Chapter 358

(House Bill 759)

AN ACT concerning

Corporations – Formation of a Holding Company by Merger

FOR the purpose of establishing a process for the formation of a certain holding company through the merger of a Maryland parent corporation with or into a certain wholly owned subsidiary of the Maryland parent corporation; providing that a vote of the stockholders of the parent corporation is not necessary to authorize the merger under certain circumstances, unless the charter of the parent corporation expressly provides otherwise; requiring that the merger be approved by a majority of the entire board of directors of the parent corporation; establishing the conditions under which the merger may be effectuated; establishing the effects of the merger; authorizing a merger of a parent real estate investment trust into a certain subsidiary real estate investment trust to be approved in a certain manner, under certain circumstances; defining a certain term; and generally relating to the establishment of a process for forming a holding company through a merger.

BY adding to
Article – Corporations and Associations
Section 3–106.2
Annotated Code of Maryland
(2014 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, with amendments,
Article – Corporations and Associations
Section 8–501.1(c)
Annotated Code of Maryland
(2014 Replacement Volume and 2016 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Corporations and Associations

3–106.2.

(A) IN THIS SECTION, "HOLDING COMPANY" MEANS A MARYLAND CORPORATION:

(1) THAT, FROM ITS FORMATION UNTIL CONSUMMATION OF A MERGER GOVERNED BY THIS SECTION, HAS BEEN AT ALL TIMES A DIRECT OR INDIRECT WHOLLY OWNED SUBSIDIARY CORPORATION; AND

(2) ALL OF THE SHARES OF STOCK OF WHICH ARE ISSUED IN THE MERGER.

(B) NOTWITHSTANDING § 3–105 OF THIS SUBTITLE, UNLESS THE CHARTER OF A PARENT CORPORATION EXPRESSLY PROVIDES OTHERWISE, A VOTE OF THE STOCKHOLDERS OF THE PARENT CORPORATION IS NOT NECESSARY TO AUTHORIZE A MERGER WITH OR INTO A SINGLE DIRECT OR INDIRECT WHOLLY OWNED SUBSIDIARY CORPORATION OF THE PARENT CORPORATION IF:

(1) THE PARENT CORPORATION AND THE DIRECT OR INDIRECT WHOLLY OWNED SUBSIDIARY CORPORATION ARE THE ONLY PARTIES TO THE MERGER;

(2) EACH SHARE OR FRACTION OF A SHARE OF THE STOCK OF THE PARENT CORPORATION OUTSTANDING IMMEDIATELY PRIOR TO THE EFFECTIVE TIME OF THE MERGER IS CONVERTED IN THE MERGER INTO A SHARE OR EQUAL FRACTION OF A SHARE OF THE STOCK OF A HOLDING COMPANY HAVING THE SAME CONTRACT RIGHTS AS THE SHARE OF STOCK OF THE PARENT CORPORATION BEING CONVERTED IN THE MERGER;

(3) THE HOLDING COMPANY, THE PARENT CORPORATION, AND THE DIRECT OR INDIRECT WHOLLY OWNED SUBSIDIARY CORPORATION THAT IS THE OTHER PARTY TO THE MERGER ARE MARYLAND CORPORATIONS;

(4) THE CHARTER AND BYLAWS OF THE HOLDING COMPANY IMMEDIATELY FOLLOWING THE EFFECTIVE TIME OF THE MERGER ARE IDENTICAL TO THE CHARTER AND BYLAWS OF THE PARENT CORPORATION IN EFFECT IMMEDIATELY PRIOR TO THE EFFECTIVE TIME OF THE MERGER, OTHER THAN:

(I) PROVISIONS, IF ANY, REGARDING THE INCORPORATOR OR INCORPORATORS, THE PRINCIPAL OFFICE, THE RESIDENT AGENT, AND THE INITIAL BOARD OF DIRECTORS;

(II) PROVISIONS AUTHORIZED UNDER § 2–605 OF THIS ARTICLE; AND

(III) ANY AMENDMENT TO THE CHARTER THAT WAS NECESSARY TO EFFECT A CHANGE, EXCHANGE, RECLASSIFICATION, SUBDIVISION, COMBINATION, OR CANCELLATION OF STOCK, IF THE CHANGE, EXCHANGE, RECLASSIFICATION, SUBDIVISION, COMBINATION, OR CANCELLATION OF STOCK HAS BECOME EFFECTIVE;

(5) AS A RESULT OF THE MERGER, THE PARENT CORPORATION OR ITS SUCCESSOR BECOMES A DIRECT OR INDIRECT WHOLLY OWNED SUBSIDIARY CORPORATION OF THE HOLDING COMPANY;

(6) THE DIRECTORS OF THE PARENT CORPORATION BECOME OR REMAIN THE DIRECTORS OF THE HOLDING COMPANY AT THE EFFECTIVE TIME OF THE MERGER;

(7) THE STOCKHOLDERS OF THE PARENT CORPORATION DO NOT RECOGNIZE GAIN OR LOSS FOR FEDERAL INCOME TAX PURPOSES, AS DETERMINED BY THE BOARD OF DIRECTORS OF THE PARENT CORPORATION; AND

(8) A MAJORITY OF THE ENTIRE BOARD OF DIRECTORS OF THE PARENT CORPORATION APPROVES THE MERGER.

