

VIRGINIA ACTS OF ASSEMBLY -- 2012 SESSION

CHAPTER 130

An Act to amend and reenact §§ 13.1-604.1, 13.1-616, 13.1-722.2, 13.1-722.4, 13.1-722.11, 13.1-767, 13.1-816, 13.1-888, 13.1-898.2, 13.1-898.4, 13.1-929, 13.1-1005, 13.1-1056, 13.1-1075, 13.1-1077, 13.1-1204, 13.1-1246, 13.1-1266, 13.1-1268, 50-73.17, and 50-73.58 of the Code of Virginia, relating to business entity domestications, conversions, amendments, withdrawals, and cancellations.

[H 519]

Approved March 6, 2012

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-604.1, 13.1-616, 13.1-722.2, 13.1-722.4, 13.1-722.11, 13.1-767, 13.1-816, 13.1-888, 13.1-898.2, 13.1-898.4, 13.1-929, 13.1-1005, 13.1-1056, 13.1-1075, 13.1-1077, 13.1-1204, 13.1-1246, 13.1-1266, 13.1-1268, 50-73.17, and 50-73.58 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-604.1. Filings with the Commission pursuant to reorganization.

A. Notwithstanding anything to the contrary contained in § 13.1-604, 13.1-619, *13.1-710, 13.1-711, 13.1-720* ~~or~~, *13.1-722.12, 13.1-743, or 13.1-750*, whenever, pursuant to any applicable statute of the United States relating to reorganizations of corporations, a plan of reorganization of a corporation has been confirmed by the decree or order of a court of competent jurisdiction, the corporation may put into effect and carry out the plan and decrees of the court relative thereto, (i) through ~~an amendment~~ *one or more* amendments to the corporation's articles of incorporation containing terms and conditions permitted by this chapter; (ii) through a plan of merger ~~or~~, share exchange, *or entity conversion*; or (iii) through dissolution *or termination*, without action by the board of directors or shareholders to carry out the plan of reorganization ordered or decreed by such court of competent jurisdiction under federal statute.

B. The individual or individuals designated by the court shall file with the Commission articles of amendment, merger, share exchange, ~~or entity conversion~~, dissolution, *or termination*, which, in addition to the matters otherwise required or permitted by law to be set forth therein, shall set forth:

1. The name of the corporation;
2. ~~The text of each~~ *Any provision relating to the* amendment *or amendments*; plan of merger ~~or~~, share exchange, *or entity conversion*; or dissolution *or termination* approved by the court;
3. ~~The name of the court and the~~ *the* date of the court's order or decree approving the ~~articles of~~ amendment, plan of merger ~~or~~, share exchange ~~or~~, *or entity conversion*; or dissolution *or termination*;
4. The title *and case number, if any*, of the reorganization proceeding in which the order or decree was entered; and

5. A statement that the court had jurisdiction of the proceeding under federal statute.

C. If the Commission finds that the articles of amendment, merger, share exchange ~~or~~, *entity conversion*, dissolution, *or termination* comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment, merger, share exchange ~~or~~, *entity conversion*, dissolution, *or termination*.

D. This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

§ 13.1-616. Fees for filing documents or issuing certificates.

The Commission shall charge and collect the following fees, except as provided in § 12.1-21.2:

1. For filing any one of the following, the fee shall be \$25:
 - a. Articles of incorporation, domestication, or incorporation surrender.
 - b. Articles of entity conversion to convert a domestic limited liability company to a corporation.
 - c. Articles of amendment or restatement.
 - d. Articles of merger or share exchange.
 - e. Articles of correction.
 - f. An application of a foreign corporation for a certificate of authority to transact business in the Commonwealth.
 - g. An application of a foreign corporation for an amended certificate of authority to transact business in the Commonwealth.
 - h. A copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.
 - i. A copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.
 - j. A copy of an instrument of entity conversion of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.

2. For filing any one of the following, the fee shall be \$10:

- a. An application to reserve or to renew the reservation of a corporate name.
- b. A notice of transfer of a reserved corporate name.
- c. An application for use of an indistinguishable name.
- d. Articles of dissolution.
- e. Articles of revocation of dissolution.
- f. Articles of termination of corporate existence.
- g. ~~A statement~~ *An application for a certificate* of withdrawal of a foreign corporation.

3. For issuing a certificate pursuant to § 13.1-781, the fee shall be \$6.

§ 13.1-722.2. Domestication.

A. A foreign corporation may become a domestic corporation if the laws of the jurisdiction in which the foreign corporation is incorporated authorize it to domesticate in another jurisdiction. The laws of ~~this the~~ Commonwealth shall govern the effect of domesticating in ~~this the~~ Commonwealth pursuant to this article.

B. A domestic corporation not required by law to be a domestic corporation may become a foreign corporation if the jurisdiction in which the corporation intends to domesticate allows for the domestication. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be approved in the manner provided in this article. The laws of the jurisdiction in which the corporation domesticates shall govern the effect of domesticating in that jurisdiction.

