

RESOLUTION 01-05-2018 – AS AMENDED

DIGEST

Corporations: Authorization for Conversion into a Foreign Entity

Amends Corporations Code sections 1150, 1151, 1152 and 1155 to authorize a California corporation to convert into an entity under the laws of another state.

STATEMENT OF REASONS

The Problem: A California corporation is allowed to convert to any other domestic (California) entity. California law authorizes other business entities, such as LLCs, to convert to a foreign entity, and also allows foreign entities, including corporations, to convert to a California corporation. However, existing California law does not allow for a California corporation to convert to a corporation of another state. This becomes problematic when the corporation and all of its operations move out of state and no longer have any connection with California.

The Solution: Right now, for a California corporation to convert to a foreign corporation, it has to convert to a California LLC, convert the California LLC to either a foreign LLC or a foreign corporation (depending on the laws of the other state). This is ridiculous to have to take several extra steps to convert the California entity to a foreign corporation. There is no rational policy reason behind this because it is not stopping corporations from leaving California. This resolution would allow California corporations to convert to a foreign corporation or other business entity.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Corporations Code sections 1150, 1151, 1152 and 1155 to read as follows:

- 1 § 1150
- 2 For purposes of this chapter, the following definitions shall apply:
- 3 (a) “Converted corporation” means a corporation that results from a conversion of an
- 4 other business entity or a foreign other business entity or a foreign corporation pursuant to
- 5 Section 1157.
- 6 (b) “Converted entity” means a domestic other business entity that results from a
- 7 conversion of a corporation under this chapter.
- 8 (c) “Converting corporation” means a corporation that converts into a domestic other
- 9 business entity or foreign corporation or a foreign other business entity pursuant to this chapter.
- 10 (d) “Converting entity” means an other business entity or a foreign other business entity
- 11 or foreign corporation that converts into a corporation pursuant to Section 1157.
- 12 (e) “Domestic other business entity” has the meaning provided in Section 167.7.
- 13 (f) “Foreign other business entity” has the meaning provided in Section 171.07.
- 14 (g) “Other business entity” has the meaning provided in Section 174.5.
- 15
- 16 § 1151
- 17 (a) A corporation may be converted into a domestic other business entity, including, but
- 18 not limited to, a limited liability company or a partnership, or a foreign corporation or a foreign

19 other business entity pursuant to this chapter if, pursuant to the proposed conversion, (1) each
20 share of the same class or series of the converting corporation shall, unless all the shareholders of
21 the class or series consent, be treated equally with respect to any cash, rights, securities, or other
22 property to be received by, or any obligations or restrictions to be imposed on, the holder of that
23 share, and (2) nonredeemable common shares of the converting corporation shall be converted
24 only into nonredeemable equity securities of the converted entity unless all of the shareholders of
25 the class consent; provided, however, that clause (1) shall not restrict the ability of the
26 shareholders of a converting corporation to appoint one or more managers, if the converted entity
27 is a limited liability company, or one or more general partners, if the converted entity is a limited
28 partnership, in the plan of conversion or in the converted entity's governing documents.

29 (b) Notwithstanding this section, the conversion of a corporation into a domestic other
30 business entity or a foreign corporation or a foreign other business entity, including, but not
31 limited to, a limited liability company or a partnership, may be effected only if both of the
32 following conditions are complied with:

33 (1) The law under which the converted entity will exist expressly permits the formation
34 of that entity pursuant to a conversion.

35 (2) The corporation complies with any and all other requirements of any other law that
36 applies to conversion to the converted entity.

37

38 § 1152

39 (a) A corporation that desires to convert to a domestic other business entity or a foreign
40 corporation or a foreign other business entity shall approve a plan of conversion. The plan of
41 conversion shall state all of the following:

42 (1) The terms and conditions of the conversion.

43 (2) The jurisdiction of the organization of the converted entity and of the converting
44 corporation and the name of the converted entity after conversion.

45 (3) The manner of converting the shares of each of the shareholders of the converting
46 corporation into securities of, or interests in, the converted entity.

47 (4) The provisions of the governing documents for the converted entity, including the
48 partnership agreement or limited liability company articles of organization and operating
49 agreement, to which the holders of interests in the converted entity are to be bound.

50 (5) Any other details or provisions that are required by the laws under which the
51 converted entity is organized, or that are desired by the converting corporation.

52 (b) The plan of conversion shall be approved by the board of the converting corporation
53 (Section 151), and the principal terms of the plan of the conversion shall be approved by the
54 outstanding shares (Section 152) of each class of the converting corporation. The approval of the
55 outstanding shares may be given before or after approval by the board. Notwithstanding the
56 foregoing, if a converting corporation is a close corporation, the conversion shall be approved by
57 the affirmative vote of at least two-thirds of each class, or a greater vote if required in the
58 articles, of outstanding shares (Section 152) of that converting corporation; provided, however,
59 that the articles may provide for a lesser vote, but not less than a majority of the outstanding
60 shares of each class.

