

AUTHORS

Patricia McGowan
Michael A. Leber
Carmen M. Fonda

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Entity Conversions

On April 3, 2013, the Maryland legislature approved HB 1140, which we expect Governor O'Malley to sign into law this month. The bill enacts new provisions of the Corporations and Associations Article of the Annotated Code of Maryland to authorize the conversion of most types of Maryland business entities into other types of Maryland business entities or into business entities formed in other jurisdictions. The new statute will also permit business entities formed in other jurisdictions to convert into Maryland business entities. These provisions were jointly proposed and drafted by the Corporate Laws Committee and the Unincorporated Associations Committee of the Business Law Section of the Maryland State Bar Association and, once enacted, will take effect on October 1, 2013.

Entity conversion has become popular over the last decade. It allows a business entity to become another type of entity by making appropriate filings in the jurisdiction in which it is formed and the jurisdiction in which it will continue. For example, a limited liability company can convert into a corporation, and vice versa. Currently, a Maryland business entity can change its form or jurisdiction of organization by merging into, or transferring its assets to, a new entity of the desired type. The important advantage of entity conversion is that, unlike in a merger or asset transfer, the resulting business entity is the same entity as the original entity. As a result, fewer third-party consents and regulatory approvals are typically required for a conversion than a merger or asset transfer, which reduces the expense and time required for a business to change its form or jurisdiction of organization.

At this time, Maryland law allows for only very limited conversions of Maryland limited partnerships or general partnerships into Maryland limited liability companies. Maryland stock corporations and limited liability companies, the most commonly utilized types of Maryland business entities, do not have statutory authorization to convert into other entity types before the effectiveness of this bill. Maryland law also does not currently authorize a Maryland business entity to convert into a business entity formed under another state's laws, or permit a business entity formed under another state's laws to convert into a Maryland business entity. Under the new statutory provisions, Maryland stock corporations, limited liability companies, general partnerships, limited partnerships, real estate investment trusts, and statutory trusts will be eligible to convert into other types of business entities or to be the surviving Maryland business entity in a conversion. Maryland nonstock corporations, religious corporations, cooperative associations, entities organized as financial institutions, and other special Maryland entity types will not be eligible for conversion.

Under the new provisions, unless the entity's charter or other governing documents require a different approval for conversions, a conversion generally must be approved by the equity owners of the entity by the same vote as is required to approve a merger of the entity. Objecting equity owners will have appraisal rights as a result of a conversion to the same extent as they would have in a comparable merger. Creditors of a converting Maryland business entity will have rights with respect to claims arising before the conversion as though the conversion had not occurred, and a resulting Maryland business entity will remain liable for all of its pre-conversion obligations. Under the new Maryland conversion statutes, the converted entity will be the same entity and will be deemed to have been formed as of the date of the original entity's formation.

Filing Improvements

On April 9, 2013, Governor O'Malley signed HB 702, which enacts new provisions of the Corporations and Associations Article of the Annotated Code of Maryland to improve the process of filing documents with the State of Maryland. The Business Law Section of the Maryland State Bar Association, working with the State Department of Assessments and Taxation ("SDAT"), proposed these provisions, which

will take effect October 1, 2013.

HB 702 provides a process for the preclearance of filings by the SDAT, such as articles of merger, articles of transfer, articles of conversion, or entity formation documents. Until HB 702, the SDAT would provide this service only on an informal basis. For example, two companies preparing to merge may want the Articles of Merger pre-cleared with the SDAT to avoid the possibility that the articles will be rejected on the day of filing. The fee for this service will be \$275. HB 702 authorizes the SDAT to adopt regulations to administer the preclearance process.

HB 702 also provides a new level of expedited service with a two-hour turn-around. The fee for two-hour service will be \$425. This new service supplements the current same-day service "to the extent practicable," which continues to be available for a \$50 expedited fee. To qualify for the two-hour service, documents must be filed with the SDAT at least two hours before the SDAT's close of business.

To further facilitate the State's on-line business registration system ("Maryland Made Easy") and pave the way for future improvements, the bill clarifies that filings may be made by electronic transmission, including electronic mail, facsimile transmission, and Internet transmission. HB 702 also clarifies that the SDAT may accept not only manual signatures and fax signatures, but all forms of signatures, including electronic signatures and conformed signatures. HB 702 facilitates the naming of third-party resident agents by users of the on-line system by authorizing the SDAT to waive the requirement that a consent signed by the resident agent accompany a filing, provided that an entity maintains a copy of the signed consent and provides a copy to the SDAT upon request.

We believe that this year's changes to Maryland business entity laws will facilitate formation of Maryland business entities and changes in entity form or jurisdiction of organization, provide flexibility to all Maryland entities for business planning purposes, and enhance Maryland as a jurisdiction of choice for forming a business. We were actively involved in the drafting and development of this legislation on behalf of the Bar Association. We are, respectively, a member of an SDAT Working Group of the Business Law Section and the chair of the Corporate Laws Committee and the chair of the Unincorporated Associations Committee of the Business Law Section of the Maryland State Bar Association. **Carmen Fonda** also provided testimony to the General Assembly in support of the conversion statute. As always, please do not hesitate to call any of us or any of our colleagues if you have questions or comments about any matter of Maryland law.