

**CHAPTER 23. BUSINESS CORPORATIONS
GENERALLY**

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GENERAL

**§ 23.1. General checklist for incorporating business corporations.
[Reserved]**

Source

The provisions of this § 23.1 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

§ 23.2. Incorporators.

- (a) One or more corporations or natural persons of full age may incorporate a business corporation.

(b) A foreign corporation for profit or a foreign corporation not-for-profit may incorporate a business corporation. It is not necessary that the incorporator corporation be qualified to do business in this Commonwealth.

(c) Full age means 18 years of age or older.

Source

The provisions of this § 23.2 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

§ 23.3. Business corporation names.

(a) Section 1303(a) of the BCL (relating to corporate name) requires that the corporate name of a business corporation contain one of the following corporate designators:

- (1) Corporation.
- (2) Corp.
- (3) Company.
- (4) Co.
- (5) Incorporated.
- (6) Inc.
- (7) Limited.
- (8) Ltd.
- (9) Association.
- (10) Fund.
- (11) Syndicate.
- (12) Words or abbreviations of like import in languages other than English.

(b) The words “Company” or “Co.” may be immediately preceded by “and” or “&” whether or not they are immediately followed by one of the words “Incorporated,” “Inc.,” “Limited” or “Ltd.” For example, John Doe & Co.

(c) The corporate name shall also comply with the applicable requirements of Chapter 17 (relating to names).

Source

The provisions of this § 23.3 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

Cross References

This section cited in 19 Pa. Code § 33.3 (relating to name).

§ 23.4. Stated purposes.

(a) Section 1102(c) of the BCL (relating to application of subpart) prohibits the incorporation under the BCL of a corporation having stated purposes for which a corporation might be incorporated under one or more of the following statutes:

- (1) The Savings Association Code.
- (2) The Banking Code.

(b) Section 1301 of the BCL (relating to purposes) provides that unless otherwise restricted in its articles, every business corporation has as its corporate purpose the engaging in lawful business for which corporations may be incorporated under the BCL. The incorporators of a corporation may desire to set forth an express statement of corporate purposes in broad terms. In these cases, stated purposes substantially as follows will be deemed to be in full compliance with the requirements of subsection (a) and will be filed without evidence of special governmental approvals:

The corporation is incorporated under the Business Corporation Law of 1988 for the purpose of engaging in, and doing any lawful act concerning any or all lawful business for which corporations may be incorporated under said Business Corporation Law, including, but not limited to, manufacturing, processing, owning, using and dealing in personal property of every class and description, engaging in research and development, furnishing services, and acquiring, owning, using and disposing of real property of any nature whatsoever.

The code requires that under certain circumstances the articles of incorporation of business corporations shall contain an express stated purpose. See, for example, §§ 17.11 and 33.4 (relating to public utility names; and stated purposes).

Source

The provisions of this § 23.4 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

§ 23.5. Term of existence.

The term of existence of a business corporation may be limited in the articles of incorporation. Section 1306(a)(6) of the BCL (relating to articles of incorporation) provides that the duration of a corporation is perpetual absent a provision in the articles setting forth a limited term. Section 1502(a)(1) of the BCL (relating to general powers) provides that every business corporation shall have perpetual succession unless a limited duration is specified in its articles and provides in section 1914(c)(2)(ii) of the BCL (relating to adoption of amendments) that unless otherwise restricted in the articles, the board of directors may, without the approval of the shareholders, amend the articles of incorporation of the corporation to provide for perpetual existence.

Source

The provisions of this § 23.5 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

§ 23.6. Share structure.

(a) Section 1306(a)(4) of the BCL (relating to articles of incorporation) requires that the articles of incorporation of a business corporation organized on

a stock share basis set forth the aggregate number of shares which the corporation shall have authority to issue. It is not necessary to set forth in the articles of incorporation the designations of the classes of shares of the corporation, or the maximum number of shares of each class that may be issued.

(b) The articles of incorporation of a business corporation may set forth a statement of the voting rights, designations, preferences, limitations and special rights in respect of the shares of a class or a series of a class, the fixing of which by the articles of incorporation is desired.

(c) The articles of incorporation of a business corporation may set forth a statement of authority vested in the board of directors to divide the authorized and unissued shares into classes or series, or both, and to determine for the class or series its voting rights, designations, preferences, limitations and special rights. A typical provision of the articles conferring the authority reads as follows:

The aggregate number of shares which the corporation shall have the authority to issue is 2,000 shares. The board of directors shall have the full authority permitted by law to fix by resolution full, limited, multiple or fractional, or no voting rights, and such designations, preferences, limitations and other special rights of any class or any series of any class that may be desired.

