

Cherokee Nation Code Annotated

Title 18: Corporations

Chapter 2: Cherokee Nation Limited Liability Company Act

Article 8: Conversion and Mergers

§ 249. Merger or consolidation

Cite as: 18 CNCA § 249

A. Pursuant to an agreement of merger or consolidation, a domestic limited liability company may merge or consolidate with or into one or more domestic or foreign limited liability companies or other business entities. As used in this section, "business entity" means a domestic or foreign corporation, a business trust, a common law trust, or an unincorporated business including a partnership, whether general or limited.

B. Unless otherwise provided in the articles of organization or the operating agreement, a merger or consolidation shall be approved by each domestic limited liability company which is to merge or consolidate by a majority of the members or, if there is more than one class or group of members, then by a majority of each class or group. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

C. If a domestic limited liability company is merging or consolidating pursuant to this section, the domestic limited liability company or other business entity surviving or resulting in or from the merger or consolidation shall file articles of merger or consolidation with the Office of the Principal Chief. The articles of merger or consolidation shall state:

1. The name and jurisdiction of formation or organization of each of the limited liability companies or other business entities which are to merge or consolidate;
2. That an agreement of merger or consolidation has been approved and executed by each of the domestic limited liability companies or other business entities which is to merge or consolidate;
3. The name of the surviving or resulting domestic limited liability company or other business entity;
4. The future effective date or time, which shall be a date or time certain, of the merger or consolidation if it is not to be effective upon the filing of the articles of merger or consolidation;

5. That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited liability company or other business entity, and shall state the address thereof;

6. That a copy of the agreement of merger or consolidation shall be furnished by the surviving or resulting domestic limited liability company or other business entity, upon request and without cost, to any member of any domestic limited liability company or any person holding an interest in any other business entity which is to merge or consolidate;

7. In the case of a merger, any amendments or changes in the articles of organization of the surviving domestic limited liability company that are to be effected by the merger;

8. In the case of a consolidation, that the articles of organization of the resulting domestic limited liability company shall be as set forth in an attachment to the articles of consolidation; and

9. If the surviving or resulting entity is not a domestic limited liability company or business entity formed or organized pursuant to the laws of Cherokee Nation, a statement that the surviving or resulting other business entity agrees to be served with process in Cherokee Nation in any action, suit, or proceeding for the enforcement of any obligation of any domestic limited liability company which is to merge or consolidate; irrevocably appoints the Office of the Principal Chief as its agent to accept service of process in any action, suit, or proceeding; and specifies the address to which process shall be mailed to the entity by the Office of the Principal Chief.

D. A merger or consolidation shall be effective upon the filing with the Office of the Principal Chief of articles of merger or consolidation, unless a future effective date or time is provided in the articles of merger or consolidation.

E. Articles of merger or consolidation shall act as articles of dissolution for a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation.

Once any merger or consolidation is effective pursuant to this section, for all purposes of the laws of Cherokee Nation, all of the rights, privileges, and powers of each of the domestic limited liability companies and other business entities that have merged or consolidated and all property, real, personal and mixed, and all debts due to each domestic limited liability company or other business entity, as well as all other things and causes of action belonging to each domestic limited liability company or other business entity shall be vested in the surviving or resulting domestic limited liability company or other business entity. and shall thereafter be the property of the surviving or resulting domestic limited liability company or other business entity as they were of each domestic

limited liability company or other business entity that has merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of Cherokee Nation, in any domestic limited liability company or other business entity shall not revert or be in any way impaired by reason of this section, but all rights of creditors and all liens upon any property of each domestic limited liability company or other business entity shall be preserved unimpaired. All debts, liabilities and duties of each domestic limited liability company or other business entity that has merged or consolidated shall thereafter attach to the surviving or resulting domestic limited liability company or other business entity, and may be enforced against the surviving or resulting limited liability company or other entity to the same extent as if the debts, liabilities and duties had been incurred or contracted by the surviving or resulting limited liability company or other entity. Unless otherwise agreed, a merger or consolidation of a domestic limited liability company, including a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation, shall not require the domestic limited liability company to wind up its affairs pursuant to 18 CNCA § 243 or pay its liabilities and distribute its assets pursuant to 18 CNCA § 248.

Historical Data

LA 32-04, eff. July 16, 2004.