HB 1513

Department of Legislative Services

Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1513 (Delegate Kramer)
Rules and Executive Nominations

Corporations - Formation of a Holding Company by Merger

This bill is intended to establish a simplified process for the formation of a holding company through the merger of a Maryland parent corporation with or into a direct or indirect wholly owned subsidiary corporation (subsidiary) of the Maryland parent corporation.

Fiscal Summary

State Effect: The bill does not directly affect State operations or finances.

Local Effect: The bill does not directly affect local operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill defines "holding company" as a Maryland corporation (1) that, from its incorporation until consummation of a merger governed by the bill, has been at all times a subsidiary and (2) the stock of which is issued in the merger.

Generally, a vote of the stockholders of the parent corporation is not necessary to authorize a merger with or into a single subsidiary of the parent corporation if:

- the parent corporation and the subsidiary are the only parties to the merger;
- each share or fraction of a share of the stock of the parent corporation outstanding immediately prior to 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;

- the holding company, the parent corporation, and the subsidiary that is the other party to the merger are Maryland corporations;

- the charter and bylaws of the holding company immediately following the merger are identical to the charter and bylaws of the parent corporation in effect immediately prior to the merger, other than (1) provisions (if any) regarding the incorporator or incorporators, the principal office, the resident agent, and the initial board of directors; (2) provisions related to minor changes in name or designation of stock classes or series; and (3) any amendment to the charter that was necessary to cause a specified alteration or cancellation of stock, if the specified alteration or cancellation of stock has become effective;

- as a result of the merger, the parent corporation or its successor becomes a subsidiary of the holding company;

- the directors of the parent corporation become or remain the directors of the holding company at merger;

- 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

- a majority of the entire board of directors of the parent corporation approves the merger.

As of the effective date of a completed merger, to the extent that restrictions on business combinations applied to the parent corporation and the stockholders of the parent corporation at merger, the restrictions must also apply to the holding company and its stockholders immediately after merger as though the holding company was the parent company.

In addition, all the holding company shares of stock acquired in the merger are deemed to have been acquired at the time that the shares of stock of the parent corporation that were converted in the merger were acquired. Moreover, any stockholder that immediately prior to merger was *not* an interested stockholder (as defined in Title 3, Subtitle 6 of the Corporations and Associations Article) does *not*, solely by reason of the merger, become an interested stockholder of the holding company. Likewise, any stockholder that immediately prior to merger *was* an interested stockholder (as defined in Title 3, Subtitle 6

of the Corporations and Associations Article) *remains* an interested stockholder of the holding company.

In addition, as of the effective date of a merger:

- to the extent that, at merger, any approval by the stockholders of the parent corporation (that is governed by specified voting rights and shareholder approval provisions) applied to the parent corporation and any of its control shares, the same approval provisions apply to the holding company and any of its control shares immediately after the merger as if the holding company were the parent corporation;

- to the extent that, at merger, the board of directors of the parent corporation had elected by resolution to be subject or not subject to (wholly or partly) any or all provisions related to unsolicited takeovers as specified in Title 3, Subtitle 8 of the Corporations and Associations Article, the same election applies to the holding company immediately after the merger as if the holding company were the parent corporation;

- if the corporate name of the holding company immediately following the merger is the same as the corporate name of the parent corporation immediately prior to the merger, the holding company share of stock into which the parent corporation shares of stock are converted in the merger may continue to be represented by the stock certificates that previously represented the parent corporation shares of stock; and

- to the extent that a stockholder of the parent corporation, immediately prior to the merger, had standing to institute or maintain derivative litigation on behalf of the parent corporation, that stockholder continues to have standing to institute or maintain derivative litigation on behalf of the holding company.

Finally, the bill specifies that a merger of a parent real estate investment trust with or into a single subsidiary real estate investment trust may be approved in the manner specified under the bill (if the merger otherwise conforms to statutory requirements).

Current Law: A Maryland corporation having capital stock may:

- consolidate with one or more other Maryland or foreign corporations having capital stock to form a new consolidated corporation;

- merge into another Maryland or foreign corporation having capital stock, or have one or more such corporations merged into it;

- merge into a domestic or foreign business trust having transferrable units of beneficial interest, or have one or more such business trusts merge into it;

- merge into a domestic or foreign limited partnership, or have one or more domestic or foreign limited partnerships merged into it;

- merge into a domestic or foreign limited liability company, or have one or more domestic or foreign limited liability companies merged into it;

- merge into a domestic or foreign partnership, or have one or more domestic or foreign partnerships merged into it;

- participate in a share exchange either (1) as the successor or (2) as the corporation that is the subject of the stock acquisition; or

- transfer its assets.

Restrictions or limitations imposed on a corporation by law, charter provision, or that are contained in franchise agreements, as specified, continue.

Except as otherwise specified, the board of directors of each corporation proposing to consolidate, merge, transfer its assets, or have its stock acquired in a share exchange must (1) adopt a resolution which declares that the proposed transaction is advisable, as specified, and (2) direct that the proposed transaction be submitted for consideration at either an annual or a special meeting of the stockholders.

State law requires that notice of the meeting be given by each corporation and state that a purpose of the meeting will be to act on the proposed consolidation, merger, share exchange, or transfer of assets. The notice must be given to (1) each of its stockholders entitled to vote on the proposed transaction and (2) each of its stockholders not entitled to vote on the proposed transaction (except the stockholders of a successor in a merger if the merger does not alter the contract rights of their stock as expressly set forth in the charter).

An agreement of consolidation, merger, share exchange, or transfer of assets may require submission to the stockholders, even if the board of directors determines – at any time *after* having declared the advisability of the proposed transaction – that the proposed transaction is no longer advisable and either makes no recommendation to the stockholders or recommends that the stockholders reject the proposed transaction.

The proposed consolidation, merger, share exchange, or transfer must be approved by the stockholders of each corporation by the affirmative vote of two-thirds of all the votes entitled to be cast on the matter.

Background: The bill is a result of recommendations by the Committee on Corporation Law of the Business Law Section of the Maryland State Bar Association. According to the committee, it regularly reviews the Corporations and Associations Article in an attempt to clarify unclear provisions and eliminate outdated language.

Additional Information

Prior Introductions: None.

Cross File: SB 1056 (Senator Feldman) - Judicial Proceedings.

Information Source(s): State Department of Assessments and Taxation, Maryland State Bar Association, Department of Legislative Services

Fiscal Note History: First Reader - March 29, 2016
min/kdm

Analysis by: Eric Pierce

Direct Inquiries to:
(410) 946-5510
(301) 970-5510