

**To: New Jersey Law Revision Commission**  
**From: Laura C. Tharney, Executive Director**  
**Re: Model Entity Transactions Act**  
**Date: May 09, 2022**

## **MEMORANDUM**

### **Project Summary**

In March of 2017, the Commission authorized Staff to engage in additional research and outreach regarding the Model Entity Transactions Act (META), which represents a collaborative effort between the Uniform Law Commission (ULC) and the American Bar Association (ABA) to address business issues that fall within their shared areas of expertise.<sup>1</sup>

META was released by the ULC in 2007, and subsequently revised in 2011 and 2013.<sup>2</sup>

The Commission requested that Staff determine whether states with economies and demographics similar to New Jersey had enacted or considered the Act, and whether Staff could identify issues considered by other jurisdictions when determining whether or not to adopt the Act or parts of it.<sup>3</sup>

Consistent with the direction provided by the Commission, Staff engaged in detailed research and began outreach in this area. During the legislative session encompassing Staff's work, however, a bill was introduced in the Legislature that addressed much of the substance of META. Similar bills were introduced in subsequent legislative sessions, and Staff deferred substantive work in this area as a result.

### **Background**

As the Memorandum previously considered by the Commission explained, American business law is known for its flexibility and responsiveness to the needs of both the for-profit and the non-profit sectors.<sup>4</sup> It is widely accepted that a business formed as one entity may wish to combine with another business, or transform itself in some other manner during the course of its business life-cycle. Most states have no "comprehensive statutory framework for one-step intra- and inter-entity organic reorganizations such as mergers, conversions, interest exchanges and

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<sup>1</sup> N.J. Law Revision Comm'n, Minutes of NJLRC meeting, Mar 16, 2017, p 6; [www.njlrc.org](http://www.njlrc.org).

<sup>2</sup> Uniform Law Commission, Acts, Entity Transactions Act, (Model), Legislative Information Kit, Act Summary; [http://www.uniformlaws.org/shared/docs/entity\\_transactions/revise%20meta%20summary\\_Jan%202015\\_GH%20e%20dits.pdf](http://www.uniformlaws.org/shared/docs/entity_transactions/revise%20meta%20summary_Jan%202015_GH%20e%20dits.pdf) (last visited April 14, 2022).

<sup>3</sup> N.J. Law Revision Comm'n, Minutes of NJLRC meeting, Mar 16, 2017, p 5; [www.njlrc.org](http://www.njlrc.org).

<sup>4</sup> Uniform Law Commission, Acts, Entity Transactions Act, (Model), Legislative Information Kit, Act Summary; [http://www.uniformlaws.org/shared/docs/entity\\_transactions/revise%20meta%20summary\\_Jan%202015\\_GH%20e%20dits.pdf](http://www.uniformlaws.org/shared/docs/entity_transactions/revise%20meta%20summary_Jan%202015_GH%20e%20dits.pdf) (last visited April 14, 2022).

domestications.”<sup>5</sup> Nationwide, state business reorganization statutes were described by the ULC as “incomplete” and containing “gaps and inconsistent procedural requirements.”<sup>6</sup>

META was drafted to govern “four kinds of transactions: merger of one entity with another, conversion of an entity to another kind of entity, an interest exchange between two entities so that one of them is controlled by the other without actually merging the two entities, and the domestication of an entity originally organized in one state in another state.”<sup>7</sup> Nine jurisdictions have adopted META.<sup>8</sup>

Under current law, an ongoing entity wishing to engage in a merger, conversion, interest exchange, or a change in the location of its business entity may have to be dissolved to do so. Dissolution may require winding down the business, satisfying creditors and interest holders, and potentially incurring adverse tax consequences. This can be burdensome, costly, and disruptive when the ultimate objective is not to dissolve the business, but rather to continue it in another form or in another location.