C. The plan of domestication shall set forth:

1. A statement of the jurisdiction in which the corporation is to be domesticated; ~~and~~
2. The terms and conditions of the domestication, provided, ~~however,~~ that such terms and conditions may not alter the designation, rights, preferences or limitations of all or part of the authorized shares except to the extent required to conform to the requirements of this chapter; ~~and~~
3. *For a foreign corporation that is to become a domestic corporation, as a referenced attachment, amended and restated articles of incorporation that comply with the requirements of § 13.1-619 as they will be in effect upon consummation of the domestication.*

D. The plan of domestication may include:

1. ~~Subject to the provisions of subsection C, amendments to the articles of incorporation of the corporation following its domestication or a restatement of the articles of incorporation; and~~
2. ~~Any~~ any other provision relating to the domestication.

E. The plan of domestication may also include a provision that the board of directors may amend the plan at any time prior to issuance of the certificate of domestication or such other document required by the laws of the other jurisdiction to consummate the domestication. An amendment made subsequent to the submission of the plan to the shareholders of the corporation shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the shares of any class or series of the corporation.

§ 13.1-722.4. Articles of domestication.

A. After the domestication of a foreign corporation is approved in the manner required by the laws of the jurisdiction in which the corporation is incorporated, the corporation shall file with the Commission articles of domestication setting forth:

1. The name of the corporation immediately prior to the filing of the articles of domestication and, if that name is unavailable for use in ~~this the~~ Commonwealth or the corporation desires to change its name in connection with the domestication, a name that satisfies the requirements of § 13.1-630;
2. The plan of domestication;
3. The original jurisdiction of the corporation and the date the corporation was incorporated in that jurisdiction, and each subsequent jurisdiction and the date the corporation was domesticated in each such jurisdiction, if any, prior to the filing of the articles of domestication; and
4. A statement that the domestication is permitted by the laws of the jurisdiction in which the corporation is incorporated and that the corporation has complied with those laws in effecting the domestication.

B. ~~The articles of domestication shall have attached articles of incorporation that comply with the requirements of this chapter.~~

C. If the Commission finds that the articles of domestication comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of domestication.

~~D~~ C. The certificate of domestication shall become effective pursuant to § 13.1-606.

~~E~~ D. A foreign corporation's existence as a domestic corporation shall begin when the certificate of domestication is effective. Upon becoming effective, the certificate of domestication shall be conclusive evidence that all conditions precedent required to be performed by the foreign corporation have been complied with and that the corporation has been incorporated under this chapter.

~~F~~ E. If the foreign corporation is authorized to transact business in ~~this the~~ Commonwealth under Article 17 (§ 13.1-757 et seq.) ~~of this chapter~~, its certificate of authority shall be ~~cancelled~~ *canceled* automatically on the effective date of the certificate of domestication issued by the Commission.

§ 13.1-722.11. Action on plan of entity conversion.

A. In the case of a corporation that is a converting entity, *a plan of entity conversion shall be adopted by the corporation in the following manner:*

1. *Except where shareholder approval of a plan of entity conversion is not required by subdivision 5:*

a. The board of directors of the converting entity shall adopt the plan of entity conversion.

2 b. After adopting the plan of entity conversion, the board of directors shall submit the plan ~~for approval by~~ to the shareholders for their approval.

3. ~~For the conversion to be approved:~~

a. The board of directors shall ~~recommend the plan~~ also transmit to the shareholders a recommendation that the shareholders approve the plan of entity conversion, unless the board of directors determines that because of conflicts of interest or other special circumstances it should make no recommendation and communicates the basis of its determination to the shareholders with the plan; and

b c. The shareholders *entitled to vote on the plan of entity conversion* shall approve the plan as provided in subdivision ~~6~~ 4.

4 2. The board of directors may condition its submission of the plan of entity conversion to the shareholders on any basis.

5 3. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 13.1-658 at which the plan of entity conversion is to be submitted for approval. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan and shall contain or be accompanied by a copy of the plan.

6 4. Unless this chapter or the board of directors, acting pursuant to subdivision 4 2, requires a greater vote, the plan of entity conversion shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes entitled to be cast by that voting group. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the plan by each voting group entitled to vote on the plan at a meeting at which a quorum of the voting group exists.

5. *If a corporation has not yet issued shares, a majority of its initial board of directors or incorporators, in the event that there is no board of directors, may adopt the plan of entity conversion.*

B. In the case of a limited liability company that is a converting entity, ~~the:~~

1. The plan of entity conversion shall be approved by the members of the limited liability company in the manner provided in the limited liability company's operating agreement or articles of organization for amendments or, if no such provision is made in an operating agreement or articles of organization, by the unanimous vote of the members of the limited liability company; and

2. *If the limited liability company has been formed without any members and no members have been admitted, the plan of entity conversion may be adopted by a majority of the persons named as a manager in the articles of organization or, if there are no members or managers, by a majority of the organizers of the limited liability company.*

§ 13.1-767. Withdrawal of foreign corporation.

A. A foreign corporation authorized to transact business in the Commonwealth may not withdraw from the Commonwealth until it obtains a certificate of withdrawal from the Commission.

