

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1249
Economic Matters

(Delegate Sydnor)

Corporations and Associations - Domestications - Authorization

This bill authorizes a foreign corporation to domesticate as a Maryland corporation if the laws of the place in which the foreign corporation is organized authorize it to domesticate in another place. A Maryland corporation that is not required by law to be a Maryland corporation may become a foreign corporation if the place in which the corporation intends to domesticate authorizes the corporation to domesticate. The bill only applies to a nonstock or religious corporation that is organized to operate as a nonprofit entity.

Fiscal Summary

State Effect: Minimal increase in special fund revenues for the State Department of Assessments and Taxation (SDAT) due to the bill's fee for processing articles of domestication, beginning as soon as FY 2018. Special fund expenditures for SDAT increase at least minimally in FY 2018 to comply with the bill and may increase more significantly in subsequent years, as discussed below.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Definitions

“Domesticated corporation” means the domesticating corporation as it continues in existence after a domestication.

“Domesticating corporation” means a Maryland corporation that adopts a plan of domestication or a foreign corporation that approves a domestication in accordance with the laws of the place in which the foreign corporation is organized.

Plan and Approval of Domestication

A corporation seeking domestication must develop a plan of domestication, adopt the plan in accordance with the bill’s requirements, and sign and acknowledge the articles of domestication. A foreign corporation seeking domestication must file the articles of domestication with SDAT.

The domestication plan must include (1) the place where the corporation is to be domesticated; (2) the terms and conditions of domestication; and (3) any amendments to the articles of incorporation or bylaws of the corporation following the domestication. The plan may authorize the domesticating corporation to amend the plan at any time before the domestication becomes effective. An amendment made after the plan is submitted to the domesticating corporation’s members for approval may not alter any of the terms or conditions of the plan without the approval of the members.

The domestication of a Maryland corporation that seeks to domesticate in a place other than the State must be approved in the manner required in the bill and in accordance with the corporation’s charter. The domestication must be approved by a majority of the board of directors or board of trustees, who must adopt a plan of domestication. The plan must be submitted to members for a vote, if appropriate. The board of directors or trustees must recommend that the members approve the plan and disclose the reason for the recommendation, unless there is a conflict of interest or other special circumstances. The corporation must give specified notice to each member of the corporation that the plan is being submitted for consideration at a board meeting. The proposed domestication must be approved by the members of the corporation by the affirmative vote of two-thirds of all the votes entitled to be cast on the matter.

The domestication of a foreign corporation to a Maryland corporation must be approved in the manner and by the vote required by its governing documents and the laws of the place in which it is organized.

Articles of Domestication

The bill requires articles of domestication to be signed, executed, and verified in the same manner as supplementary articles and articles of amendment and/or restatement, consolidation, merger, share exchange, transfer, conversion, and extension under the Corporations and Associations Article. The fee for processing of articles of domestication by SDAT is \$100.

Articles of domestication must be filed with SDAT and must be signed by any duly authorized representative of the domesticating corporation. The articles must state (1) the name and place of organization of the domesticating corporation; (2) the name and place of organization of the domesticated corporation; (3) the location of the principal office in the place where the domesticated corporation will be organized; (4) the name and address of the resident agent in the place where the domesticated corporation will be organized; (5) a statement that the plan has been approved in accordance with the bill's requirements or the requirements of the law of the corporation's place of organization, as appropriate; (6) if the articles of domestication are not effective on the acceptance for record of the articles, the future effective time, which must be a time certain; and (7) any other provision necessary to effect the domestication. The articles of incorporation of the domesticating corporation must be attached to the articles of domestication.

Effects of Domestication

Under State law, the domesticating corporation is deemed to be the same entity as the domesticated corporation and is organized under and subject to the law of the domesticated corporation. All the assets of the domesticating corporation, including any specified legacies, vest in and devolve on the domesticated corporation without any further act and are the property of the domesticated corporation. Further, the titles to any real or personal property, both tangible and intangible, vested by deed or otherwise in the domesticating corporation do not revert or are not in any way impaired by reason of domestication. Domestication does not alter the status of any licenses, permits, or registrations that were in effect at the time domestication was initiated.