Source

The provisions of this § 23.6 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

§ 23.7. Subscription by incorporator unnecessary.

Section 1306(a)(5) of the BCL (relating to articles of incorporation) requires that the articles of incorporation of a business corporation set forth the name and post office address of the incorporator or of each of the incorporators. A statement of the number of shares subscribed by each incorporator is not required and incorporators are not required to be shareholders.

Source

The provisions of this § 23.7 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

Cross References

This section cited in 19 Pa. Code § 33.2 (relating to incorporators).

§ 23.8. Naming the first directors in the articles.

(a) The first directors of the corporation may be named in the articles of incorporation.

(b) Section 1306(b) of the BCL (relating to articles of incorporation) provides that the naming of directors in the articles of incorporation constitutes an affirmation that the directors have consented in writing to serve as directors.

(c) If directors are not named in the articles of incorporation, section 1310 of the BCL (relating to organization meeting) provides that they shall be elected by the incorporators.

Source

The provisions of this § 23.8 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

§ 23.9. Cumulative voting for directors.

Sections 1306(a)(8) and 1758(c)(1) of the BCL (relating to articles of incorporation; and voting rights of shareholders) authorize the articles of incorporation of a business corporation to set forth a statement eliminating the right of shareholders to cumulate their votes for the election of directors. The statement in the articles eliminating cumulative voting usually reads as follows:

The shareholders of the corporation shall not have the right to cumulate their votes for the election of directors of the corporation.

Source

The provisions of this § 23.9 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

§ 23.10. Preemptive rights.

Sections 1306(a)(8) and 1530(a) of the BCL (relating to articles of incorporation; and preemptive rights of shareholders) authorizes the articles of incorporation of a business corporation to set forth provisions granting or denying to shareholders preemptive rights to subscribe to some or all issues of shares or securities of the corporation and provides that unless otherwise provided in the articles of a business corporation, a business corporation may issue shares, option rights or securities having conversion or option rights, without first offering them to shareholders of a class. See § 27.7 (relating to preemptive rights).

Source

The provisions of this § 23.10 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

§ 23.11. Action by partial written consent of shareholders.

Section 1766(b) of the BCL (relating to consent of shareholders in lieu of meeting) authorizes the articles of incorporation of a business corporation or a bylaw adopted by the shareholders of a nonregistered corporation to provide that action by the shareholders without a meeting may be taken by the written consent of shareholders who would have been entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting. The following language is sometimes inserted in the articles of incorporation:

Any action which may be taken at a meeting of shareholders or of a class of shareholders may be taken without a meeting if a consent or

consents in writing to such action, setting forth the action so taken, shall be signed by shareholders entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting.

Source

The provisions of this § 23.11 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

§ 23.12. Removal of directors without cause.

Section 1726(a)(1) and (4) of the BCL (relating to removal of directors) provides that the shareholders of a corporation which does not have a board of directors divided into classes by action of the shareholders have a statutory right to remove the entire board of directors, or a class of the board, or an individual director, without assigning a cause, unless otherwise provided in the articles or a bylaw adopted by the shareholders. The bylaws may not prevent the removal by the unanimous vote or consent of the shareholders entitled to vote thereon. The statement in the articles eliminating this shareholder right of removal usually reads as follows:

The entire board of directors, any class of the board, or any individual director may be removed from office by the shareholders without assigning any cause only by the unanimous vote or consent of the shareholders entitled to vote thereon.

Source

The provisions of this § 23.12 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

§ 23.13. Shareholder right to call special meetings of shareholders.

Section 1755(b)(2) of the BCL (relating to time of holding meetings of shareholders) provides that, unless otherwise provided in the articles, the shareholders entitled to cast at least 20% of the votes that all shareholders are entitled to cast at the particular meeting may call a special meeting of the shareholders. Section 2521 of the BCL (relating to call of special meetings of shareholders) provides that the shareholders of a registered corporation shall have no statutory right to call a special meeting of the shareholders. The statement in the articles eliminating this shareholder right to call a special meeting of the shareholders of a non-registered corporation usually reads as follows:

The shareholders of the corporation shall not be entitled to call a special meeting of the shareholders of the corporation.

Source

The provisions of this § 23.13 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

§ 23.14. Shareholder right to petition for amendment of the articles.

