

**Form 623—General Information
(Parent-Subsidiary Certificate of Merger)**

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

This certificate of merger may be used to effect a merger of a parent organization with a subsidiary organization when the parent organization is to survive the merger. A parent organization that is a domestic entity may effect a merger by complying with the applicable provisions of chapter 10 of the Texas Business Organizations Code (BOC), as well as the title and chapter applicable to the domestic entity. A domestic entity may not merge if an owner or member of that entity that is a party to the merger will, as a result of the merger, become subject to owner liability, without that owner's or member's consent, for liability or other obligation of any other person.

Pursuant to section 10.006 of the BOC, a parent organization that owns at least 90 percent of the outstanding ownership or membership interests of each class and series of each of one or more subsidiary organizations may merge with one or more of the subsidiary organizations if:

- (1) at least one of the parties to the merger is a domestic entity and each other party is a domestic entity or another non-code organization that is organized under the laws of a jurisdiction that permits a merger of the type authorized by section 10.006;
- (2) *none of the subsidiary organizations is a Texas partnership*; and
- (3) the resulting organization or organizations are the parent organization, one or more existing subsidiary organizations, or one or more new organizations.

A domestic entity that is a subsidiary organization is not required to approve a merger effected under section 10.006 of the BOC. When the parent organization is to survive the merger, the merger is approved by a resolution adopted by the governing authority of the parent organization. *A merger effected through section 10.006 of the BOC cannot make an amendment to the governing documents of any surviving organization.*

Do not use this form if the parent organization will not survive the merger. If the parent organization will not survive the merger, a plan of merger must be approved by the parent organization in the manner provided by section 10.001 of the BOC if the parent is a domestic entity.

Formation Documents of New Domestic Filing Entities: If a domestic filing entity is being created pursuant to the plan of merger, the certificate of formation of the entity must be filed with the certificate of merger. *Pursuant to section 3.005 of the BOC, the certificate of formation of a domestic filing entity that is to be created by the plan of merger must contain the statement that the domestic filing entity is being formed under a plan of merger.* The formation and existence of a domestic filing entity created pursuant to a plan of merger takes effect and commences on the effectiveness of the merger (BOC § 3.006).

Registration as a Limited Liability Partnership: A general partnership or limited partnership that is created by a plan of merger may file for registration to become a limited liability partnership by complying with sections 152.803 and by filing an application for registration with the secretary of state in accordance with section 152.802.

Instructions for Form

- **Parties to the Merger:** The certificate of merger must state the name of the parent organization, the name of each subsidiary organization that is a party to the merger, the jurisdiction of formation of each organization, and the number of outstanding ownership interests of each class or series of each subsidiary organization and the number or percentage of each class or series owned by the parent organization. It is recommended that the file number assigned by the secretary of state to each domestic or foreign filing entity that is a party to the merger be provided to facilitate processing of the document. ***It is required that you indicate whether a party to the merger is to survive the merger.*** If any surviving organization is not a domestic entity, the certificate of merger must include the address, including street number, of its registered or principal office in its jurisdiction of formation.
- **Resolution of Merger:** The certificate of merger must include a statement that the resolution of merger has been approved as required by the laws of the jurisdiction of formation of the parent organization and by its governing documents. The certificate of merger must include the date of the adoption of the resolution of merger by the governing authority ***and a copy of the resolution of merger.*** A resolution of merger must describe:
 - (1) the basic terms of the merger, which must include the information required by sections 10.002(c) and 10.003 of the BOC, if applicable;
 - (2) the organizations that are a party to the merger; and
 - (3) the organizations that survive or that are to be created by the merger.

If the parent organization does not own all the outstanding ownership or membership interests of each class or series of ownership or membership interests of each subsidiary organization that is a party to the merger, the resolution of the parent organization must comply with section 10.006(g) of the BOC.

If the resolution of merger authorizes the creation of one or more organizations, the certificate of merger should include the name of the organization, the jurisdiction of its formation and the organizational form of the new organization. If one or more non-code organizations is a party to the merger or is to be created by the merger, each non-code organization must effect the merger by taking all action required by the BOC and its governing documents, and the merger must be permitted by the law of the state or country under whose law each non-code organization is incorporated or organized, or the governing documents of each non-code organization if the documents are not inconsistent with such law.

- **Organizations Created by Merger:** If the merger is to result in the creation of one or more new organizations, the certificate of merger must include the identification of each domestic entity or non-code organization that is to be created by the plan of merger. The identification must include: the legal name of the entity, which must include an appropriate organizational designation; the name of the jurisdiction in which each new organization is to be incorporated or organized; a description of the organizational form of each new organization (e.g., for-profit corporation, limited partnership, etc.); and the principal place of business of the new organization. In addition, the certificate of merger must state that the certificate of formation of each new filing entity is being filed with the certificate of merger.
- **Effectiveness of Filing:** A certificate of merger becomes effective when accepted and filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the

date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of a non-surviving domestic filing entity will be shown as “merged” and the status of any new domestic filing entity created by the merger will be shown as “in existence” on the records of the secretary of state.

- **Tax Certificate:** The secretary of state may not accept a certificate of merger for filing if the required franchise taxes have not been paid (BOC § 10.156). The certificate of merger must be accompanied by a certificate of account status from the Texas Comptroller of Public Accounts indicating that all taxes under title 2 of the Tax Code have been paid and that the non-surviving party to the merger may legally end its existence in Texas. Please note that the Comptroller issues many different types of certificates of account status. You need to attach form #05-305, which is issued by the Comptroller of Public Accounts, for each non-surviving party to the merger. *Do not attach a print-out of the entity’s franchise tax account status obtained from the Comptroller’s web site as this does not meet statutory requirements.*

Requests for certificates or questions on tax status should be directed to the Tax Assistance Section, Comptroller of Public Accounts, Austin, Texas 78774-0100; (512) 463-4600 or toll-free (800) 252-1381. You also may contact tax.help@cpa.state.tx.us.

Alternative: In lieu of the tax certificate, the certificate of merger may provide that one or more of the surviving, new, or acquiring organizations is liable for the payment of the required franchise taxes.

- **Execution:** Pursuant to section 10.152, an officer or other authorized representative of the parent organization must sign the certificate of merger.

The certificate of merger need not be notarized. However, before signing, please read the statements on this form carefully. *A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person’s intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for a certificate of merger of a domestic filing entity is **\$300, plus the fee imposed for filing a certificate of formation for each newly created filing entity.**

Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

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