B. A foreign corporation authorized to transact business in the Commonwealth may apply to the Commission for a certificate of withdrawal. The application shall be on ~~forms~~ a form prescribed and furnished by the Commission ~~and~~, which shall set forth:

1. The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

2. *That the foreign corporation is in existence and has not been merged into or consolidated with another entity or converted into another type of entity or, if the foreign corporation has been merged into or consolidated with another entity or converted into another type of entity, that the application is signed on behalf of the foreign corporation by the surviving or resulting entity;*

3. That the foreign corporation is not transacting business in the Commonwealth and that it surrenders its authority to transact business in the Commonwealth;

3 4. That the foreign corporation revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in the Commonwealth;

4 5. A mailing address to which the clerk of the Commission may mail a copy of any process served on the clerk under subdivision ~~3 of this subsection~~ 4; and

5 6. A commitment to notify the clerk of the Commission in the future of any change in the mailing address of the corporation.

C. The Commission shall not allow any foreign corporation to withdraw from the Commonwealth unless such corporation files with the Commission a statement certifying that the corporation has filed returns and has paid all state taxes to the time of the certificate. In such case the corporation may file

returns and pay taxes before they would otherwise be due. If the Commission finds that the application complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of withdrawal.

D. Before any foreign corporation authorized to transact business in the Commonwealth terminates its corporate existence, it shall file with the Commission an application for withdrawal. Whether or not such application is filed, the termination of the corporate existence of such foreign corporation shall not take away or impair any remedy available against such corporation for any right or claim existing or any liability incurred prior to such termination. Any such action or proceeding against such foreign corporation may be defended by such corporation in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. The right of a foreign corporation that has terminated its corporate existence to institute and maintain in its corporate name actions, suits or proceedings in the courts of the Commonwealth shall be governed by the law of the state of its incorporation.

E. Service of process on the clerk of the Commission is service of process on a foreign corporation that has withdrawn pursuant to this section. Service upon the clerk shall be made in accordance with § 12.1-19.1 and service upon the foreign corporation may be made in any other manner permitted by law.

§ 13.1-816. Fees for filing documents or issuing certificates.

The Commission shall charge and collect the following fees, except as provided in § 12.1-21.2:

1. For filing any one of the following, the fee shall be \$25:
 - a. Articles of incorporation, domestication, or incorporation surrender.
 - b. Articles of amendment or restatement.
 - c. Articles of merger.
 - d. Articles of correction.
 - e. An application of a foreign corporation for a certificate of authority to transact business in the Commonwealth.
 - f. An application of a foreign corporation for an amended certificate of authority to transact business in the Commonwealth.
 - g. A copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.
 - h. A copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.
 - i. A copy of an instrument of entity conversion of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.
 2. For filing any one of the following, the fee shall be \$10:
 - a. An application to reserve or to renew the reservation of a corporate name.
 - b. A notice of transfer of a reserved corporate name.
 - c. An application for use of an indistinguishable name.
 - d. Articles of dissolution.
 - e. Articles of revocation of dissolution.
 - f. Articles of termination of corporate existence.
 - g. ~~A statement of~~ *An application for* withdrawal of a foreign corporation.
 3. For issuing a certificate pursuant to § 13.1-945, the fee shall be \$6.
- § 13.1-888. Articles of amendment.

A. A corporation amending its articles of incorporation shall file with the Commission articles of amendment setting forth:

1. The name of the corporation;
2. The text of each amendment adopted or the information required by subdivision L 5 of § 13.1-804;
3. The date of each amendment's adoption;
4. If an amendment was adopted by the incorporators or the board of directors without member approval, a statement that the amendment was duly approved by the *vote of at least two-thirds of the directors in office or by a majority of the incorporators or by the board of directors*, as the case may be, including the reason member *and, if applicable, director* approval was not required;
5. If an amendment was approved by the members, either:
 - a. A statement that the amendment was adopted by unanimous consent of the members; or
 - b. A statement that the amendment was proposed by the board of directors and submitted to the members in accordance with this Act and a statement of:
 - (1) The existence of a quorum of each voting group entitled to vote separately on the amendment; and
 - (2) Either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

B. If the Commission finds that the articles of amendment comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment.

§ 13.1-898.2. Domestication.

A. A foreign corporation may become a domestic corporation if the laws of the jurisdiction in which the foreign corporation is incorporated authorize it to domesticate in another jurisdiction. The laws of the Commonwealth shall govern the effect of domesticating in the Commonwealth pursuant to this article.

B. A domestic corporation not required by law to be a domestic corporation may become a foreign corporation if the jurisdiction in which the corporation intends to domesticate allows for the domestication. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be approved in the manner provided in this article. The laws of the jurisdiction in which the corporation domesticates shall govern the effect of domesticating in that jurisdiction.

C. The plan of domestication shall set forth:

1. A statement of the jurisdiction in which the corporation is to be domesticated; ~~and~~
2. The terms and conditions of the domestication; *and*

3. *For a foreign corporation that is to become a domestic corporation, as a referenced attachment, amended and restated articles of incorporation that comply with the requirements of § 13.1-819 as they will be in effect upon consummation of the domestication.*

D. The plan of domestication may include:

1. ~~Subject to the provisions of subsection C, amendments to the articles of incorporation of the corporation following its domestication or a restatement of the articles of incorporation; and~~
2. ~~Any~~ *any* other provision relating to the domestication.