Section 1912(a)(2) of the BCL (relating to proposal of amendments) provides that, unless otherwise provided in the articles, the shareholders entitled to cast at least 10% of the votes that all shareholders are entitled to cast thereon may by petition propose an amendment to the articles of the corporation. Section 2535 of the BCL (relating to proposal of amendment to articles) provides that the shareholders of a registered corporation shall have no statutory right to propose amendments. The statement in the articles eliminating this shareholder right to petition for an amendment of the articles of a nonregistered corporation usually reads as follows:

The shareholders of the corporation shall not be entitled by petition or otherwise to propose an amendment to the articles of the corporation.

Source

The provisions of this § 23.14 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

§ 23.15. Other provisions in the articles.

Section 1306(a)(8) of the BCL (relating to articles of incorporation) authorizes the articles of incorporation of a business corporation to contain other provisions, subject to certain enumerated exceptions, which the incorporator may choose to insert if one of the following exists:

(1) A section of the BCL authorizes or requires provisions pertaining to that subject matter to be set forth in the articles or bylaws of a business corporation or in an agreement or other instrument.

(2) The provisions, whether or not specifically authorized by the BCL, relate to the purpose of the corporation, the management of its business or affairs or to the rights, powers or duties of its security holders, directors or officers.

Source

The provisions of this § 23.15 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

ADVERTISEMENT**§ 23.31. General.**

(a) Section 1307 of the BCL (relating to advertisement) requires that the incorporators advertise their intention to file, or the corporation advertise the filing of, articles of incorporation with the Department one time in two newspapers published in the English language, one of which shall be a newspaper of general circulation, and the other the legal newspaper, if any, designated by the rules of the court for the publication of legal notices, otherwise, in two newspapers of general circulation, published in the county in which the initial registered office

of the corporation is to be located. If there is only one newspaper of general circulation published in a county, advertisement in that newspaper is sufficient. Advertisements may appear prior to or after the day the articles of incorporation are filed with the Department, and shall set forth briefly the following:

(1) The name of the proposed corporation.

(2) A statement that the corporation is to be or has been organized under the BCL.

(b) Title 45 of the *Pennsylvania Consolidated Statutes*, section 307 (relating to effect of failure to advertise when required) provides that no legal proceeding, and the like, in which notice is required to be given by official or legal advertising, will be binding upon an interested person unless the advertising is effected and a proof of publication is filed of record in the matter or proceeding. The proofs referred to in this section may not be submitted to, and will not be received and filed by, the Department, but shall be filed in the minute book of the corporation.

Source

The provisions of this § 23.31 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

ANNUAL REPORT INFORMATION

§ 23.51. Annual report information.

Section 1110 of the BCL (relating to annual report information) requires the Department to make available as public information for inspection and copying the names of the president, vice-president, secretary and treasurer of corporations for profit as annually forwarded to the Department by the Department of Revenue under section 403(a)(3) of the Tax Reform Code of 1971 (72 P. S. § 7403(a)(3)). See also § 41.52 (relating to annual reports).

Source

The provisions of this § 23.51 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

Cross References

This section cited in 19 Pa. Code § 13.31 (relating to searches and information; telephone inquiries).

FORMS

§ 23.101. Official forms.

The following official forms have been promulgated under the provisions set forth in this chapter and appear in Appendix A:

Form DSCB:15-1306/2102/2303/2702/2903/3101/7102A (Articles of Incorporation—For Profit).

Form DSCB:15-1341 (Statement of Revival—Domestic Business Corporation).

Form DSCB:15-1507/4144/5507/6144/8506 (Statement of Change of Registered Office).

Form DSCB:15-1522 (Statement With Respect to Shares—Domestic Business Corporation).

Form DSCB:15-1902 (Statement of Termination—Business Corporation).

Form DSCB:15-1915 (Articles of Amendment—Domestic Business Corporation).

Form DSCB:15-1926 (Articles of Merger—Domestic Business Corporation).

Form DSCB:15-1931 (Articles of Exchange—Domestic Business Corporation).

Form DSCB:15-1954 (Articles of Division—Business Corporation).

Form DSCB:15-1963 (Articles of Conversion—Domestic Business to Non-profit Corporation).

Form DSCB:15-1971 (Articles of Dissolution by Shareholders Before Commencement of Business—Domestic Business Corporation).

Form DSCB:15-1977 (Articles of Dissolution—Domestic Business Corporation).

Form DSCB:15-1989 (Articles of Involuntary Dissolution—Domestic Business Corporation).

Source

The provisions of this § 23.101 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

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(278638) No. 320 Jul. 01

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