(C) FROM AND AFTER THE EFFECTIVE TIME OF A MERGER UNDER SUBSECTION (B) OF THIS SECTION:

(1) IF THE PARENT CORPORATION WAS FORMED BEFORE OCTOBER 1, 1995, AND ITS CHARTER DID NOT EXPRESSLY TERMINATE PREEMPTIVE RIGHTS, AND THE HOLDING COMPANY WAS FORMED ON OR AFTER OCTOBER 1, 1995, THE CHARTER OF THE HOLDING COMPANY SHALL PROVIDE THAT STOCKHOLDERS OF THE HOLDING COMPANY HAVE PREEMPTIVE RIGHTS, TO THE EXTENT PROVIDED IN THE CHARTER OF THE PARENT CORPORATION IMMEDIATELY PRIOR TO THE EFFECTIVE TIME OF THE MERGER AND SUBJECT TO § 2–205 OF THIS ARTICLE, TO SUBSCRIBE TO ANY ADDITIONAL SHARES OF STOCK OR ANY SECURITY CONVERTIBLE INTO AN ADDITIONAL ISSUE OF STOCK;

(2) TO THE EXTENT A VOTING TRUST AGREEMENT AUTHORIZED BY § 2–510 OF THIS ARTICLE, A WRITTEN AGREEMENT AUTHORIZED BY § 2–510.1 OF THIS ARTICLE, A PROXY AUTHORIZED BY § 2–507 OF THIS ARTICLE, OR ANY OTHER SIMILAR AGREEMENT OR INSTRUMENT APPLIED TO THE PARENT CORPORATION, ITS STOCK, OR ITS STOCKHOLDERS IMMEDIATELY PRIOR TO THE EFFECTIVE TIME OF THE MERGER, THE VOTING TRUST AGREEMENT, WRITTEN AGREEMENT, PROXY, OR OTHER SIMILAR AGREEMENT OR INSTRUMENT SHALL APPLY TO THE HOLDING COMPANY, ITS STOCK, AND ITS STOCKHOLDERS;

(3) TO THE EXTENT THAT THE RESTRICTIONS UNDER § 3–602 OF THIS TITLE APPLIED TO THE PARENT CORPORATION AND THE STOCKHOLDERS OF THE PARENT CORPORATION IMMEDIATELY PRIOR TO THE EFFECTIVE TIME OF THE MERGER:

(I) THE RESTRICTIONS SHALL APPLY TO THE HOLDING COMPANY AND THE STOCKHOLDERS OF THE HOLDING COMPANY IMMEDIATELY AFTER THE EFFECTIVE TIME OF THE MERGER AS THOUGH THE HOLDING COMPANY WAS THE PARENT COMPANY;

(II) FOR PURPOSES OF § 3–602 OF THIS TITLE, ALL SHARES OF STOCK OF THE HOLDING COMPANY ACQUIRED IN THE MERGER SHALL BE DEEMED TO HAVE BEEN ACQUIRED AT THE TIME THAT THE SHARES OF STOCK OF THE PARENT CORPORATION CONVERTED IN THE MERGER WERE ACQUIRED; AND

(III) 1. ANY STOCKHOLDER THAT IMMEDIATELY PRIOR TO THE EFFECTIVE TIME OF THE MERGER WAS NOT AN INTERESTED STOCKHOLDER, AS DEFINED IN § 3–601 OF THIS TITLE, DOES NOT, SOLELY BY REASON OF THE MERGER, BECOME AN INTERESTED STOCKHOLDER OF THE HOLDING COMPANY; AND

2. ANY STOCKHOLDER THAT IMMEDIATELY PRIOR TO THE EFFECTIVE TIME OF THE MERGER WAS AN INTERESTED STOCKHOLDER, AS DEFINED IN § 3–601 OF THIS TITLE, REMAINS AN INTERESTED STOCKHOLDER OF THE HOLDING COMPANY;

