

Cherokee Nation Code Annotated

Title 18: Corporations

Chapter 1: Cherokee Nation General Corporation Act

Article 10: Merger or Consolidation

§ 90.1. Share acquisitions

Cite as: 18 CNCA § 90.1

A. One or more corporations may acquire all or part of the outstanding shares of one or more other corporations, if the board of directors of each corporation adopts and its shareholders approve, if required by subsection (C) of this section, the agreement of acquisition.

B. The agreement of acquisition shall set forth:

1. the name or names of the corporation or corporations whose shares will be acquired and the name or names of the acquiring corporation or corporations;
2. the terms and conditions of the acquisitions;
3. the manner and basis of exchanging the shares to be acquired for the consideration proffered;
4. any amendments or changes in the certificate of incorporation of a corporation which is a party to the agreement; and
5. such other provisions as the directors shall deem advisable.

C. After adopting an agreement of acquisition, the board of directors of each corporation whose shares are to be acquired, in whole or in part, or whose certificate of incorporation is to be amended, shall submit the agreement of acquisition for approval by the shareholders entitled to vote thereon. Due notice of the meeting shall be mailed to each holder of stock, whether voting or nonvoting, of the corporation at his address as it appears on the records of the corporation, at least twenty (20) days prior to the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as the directors shall deem advisable. At the meeting, the agreement shall be considered and a vote taken for its adoption or rejection. If a majority of the outstanding stock of the corporation entitled to vote thereon shall be voted for the adoption of the agreement, that fact shall be certified on the agreement by the secretary or assistant secretary of the corporation. If the agreement shall be adopted and approved in accordance with the provisions of this section, it shall then be filed and shall become effective in accordance with the provisions of 18 CNCA § 7. In lieu of filing an agreement of acquisition required by this section, the acquiring corporation may

file a certificate of acquisition, executed in accordance with the provisions of 18 CNCA § 7, which states:

1. the name and jurisdiction of incorporation of each corporation which is a party to the agreement;
2. that the agreement of acquisition has been adopted, approved, certified, executed, and acknowledged in accordance with the provisions of this section;
3. whether the corporation is an acquiring corporation or a corporation whose shares are to be acquired;
4. the amendments or changes, if any, in the certificate of incorporation that are to be effected by the agreement of acquisition;
5. that the executed agreement of acquisition is on file at the principal place of business of each corporation, stating the address thereof, and
6. that a copy of the agreement of acquisition will be furnished by each corporation, on request and without cost, to any of its shareholders.

D. Any agreement of acquisition may contain a provision that at any time prior to the filing of the agreement with the Office of the Principal Chief or his authorized representative, the agreement may be terminated by the board of directors of any affected corporation notwithstanding approval of the agreement by the shareholders of one or more of the affected corporations. Any agreement of acquisition may contain a provision that the board of directors of the affected corporations may amend the agreement at any time prior to the filing of the agreement, or a certificate in lieu thereof, with the Office of the Principal Chief or his authorized representative, provided that an amendment made subsequent to the adoption of the agreement by the shareholders of any affected corporation shall not:

1. alter or change the amount or kind of consideration to be received in exchange for or on conversion of all or part of the shares to be acquired;
2. alter or change any term of the certificate of incorporation of the affected corporations;
or
3. alter or change any of the terms and consideration of the agreement if such alteration or change would adversely affect the holders of any class or series of a corporation whose shares are to be acquired.

E. The holders of the outstanding shares of a class shall be entitled to vote as a class upon an agreement of acquisition, whether or not entitled to vote thereon by the provisions of

the certificate of incorporation, if the agreement provides for the acquisition of all or part of the shares of the class.

F. This section shall 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.

G. Any shareholder whose shares are to be acquired pursuant to an agreement of acquisition adopted and approved in accordance with this section and who has complied with the procedural steps specified in 18 CNCA § 91(D) for mergers and consolidations and who has neither voted in favor of the share acquisition nor consented thereto in writing shall be entitled to an appraisal by the District Court of the fair value of his shares in compliance with the same provisions and procedures and with the same rights and limitations as set out in 18 CNCA § 91(E) through (K).

H. If the entity acquiring shares pursuant to this section is governed by the laws of the District of Columbia or any state other than Cherokee Nation, the entity shall agree that it may be served with process in Cherokee Nation in any proceeding for enforcement of any obligation of the acquiring corporation arising from the share acquisition, including any suit or other proceeding to enforce the right of any shareholders as determined in appraisal proceedings pursuant to the provisions of 18 CNCA § 91, and shall irrevocably appoint the Office of the Principal Chief or his authorized representative as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Office of the Principal Chief or his authorized representative. In the event of such service upon the Office of the Principal Chief or his authorized representative in accordance with this subsection, the Office of the Principal Chief or his authorized representative shall forthwith notify such acquiring corporation thereof by letter sent by certified mail, with return receipt requested, directed to such acquiring corporation at its address so specified, unless such acquiring corporation shall have designated in writing to the Office of the Principal Chief or his authorized representative a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall enclose a copy of the process and any other papers served on the Office of the Principal Chief or his authorized representative pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Office of the Principal Chief or his authorized representative that service is being effected pursuant to this subsection and to pay the Office of the Principal Chief or his authorized representative the fee provided for in 18 CNCA § 142(7), which fee shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Office of the Principal Chief or his authorized

representative shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served upon the Office of the Principal Chief or his authorized representative, the fact that service has been served upon the Office of the Principal Chief or his authorized representative, the fact that service has been effected pursuant to this subsection, the return date thereof, and the date service was made. The Office of the Principal Chief or his authorized representative shall not be required to retain such information longer than five (5) years from receipt of the service of process by the Office of the Principal Chief or his authorized representative.

Historical Data

LA 16-96, eff. July 15, 1996.