

CHAPTER 302A

BUSINESS CORPORATIONS

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302A.011 DEFINITIONS.

[For text of subs 1 to 6a, see M.S.1998]

Subd. 7. **Constituent corporation.** "Constituent corporation" means a corporation or a foreign corporation that:

(1) in a merger is either the surviving corporation or a corporation that is merged into the surviving organization; or

(2) in an exchange is either the acquiring corporation or a corporation whose shares are acquired by the acquiring organization.

[For text of subs 8 to 55, see M.S.1998]

Subd. 56. **Constituent organization.** "Constituent organization" means a corporation, foreign corporation, limited liability company or foreign limited liability company that:

(1) in a merger is either the surviving organization or an organization that is merged into the surviving organization; or

(2) in an exchange is either the acquiring organization or an organization whose securities are acquired by the acquiring organization.

[For text of subs 57 to 59, see M.S.1998]

History: 1999 c 85 art 1 s 1,2

302A.111 ARTICLES.

[For text of subs 1 to 4, see M.S.1998]

Subd. 5. **Optional provisions: generally.** The articles may contain other provisions not inconsistent with section 302A.201 or any other provision of law relating to the management of the business or the regulation of the affairs of the corporation.

[For text of subd 6, see M.S.1998]

History: 1999 c 85 art 1 s 3

302A.181 BYLAWS.

Subdivision 1. **Generally.** A corporation may, but need not, have bylaws. Bylaws may contain any provision relating to the management of the business or the regulation of the affairs of the corporation not inconsistent with section 302A.201 or any other provision of law or the articles.

[For text of subs 2 and 3, see M.S.1998]

History: 1999 c 85 art 1 s 4

302A.223 REMOVAL OF DIRECTORS.

[For text of subs 1 and 2, see M.S.1998]

Subd. 3. **Removal by shareholders.** Except as provided in subdivision 4, any one or all of the directors may be removed at any time, with or without cause, by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote at an election of directors; provided that, if a director has been elected solely by the holders of a class or series of shares, as stated in the articles or bylaws, then that director may be removed only by the affirmative vote of the holders of a majority of the voting power of all shares of that class or series entitled to vote at an election of that director.

[For text of subs 4 and 5, see M.S.1998]

History: 1999 c 85 art 1 s 5

302A.402 SHARE DIVIDENDS, DIVISIONS, AND COMBINATIONS.

[For text of subs 1 and 2, see M.S.1998]

Subd. 3. **By action of board alone; filing of articles of amendment.** (a) Subject to the restrictions provided in subdivision 2 or any provision in the articles that states that section 302A.402; subdivision 3, does not apply, a share dividend, division, or combination may be effected by action of the board alone, without the approval of shareholders under sections 302A.135 and 302A.137. In effecting a division or combination under this subdivision, the board may amend the articles to increase or decrease the par value of shares, increase or decrease the number of authorized shares, and make any other change necessary or appropriate to assure that the rights or preferences of the holders of outstanding shares of any class or series will not be adversely affected by the division or combination.

(b) If a division or combination that includes an amendment of the articles is effected under this subdivision, then articles of amendment must be prepared that contain the information required by section 302A.139 and a statement that the amendment will not adversely affect the rights or preferences of the holders of outstanding shares of any class or series and will not result in the percentage of authorized shares of any class or series that remains unissued after the division or combination exceeding the percentage of authorized shares of that class or series that were unissued before the division or combination.

[For text of subd 4, see M.S.1998]

History: 1999 c 85 art 1 s 6

302A.405 CONSIDERATION FOR SHARES; VALUE AND PAYMENT; LIABILITY.

