

## IC 23-1-42

### Chapter 42. Control Share Acquisitions

#### IC 23-1-42-1

##### **"Control shares" defined**

Sec. 1. As used in this chapter, "control shares" means shares that, except for this chapter, would have voting power with respect to shares of an issuing public corporation that, when added to all other shares of the issuing public corporation owned by a person or in respect to which that person may exercise or direct the exercise of voting power, would entitle that person, immediately after acquisition of the shares (directly or indirectly, alone or as a part of a group), to exercise or direct the exercise of the voting power of the issuing public corporation in the election of directors within any of the following ranges of voting power:

- (1) One-fifth (1/5) or more but less than one-third (1/3) of all voting power.
- (2) One-third (1/3) or more but less than a majority of all voting power.
- (3) A majority or more of all voting power.

*As added by P.L.149-1986, SEC.26.*

#### IC 23-1-42-2

##### **"Control share acquisition" defined**

Sec. 2. (a) As used in this chapter, "control share acquisition" means the acquisition (directly or indirectly) by any person of ownership of, or the power to direct the exercise of voting power with respect to, issued and outstanding control shares.

(b) For purposes of this section, shares acquired within ninety (90) days or shares acquired pursuant to a plan to make a control share acquisition are considered to have been acquired in the same acquisition.

(c) For purposes of this section, a person who acquires shares in the ordinary course of business for the benefit of others in good faith and not for the purpose of circumventing this chapter has voting power only of shares in respect of which that person would be able to exercise or direct the exercise of votes without further instruction from others.

(d) The acquisition of any shares of an issuing public corporation does not constitute a control share acquisition if the acquisition is consummated in any of the following circumstances:

- (1) Before January 8, 1986.
- (2) Pursuant to a contract existing before January 8, 1986.
- (3) Pursuant to the laws of descent and distribution.
- (4) Pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing this chapter.
- (5) Pursuant to a merger or plan of share exchange effected in compliance with IC 23-1-40 if the issuing public corporation is a party to the agreement of merger or plan of share exchange.

(e) The acquisition of shares of an issuing public corporation in good faith and not for the purpose of circumventing this chapter by or from:

- (1) any person whose voting rights had previously been authorized by shareholders in compliance with this chapter; or
- (2) any person whose previous acquisition of shares of an issuing public corporation would have constituted a control share acquisition but for subsection (d);

does not constitute a control share acquisition, unless the acquisition entitles any person (directly or indirectly, alone or as a part of a group) to exercise or direct the exercise of voting power of the corporation in the election of directors in excess of the range of the voting power otherwise authorized.

*As added by P.L.149-1986, SEC.26.*

### **IC 23-1-42-3**

#### **"Interested shares" defined**

Sec. 3. As used in this chapter, "interested shares" means the shares of an issuing public corporation in respect of which any of the following persons may exercise or direct the exercise of the voting power of the corporation in the election of directors:

- (1) An acquiring person or member of a group with respect to a control share acquisition.
- (2) Any officer of the issuing public corporation.
- (3) Any employee of the issuing public corporation who is also a director of the corporation.

*As added by P.L.149-1986, SEC.26.*

### **IC 23-1-42-4**

#### **"Issuing public corporation" defined**

Sec. 4. (a) As used in this chapter, "issuing public corporation" means a corporation that has:

- (1) one hundred (100) or more shareholders;
- (2) its principal place of business or its principal office in Indiana, or that owns or controls assets within Indiana having a fair market value of more than one million dollars (\$1,000,000); and
- (3) either:
  - (A) more than ten percent (10%) of its shareholders resident in Indiana;
  - (B) more than ten percent (10%) of its shares owned of record or owned beneficially by Indiana residents; or
  - (C) one thousand (1,000) shareholders resident in Indiana.

(b) The residence of a record shareholder is presumed to be the address appearing in the records of the corporation.

*As added by P.L.149-1986, SEC.26. Amended by P.L.133-2009, SEC.36.*

### **IC 23-1-42-5**

#### **Voting rights under IC 23-1-42-9**

Sec. 5. Unless the corporation's articles of incorporation or bylaws provide that this chapter does not apply to control share acquisitions of shares of the corporation before the control share acquisition, control shares of an issuing public corporation acquired in a control share acquisition have only such voting rights as are conferred by section 9 of this chapter.

