

## **IC 23-1-26**

### Chapter 26. Issuance of Shares

#### **IC 23-1-26-1**

##### **Subscription agreements**

Sec. 1. (a) A subscription for shares entered into before incorporation is irrevocable for six (6) months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(b) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(c) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(d) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty (20) days after the corporation sends written demand for payment to the subscriber.

(e) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to section 2 of this chapter.

*As added by P.L.149-1986, SEC.10.*

#### **IC 23-1-26-2**

##### **Consideration**

Sec. 2. (a) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(b) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(c) The corporation may issue shares for such consideration received or to be received as the board of directors determines to be adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(d) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

(e) The corporation may (but is not required to) place in escrow

shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may (but is not required to) credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be cancelled in whole or in part.

*As added by P.L.149-1986, SEC.10. Amended by P.L.133-2009, SEC.16.*

### **IC 23-1-26-3**

#### **Shareholder liability**

Sec. 3. (a) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued (section 2 of this chapter) or specified in the subscription agreement (section 1 of this chapter).

(b) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that the shareholder may become personally liable by reason of the shareholder's own acts or conduct.

*As added by P.L.149-1986, SEC.10.*

### **IC 23-1-26-4**

#### **Share dividends and share splits**

Sec. 4. (a) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one (1) or more classes or series. An issuance of shares under this subsection may be in the form of a share dividend or a share split, but shall be considered a share dividend for purposes of this article.

(b) Shares of one (1) class or series may not be issued as a share dividend in respect of shares of another class or series unless:

- (1) the articles of incorporation so authorize;
- (2) a majority of the votes entitled to be cast by the class or series to be issued approve the issue; or
- (3) there are no outstanding shares of the class or series to be issued.

(c) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

*As added by P.L.149-1986, SEC.10.*

### **IC 23-1-26-5**

#### **Rights, options, or warrants**

Sec. 5. (a) A corporation, acting through its board of directors, may create or issue rights, options, or warrants for the purchase of shares or other securities of the corporation or any successor in interest of the corporation. The board of directors shall determine the

terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares or other securities are to be issued. The rights, options, or warrants may be issued with or without consideration, and may (but need not) be issued pro rata.

(b) The terms and conditions of the rights, options, or warrants, including the rights, options, or warrants outstanding on July 1, 2009, may include, without limitation, restrictions or conditions that:

(1) preclude or limit the exercise, transfer, or receipt of the rights, options, or warrants by:

(A) a person owning or offering to acquire a specified number or percentage of the outstanding shares or other securities of the corporation; or

(B) a transferee of the person described in clause (A); or

(2) invalidate or void the rights, options, or warrants held by the person described in subdivision (1)(A) or a transferee described in subdivision (1)(B).

*As added by P.L.149-1986, SEC.10. Amended by P.L.133-2009, SEC.17.*

### **IC 23-1-26-6**

#### **Certificates; contents; signatures**

Sec. 6. (a) Shares may but need not be represented by certificates. Unless this article or another statute expressly provides otherwise, the rights and obligations of shareholders of the same class or series of shares are identical whether or not their shares are represented by certificates.

(b) At a minimum each share certificate must state on its face:

(1) the name of the issuing corporation and that it is organized under the law of this state;

(2) the name of the person to whom issued; and

(3) the number and class of shares and the designation of the series, if any, the certificate represents.

(c) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series (and the authority of the board of directors to determine variations for future series) must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(d) Each share certificate:

(1) must be signed (either manually or in facsimile) by at least two (2) officers (or the sole officer, if the corporation has only one (1) officer) designated in the bylaws or by the board of directors; and

(2) may bear the corporate seal or its facsimile.

(e) If the person who signed (either manually or in facsimile) a

share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

*As added by P.L.149-1986, SEC.10. Amended by P.L.107-1987, SEC.5.*

#### **IC 23-1-26-7**

##### **Issuance of shares without certificates**

Sec. 7. (a) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(b) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by sections 6(b) and 6(c) of this chapter, and, if applicable, section 8 of this chapter.

*As added by P.L.149-1986, SEC.10.*

#### **IC 23-1-26-8**

##### **Restrictions on transfer or registration of transfer of shares**

Sec. 8. (a) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of any class or series of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(b) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by section 7(b) of this chapter. Unless so noted or contained, a restriction is not enforceable against a person without knowledge of the restriction.

(c) A restriction on the transfer or registration of transfer of shares is authorized:

- (1) to maintain the corporation's status when it is dependent on the number or identity of its shareholders;
- (2) to preserve exemptions under federal or state securities law;
- or
- (3) for any other reasonable purpose.

(d) A restriction on the transfer or registration of transfer of shares may, among other things:

- (1) obligate the shareholder first to offer the corporation or other persons (separately, consecutively, or simultaneously) an opportunity to acquire the restricted shares;
- (2) obligate the corporation or other persons (separately, consecutively, or simultaneously) to acquire the restricted

shares;

(3) require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or

(4) prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(e) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares. *As added by P.L.149-1986, SEC.10. Amended by P.L.133-2009, SEC.18.*

### **IC 23-1-26-9**

#### **Expenses payable from consideration received for shares**

Sec. 9. A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.

*As added by P.L.149-1986, SEC.10.*