Subdivision 1. **Consideration; procedure.** Subject to any restrictions in the articles:

(a) Shares may be issued for any consideration, including, without limitation, money or other tangible or intangible property received by the corporation or to be received by the corporation under a written agreement, or services rendered to the corporation or to be rendered to the corporation, as authorized by resolution approved by the affirmative vote of the directors required by section 302A.237, or, if provided for in the articles, approved by the affirmative vote of the shareholders required by section 302A.437, establishing a price in money or other consideration, or a minimum price, or a general formula or method by which the price will be determined; and

(b) A corporation may, without any new or additional consideration, issue its own shares in exchange for or in conversion of its outstanding shares, or, subject to authorization of share dividends, divisions, and combinations according to section 302A.402, issue its own shares pro rata to its shareholders or the shareholders of one or more classes or series, to effectuate share dividends, divisions, or combinations. No shares of a class or series, shares of which are then outstanding, shall be issued to the holders of shares of another class or series (except in exchange for or in conversion of outstanding shares of the other class or series), unless the issuance either is expressly provided for in the articles or is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares of the same class or series as the shares to be issued.

[For text of subs 2 and 3, see M.S.1998]

History: 1999 c 85 art 1 s 7

302A.417 SHARE CERTIFICATES; ISSUANCE AND CONTENTS; UNCERTIFICATED SHARES.

[For text of subs 1 to 6, see M.S.1998]

Subd. 7. **Uncertificatcd shares.** Unless uncertificated shares are prohibited by the articles or bylaws, a resolution approved by the affirmative vote of a majority of the directors present may provide that some or all of any or all classes and series of its shares will be uncertificated shares. The resolution does not apply to shares represented by a certificate until the certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the new shareholder the information required by this section to be stated on certificates. This information is not required to be sent to the new shareholder by a publicly held corporation that has adopted a system of issuance, recordation, and transfer of its shares by electronic or other means not involving an issuance of certificates if the system complies with section 17A of the Securities Exchange Act of 1934. Except as otherwise expressly provided by statute, the rights and obligations of the holders of certificated and uncertificated shares of the same class and series are identical.

History: 1999 c 85 art 1 s 8

302A.457 SHAREHOLDER CONTROL AGREEMENTS.

Subdivision 1. **Authorized.** A written agreement among the shareholders of a corporation and the subscribers for shares to be issued, relating to the control of any phase of the business and affairs of the corporation, its liquidation and dissolution, or the relations among shareholders of or subscribers to shares of the corporation is valid and specifically enforceable as provided in subdivision 2. The agreement may also include as parties persons who are neither shareholders nor subscribers.

Subd. 2. **Method of approval; enforceability; copies.** (a) A written agreement as described in subdivision 1 that relates to the control of or the liquidation and dissolution of the corporation, the relations among the shareholders and subscribers, or any phase of the business and affairs of the corporation, including, without limitation, the management of its business, the declaration and payment of distributions, the election of directors or officers, the employment of shareholders and others by the corporation, or the arbitration of disputes, is valid and specifically enforceable, if the agreement is signed by all persons who, on the date the agreement first becomes effective, are then the shareholders of the corporation, whether or not the shareholders all have voting shares, and the subscribers for shares, whether or not voting shares, to be issued. A written agreement as described in subdivision 1 may provide for its amendment through nonunanimous means.

(b) The agreement is enforceable by the persons who are parties to it and is binding upon and enforceable against only those persons and other persons having knowledge of the existence of the agreement. A copy of the agreement shall be filed with the corporation. The existence and location of a copy of the agreement shall be noted conspicuously on the face or back of each certificate for shares issued by the corporation and included in information sent to the holders of uncertificated shares according to section 302A.417, subdivision 7.

(c) A shareholder, a beneficial owner of shares, or another person having a security interest in shares has the right upon written demand to obtain a copy of the agreement from the corporation at the expense of the corporation.

[For text of subs 3 and 4, see M.S.1998]

History: 1999 c 85 art 1 s 9,10

302A.471 RIGHTS OF DISSENTING SHAREHOLDERS.

