

CHAPTER 10

AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

SUBCHAPTER 1

AMENDMENT OF ARTICLES OF INCORPORATION

§1001. Authority to amend

1. Generally. A corporation may amend its articles of incorporation at any time to add or change a provision that, as of the effective date of the amendment, is required or permitted in the articles of incorporation or to delete a provision that is not required to be contained in the articles of incorporation. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

2. No vested property right. A shareholder of a corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement or purpose or duration of the corporation. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

3. Organized under special Act. If a corporation was organized under a special Act of the Legislature, the corporation may amend its articles of incorporation only if:

A. The corporation could now be organized under this Act; or [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. The proposed amendment would not be materially inconsistent with the special Act creating the corporation. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]
[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF).

§1002. Amendment before issuance of shares

If a corporation has not yet issued shares, its board of directors or if it has no board of directors, its incorporators, may adopt one or more amendments to the corporation's articles of incorporation. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF).

§1003. Amendment by board of directors and shareholders

If a corporation has issued shares, an amendment to the articles of incorporation must be adopted in accordance with the following. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

1. Amendment adopted by board of directors. The proposed amendment must be adopted by the board of directors. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

2. Approval by shareholders. Except as provided in sections 1005, 1007 and 1008, after adopting the proposed amendment the corporation's board of directors shall submit the amendment to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless:

A. The board of directors makes a determination that because of conflicts of interest or other special circumstances the board of directors should not make such a recommendation; or [PL 2011, c. 274, §48 (NEW).]

B. Section 827 applies. [PL 2011, c. 274, §48 (NEW).]

If paragraph A or B applies, the board of directors shall transmit to the shareholders the basis for so proceeding.

[PL 2011, c. 274, §48 (RPR).]

3. Condition of submission. The board of directors may condition its submission of the amendment to the shareholders on any basis.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

4. Notice of meeting. If the amendment is required to be approved by the shareholders and the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the amendment and must contain or be accompanied by a copy of the amendment.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

5. Approval by majority. Unless the articles of incorporation or the board of directors, acting pursuant to subsection 3, requires a greater vote, approval of the amendment requires the approval of the shareholders by a majority of all the votes entitled to be cast on the amendment by the shareholders and, if any class or series is entitled to vote as a separate voting group on the amendment, except as provided in section 1004, subsection 3, the amendment requires the approval of each separate voting group by a majority of all the votes entitled to be cast on the amendment by that voting group. The articles of incorporation may provide that an amendment may be approved by a lesser vote of each voting group entitled to vote on the amendment, but in no case less than a majority of the votes cast by that voting group at a meeting at which there exists, for each such voting group, a quorum consisting of at least a majority of the votes entitled to be cast on the amendment by each voting group entitled to vote on the amendment.

[PL 2003, c. 344, Pt. B, §92 (AMD).]

6. Consent of shareholders. An amendment to the articles of incorporation may be approved by written consent of shareholders entitled to vote, as provided in section 704. If the amendment is approved by written consent of all shareholders, whether or not entitled to vote, a resolution of the board of directors proposing the amendment is not necessary.

[PL 2003, c. 344, Pt. B, §92 (AMD).]

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2003, c. 344, §B92 (AMD). PL 2011, c. 274, §48 (AMD).

§1004. Voting on amendments by voting groups

1. Separate voting groups. If a corporation has more than one class of shares outstanding, the holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by this Act, on a proposed amendment to the articles of incorporation if the amendment would:

A. Effect an exchange or reclassification of all or part of the shares of the class into shares of another class; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

C. Change the rights, preferences or limitations of all or part of the shares of the class; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

D. Change the shares of all or part of the class into a different number of shares of the same class; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

E. Create a new class of shares having rights or preferences with respect to distributions that are prior or superior to the shares of the class; [PL 2011, c. 274, §49 (AMD).]

F. Increase the rights, preferences or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions that are prior or superior to the shares of the class; [PL 2011, c. 274, §50 (AMD).]

G. Limit or deny an existing preemptive right of all or part of the shares of the class; or [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

H. Cancel or otherwise affect rights to distributions that have accumulated but have not yet been authorized on all or part of the shares of the class. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

[PL 2011, c. 274, §§49, 50 (AMD).]

2. Voting rights of series. If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection 1, the holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

3. Two or more classes or series affected; vote as one group. If a proposed amendment that entitles the holders of 2 or more classes or series of shares to vote as separate voting groups under this section would affect those 2 or more classes or series in the same or a substantially similar way, the holders of shares of all the classes or series so affected must vote together as a single voting group on the proposed amendment, unless otherwise provided in the articles of incorporation or required by the board of directors.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

4. Nonvoting shares. A class or series of shares is entitled to the voting rights granted by this section even if the articles of incorporation provide that the shares are nonvoting shares.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2011, c. 274, §§49, 50 (AMD).

§1005. Amendment by board of directors

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval: [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

1. Extend duration of corporation. To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

2. Initial directors. To delete the names and addresses of the initial directors;

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

3. Initial registered clerk or registered office.

[PL 2007, c. 323, Pt. C, §15 (RP); PL 2007, c. 323, Pt. G, §4 (AFF).]