*As added by P.L.149-1986, SEC.26.*

#### **IC 23-1-42-6**

##### **Acquiring person statement**

Sec. 6. Any person who proposes to make or has made a control share acquisition may at the person's election deliver an acquiring person statement to the issuing public corporation at the issuing public corporation's principal office. The acquiring person statement must set forth all of the following:

- (1) The identity of the acquiring person and each other member of any group of which the person is a part for purposes of determining control shares.
- (2) A statement that the acquiring person statement is given pursuant to this chapter.
- (3) The number of shares of the issuing public corporation owned (directly or indirectly) by the acquiring person and each other member of the group.
- (4) The range of voting power under which the control share acquisition falls or would, if consummated, fall.
- (5) If the control share acquisition has not taken place:
  - (A) a description in reasonable detail of the terms of the proposed control share acquisition; and
  - (B) representations of the acquiring person, together with a statement in reasonable detail of the facts upon which they are based, that the proposed control share acquisition, if consummated, will not be contrary to law, and that the acquiring person has the financial capacity to make the proposed control share acquisition.

*As added by P.L.149-1986, SEC.26.*

#### **IC 23-1-42-7**

##### **Special meeting of shareholders**

Sec. 7. (a) If the acquiring person so requests at the time of delivery of an acquiring person statement and gives an undertaking to pay the corporation's expenses of a special meeting, within ten (10) days thereafter, the directors of the issuing public corporation shall call a special meeting of shareholders of the issuing public corporation for the purpose of considering the voting rights to be accorded the shares acquired or to be acquired in the control share acquisition.

(b) Unless the acquiring person agrees in writing to another date, the special meeting of shareholders shall be held within fifty (50) days after receipt by the issuing public corporation of the request.

(c) If no request is made, the voting rights to be accorded the

shares acquired in the control share acquisition shall be presented to the next special or annual meeting of shareholders.

(d) If the acquiring person so requests in writing at the time of delivery of the acquiring person statement, the special meeting must not be held sooner than thirty (30) days after receipt by the issuing public corporation of the acquiring person statement.

*As added by P.L.149-1986, SEC.26.*

#### **IC 23-1-42-8**

##### **Notice**

Sec. 8. (a) If a special meeting is requested, notice of the special meeting of shareholders shall be given as promptly as reasonably practicable by the issuing public corporation to all shareholders of record as of the record date set for the meeting, whether or not entitled to vote at the meeting.

(b) Notice of the special or annual shareholder meeting at which the voting rights are to be considered must include or be accompanied by both of the following:

(1) A copy of the acquiring person statement delivered to the issuing public corporation pursuant to this chapter.

(2) A statement by the board of directors of the corporation, authorized by its directors, of its position or recommendation, or that it is taking no position or making no recommendation, with respect to the proposed control share acquisition.

*As added by P.L.149-1986, SEC.26.*

#### **IC 23-1-42-9**

##### **Voting rights of acquired control shares; resolution**

Sec. 9. (a) Control shares acquired in a control share acquisition have the same voting rights as were accorded the shares before the control share acquisition only to the extent granted by resolution approved by the shareholders of the issuing public corporation.

(b) To be approved under this section, the resolution must be approved by:

(1) each voting group entitled to vote separately on the proposal by a majority of all the votes entitled to be cast by that voting group, with the holders of the outstanding shares of a class being entitled to vote as a separate voting group if the proposed control share acquisition would, if fully carried out, result in any of the changes described in IC 23-1-38-4(a); and

(2) each voting group entitled to vote separately on the proposal by a majority of all the votes entitled to be cast by that group, excluding all interested shares.

*As added by P.L.149-1986, SEC.26.*

#### **IC 23-1-42-10**

##### **Redemption of acquired control shares**

Sec. 10. (a) If authorized in a corporation's articles of incorporation or bylaws before a control share acquisition has occurred, control shares acquired in a control share acquisition with

respect to which no acquiring person statement has been filed with the issuing public corporation may, at any time during the period ending sixty (60) days after the last acquisition of control shares by the acquiring person, be subject to redemption by the corporation at the fair value thereof pursuant to the procedures adopted by the corporation.

(b) Control shares acquired in a control share acquisition are not subject to redemption after an acquiring person statement has been filed unless the shares are not accorded full voting rights by the shareholders as provided in section 9 of this chapter.

*As added by P.L.149-1986, SEC.26.*

#### **IC 23-1-42-11**

##### **Dissenters' rights; "fair value" defined**

Sec. 11. (a) Unless otherwise provided in a corporation's articles of incorporation or bylaws before a control share acquisition has occurred, in the event control shares acquired in a control share acquisition are accorded full voting rights and the acquiring person has acquired control shares with a majority or more of all voting power, all shareholders of the issuing public corporation have dissenters' rights as provided in this chapter.

(b) As soon as practicable after such events have occurred, the board of directors shall cause a notice to be sent to all shareholders of the corporation advising them of the facts and that they have dissenters' rights to receive the fair value of their shares pursuant to IC 23-1-44.

(c) As used in this section, "fair value" means a value not less than the highest price paid per share by the acquiring person in the control share acquisition.

*As added by P.L.149-1986, SEC.26.*