Subdivision 1. **Actions creating rights.** A shareholder of a corporation may dissent from, and obtain payment for the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) An amendment of the articles that materially and adversely affects the rights or preferences of the shares of the dissenting shareholder in that it:

- (1) alters or abolishes a preferential right of the shares;
- (2) creates, alters, or abolishes a right in respect of the redemption of the shares, including a provision respecting a sinking fund for the redemption or repurchase of the shares;
- (3) alters or abolishes a preemptive right of the holder of the shares to acquire shares, securities other than shares, or rights to purchase shares or securities other than shares;
- (4) excludes or limits the right of a shareholder to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the authorization or issuance of securities of an existing or new class or series with similar or different voting rights; except that an amendment to the articles of an issuing public corporation that provides that section 302A.671 does not apply to a control share acquisition does not give rise to the right to obtain payment under this section;
- (b) A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation, but not including a transaction permitted without shareholder approval in section 302A.661, subdivision 1, or a disposition in dissolution described in section 302A.725, subdivision 2, or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition;
- (c) A plan of merger, whether under this chapter or under chapter 322B, to which the corporation is a constituent organization, except as provided in subdivision 3;
- (d) A plan of exchange, whether under this chapter or under chapter 322B, to which the corporation is a party as the corporation whose shares will be acquired by the acquiring corporation, if the shares of the shareholder are entitled to be voted on the plan; or
- (e) Any other corporate action taken pursuant to a shareholder vote with respect to which the articles, the bylaws, or a resolution approved by the board directs that dissenting shareholders may obtain payment for their shares.

[For text of subs 2 to 4, see M.S.1998]

History: 1999 c 85 art 1 s 11

302A.613 PLAN APPROVAL.

Subdivision 1. **Board approval; notice to shareholders.** A resolution containing the plan of merger or exchange shall be approved by the affirmative vote of a majority of the directors present at a meeting of the board of each constituent corporation and shall then be submitted at a regular or a special meeting to the shareholders of (i) each constituent corporation, in the case of a plan of merger, and (ii) the corporation whose shares will be acquired by the acquiring organization in the exchange, in the case of a plan of exchange. The plan of merger or exchange may require that it be submitted to the shareholders whether or not the board of directors determines at any time after the board of directors' initial approval of the plan that the plan is no longer advisable and recommends that the shareholders reject it. If shareholders holding any class or series of stock of the corporation are entitled to vote on the plan of merger or exchange pursuant to this section, written notice shall be given to every shareholder of a corporation, whether or not entitled to vote at the meeting, not less than 14 days nor more than 60 days before the meeting, in the manner provided in section 302A.435 for notice of meetings of shareholders. The written notice shall state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange shall be included in or enclosed with the notice. If the merger or exchange is with a domestic or foreign limited liability company, the plan of merger or exchange must also be approved in the manner required by the laws of the state under which the limited liability company is organized.

[For text of subs 2 and 3, see M.S.1998]

History: 1999 c 85 art 1 s 12

302A.621 MERGER OF SUBSIDIARY.

Subdivision 1. **When authorized; contents of plan.** A parent owning at least 90 percent of the outstanding shares of each class and series of a subsidiary directly, or indirectly

through related corporations, may merge the subsidiary into itself or into any other subsidiary at least 90 percent of the outstanding shares of each class and series of which is owned by the parent directly, or indirectly through related corporations, without a vote of the shareholders of itself or any subsidiary or may merge itself, or itself and one or more of the subsidiaries, into one of the subsidiaries under this section. A resolution approved by the affirmative vote of a majority of the directors of the parent present shall set forth a plan of merger that contains:

(a) The name of the subsidiary or subsidiaries, the name of the parent and the name of the surviving corporation;

(b) The manner and basis of converting the shares of the subsidiary or subsidiaries or parent into securities of the parent, subsidiary, or of another corporation or, in whole or in part, into money or other property;

(c) If the parent is a constituent corporation but is not the surviving corporation in the merger, a provision for the pro rata issuance of shares of the surviving corporation to the holders of shares of the parent on surrender of any certificates for shares of the parent; and

(d) If the surviving corporation is a subsidiary, a statement of any amendments to the articles of the surviving corporation that will be part of the merger.