4. One class of shares outstanding. If the corporation has only one class of shares outstanding:

A. To change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

5. Change corporate name. To change the corporate name by substituting the word "corporation," "incorporated," "company," or "limited" or the abbreviation "corp.," "inc.," "co." or "ltd." for a similar word or abbreviation in the name or by adding, deleting or changing a geographical attribution for the name;

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

6. Reduction in authorized shares. To reflect a reduction in authorized shares, as a result of the operation of section 642, subsection 2, when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares;

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

7. Delete class of shares. To delete a class of shares from the articles of incorporation, as a result of the operation of section 642, subsection 2, when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares; or

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

8. Make approved changes. To make any change expressly permitted by section 602, subsections 1 and 2-A to be made without shareholder approval.

[PL 2003, c. 344, Pt. B, §94 (AMD).]

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2003, c. 344, §§B93,94 (AMD). PL 2007, c. 323, Pt. C, §15 (AMD). PL 2007, c. 323, Pt. G, §4 (AFF).

§1006. Articles of amendment

1. Content. After an amendment to the articles of incorporation has been adopted and approved in the manner required by this Act and by the articles of incorporation, the corporation shall deliver to the Secretary of State for filing articles of amendment that must set forth:

A. The name of the corporation; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. The text of each amendment adopted or the information required by section 121, subsection 10, paragraph E; [PL 2003, c. 344, Pt. B, §95 (AMD).]

C. If an amendment provides for an exchange, reclassification or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself, which may be dependent upon facts objectively ascertainable outside the articles of amendment in accordance with section 121, subsection 10; [PL 2003, c. 344, Pt. B, §95 (AMD).]

D. The date of each amendment's adoption; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

E. If an amendment was adopted by the incorporators or board of directors without shareholder approval, a statement that the amendment was duly approved by the incorporators or by the board of directors, as the case may be, and that shareholder approval was not required; and [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

F. If an amendment required approval by the shareholders, a statement that the amendment was duly approved by the shareholders in the manner required by this Act and by the articles of incorporation or, if an amendment is being filed pursuant to section 121, subsection 10, a statement to that effect. [PL 2003, c. 344, Pt. B, §95 (AMD).]

[PL 2003, c. 344, Pt. B, §95 (AMD).]

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2003, c. 344, §B95 (AMD).

§1007. Restated articles of incorporation

1. Consolidation into single document. A corporation's board of directors may restate its articles of incorporation at any time, with or without shareholder approval, to consolidate all amendments into a single document. The restatement may omit statements as to the incorporator or incorporators and the initial directors.

[PL 2003, c. 344, Pt. B, §96 (AMD).]

2. Inclusion of amendments requiring shareholder approval. If the restated articles of incorporation include one or more new amendments that require shareholder approval, the amendments must be adopted and approved as provided in section 1003.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

3. Filing restated articles. A corporation that restates its articles of incorporation shall deliver to the Secretary of State for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate that states that the restated articles of incorporation consolidate all amendments into a single document. If a new amendment is included in the restated articles of incorporation, the certificate must also include the statements required under section 1006.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

4. Original articles superseded. Duly adopted restated articles of incorporation supersede the original articles of incorporation and all earlier amendments to the articles of incorporation.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

5. Certification of restated articles. The Secretary of State may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required by subsection 3.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2003, c. 344, §B96 (AMD).

§1008. Amendment pursuant to reorganization

1. Court ordered reorganization. A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

2. Individual appointed by court. The individual or individuals designated by the court pursuant to subsection 1 shall deliver to the Secretary of State for filing articles of amendment setting forth:

A. The name of the corporation; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. The text of each amendment approved by the court; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

C. The date of the court's order or decree approving the articles of amendment; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

D. The title of the reorganization proceeding in which the order or decree was entered; and [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

E. A statement that the court had jurisdiction of the proceeding under federal statute. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]
[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

3. Final decree. This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.
[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF).

§1009. Effect of amendment

An amendment to a corporation's articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF).

SUBCHAPTER 2

AMENDMENT OF BYLAWS

§1020. Amendment by board of directors or shareholders

1. Shareholders amend; repeal bylaws. A corporation's shareholders may amend or repeal the corporation's bylaws.
[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

2. Board of directors amend bylaws. A corporation's board of directors may amend or repeal the corporation's bylaws, unless:

A. The articles of incorporation or section 1021 reserve that power exclusively to the shareholders in whole or part; or [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. Except as provided in section 206, subsection 4, the shareholders in amending, repealing or adopting a bylaw expressly provide that the board of directors may not amend, repeal or reinstate that bylaw. [PL 2011, c. 274, §51 (AMD).]

[PL 2011, c. 274, §51 (AMD).]

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2011, c. 274, §51 (AMD).

§1021. Bylaw increasing quorum or voting requirement for directors

1. Increase quorum or voting requirement. A bylaw that increases a quorum or voting requirement for the corporation's board of directors may be amended or repealed:

A. If originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides; or [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. If adopted by the board of directors, either by the shareholders or by the board of directors. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]
[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

2. Bylaw increasing quorum or voting requirement. A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the corporation's board of directors may provide that it can be amended or repealed only by a specified vote of either the shareholders or the board of directors.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

3. Amendment quorum requirement. Action by the corporation's board of directors under subsection 1 to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF).

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