E. The plan of domestication may also include a provision that the board of directors may amend the plan at any time prior to issuance of the certificate of domestication or such other document required by the laws of the other jurisdiction to consummate the domestication. Where a plan of domestication is required to be submitted to the members for their approval, an amendment made subsequent to the submission of the plan to the members of the corporation shall not alter or change any of the terms or conditions of the plan if such alteration or change would adversely affect the members of any class of the corporation.

§ 13.1-898.4. Articles of domestication.

A. After the domestication of a foreign corporation is approved in the manner required by the laws of the jurisdiction in which the corporation is incorporated, the corporation shall file with the Commission articles of domestication setting forth:

1. The name of the corporation immediately prior to the filing of the articles of domestication and, if that name is unavailable for use in the Commonwealth or the corporation desires to change its name in connection with the domestication, a name that satisfies the requirements of § 13.1-829;
2. The plan of domestication;
3. The original jurisdiction of the corporation and the date the corporation was incorporated in that jurisdiction, and each subsequent jurisdiction and the date the corporation was domesticated in each such jurisdiction, if any, prior to the filing of the articles of domestication; and
4. A statement that the domestication is permitted by the laws of the jurisdiction in which the corporation is incorporated and that the corporation has complied with those laws in effecting the domestication.

~~B. The articles of domestication shall have attached articles of incorporation that comply with the requirements of this Act.~~

~~C.~~ If the Commission finds that the articles of domestication comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of domestication.

~~D C.~~ The certificate of domestication shall become effective pursuant to § 13.1-806.

~~E D.~~ A foreign corporation's existence as a domestic corporation shall begin when the certificate of domestication is effective. Upon becoming effective, the certificate of domestication shall be conclusive evidence that all conditions precedent required to be performed by the foreign corporation have been complied with and that the corporation has been incorporated under this Act.

~~F E.~~ If the foreign corporation is authorized to transact business in the Commonwealth under Article 14 (§ 13.1-919 et seq.) ~~of this Act~~, its certificate of authority shall be ~~cancelled~~ *canceled* automatically on the effective date of the certificate of domestication issued by the Commission.

§ 13.1-929. Withdrawal of foreign corporation.

A. A foreign corporation authorized to transact business in the Commonwealth may not withdraw from the Commonwealth until it obtains a certificate of withdrawal from the Commission.

B. A foreign corporation authorized to transact business in the Commonwealth may apply to the Commission for a certificate of withdrawal. The application shall be on ~~forms~~ *a form* prescribed and furnished by the Commission and shall set forth:

1. The name of the foreign corporation and the name of the state or country under whose laws it is incorporated;

2. *That the foreign corporation is in existence and has not been merged into or consolidated with another entity or converted into another type of entity or, if the foreign corporation has been merged into or consolidated with another entity or converted into another type of entity, that the application is signed on behalf of the foreign corporation by the surviving or resulting entity;*

3. That the foreign corporation is not transacting business in the Commonwealth and that it surrenders its authority to transact business in the Commonwealth;

3 4. That the foreign corporation revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in the Commonwealth;

4 5. A mailing address to which the clerk of the Commission may mail a copy of any process served on him under subdivision 3 4 ~~of this subsection~~; and

5 6. A commitment to notify the clerk of the Commission in the future of any change in the mailing address of the corporation.

C. The Commission shall not allow any foreign corporation to withdraw from the Commonwealth unless such corporation files with the Commission a statement certifying that the corporation has filed returns and has paid all state taxes to the time of the certificate or a statement that no such returns are required to be filed or taxes are required to be paid. In such case the corporation may file returns and pay taxes before they would otherwise be due. If the Commission finds that the application complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of withdrawal.

D. Before any foreign corporation authorized to transact business in the Commonwealth terminates its corporate existence, it shall file with the Commission an application for withdrawal. Whether or not such application is filed, the termination of the corporate existence of such foreign corporation shall not take away or impair any remedy available against such corporation for any right or claim existing or any liability incurred prior to such termination. Any such action or proceeding against such foreign corporation may be defended by such corporation in its corporate name. The members, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. The right of a foreign corporation that has terminated its corporate existence to institute and maintain in its corporate name actions, suits or proceedings in the courts of the Commonwealth shall be governed by the law of the state of its incorporation.

E. Service of process on the clerk of the Commission is service of process on a foreign corporation that has withdrawn pursuant to this section. Service upon the clerk shall be made in accordance with § 12.1-19.1, and service upon the foreign corporation may be made in any other manner permitted by law.

§ 13.1-1005. Fees.

The Commission shall charge and collect the following fees:

1. For filing any one of the following, the fee shall be \$100:

a. Articles of organization.

b. An application for registration as a foreign limited liability company.

c. ~~Articles of reinstatement.~~

d. Articles of entity conversion to convert a domestic corporation to a limited liability company.

e d. Articles of domestication.

