

## Conversions for a foreign companies

# PREVIEW

1. A new form or mode of dissolution event or type of entity has been created under the Texas Business Organizations Code. See section 10.103 of the BOC.
2. This means that corporate entities can be converted from one type to another. For example a corporation to a limited liability company. Accordingly, corporate documents may refer to conversions as another corporate tool.
3. A business corporation may convert into a foreign corporation or any other type foreign or domestic entity if such conversion is permitted or not inconsistent with the laws governing the other entity. Further, a foreign corporation or a domestic or foreign other entity may also convert into a Texas corporation if the laws governing the entity so permit and the entity takes all action required by the laws of the state or country under which it is incorporated, formed or organized, and by its constituent documents to effect the conversion.
4. Although there is only one party in a conversion, the conversion of a domestic entity into another type of domestic entity generally requires that the Certificate of conversion be filed with the secretary of state under the statute applicable to the converted entity (the entity after conversion), as well as the converting entity (the entity prior to conversion).
5. **Creation of a Converted Entity.** The organizational documents of a converted entity, whether foreign or domestic, are to be included as an exhibit or attachment to the plan of conversion. Additionally, if the conversion creates a domestic corporation, limited partnership, or limited liability company, the conversion must include, as a separate exhibit or attachment, the organizational documents for the domestic entity. The organizational document of a converted domestic entity must include the following additional statements:

1. The statement that the corporation, limited liability company or limited partnership is being incorporated, organized or formed pursuant to a plan of conversion; and
2. A statement providing the name, address, prior form of organization and its date of formation, and jurisdiction of incorporation, formation or organization of the converting entity.

The certificate of formation of a Texas corporation, limited liability company, or limited partnership is effective upon the effectiveness of the Certificate of conversion. There is no additional filing fee for the new domestic entity created by the conversion.

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## Conversion of a Foreign Filing Entity

The filing of a conversion by a foreign filing entity (that is, a foreign corporation, limited partnership, or limited liability company) to convert to a domestic entity does not cancel the certificate of authority or registration on file with the secretary of state. Consequently, if the name of the domestic converted entity is to be the same as or deceptively similar to that of the converting qualified foreign entity, this will create a name conflict and be grounds for rejection of the filing of the conversion. The qualified foreign entity must either file an application for certificate of

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withdrawal or evidence of the filing of the conversion in the jurisdiction of formation of the converted entity to terminate the existing certificate of authority. In order to avoid this result.

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A foreign filing entity that converts to change its jurisdiction of formation to a jurisdiction other than Texas, but which does not change its organizational form should file an application for amended certificate of authority.

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CERTIFICATE OF CONVERSION  
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The undersigned converting entity certifies the following Certificate of conversion adopted for the purpose of effecting a conversion.

1. A plan of conversion was approved and adopted in accordance with the Texas Business Organizations Code providing for the conversion of \_\_\_\_\_, [Insert name of converting entity], a corporation incorporated under the Texas Business Organizations Code to \_\_\_\_\_ [insert name of converted entity], a Texas limited partnership. [The name of the converted entity need not be the same as the name of the converting entity, but must conform to the applicable statutory and administrative provisions relating to entity names].

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2. An executed plan of conversion is on file at the principal place of business of the converting entity at \_\_\_\_\_ [insert address] and, from and after the conversion, an executed plan of conversion will be on file at the principal place of business of the converted entity at \_\_\_\_\_ [insert address].

3. A copy of the plan of conversion will be furnished by the converting entity (prior to the conversion) or by the converted entity (after the conversion) on written request and without cost to any shareholder or member of the converting entity or the converted entity.

4. The approval of the plan of conversion was duly authorized by all action required by the laws under which [name of converting entity] is incorporated and by its constituent documents. The number of outstanding shares of each class or series of stock of [name of converting entity] entitled to vote, with other shares or as a class, on the plan of conversion are as follows:

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<u>Number of Shares</u> <u>Outstanding</u>	<u>Class or Series</u>	<u>Number of Shares Entitled to</u> <u>Vote as a Class or Series</u>

5. The number of shares, not entitled to vote only as a class, voted for and against the plan of conversion, respectively, and, if the shares of any class or series are entitled to vote as a class, the number of shares of each such class or series voted for and against the plan of conversion, are as follows:

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<u>Total Voted For</u>	<u>Total Voted Against</u>	<u>Class or Series</u>	<u>Number of Shares Entitled to</u> <u>Vote as a Class or Series</u> <u>Voted</u>
			<u>For</u> <u>Against</u>

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6. Two copies of the certificate of limited partnership of [insert name of converted entity] which is to be created pursuant to the plan of conversion are being filed with the secretary of state with the Certificate of conversion.

[If a later effective date is desired, insert the following.]

7. The conversion will become effective on [insert a date no more than 90 days from the date of filing] at [insert a time if desired] a.m. [Time cannot be 12 A.M. or 12 P.M.]

[NOTE: The conversion will become effective upon the issuance of the certificate of conversion by the secretary of state unless the conversion's effective date is delayed to a subsequent date and time or conditioned upon the occurrence of a future event]

I, the undersigned, have executed this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument on \_\_\_\_\_.

Dated: \_\_\_\_\_.

\_\_\_\_\_  
(Name of Converting Entity)

By \_\_\_\_\_

Its \_\_\_\_\_

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If the converting entity is a domestic corporation, the Certificate of conversion must set forth the following information:

1. The number of shares outstanding and, if the shares of any class or series are entitled to vote as a class, the designation and number of outstanding shares of each such class or series; and
2. the number of outstanding shares voting for and against the plan, respectively.

Voting requirements are the same as if the converting entity were a party to a merger and not a surviving entity in such merger.

If the converting entity is a foreign corporation, limited liability company, limited partnership, or other entity, the Certificate of conversion must include a statement that the approval of the plan of conversion was duly authorized by all action required by the laws under which the converting entity was incorporated, formed, or organized and by its constituent documents.

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### Plan of Conversion

Generally, the conversion provisions found in the Business Corporation Act, the Limited Liability Company Act, the Revised Limited Partnership Act, and the Revised Partnership Act are substantially the same. The following is a summary of the basic requirements for a plan of conversion for these entities.

The plan of conversion must set forth:

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1. the name of the converting entity and the converted entity;
2. a statement that the converting entity is continuing its existence in the organizational form of the converted entity;
3. a statement as to the type of entity that the converted entity is to be and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized;
4. the manner and basis of converting the shares, membership or partnership interests or other evidences of ownership of the converting entity into securities, partnership or membership interests, or other evidences of ownership of the converted entity, or any combination thereof; and
5. in an attachment or exhibit, the organizational documents of the converted entity (foreign or domestic).

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The plan of conversion may be presented as an attachment to the Certificate of conversion and may include any other provisions relating to the conversion, not inconsistent with law, including the initial bylaws and officers of the converted entity if the converted entity is a corporation.

In lieu of a plan of conversion, the Certificate of conversion may include a statement certifying to the following information:

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1. the name, state or country of incorporation, formation, or organization of the converting entity, and the organizational form of the converting entity;
2. a statement that the plan of conversion has been approved;
3. a statement that an executed plan of conversion is on file at the principal place of business of the converting entity and the address thereof;
4. a statement that from and after the conversion, an executed plan of conversion will be on file at the principal place of business of the converted entity, and the address thereof; and
5. a statement that a copy of the plan of conversion will be furnished by the converting entity (prior to the conversion) or the converted entity (after the conversion), on written request and without cost, to any shareholder, partner, or member of the converting entity or the converted entity.

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## Execution and Filing

Certificates are to be executed by an authorized officer, partner, manager, or member or other duly authorized representative of the converting entity. The person submitting the document should provide two copies of the Certificate of conversion and two copies of the organizational document of the converted entity.

## Fee

The filing fee for Certificate of conversion converting or creating by conversion a business corporation, professional corporation or professional association is \$300.00. The filing fee for Certificate of conversion converting or creating by conversion a limited or general partnership is \$300.00. The filing fee for Certificate of conversion converting or creating by conversion a limited liability company is \$300.00; however, any other filing fee paid under the corporation, partnership, or other entity statutes of this state is to be credited against the fee assessed for the limited liability company. Therefore, except in the case of a conversion involving a limited liability company, the filing fee would be the total of the fee assessed under the statute governing the domestic converting entity and the fee for a domestic converted entity.

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