A statute that allows the transitions to occur without dissolving the entities involved could potentially increase efficiency and lower costs. META is designed to do that while protecting outstanding interests in the business, including those of creditors.<sup>9</sup>

META provides that for each of the covered transactions, there must be a plan that is approved by the interest holders in the entities.<sup>10</sup> The plan describes the transaction and its effect in detail.<sup>11</sup> Approval is granted according to the underlying statutes and rules that govern the existing entities.<sup>12</sup> If there are no such statutes, the transaction proceeds by the unanimous consent of all interest holders.<sup>13</sup> Once a plan is approved, a statement relevant to the transaction must be filed with the state office that normally receives entity statements or charters.<sup>14</sup> Filing places the transaction, and the identity of the entity that survives, in public records.<sup>15</sup> One key objective of the process is to make sure that no valid interest in the business is extinguished during the process of any of the transactions covered by META.<sup>16</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> The jurisdictions that have adopted META, according to the ULC, are: Alaska, Arizona, Connecticut, Hawaii, Idaho, Indiana, Kansas, Pennsylvania, and the District of Columbia. In addition to those jurisdictions mentioned on the ULC’s website, Arkansas and Montana seem to have incorporated some portions of META into their existing statutes.

<sup>9</sup> Uniform Law Commission, Acts, Entity Transactions Act, (Model), Legislative Information Kit, Act Summary; [http://www.uniformlaws.org/shared/docs/entity\\_transactions/revise%20meta%20summary\\_Jan%202015\\_GH%20e-dits.pdf](http://www.uniformlaws.org/shared/docs/entity_transactions/revise%20meta%20summary_Jan%202015_GH%20e-dits.pdf) (last visited April 14, 2022).

<sup>10</sup> *Ibid.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

The 2011 and 2013 amendments to META were primarily technical in nature and designed to harmonize the procedural and filing provisions of META with the other uniform and model entity acts that are included in the Uniform Business Organizations Code (2011, last Amended in 2013).<sup>17</sup>

Existing New Jersey law governs mergers<sup>18</sup>, share exchanges<sup>19</sup>, and domestication<sup>20</sup>. New Jersey is one of only a few states that does not currently allow the conversion of corporation to another business form.<sup>21</sup>

### **Bills Introduced**

As has been the case in recent legislative sessions, a bill was introduced in the current legislative session that is substantively similar to META. S142 was introduced in the current legislative session and referred to the Senate Commerce Committee.<sup>22</sup> The Sponsor's Statement explains that the bill modifies the New Jersey Business Corporation Act "by adding domestication and conversion provisions across all business entity types."<sup>23</sup> The Statement adds that "this bill will make New Jersey a more attractive State for the incorporation of businesses, by bringing it in line with many other states that allow domestication and conversion."<sup>24</sup> As noted, this bill has been introduced in several prior legislative sessions.<sup>25</sup>

### **Conclusion**

In light of the ongoing legislative attention to this area of the law, Staff recommends the conclusion of the open Commission project in this area at this time.

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<sup>17</sup> *Id.*

<sup>18</sup> N.J. Stat. Ann. § 14A:10-1 (West).

<sup>19</sup> N.J. Stat. Ann. § 14A:10-13 (West).

<sup>20</sup> N.J. Stat. Ann. § 14A:13-3 (West).

<sup>21</sup> David M. Steingold, *Converting a Corporation to an LLC in New Jersey*, NOLO, <http://www.nolo.com/legal-encyclopedia/converting-corporation-llc-new-jersey.html> (last visited April 14, 2022).

<sup>22</sup> S.B. 142, 2022 Leg., 220th Sess. (N.J. 2022), <https://www.njleg.state.nj.us/bill-search/2022/S142> (last visited April 15, 2022).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Including: S.B. 2883, 2020 Leg., 219th Sess. (N.J. 2020); S.B. 2187, 218th Sess. (N.J. 2018); and S.B. 1089, 217<sup>th</sup> Sess. (N.J. 2016).