2. For filing any one of the following, the fee shall be \$25:

a. Articles of amendment.

b. Articles of cancellation with respect to a domestic limited liability company or a certificate of cancellation with respect to a foreign limited liability company.

c. Articles of correction referred to in § 13.1-1011.1, a copy of an amendment or correction referred to in § 13.1-1055, or an amended application for registration referred to in § 13.1-1055, provided that an amended application shall not require a separate fee when it is filed with a copy of an amendment or a correction referred to in § 13.1-1055.

d. A copy of an instrument of merger of a foreign limited liability company referred to in § 13.1-1060.

e. Articles of merger.

f. A copy of an instrument of entity conversion of a foreign limited liability company holding a certificate of registration to transact business in the Commonwealth.

g. Articles of restatement.

h. Articles of organization surrender.

i. *An application for a certificate of cancellation of a foreign limited liability company.*

3. For filing any one of the following, the fee shall be \$10:

a. An application to reserve or to renew the reservation of a name for use by a domestic or foreign limited liability company.

b. A notice of the transfer of a name reserved for use by a domestic or a foreign limited liability company.

4. For issuing a certificate pursuant to § 13.1-1067, \$6 for each certificate.

§ 13.1-1056. Cancellation of certificate of registration.

A. A foreign limited liability company *registered to transact business in the Commonwealth* may ~~cancel its certificate of registration by delivering~~ apply to the Commission for a certificate of cancellation ~~to cancel its certificate of registration. The application shall be on forms~~ a form prescribed and furnished by the Commission, which shall set forth:

1. The name of the foreign limited liability company and the name of the state or other jurisdiction under whose jurisdiction it was formed;

2. *That the foreign limited liability company is in existence and has not been merged into or consolidated with another entity or converted into another type of entity or, if the foreign limited liability company has been merged into or consolidated with another entity or converted into another type of entity, that the application is signed on behalf of the foreign limited liability company by the surviving or resulting entity;*

3. That the foreign limited liability company is not transacting business in ~~this~~ the Commonwealth and that it surrenders its registration to transact business in ~~this~~ the Commonwealth;

3 4. That the foreign limited liability company revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in ~~this~~ the Commonwealth;

4 5. A mailing address to which the clerk of the Commission may mail a copy of any process served on him under subdivision 3 of ~~this subsection~~ 4; and

5 6. A commitment to notify the clerk of the Commission in the future of any change in the mailing address of the limited liability company.

B. If the Commission finds that the ~~certificate of cancellation conforms to the provisions~~ application *complies with the requirements of this article* law and all required fees have been paid, ~~the Commission it shall file the issue a certificate and the of cancellation canceling the certificate of registration shall be canceled.~~

C. *Before any foreign limited liability company registered to transact business in the Commonwealth cancels its existence, it shall file with the Commission an application for a certificate of cancellation. Whether or not such application is filed, the cancellation of the existence of such foreign limited liability company shall not take away or impair any remedy available against such limited liability company for any right or claim existing or any liability incurred prior to such cancellation. Any such action or proceeding against such foreign limited liability company may be defended by such limited liability company in its name. The members, managers, and officers shall have power to take such action as shall be appropriate to protect such remedy, right, or claim. The right of a foreign limited liability company that has canceled its existence to institute and maintain in its name actions, suits, or proceedings in the courts of the Commonwealth shall be governed by the law of the state of its organization.*

D. *Service of process on the clerk of the Commission is service of process on a foreign limited liability company whose certificate of registration has been canceled pursuant to this section. Service upon the clerk shall be made in accordance with § 12.1-19.1, and service upon the foreign limited liability company may be made in any other manner permitted by law.*

§ 13.1-1075. Plan of domestication.

A. The plan of domestication shall set forth:

1. ~~A statement~~ *The name of the state or other jurisdiction in which under whose laws the domestic and or foreign limited liability company is presently domesticated organized; and*

2. A statement of the jurisdiction in which the domestic ~~and or~~ foreign limited liability company is to be domesticated;

3. *The terms and conditions of the domestication, provided that such terms and conditions may not alter the ownership proportion and relative rights, preferences, and limitations of the interests of the limited liability company; and*

4. *For a foreign limited liability company that is to become a domestic limited liability company, as a referenced attachment, amended and restated articles of organization that comply with § 13.1-1011 as they will be in effect upon consummation of the domestication.*

B. The plan of domestication may include:

1. ~~As a referenced attachment, the articles of organization of the limited liability company upon its domestication; and~~

2. ~~Any~~ any other provision relating to the domestication.

C. The plan of domestication may also include a provision that the members may amend the plan at any time prior to the effective date of the certificate of domestication or such other document required by the laws of the other jurisdiction to consummate the domestication.

§ 13.1-1077. Articles of domestication.

A. After the domestication of a foreign limited liability company is approved in the manner required by the laws of the jurisdiction in which the limited liability company is organized, the limited liability

company shall file with the Commission articles of domestication setting forth:

1. The name of the limited liability company immediately prior to the filing of the articles of domestication and, if that name is unavailable for use in ~~this the~~ Commonwealth or the limited liability company desires to change its name in connection with the domestication, a name that satisfies the requirements of § 13.1-1012;

2. The plan of domestication; and

3. The original jurisdiction of the limited liability company and the date the limited liability company was organized in that jurisdiction, and each subsequent jurisdiction and the date the limited liability company was domesticated in each such jurisdiction, if any, prior to the filing of the articles of domestication.

