

December 30, 2013

Secretary of the State Issues Guidelines on Connecticut Model Entity Transactions Act, Effective January 1, 2014

The Connecticut Secretary of the State has issued guidance on filings under the Model Entity Transactions Act (META), which takes effect on January 1, 2014. META will allow cross-entity mergers, consolidations and equity-interest exchanges as well as redomestication in Connecticut.

What is META?

META was adopted by the Connecticut General Assembly in 2011, to become effective in 2014. It is part of the recent efforts by the state government and the Connecticut Bar Association to create a more flexible and welcoming environment for Connecticut businesses. Cross-entity transactions such as mergers between partnerships or LLCs and corporations, which have not been permitted in Connecticut, will now be permitted. META is expected to provide an efficient cross-entity transaction process. That in turn should encourage more businesses to organize under Connecticut law and to remain in Connecticut.

META Implementation Update

Secretary of the State Denise Merrill issued guidance last week on filing procedures and fees. Seth Klaskin, director of the Commercial Recording Division, announced the new policies.

The secretary of the state will not be issuing forms at this time for META filings. However, the office encourages those engaging in META transactions to pre-clear documents prior to formal filings, to ensure that the documents meet filing requirements. Pre-clearance is offered without charge by the secretary of the state through its staff attorneys.

Because of the complexity of META transactions, only basic information as to the transactions will be available through CONCORD, the state's online filing system (<http://www.concord-sots.ct.gov/CONCORD/index.jsp>). Certificates of legal existence for companies resulting from META transactions will be processed manually, for the near future, in light of the relationship of META transactions with jurisdictions other than Connecticut. This could result in potential delays in obtaining certificates for closings.

Fees

Fees for META transactions will be the sum of the fees chargeable for each component of a META filing. The secretary of the state offered the example of a conversion of a Connecticut limited liability company to a Connecticut corporation. The new

conversion fee will be \$60. The fee for filing the certificate of incorporation for the new corporation would continue to be \$100, and the minimum franchise tax would continue to be \$150. Accordingly, total filing fees for the conversion of a Connecticut LLC to a Connecticut corporation would be \$310.

Filing fees for a redomestication out of Connecticut will be \$100. The fees for a redomestication into Connecticut will be the same as the fees for forming a new Connecticut entity.

Background

META is based on a model act adopted by the American Bar Association and the National Conference of Commissioners on Uniform State Laws. The following will be permitted:

- *Mergers, consolidations and interest exchange transactions among different forms of entities (i.e., corporations, general partnerships, limited liability companies, limited liability partnerships, associations and other forms of unincorporated for-profit entities).* Many of these cross-entity transactions cannot be accomplished under current Connecticut law. Professionals have devised multistep processes to achieve companies' goals, including interim mergers with entities formed in other jurisdictions, including Delaware, but these are cumbersome, costly and time-consuming. Frequently, after such transactions, the companies remain organized under the laws of the other jurisdiction rather than Connecticut.
- *Conversion from one form of entity to another.* META will permit the conversion of a corporation to a limited liability company and vice versa. A corporation may convert to an LLC simply by filing a certificate with the secretary of the state and paying a filing fee.
- *Redomestication of entities to or from Connecticut.* META will permit a corporation organized in another state to "redomesticate" as a Connecticut corporation merely by filing a certificate with the Connecticut secretary of the state and making an appropriate filing in the other state. Connecticut law does not currently allow redomestication.

Comprehensive legislation governing these areas has become particularly important as new forms of entities like limited liability companies, limited liability partnerships and limited liability limited partnerships have become more prevalent across the last three decades. While META will not impact the tax consequences of a transaction, it will enhance the efficiency and flexibility of dissimilar entity transactions under Connecticut law.

Day Pitney Involvement

Mark Sklarz, a partner in the Day Pitney LLP New Haven office and vice chair of the Connecticut Bar Association Business Law Section, served as the chair of a Joint Committee of the Business Law and Tax Sections of the Connecticut Bar Association, which drafted the legislation. He provided testimony to advance the act through the legislative process. Mark will chair a Connecticut Bar Association Legal Education Seminar in March to discuss META.

Conclusion

Connecticut businesses will benefit from the clarity, efficiency and comprehensive structure of META. The current "patchwork authority" of the Connecticut statutes, which permit some cross-entity mergers but not others, and which allow some entity

conversions but not others, has been confusing for business owners. META has been specifically designed to remedy these issues and will provide Connecticut with a best-practices statute to assist businesses of all sizes to compete in a favorable environment.