61 (c) If the corporation is converting into a general or limited partnership or into a limited
62 liability company, then in addition to the approval of the shareholders set forth in subdivision
63 (b), the plan of conversion shall be approved by each shareholder who will become a general
64 partner or manager, as applicable, of the converted entity pursuant to the plan of conversion

65 unless the shareholders have dissenters' rights pursuant to Section 1159 and Chapter 13
66 (commencing with Section 1300).

67 (d) Upon the effectiveness of the conversion, all shareholders of the converting
68 corporation, except those that exercise dissenters' rights as provided in Section 1159 and Chapter
69 13 (commencing with Section 1300), shall be deemed parties to any agreement or agreements
70 constituting the governing documents for the converted entity adopted as part of the plan of
71 conversion, irrespective of whether or not a shareholder has executed the plan of conversion or
72 those governing documents for the converted entity. Any adoption of governing documents made
73 pursuant thereto shall be effective at the effective time or date of the conversion.

74 (e) Notwithstanding its prior approval by the board and the outstanding shares or either of
75 them, a plan of conversion may be amended before the conversion takes effect if the amendment
76 is approved by the board and, if it changes any of the principal terms of the plan of conversion,
77 by the shareholders of the converting corporation in the same manner and to the same extent as
78 was required for approval of the original plan of conversion.

79 (f) A plan of conversion may be abandoned by the board of a converting corporation, or
80 by the shareholders of a converting corporation if the abandonment is approved by the
81 outstanding shares, in each case in the same manner as required for approval of the plan of
82 conversion, subject to the contractual rights of third parties, at any time before the conversion is
83 effective.

84 (g) The converted entity shall keep the plan of conversion at (1) the principal place of
85 business of the converted entity if the converted entity is a domestic partnership or (2) at the
86 office at which records are to be kept under Section 15901.11 if the converted entity is a
87 domestic limited partnership or at the office at which records are to be kept under Section
88 17701.13 if the converted entity is a domestic limited liability company. Upon the request of a
89 shareholder of a converting corporation, the authorized person on behalf of the converted entity
90 shall promptly deliver to the shareholder, at the expense of the converted entity, a copy of the
91 plan of conversion. A waiver by a shareholder of the rights provided in this subdivision shall be
92 unenforceable.

93
94 § 1155

95 (a) To convert a corporation:

96 (1) If the corporation is converting into a domestic limited partnership, a statement of
97 conversion shall be completed on the certificate of limited partnership for the converted entity.

98 (2) If the corporation is converting into a domestic partnership, a statement of conversion
99 shall be completed on the statement of partnership authority for the converted entity, or if no
100 statement of partnership authority is filed then a certificate of conversion shall be filed
101 separately.

102 (3) If the corporation is converting into a domestic limited liability company, a statement
103 of conversion shall be completed on the articles of organization for the converted entity.

104 (4) If the corporation is converting into a foreign corporation or foreign other business
105 entity, a certificate of conversion shall be filed with the Secretary of State.

106 (b) Any statement or certificate of conversion of a converting corporation shall be
107 executed and acknowledged by those officers of the converting corporation as would be required
108 to sign an officers' certificate (Section 173), and shall set forth all of the following:

109 (1) The name of the converting corporation and the Secretary of State's file number of
110 the converting corporation.

111 (2) A statement of the total number of outstanding shares of each class entitled to vote on
112 the conversion, that the principal terms of the plan of conversion were approved by a vote of the
113 number of shares of each class which equaled or exceeded the vote required under Section 1152,
114 specifying each class entitled to vote and the percentage vote required of each class.

115 (3) The name, form, and jurisdiction of organization of the converted entity.

116 (4) The name, mailing address, and street address of the converted entity's agent for
117 service of process. If a corporation qualified under Section 1505 is designated as the agent, no
118 address for it shall be set forth.

119 (c) For the purposes of this chapter, the certificate of conversion shall be on a form
120 prescribed by the Secretary of State.

121 (d) The filing with the Secretary of State of a statement of conversion on an
122 organizational document or a certificate of conversion as set forth in subdivision (a) shall have
123 the effect of the filing of a certificate of dissolution by the converting corporation and no
124 converting corporation that has made the filing is required to file a certificate of election under
125 Section 1901 or a certificate of dissolution under Section 1905 as a result of that conversion.

126 (e) Upon the effectiveness of a conversion pursuant to this chapter, a converted entity that
127 is a domestic partnership, domestic limited partnership, or domestic limited liability company
128 shall be deemed to have assumed the liability of the converting corporation (1) to prepare and
129 file or cause to be prepared and filed all tax and information returns otherwise required of the
130 converting corporation under the Corporation Tax Law (Part 11 (commencing with Section
131 23001) of Division 2 of the Revenue and Taxation Code) and (2) to pay any tax liability
132 determined to be due pursuant to that law.

(Proposed new language underlined; language to be deleted stricken)

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR RELATED LEGISLATION

None known.

PROPONENT: Bar Association of Northern San Diego County

AUTHOR AND/OR PERMANENT CONTACT: Melissa L. Bustarde, Mayfield Bustarde,
LLP, 462 Stevens Ave., Suite 303, Solana Beach, CA 92075, (858) 793-8090,
bustarde@mayfieldbustarde.com

RESPONSIBLE FLOOR DELEGATE: Melissa L. Bustarde