~~B. The articles of domestication shall have attached articles of organization that comply with the requirements of this chapter.~~

~~C.~~ If the Commission finds that the articles of domestication comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of domestication.

~~D C.~~ The certificate of domestication shall become effective pursuant to subsection D of § 13.1-1004.

~~E D.~~ A foreign limited liability company's existence as a domestic limited liability company shall begin when the certificate of domestication is effective. Upon becoming effective, the certificate of domestication shall be conclusive evidence that all conditions precedent required to be performed by the foreign limited liability company have been complied with and that the limited liability company has been organized under this chapter.

~~F E.~~ If the foreign limited liability company is authorized to transact business in ~~this the~~ Commonwealth under Article 10 (§ 13.1-1051 et seq.) of ~~this chapter~~, its certificate of registration shall be canceled automatically on the effective date of the certificate of domestication issued by the Commission.

§ 13.1-1204. Fees for filing documents and issuing certificates.

The Commission shall charge and collect the following fees, *except as provided in § 12.1-21.2*:

1. For filing any one of the following, the fee shall be \$100:

- a. Articles of trust.
- b. An application for registration as a foreign business trust.
- c. Articles of reinstatement.
- d. Articles of domestication.
- e. Articles of entity conversion.

2. For filing any one of the following, the fee shall be \$25:

- a. Articles of amendment.
- b. Articles of restatement.
- c. Articles of cancellation ~~with respect to a domestic or foreign business trust.~~
- d. Articles of correction referred to in § 13.1-1213, a copy of an amendment or a correction referred to in § 13.1-1245, or an amended application for registration referred to in § 13.1-1245, provided that an amended application shall not require a separate fee when it is filed with a copy of an amendment or a correction referred to in § 13.1-1245.

e. A copy of an instrument of merger of a foreign business trust referred to in § 13.1-1250.

f. Articles of merger.

g. Articles of trust surrender.

h. A copy of an instrument of entity conversion of a foreign business trust holding a certificate of registration to transact business in the Commonwealth.

i. An application for a certificate of cancellation of a foreign business trust.

3. For filing any one of the following, the fee shall be \$10:

a. An application to reserve or to renew the reservation of a name for use by a domestic or foreign business trust.

b. A notice of the transfer of a name reserved for use by a domestic or foreign business trust.

4. For issuing a certificate pursuant to § 13.1-1285, the fee shall be \$6.

§ 13.1-1246. Cancellation of certificate of registration.

A. A foreign business trust *registered to transact business in the Commonwealth* may ~~cancel its certificate of registration by delivering~~ apply to the Commission ~~articles for a certificate of cancellation to cancel its certificate of registration. The application shall be on forms a form~~ prescribed and furnished by the Commission ~~that~~, which shall set forth:

1. The name of the foreign business trust and the name of the state or other jurisdiction under whose jurisdiction it was formed;

2. *That the foreign business trust is in existence and has not been merged into or consolidated with another entity or converted into another type of entity or, if the foreign business trust has been merged into or consolidated with another entity or converted into another type of entity, that the application is signed on behalf of the foreign business trust by the surviving or resulting entity;*

3. That the foreign business trust is not transacting business in ~~this the~~ Commonwealth and that it surrenders its registration to transact business in ~~this the~~ Commonwealth;

3 4. That the foreign business trust revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in ~~this the~~ Commonwealth;

4 5. A mailing address to which the clerk of the Commission may mail a copy of any process served on him under subdivision 3 of ~~this subsection~~ 4; and

5 6. A commitment to notify the clerk of the Commission in the future of any change in the mailing address of the business trust.

B. If the Commission finds that the ~~articles of cancellation conform to application~~ *application complies with the provisions requirements of this article law* and all required fees have been paid, it shall file the ~~articles and issue a certificate of cancellation canceling the certificate of registration shall be canceled.~~

C. *Before any foreign business trust registered to transact business in the Commonwealth cancels its existence, it shall file with the Commission an application for a certificate of cancellation. Whether or not such application is filed, the cancellation of the existence of such foreign business trust shall not take away or impair any remedy available against such business trust for any right or claim existing or any liability incurred prior to such cancellation. Any such action or proceeding against such foreign business trust may be defended by such business trust in its name. The trustees and beneficial owners shall have power to take such action as shall be appropriate to protect such remedy, right, or claim. The right of a foreign business trust that has canceled its existence to institute and maintain in its name actions, suits, or proceedings in the courts of the Commonwealth shall be governed by the law of the state of its formation.*

D. *Service of process on the clerk of the Commission is service of process on a foreign business trust whose certificate of registration has been canceled pursuant to this section. Service upon the clerk shall be made in accordance with § 12.1-19.1, and service upon the foreign business trust may be made in any other manner permitted by law.*

§ 13.1-1266. Plan of domestication.