Confirmatory deeds, assignments, or similar instruments to evidence the domestication may be executed and delivered at any time by the appropriate authorized persons, as specified. The domesticated corporation is liable for all the debts and obligations of the domesticating corporation.

Further, domestication does not affect (1) any existing claims, actions, or proceedings pending by or against the domesticating corporation; (2) a judgment against the domesticating corporation; (3) the rights of creditors or any liens on the domesticating corporation's property; or (4) any debts, obligations, or liabilities of the domesticating corporation or the personal liability of any person incurred before the domestication.

The articles of domestication, or the articles of incorporation that are attached to the articles of domestication, are the articles of incorporation of a foreign corporation domesticating in the State. The membership of the domesticating corporation must be reclassified into memberships, obligations, rights to acquire memberships, or cash or other property in accordance with the terms of the domestication plan.

Effective Time of Domestication

Domestication is completed on the effectiveness of the articles of domestication filed for record with SDAT. The articles of domestication are effective on the later of (1) the time SDAT accepts the articles of domestication for record or (2) the future effective time as set forth in the articles of domestication that have been accepted by SDAT for record.

If the domesticated corporation is a Maryland corporation, the corporation is subject to all of the provisions of the Maryland General Corporation Law at the time the domestication becomes effective; the existence of the domesticated corporation is deemed to have commenced on the date the domesticating corporation commenced its existence in the place in which the domesticating corporation was first organized.

Abandonment of Proposed Domestication

Unless the charter of the domesticating corporation or the articles of domestication specify otherwise, a proposed domestication may be abandoned before the effective date of the articles of domestication by a majority vote of the board of directors or trustees, if the domesticating corporation is a Maryland corporation. If the domesticating corporation is a foreign corporation, domestication may be abandoned in the manner and by the vote required by the governing document of the corporation and the laws of the place in which it is organized or in the manner and by the vote specified in the bill for domestication approval, as specified.

If the articles of domestication have been filed with SDAT, notice of the abandonment must also be given to SDAT.

No legal liability arises if abandonment is conducted in accordance with the bill's requirements. Abandonment does not prejudice the rights of any person under any other contract made by a Maryland corporation in connection with the proposed domestication.

Current Law: Under the Corporations and Associations Article, “foreign corporation” means a corporation, association, or joint-stock company organized under the laws of the United States, another state of the United States, a territory, possession, or district of the United States, or a foreign country. “Maryland corporation” means a corporation organized and existing under the laws of this State.

Supplementary articles and articles of amendment and/or restatement, consolidation, merger, share exchange, transfer, conversion, and extension must be executed in a specified manner, including signed and witnessed by specified corporate officers. Further, such documents must be verified under oath by specified corporate officers.

A nonstock corporation may consolidate or merge only with another nonstock corporation, which must be effected under Title 3 of the Corporations and Associations Article. A proposed consolidation, merger, or transfer of assets of a nonstock corporation organized to hold title to property for a labor organization, and for related purposes, must be approved by the same affirmative vote of the members of the corporation that the constitution or bylaws of the labor organization requires for the same action.

State Revenues: Special fund revenues for SDAT increase minimally beginning as soon as fiscal 2018 due to the new fee for processing articles of domestication. The timing and magnitude of any such revenues cannot be reliably estimated; however, as noted below, relatively few such filings are anticipated.

State Expenditures: Although SDAT advises that it anticipates only a minimal number of domestication filings under the bill, the department also advises that it anticipates a significant increase in programming costs to update computer software to reflect the bill’s requirements (as much as \$500,000 in fiscal 2018 and \$30,000 annually for computer system maintenance thereafter). SDAT did not provide any other detail to justify the level of system changes that may be required under the bill.

Absent a justification and given the limited number of domestication filings expected under the bill (because the bill only applies to specified nonstock and religious corporations), the Department of Legislative Services advises SDAT may be able to develop a process for handling such filings that does not necessitate major programming and related costs. Regardless, special fund expenditures increase at least minimally for SDAT to comply with the bill. To the extent SDAT receives more filings than anticipated and must undertake major programming, special fund expenditures for SDAT likely increase more significantly in future years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Assessments and Taxation; Department of Legislative Services

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