is a limited partnership subject to this Act, the partners of the converting organization are subject to the duties and obligations stated in this Act. Those duties would apply to the process and terms under which a squeeze out conversion occurs.

If the converting organization is a limited partnership, the plan of conversion will determine the fate of any interests held by mere transferees. This Act does not state any duty or obligation owed by a converting limited partnership or its partners to mere transferees. That issue is a matter for other law.

SECTION 1103. ACTION ON PLAN OF CONVERSION BY CONVERTING LIMITED PARTNERSHIP.

(a) Subject to Section 1110, a plan of conversion must be consented to by all the partners of a converting limited partnership.

(b) Subject to Section 1110 and any contractual rights, after a conversion is approved, and at any time before a filing is made under Section 1104, a converting limited partnership may amend the plan or abandon the planned conversion:

(1) as provided in the plan; and

(2) except as prohibited by the plan, by the same consent as was required to approve the plan.

Comment

Section 1110 imposes special consent requirements for transactions which might cause a partner to have “personal liability,” as defined in Section 1101(10) for entity debts. The partnership agreement may not restrict the rights provided by Section 1110. See Section 110(b)(12).

Subsection (a) – Like many of the rules stated in this Act, this subsection’s requirement of unanimous consent is a default rule. Subject only to Section 1110, the partnership agreement may state a different quantum of consent or provide a completely different approval mechanism. Varying this subsection’s rule means that a partner might be subject to a conversion (including a “squeeze out” conversion) without consent and with no appraisal remedy. If the converting organization is a limited partnership subject to this Act, the partners of the converting organization are subject to the duties and obligations stated in this Act. Those duties would apply to the process and terms under which the conversion occurs. However, if the partnership agreement allows for a conversion with less than unanimous consent, the mere fact a partner objects to a conversion does not mean that the partners favoring, arranging, consenting to or effecting the conversation have breached a duty under this Act.

SECTION 1104. FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE.

(a) After a plan of conversion is approved:

(1) a converting limited partnership shall deliver to the [Secretary of State] for filing articles of conversion, which must include: