

Schrödinger's Cat And Merging Into A Foreign Corporation

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When a California corporation merges into a foreign corporation, the merger becomes effective in accordance with the law of the jurisdiction in which the surviving corporation is organized. In California, the merger will be effective as to the disappearing California corporation as of the time of effectiveness in the foreign jurisdiction upon making the required filing with the California Secretary of State. Cal. Corp. Code § 1108. If, for example, a California corporation merges into a Delaware corporation and the merger takes effect in Delaware on January 1, then the merger will be effective in California on January 1 as soon as the required filing is made in California.

However, there is an exception to this rule, if the date of filing in California is more than six months after the time of effectiveness in the foreign jurisdiction (or if the powers of the California corporation are suspended at the time of effectiveness in the foreign jurisdiction), the merger becomes effective as to the California disappearing corporation as of the date of filing in California. Cal. Corp. Code § 1108(e). Thus, if a California corporation merges into a Delaware corporation and the merger takes effect in Delaware on January 1 but no filing is made in California until July 15, the merger does not take effect in California until July 15.

This creates an oddity reminiscent of Schrödinger's famous feline. Suppose it is February 1 and a California corporation has merged into a Delaware corporation effective in Delaware on January 1 but no filing has been made in California. On February 1, you cannot say whether the California corporation exists. If the required California filing is made within six months of the Delaware effective date, it does not exist on February 1. If, however, the filing is made more than six months after the Delaware effective date, it continues to exist in California.

A corporation that both was and is

For those not familiar with Schrödinger's cat, this is a reference to a famous thought experiment devised by the Austrian physicist Erwin Schrödinger in 1935. The experiment involves a hypothetical feline in a box with a vial of poison, a radioactive source, a hammer and a Geiger counter. If the source atomic particle decays, the Geiger counter detects the emission, trips the hammer which breaks the vial and kills the cat. The problem is that in quantum mechanics, particles are thought to exist in all possible states (called quantum supposition) so that they are paradoxically both decayed and not decayed at the same time. This means that the cat is both dead and alive at the same time and an observer won't know the cat's state until the box is opened.

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