A. ~~The domesticating foreign entity shall adopt a plan of domestication setting shall set forth:~~

1. *The name of the state or other jurisdiction under whose laws the domestic business trust or foreign entity is formed, organized, or incorporated;*

2. A statement of the jurisdiction in which the domestic business trust or foreign entity is to be domesticated;

2 3. The terms and conditions of the domestication, provided, ~~however,~~ that such terms and conditions may not alter the ownership proportion or the relative rights, preferences and limitations of the interests of the beneficial owners except to the extent required to conform to the requirements of this chapter; and

3 4. For a foreign entity that is *to become a converting entity domestic business trust, as an a referenced attachment incorporated by reference, the full text of the amended and restated articles of trust of the domestic business trust that comply with § 13.1-1212 as it they will be in effect immediately after upon consummation of the conversion domestication.*

B. The plan of domestication may include:

1. ~~Subject to the provisions of subsection A, amendments to the articles of trust of the business trust following its domestication or a restatement of the articles of trust; and~~

2. ~~Any~~ any other provision relating to the domestication.

C. The plan of domestication may also include a provision that the management of the converting entity may amend the plan at any time prior to issuance of the certificate of domestication or such other document required by the laws of the other jurisdiction to consummate the domestication. An amendment made subsequent to the submission of the plan to the beneficial owners of the foreign entity, if required, shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the interests of the beneficial owners.

§ 13.1-1268. Articles of domestication.

A. After the domestication of a foreign entity is approved in the manner required by the laws of the jurisdiction in which the foreign entity is formed, the foreign entity shall file with the Commission articles of domestication setting forth:

1. The name of the foreign entity immediately prior to the filing of the articles of domestication and, if that name is unavailable for use in ~~this the~~ Commonwealth or the foreign entity desires to change its name in connection with the domestication, a name that satisfies the requirements of § 13.1-1214;

2. The plan of domestication, ~~including as an attachment to the plan, the full text of the articles of trust of the surviving entity that comply with the requirements of § 13.1-1212 as they will be in effect immediately after consummation of the domestication;~~

3. The original jurisdiction, entity type and date of formation of the foreign entity, and each subsequent jurisdiction, entity type and date the foreign entity was domesticated in each such jurisdiction or converted to a new entity type, if any, prior to the filing of the articles of domestication; and

4. A statement that the domestication is permitted by the laws of the jurisdiction in which the business trust is formed and that the business trust has complied with those laws in effecting the

domestication.

B. If the Commission finds that the articles of domestication comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of domestication.

C. The certificate of domestication shall become effective pursuant to § 13.1-1203.

D. A foreign entity's existence as a domestic business trust shall begin when the certificate of domestication is effective. Upon becoming effective, the certificate of domestication shall be conclusive evidence that all conditions precedent required to be performed by the foreign business trust have been complied with and that the business trust has been formed under this chapter.

E. If the foreign business trust is authorized to transact business in ~~this~~ *the* Commonwealth under Article 9 (§ 13.1-1241 et seq.) ~~of this chapter~~, its certificate of authority shall be canceled automatically on the effective date of the certificate of domestication issued by the Commission.

§ 50-73.17. Filing; fees; effective time and date.

A. 1. One signed copy of the certificate of limited partnership, of any amended and restated certificate referred to in § 50-73.77, of any certificate of amendment or cancellation, of any restated certificate of limited partnership or of any articles of merger shall be delivered to the Commission for filing and shall be accompanied by the required filing fee.

2. Any document delivered to the Commission for filing shall be typewritten or printed in black. Photocopies, or other reproduced copies, of typewritten or printed certificates may be filed. In every case, information in the document shall be legible and the document shall be capable of being reformatted and reproduced in copies of archival quality.

3. The document shall be in the English language. A limited partnership name need not be in English if written in English letters or Arabic or Roman numerals. The certificate of limited partnership or partnership agreement, duly authenticated by the official having custody of the applicable records in the state or other jurisdiction under whose law the limited partnership is formed, which is required of foreign limited partnerships, need not be in English if accompanied by a reasonably authenticated English translation.

4. If, pursuant to any provision of this chapter, the Commission has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

5. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. If the Commission finds that the certificate complies with the provisions of this chapter, that it has been signed as required by this chapter, and that the required filing fee has been paid, it shall file the certificate and admit it to record in its office.

6. The Commission may accept the electronic filing of any information required or permitted to be filed by this chapter and may prescribe the methods of execution, recording, reproduction and certification of electronically filed information pursuant to § 59.1-496.

B. The Commission shall charge and collect the following fees, *except as provided in § 12.1-21.2*:

1. For filing any one of the following, the fee shall be \$10:

a. An application to reserve or to renew the reservation of a name for use by a domestic or a foreign limited partnership;

b. A notice of the transfer of a name reserved for the use by a domestic or a foreign limited partnership; and

c. A certificate declaring withdrawal referred to in § 50-73.25.

2. For filing any one of the following, the fee shall be \$100:

a. A certificate of limited partnership ~~referred to in § 50-73.11 or 50-73.11:3~~;

b. An application for registration as a foreign limited partnership; and

c. An amended and restated certificate of limited partnership referred to in § 50-73.77.

