

## **IC 23-1-30**

### **Chapter 30. Voting by Shareholders**

#### **IC 23-1-30-1**

##### **Shareholders' list**

Sec. 1. (a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group (and within each voting group by class or series of shares) and show the address of and number of shares held by each shareholder.

(b) The shareholders' list must be available for inspection by any shareholder entitled to vote at the meeting, beginning five (5) business days before the date of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. Subject to IC 23-1-52-2(c), a shareholder, or the shareholder's agent or attorney authorized in writing, is entitled on written demand to inspect and to copy the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

(c) The corporation shall make the shareholders' list available at the meeting, and any shareholder, or the shareholder's agent or attorney authorized in writing, is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a shareholder, or the shareholder's agent or attorney authorized in writing, to inspect the shareholders' list during the period specified in subsection (b) (or copy the list as permitted by subsection (b)), the circuit or superior court of the county where a corporation's principal office (or, if none in Indiana, its registered office) is located, on application of the shareholder, may order the inspection or copying.

(e) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

(f) The use and distribution of any information acquired from inspection or copying the shareholders' list under the rights granted by this section are subject to IC 23-1-52-5.

*As added by P.L.149-1986, SEC.14.*

#### **IC 23-1-30-2**

##### **Shares entitled to vote**

Sec. 2. (a) Except as provided in subsections (b) and (c) or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one (1) vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(b) Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote

for directors of the second corporation.

(c) Subsection (b) does not limit the power of a corporation to vote any shares, including its own shares, held by it in or for an employee benefit plan or in any other fiduciary capacity.

(d) Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

*As added by P.L.149-1986, SEC.14.*

### **IC 23-1-30-3**

#### **Voting of shares; appointment of proxy**

Sec. 3. (a) A shareholder may vote the shareholder's shares in person or by proxy.

(b) A shareholder may authorize a person or persons to act for the shareholder as proxy by any of the following:

(1) A shareholder or the shareholder's designated officer, director, employee, or agent may execute a writing by:

(A) signing it; or

(B) causing the shareholder's signature or the signature of the designated officer, director, employee, or agent of the shareholder to be affixed to the writing by any reasonable means, including by facsimile signature.

(2) A shareholder may transmit or authorize the transmission of an electronic submission. The electronic submission:

(A) may be transmitted by any electronic means, including data and voice telephonic communications and computer network;

(B) may be transmitted to:

(i) the person who will be the holder of the proxy;

(ii) a proxy solicitation firm; or

(iii) a proxy support service organization or similar agency authorized by the person who will be the holder of the proxy to receive the electronic submission; and

(C) must either contain or be accompanied by information from which it can be determined that the electronic submission was transmitted by or authorized by the shareholder.

(3) Any other method allowed by law.

(c) A copy, facsimile telecommunication, or other reliable reproduction of the writing or electronic submission created under subsection (b)(1) or (b)(2) may be used instead of the original writing or electronic submission for all purposes for which the original writing or electronic submission may be used if the copy, facsimile telecommunication, or other reproduction is a complete copy of the entire original writing or electronic submission.

(d) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven (11) months unless a shorter or

longer period is expressly provided in the appointment.

(e) An appointment of a proxy is revocable by the shareholder unless the appointment conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

- (1) a pledgee;
- (2) a person who purchased or agreed to purchase the shares;
- (3) a creditor of the corporation who extended its credit under terms requiring the appointment;
- (4) an employee of the corporation whose employment contract requires the appointment; or
- (5) a party to a voting agreement created under IC 23-1-31-2.

(f) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

(g) An appointment made irrevocable under subsection (e) is revoked when the interest with which it is coupled is extinguished.

(h) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(i) Subject to section 5 of this chapter and to any express limitation on the proxy's authority contained in the writing or electronic submission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

*As added by P.L.149-1986, SEC.14. Amended by P.L.107-1987, SEC.8; P.L.9-1998, SEC.1.*

#### **IC 23-1-30-4**

##### **Beneficial owners of shares; recognition procedure; disclosure procedure**

Sec. 4. (a) A corporation may establish a recognition procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the recognition procedure.

(b) A corporation may establish a disclosure procedure by which the names of beneficial owners of its shares shall, to the extent not prohibited by law, be disclosed to the corporation. A corporation may not establish a procedure requiring disclosure of the names of the beneficial owners of a private trust created in good faith and not for the purpose of circumventing a disclosure procedure adopted pursuant to this section. The corporation may adopt reasonable sanctions to ensure compliance with its disclosure procedure, including without limitation:

- (1) prohibiting the voting of;
- (2) providing for mandatory or optional reacquisition of; or
- (3) the withholding or payment into escrow of dividends with respect to;

shares as to which the beneficial owner's name is not disclosed as required by the disclosure procedure.

*As added by P.L.149-1986, SEC.14.*

### **IC 23-1-30-5**

#### **Acceptance of signature**

Sec. 5. (a) If the name signed on or submitted with a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

(b) If the name signed on or submitted with a vote, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

- (1) the shareholder is an entity and the name purports to be that of an officer or agent of the entity;
- (2) the name purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;
- (3) the name purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;
- (4) the name purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the person's authority to act for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or
- (5) two (2) or more persons are the shareholder as cotenants or fiduciaries and the name purports to be the name of at least one (1) of the coowners and the person acting appears to be acting on behalf of all the coowners.

(c) The inspectors or the persons making a determination of the validity of proxies shall specify the information upon which they rely in determining the validity of a proxy. The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about:

- (1) the validity of the signature on a writing or about the signatory's authority to sign for the shareholder; or
- (2) the validity of an electronic submission or the submitter's

authority to make the electronic transmission.

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.  
*As added by P.L.149-1986, SEC.14. Amended by P.L.9-1998, SEC.2.*

### **IC 23-1-30-6**

#### **Voting group; quorum**

Sec. 6. (a) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this article provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(b) Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(c) If a quorum exists, action on a matter (other than the election of directors) by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this article require a greater number of affirmative votes.

(d) The election of directors is governed by section 9 of this chapter.

*As added by P.L.149-1986, SEC.14.*

### **IC 23-1-30-7**

#### **Voting groups; method of taking action**

Sec. 7. (a) If the articles of incorporation or this article provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in section 6 of this chapter.

(b) If the articles of incorporation or this article provide for voting by two (2) or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in section 6 of this chapter. A matter may be voted on by one (1) voting group even though no vote is taken by another voting group entitled to vote on the matter.

*As added by P.L.149-1986, SEC.14.*

### **IC 23-1-30-8**

#### **Special voting requirements in articles of incorporation**

Sec. 8. The articles of incorporation may provide for a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is provided for by this article.

*As added by P.L.149-1986, SEC.14.*

**IC 23-1-30-9**

**Election of directors; cumulative voting**

Sec. 9. (a) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(b) Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

(c) A statement included in the articles of incorporation that "(all) (a designated voting group of) shareholders are entitled to cumulate their votes for directors" (or words of similar import) means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two (2) or more candidates.

(d) Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:

(1) the meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or

(2) a shareholder who has the right to cumulate the shareholder's votes gives notice to the corporation not less than forty-eight (48) hours before the time set for the meeting of the shareholder's intent to cumulate the shareholder's votes during the meeting, and if one (1) shareholder gives this notice, all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

*As added by P.L.149-1986, SEC.14.*