



Corporate and Limited Liability Company Conversions and Domestications

By **W. Raymond Felton**



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For a variety of reasons, business entities such as corporations, partnerships and limited liability companies may desire to change their state of incorporation or formation or their form of entity. For example, a New Jersey limited liability company could decide, acting pursuant to its governing procedures, to become a New Jersey corporation or a Delaware corporation. The reasons are limitless, but very often are driven by a desire to facilitate a financing transaction such as a venture capital investment or an initial public offering. This article outlines the process for accomplishing these

changes, which can now be accomplished more efficiently thanks to recently enacted New Jersey legislation.

Historically, migration from one state to another, referred to as domestication, or from one form of entity to another, a conversion, was done by using a statutory merger. If a corporation formed in New Jersey elected to become a Delaware corporation, it would cause a new corporation to be incorporated in Delaware and merge the New Jersey corporation into the Delaware corporation, with the latter being the surviving corporation. The New Jersey corporation would cease to exist as such although it might need to qualify to do business in New Jersey, now as a foreign corporation. The documentation would include an agreement and plan of merger between the two corporations and certificates of merger consistent with the corporate statutes in both states, as well as authorizing resolutions. Similarly, a New Jersey limited liability company could convert itself into a New Jersey corporation through a similar merger process, albeit confined to New Jersey.

In recent years, there has been a trend in the United States, most notably led by Delaware, to enable these changes in a more streamlined manner. New Jersey joined this trend partially upon adopting its version of the Revised Uniformed Limited Liability Company Act (RULLCA), which became effective on March 18, 2013.¹ RULLCA authorized a corporation to convert to a limited liability company and a limited liability company to convert to a corporation if the applicable counterpart statute authorized such a conversion. Unfortunately, the New Jersey Legislature did not amend the New Jersey Business Corporation Act (NJBCA) at the same time or since then prior to 2023, thereby limiting the use of the conversion provisions by RULLCA.

These deficiencies in the NJBCA were resolved by the adoption of amendments signed by Gov. Phil Murphy on May 8,

2023, with an effective date of Nov. 4, 2023.² By adding new provisions to the NJBCA, the following can be accomplished relatively efficiently:

- A New Jersey corporation may convert to a New Jersey or foreign limited liability company or a foreign corporation;
- A New Jersey limited liability company may convert to a New Jersey or foreign corporation or foreign limited liability company;
- A foreign corporation may convert to a New Jersey corporation or limited liability company;
- A foreign limited liability company may convert to a New Jersey corporation or limited liability company.

As noted above, the migration of an entity's state of incorporation or formation to another state is typically referred to as domestication, but this legislation does not use that term, instead using "conversion" for both a change of the form of the entity and a change of the domicile state. As used in this article, references to a foreign jurisdiction include both other states and other countries.

Conversion of a New Jersey Corporation

The NJBCA now explicitly now authorizes a New Jersey corporation to convert to any other entity.³ The conversion must first be approved by the Board of Directors of the corporation and then submitted to its shareholders for approval at a meeting or by written consent. The shareholders need to approve the conversion unanimously to be effective, and for this purpose the holders of non-voting shares of stock are included in the unanimity requirement. If the corporation is converting to a New Jersey limited liability company, RULLCA already addressed the limited liability company side of the conversion,⁴ so the circle has now been closed by the new

legislation. If the corporation is being domesticated in another state, whether as a corporation or a limited liability company, that state's laws must be consulted and followed to make the conversion effective in that state.

Just as in any business transaction, it is important to review the tax consequences of a conversion of a corporation. In particular, the conversion of a corporation to a limited liability company, whether domestic or foreign, is likely a dissolution of the corporation for tax purposes and the income tax imposed could be substantial depending on the specific facts pertinent to that corporation. Counsel should consult with a tax attorney or the client's accountant to determine the tax implications, if any.

As with all corporate and limited liability company filings in New Jersey, certificates of conversion are to be filed with the Division of Revenue and Enterprise Services in the Department of Treasury (DORES). DORES provides fillable forms on its website, nj.gov/treasury/revenue. Form CD100 is to be used where the resulting business will be a New Jersey entity and Form CD101 when the resulting entity will be domiciled in a state or foreign jurisdiction other than New Jersey.

Conversion of a New Jersey Limited Liability Company

The conversion of a New Jersey limited liability company was already covered in RULLCA.⁵ The new statute now allows the conversion to the corporate form in New Jersey by adding the necessary authorization to the NJBCA. Similar to the conversion of a corporation, all members of the limited liability company to be converted must consent to the transaction, regardless of whether they are otherwise given a say on management issues. The forms are the same as referenced above for corporations, Forms CD100 and CD101.

Foreign Corporations

If an unincorporated entity, most typically a limited liability company, was formed in another jurisdiction and is qualified to do business as such in New Jersey, and then converts to the corporate form in its state or county of formation, the new statute amends the NJBCA to create a filing for the new converted corporation to be authorized to transact business in New Jersey as such.⁶ The statute spells out the application that should be filed which is essentially the same as if the original entity had not been authorized to do business in New Jersey and this were an initial application. The application will need to include a certificate of good standing for the corporation from its state of incorporation as part of the application process.

A foreign corporation may convert to a New Jersey corporation or limited lia-

bility company upon the approval of the Board of Directors and shareholders of the foreign corporation in a manner consistent with the corporate law of the state of incorporation pursuant to a plan of conversion.⁷ The plan of conversion and certificate of conversion, as noted above, will complete the process.

Domestication of a Foreign Limited Liability Company

A limited liability company formed in a jurisdiction outside of New Jersey, or domesticate, if permitted by the laws of its original state of formation.⁸ The foreign limited liability company must, of course, comply with the requirements imposed by the law of the state of formation. The plan of domestication should be adopted by the members of the limited liability company and filed in

New Jersey and whatever filing is required by the original state must be completed.

Partnership and Limited Partnerships

The new statute does not address conversion or domestication of partnerships and limited partnerships. Legislation has been introduced in New Jersey regarding such incorporated entities but has not been adopted at this writing. ■

Endnotes

1. *N.J.S.A. 42:2C-1 et. seq.*
2. Pub. Law. 2023, Ch. 38.
3. *N.J.S.A. 14A:11A-2(2).*
4. *N.J.S.A. 42:2C-78.*
5. *N.J.S.A. 42:2C-78.*
6. *N.J.S.A. 14a:13-6.1*
7. *N.J.S.A. 14A:11A-1(3).*
8. 2022 Session, Senate Bill No. 134.



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