3. For filing any one of the following, the fee shall be \$25:

a. A certificate of amendment ~~referred to in § 50-73.12~~;

b. A restated certificate of limited partnership ~~referred to in § 50-73.12~~;

c. A copy of an amendment or correction referred to in § 50-73.57, or an amended application referred to in § 50-73.57, provided that an amended application shall not require a separate fee when it is filed with a copy of an amendment or a correction referred to in § 50-73.57;

d. Articles of merger ~~referred to in § 50-73.48:3~~;

e. ~~An~~ A copy of an instrument of merger ~~referred to in § 50-73.57:2 of a foreign limited partnership holding a certificate of registration to transact business in the Commonwealth~~;

f. ~~An~~ A copy of an instrument of entity conversion ~~referred to in § 50-73.57:3 of a foreign limited partnership holding a certificate of registration to transact business in the Commonwealth~~;

g. A certificate of cancellation ~~referred to in § 50-73.52:4~~; and

h. A ~~certificate of~~ An application for cancellation ~~referred to in § 50-73.58 of a foreign limited partnership~~.

4. For issuing a certificate pursuant to § 50-73.76:1, the fee shall be \$6.

C. 1. A certificate filed with or issued by the Commission pursuant to the provisions of this chapter is effective at the time such certificate is filed or issued unless the certificate or articles to which the certificate relates are filed on behalf of a limited partnership and state that they shall become effective at

a later time and date. In that event, the certificate shall become effective at the earlier of the time and date so specified or 11:59 p.m. on the fifteenth day after the date on which the certificate is filed with or issued by the Commission. Any other document filed with the Commission shall be effective when accepted for filing unless otherwise provided for in this chapter.

2. Notwithstanding subdivision 1 ~~of this subsection~~, as to any certificate that has a delayed effective time and date if, prior to the effective time and date, a party to which the certificate relates files a request for cancellation with the Commission, the Commission shall cancel the certificate and it shall not become effective.

3. Notwithstanding subdivision 1 ~~of this subsection~~, for purposes of §§ 50-73.2 and 50-73.56, any certificate that has a delayed effective date shall be deemed to be effective when the certificate is filed or, in the case of a certificate of merger, issued.

D. Notwithstanding any other provision of law to the contrary, the Commission shall have the power to act upon a petition filed by a limited partnership at any time to correct Commission records so as to eliminate the effects of clerical errors and of filings made by a person without authority to act for the limited partnership.

§ 50-73.58. Cancellation of certificate of registration.

A. A foreign limited partnership registered to transact business in the Commonwealth may ~~cancel its certificate of registration by delivering~~ apply to the Commission for a certificate of cancellation to cancel its certificate of registration. The application shall be executed by a general partner or court-appointed fiduciary on ~~forms~~ a form prescribed and furnished by the Commission, which shall set forth:

1. The name of the foreign limited partnership and the name of the state or other jurisdiction under whose jurisdiction it was formed;

2. *That the foreign limited partnership is in existence and has not been merged into or consolidated with another entity or converted into another type of entity or, if the foreign limited partnership has been merged into or consolidated with another entity or converted into another type of entity, that the application is signed on behalf of the foreign limited partnership by the surviving or resulting entity;*

3. That the foreign limited partnership is not transacting business in ~~this~~ the Commonwealth and that it surrenders its registration to transact business in ~~this~~ the Commonwealth;

~~3~~ 4. That the foreign limited partnership revokes the authority of its registered agent to accept service on its behalf and appoints the ~~Clerk~~ clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in ~~this~~ the Commonwealth;

4 5. A mailing address to which the ~~Clerk~~ clerk of the Commission may mail a copy of any process served on him under subdivision 3 ~~of this subsection~~ 4; and

5 6. A commitment to notify the ~~Clerk~~ clerk of the Commission in the future of any change in the mailing address of the limited partnership.

B. If the ~~certificate has been signed by a general partner of the limited partnership~~ Commission finds that the application complies with the requirements of law and ~~the~~ all required fees have been paid, ~~the Commission~~ it shall file the issue a certificate and of cancellation canceling the certificate of registration shall be canceled.

C. Before any foreign limited partnership registered to transact business in the Commonwealth cancels its existence, it shall file with the Commission an application for a certificate of cancellation. Whether or not such application is filed, the cancellation of the existence of such foreign limited partnership shall not take away or impair any remedy available against such limited partnership for any right or claim existing or any liability incurred prior to such cancellation. Any such action or proceeding against such foreign limited partnership may be defended by such limited partnership in its name. The general partners and limited partners shall have power to take such action as shall be appropriate to protect such remedy, right, or claim. The right of a foreign limited partnership that has canceled its existence to institute and maintain in its name actions, suits, or proceedings in the courts of the Commonwealth shall be governed by the law of the state of its formation.

D. Service of process on the clerk of the Commission is service of process on a foreign limited partnership whose certificate of registration has been canceled pursuant to this section. Service upon the clerk shall be made in accordance with § 12.1-19.1, and service upon the foreign limited partnership may be made in any other manner permitted by law.