

IC 23-1-33

Chapter 33. Board of Directors Generally

IC 23-1-33-1

Necessity of board of directors; powers

Sec. 1. (a) Except as provided in subsection (c), each corporation must have a board of directors.

(b) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation.

(c) A corporation having fifty (50) or fewer shareholders may dispense with the board of directors or limit the authority of the board by describing in its articles of incorporation who will perform some or all of the duties of the board of directors. If a corporation elects to dispense with or limit the authority of the board of directors, any reference to the board of directors by this article also includes those persons described in the articles of incorporation who will perform the duties of the board of directors.

As added by P.L.149-1986, SEC.17.

IC 23-1-33-2

Qualifications

Sec. 2. The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

As added by P.L.149-1986, SEC.17.

IC 23-1-33-3

Number of directors; time for electing

Sec. 3. (a) A board of directors must consist of one (1) or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the board of directors.

(c) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under section 6 of this chapter.

As added by P.L.149-1986, SEC.17.

IC 23-1-33-4

Election of directors by classes of shares

Sec. 4. If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one (1) or more

authorized classes of shares. Each class (or classes) of shares entitled to elect one (1) or more directors is a separate voting group for purposes of the election of directors.

As added by P.L.149-1986, SEC.17.

IC 23-1-33-5

Terms of office

Sec. 5. (a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(b) Unless the bylaws of a corporation specify otherwise as provided under IC 23-1-39-4 or a shorter term is specified in the bylaws for a director nominee failing to receive a specified vote for election, the terms of all other directors expire at:

(1) the next; or

(2) if the director's terms are staggered in accordance with section 6 of this chapter, the applicable second or third; annual shareholders' meeting following their election.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the end of the term for which the director's predecessor was elected.

(e) Unless the bylaws of a corporation specify otherwise as provided under IC 23-1-39-4, despite the expiration of a director's term, the director continues to serve until a successor is elected and qualifies or until there is a decrease in the number of directors.

As added by P.L.149-1986, SEC.17. Amended by P.L.133-2009, SEC.23.

IC 23-1-33-6

Staggered terms

Sec. 6. (a) The articles of incorporation or the bylaws may provide for staggering their terms by dividing the total number of directors into either:

(1) two (2) groups, with each group containing one-half (1/2) of the total, as near as may be; or

(2) if there are more than two (2) directors, three (3) groups, with each group containing one-third (1/3) of the total, as near as may be.

(b) In the event that terms are staggered under subsection (a), the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two (2) years or three (3) years, as the case may be, to succeed those whose terms expire.

(c) A corporation that has a class of voting shares registered with the Securities and Exchange Commission under Section 12 of the

Securities Exchange Act of 1934 shall provide for staggering the terms of directors in accordance with this section unless, not later than thirty (30) days after the later of:

- (1) July 1, 2009; or
- (2) the time when the corporation's voting shares are registered with the Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934;

the board of directors of the corporation adopts a bylaw expressly electing not to be governed by this subsection. However, an election not to be governed by this subsection may be rescinded by a subsequent action of the board of directors unless the original articles of incorporation contain a provision expressly electing not to be governed by this subsection.

(d) If the board fails to provide for the staggering of the terms of directors as required by subsection (c), the board must be staggered as follows:

- (1) The first group comprises one-third (1/3) of the directors or one-third (1/3) of the directors rounded to the nearest higher whole number if the number of directors is not divisible by three (3) without any remaining.
- (2) The second group comprises one-third (1/3) of the directors or one-third (1/3) of the directors rounded to the nearest higher whole number if the number of directors is not divisible by three (3) without two (2) remaining.
- (3) The third group comprises one-third (1/3) of the directors or one-third (1/3) of the directors rounded to the nearest lower whole number if the number of directors is not divisible by three (3) without any remaining.

The directors shall be placed into the groups established by this subsection alphabetically by last name.

As added by P.L.149-1986, SEC.17. Amended by P.L.107-1987, SEC.9; P.L.277-2001, SEC.5; P.L.133-2009, SEC.24.

IC 23-1-33-7

Resignation

Sec. 7. (a) A director may resign at any time by delivering written notice:

- (1) to the board of directors, its chairman, or the secretary of the corporation; or
- (2) if the articles of incorporation or bylaws so provide, to another designated officer.

(b) A resignation is effective when the notice is delivered unless the notice specifies:

- (1) a later effective date; or
- (2) an effective date determined upon the happening of an event.

(c) A resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that the resignation is irrevocable.

As added by P.L.149-1986, SEC.17. Amended by P.L.107-1987,

SEC.10; P.L.133-2009, SEC.25.

IC 23-1-33-8

Removal

Sec. 8. (a) Directors may be removed in any manner provided in the articles of incorporation. In addition, the shareholders or directors may remove one (1) or more directors with or without cause unless the articles of incorporation provide otherwise.

(b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that director.

(c) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove the director exceeds the number of votes cast not to remove the director.

(d) A director may be removed by the shareholders, if they are otherwise authorized to do so, only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one (1) of the purposes, of the meeting is removal of the director.

As added by P.L.149-1986, SEC.17.

IC 23-1-33-9

Vacancies

Sec. 9. (a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

- (1) the board of directors may fill the vacancy; or
- (2) if the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

(c) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under section 7(b) of this chapter or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

As added by P.L.149-1986, SEC.17.

IC 23-1-33-10

Compensation

Sec. 10. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

As added by P.L.149-1986, SEC.17.