(4) TO THE EXTENT THAT, IMMEDIATELY PRIOR TO THE EFFECTIVE TIME OF THE MERGER, ANY APPROVAL BY THE STOCKHOLDERS OF THE PARENT CORPORATION UNDER § 3–702(A) OF THIS TITLE APPLIED TO THE PARENT CORPORATION AND ANY CONTROL SHARES OF THE PARENT CORPORATION, THE APPROVAL SHALL APPLY TO THE HOLDING COMPANY AND ANY CONTROL SHARES OF THE HOLDING COMPANY IMMEDIATELY AFTER THE EFFECTIVE TIME OF THE MERGER AS IF THE HOLDING COMPANY WERE THE PARENT CORPORATION;

(5) TO THE EXTENT THAT, IMMEDIATELY PRIOR TO THE EFFECTIVE TIME OF THE MERGER, THE BOARD OF DIRECTORS OF THE PARENT CORPORATION HAD ELECTED BY RESOLUTION TO BE SUBJECT TO OR NOT TO BE SUBJECT TO, WHOLLY OR PARTLY, ANY OR ALL PROVISIONS OF SUBTITLE 8 OF THIS TITLE, THE ELECTION SHALL APPLY TO THE HOLDING COMPANY IMMEDIATELY AFTER THE EFFECTIVE TIME OF THE MERGER AS IF THE HOLDING COMPANY WERE THE PARENT CORPORATION;

(6) UNLESS THE BOARD OF DIRECTORS OF THE HOLDING COMPANY HAS AUTHORIZED SHARES OF STOCK OF THE HOLDING COMPANY TO BE ISSUED WITHOUT CERTIFICATES, OR UNTIL CERTIFICATES WITH THE NAME OF THE HOLDING COMPANY HAVE BEEN ISSUED, THE SHARES OF STOCK OF THE HOLDING COMPANY INTO WHICH THE SHARES OF STOCK OF THE PARENT CORPORATION ARE CONVERTED IN THE MERGER MAY CONTINUE TO BE REPRESENTED BY THE STOCK

CERTIFICATES THAT PREVIOUSLY REPRESENTED SHARES OF STOCK OF THE PARENT CORPORATION; AND

(7) TO THE EXTENT THAT A STOCKHOLDER OF THE PARENT CORPORATION IMMEDIATELY PRIOR TO THE EFFECTIVE TIME OF THE MERGER HAD STANDING TO INSTITUTE OR MAINTAIN DERIVATIVE LITIGATION ON BEHALF OF THE PARENT CORPORATION, THE STOCKHOLDER SHALL HAVE STANDING TO INSTITUTE OR MAINTAIN DERIVATIVE LITIGATION ON BEHALF OF THE HOLDING COMPANY.

8–501.1.

(c) A merger shall be approved in the manner provided by this section, except that:

(1) A foreign business trust, a Maryland business trust, other than a Maryland real estate investment trust, a corporation, a domestic or foreign partnership, or a domestic or foreign limited partnership party to the merger shall have the merger advised, authorized, and approved in the manner and by the vote required by its declaration of trust, governing instrument, charter, or partnership agreement and the laws of the place where it is organized;

(2) (i) A foreign limited liability company party to the merger shall have the merger advised, authorized, and approved in the manner and by the vote required by the laws of the place where it is organized; and

(ii) A domestic limited liability company shall have the merger approved in the manner provided under § 4A–703 of this article;

(3) A merger need be approved by a Maryland real estate investment trust successor only by a majority of its entire board of trustees if the merger does not reclassify or change the terms of any class or series of its shares that are outstanding immediately before the merger becomes effective or otherwise amend its declaration of trust and the number of shares of such class or series outstanding immediately after the effective time of the merger does not increase by more than 20 percent of the number of its shares of the class or series of shares outstanding immediately before the merger becomes effective;

(4) A merger of a subsidiary with or into its parent need be approved only in the manner provided in § 3–106 of this article, provided the parent owns at least 90 percent of the subsidiary; **[**and**]**

(5) A merger of a Maryland real estate investment trust in accordance with § 3–106.1 of this article need be approved only in the manner provided in § 3–106.1 of this article**; AND**

(6) A MERGER OF A PARENT REAL ESTATE INVESTMENT TRUST WITH OR INTO A SINGLE DIRECT OR INDIRECT WHOLLY OWNED SUBSIDIARY REAL ESTATE INVESTMENT TRUST MAY BE APPROVED IN THE MANNER PROVIDED IN § 3–106.2 OF THIS ARTICLE, PROVIDED THE MERGER OTHERWISE CONFORMS TO THE REQUIREMENTS UNDER § 3–106.2 OF THIS ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2017.

Approved by the Governor, April 18, 2017.