If the parent is a constituent corporation and the surviving corporation in the merger, it may change its corporate name, without a vote of its shareholders, by the inclusion of a provision to that effect in the resolution of merger setting forth the plan of merger that is approved by the affirmative vote of a majority of the directors of the parent present. Upon the effective date of the merger, the name of the parent shall be changed.

If the parent is a constituent corporation but is not the surviving corporation in the merger, the resolution is not effective unless it is also approved by the affirmative vote of the holders of a majority of the voting power of all shares of the parent entitled to vote at a regular or special meeting held in accordance with section 302A.613 if the parent is a domestic corporation or in accordance with the laws under which it is incorporated if the parent is a foreign corporation.

[For text of subs 2 to 5, see M.S.1998]

Subd. 6. Rights of dissenting shareholders. In the event all of the stock of one or more domestic subsidiaries that is a constituent party to a merger under this section is not owned by the parent directly, or indirectly through related corporations, immediately prior to the merger, the shareholders of each domestic subsidiary have dissenters' rights under sections 302A.471 (without regard to section 302A.471, subdivision 3) and 302A.473. If the parent is a constituent corporation but is not the surviving corporation in the merger, and the articles of incorporation of the surviving corporation immediately after the merger differ from the articles of incorporation of the parent immediately prior to the merger in a manner that would entitle a shareholder of the parent to dissenters' rights under section 302A.471, subdivision 1, paragraph (a), if the articles of incorporation of the surviving corporation constituted an amendment to the articles of incorporation of the parent, that shareholder of the parent has dissenters' rights as provided under sections 302A.471 and 302A.473. Except as provided in this subdivision, sections 302A.471 and 302A.473 do not apply to any merger effected under this section.

[For text of subd 7, see M.S.1998]

History: 1999 c 85 art 1 s 13,14

302A.671 CONTROL SHARE ACQUISITIONS.

Subdivision 1. Application. (a) Unless otherwise expressly provided in the articles or in bylaws approved by the shareholders of an issuing public corporation, this section applies to a control share acquisition. A shareholder's proposal to amend the corporation's articles or bylaws to cause this section to be inapplicable to the corporation requires the vote set forth in subdivision 4a, paragraph (b), in order for it to be effective, unless it is approved by a committee of the board comprised solely of directors who:

(1) are neither officers nor employees of, nor were during the five years preceding the formation of the committee officers or employees of, the corporation or a related organization;

(2) are neither acquiring persons nor affiliates or associates of an acquiring person;

(3) were not nominated for election as directors by an acquiring person or an affiliate or associate of an acquiring person; and

(4) were directors at the time an acquiring person became an acquiring person or were nominated, elected, or recommended for election as directors by a majority of those directors.

(b) The shares of an issuing public corporation acquired by an acquiring person in a control share acquisition that exceed the threshold of voting power of any of the ranges specified in subdivision 2, paragraph (d), shall have only the voting rights as shall be accorded to them pursuant to subdivision 4a.

[For text of subds 2 to 6, see M.S.1998]

History: 1999 c 85 art 1 s 15

302A.675 TAKEOVER OFFER; FAIR PRICE.

[For text of subd 1, see M.S.1998]

Subd. 2. **Exception.** Subdivision 1 does not apply if the proposed acquisition of shares is approved, before the purchase of any shares by the offeror pursuant to the earlier takeover offer, by a committee of the board, comprised solely of directors who:

(1) neither are officers or employees of, nor were during the five years preceding the formation of the committee officers or employees of, the corporation or a related organization;

(2) are neither the offerors nor affiliates or associates of the offeror;

(3) were not nominated for election as directors by the offeror or an affiliate or associate of the offeror; and

(4) were directors at the time of the first public announcement of the takeover offer or were nominated, elected, or recommended for election as directors by a majority of the directors.

History: 1999 c 85 art 1 s 16