

IC 23-1-20

Chapter 20. General Definitions

IC 23-1-20-1

Application

Sec. 1. The definitions in this chapter apply throughout this article.
As added by P.L.149-1986, SEC.4.

IC 23-1-20-2

"Articles of incorporation"

Sec. 2. "Articles of incorporation" means the original articles of incorporation and all amendments and restatements of the articles of incorporation. If an amendment of the articles of incorporation or any other document filed under this article restates the articles of incorporation in their entirety, the articles of incorporation may not include any prior documents.

As added by P.L.149-1986, SEC.4. Amended by P.L.133-2009, SEC.6.

IC 23-1-20-3

"Authorized shares"

Sec. 3. "Authorized shares" means the shares of all classes that a domestic or foreign corporation is authorized to issue.

As added by P.L.149-1986, SEC.4.

IC 23-1-20-3.5

"Beneficial owner"

Sec. 3.5. "Beneficial owner", for purposes of IC 23-1-22-4, IC 23-1-30-4, and IC 23-1-43, means a person that:

- (1) individually or with or through any of its affiliates or associates beneficially owns the shares, directly or indirectly;
- (2) individually or with or through any of its affiliates or associates, has:
 - (A) the right to acquire the shares at any time, under any agreement, arrangement, or understanding, or upon the exercise of conversion rights, exchange rights, warrants, options, or otherwise; or
 - (B) the right to vote the shares under any agreement, arrangement, or understanding.

However, a person is not a beneficial owner of shares tendered under a tender or exchange offer made by the person or any of the person's affiliates or associates until the tendered shares are accepted for purchase or exchange, and a person is not a beneficial owner of shares under clause (B) if the agreement, arrangement, or understanding to vote the shares arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable regulations under the Securities Exchange Act of 1934 and is

not then reportable on a Schedule 13D under the Securities Exchange Act of 1934 or any comparable or successor report; (3) has any agreement, arrangement, or understanding for the purpose of acquiring, holding, voting (except as provided in subdivision (2)), or disposing of the shares with any other person that beneficially owns or whose affiliates or associates beneficially own the shares, directly or indirectly; or (4) has any derivative instrument that includes the opportunity, directly or indirectly, to profit or share in any profit derived from any increase in the value of the subject shares.

As added by P.L.133-2009, SEC.7.

IC 23-1-20-4

"Conspicuous"

Sec. 4. "Conspicuous" means written so that a reasonable person against whom the writing is to operate should have noticed it. "Conspicuous" includes the following:

- (1) Printing in italics or boldface or contrasting color.
- (2) Typing in capitals or underlined.
- (3) Placement of text in a separate or otherwise noticeable location.

As added by P.L.149-1986, SEC.4.

IC 23-1-20-5

"Corporation; domestic corporation"

Sec. 5. "Corporation" or "domestic corporation" means a corporation for profit that is not a foreign corporation, incorporated under or subject to the provisions of this article.

As added by P.L.149-1986, SEC.4.

IC 23-1-20-6

"Deliver" or "delivery"

Sec. 6. "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission.

As added by P.L.149-1986, SEC.4. Amended by P.L.133-2009, SEC.8.

IC 23-1-20-6.5

"Derivative instrument"

Sec. 6.5. "Derivative instrument" means any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to an equity security or similar instrument with a value derived in whole or in part from the value of an equity security, whether or not the instrument or right is subject to settlement in the underlying security or otherwise.

As added by P.L.133-2009, SEC.9.

IC 23-1-20-7**"Distribution"**

Sec. 7. (a) "Distribution" means a direct or indirect transfer of money or other property (except a corporation's own shares) or incurrence or transfer of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares under IC 23-1-28. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

(b) The term does not include:

- (1) amounts constituting reasonable compensation for past or present services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefit program; or
- (2) the making of or payment or performance upon a bona fide guaranty or similar arrangement by a corporation to or for the benefit of its shareholders.

However, the failure of an amount to satisfy subdivision (1), or of a payment or performance to satisfy subdivision (2), is not determinative of whether the amount, payment, or performance is a distribution.

As added by P.L.149-1986, SEC.4. Amended by P.L.130-2006, SEC.3.

IC 23-1-20-8**"Effective date of notice"**

Sec. 8. "Effective date of notice" has the meaning set forth in section 29 of this chapter.

As added by P.L.149-1986, SEC.4.

IC 23-1-20-8.5**"Electronic transmission" or "electronically transmitted"**

Sec. 8.5. "Electronic transmission" or "electronically transmitted" means the transmission of an electronic record (as defined in IC 26-2-8-102(9)). The time and place of sending and of delivery by electronic means is governed by IC 26-2-8-114.

As added by P.L.133-2009, SEC.10.

IC 23-1-20-9**"Employee"**

Sec. 9. "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.

As added by P.L.149-1986, SEC.4.

IC 23-1-20-10**"Entity"**

Sec. 10. "Entity" includes the following:

- (1) Domestic corporation and foreign corporation.
- (2) Not-for-profit corporation.

- (3) Corporation incorporated under any other statute.
- (4) Profit and not-for-profit unincorporated association.
- (5) Business trust, estate, partnership, trust, and two (2) or more persons having a joint or common economic interest.
- (6) Other entity (as defined in IC 23-1-20-17.5).
- (7) State, United States, and foreign government.

As added by P.L.149-1986, SEC.4. Amended by P.L.133-2009, SEC.11.

IC 23-1-20-11

"Foreign corporation"

Sec. 11. "Foreign corporation" means a corporation for profit incorporated under a law other than the law of Indiana.

As added by P.L.149-1986, SEC.4.

IC 23-1-20-12

"Governmental subdivision"

Sec. 12. "Governmental subdivision" includes authority, county, district, and municipality.

As added by P.L.149-1986, SEC.4.

IC 23-1-20-13

"Includes"

Sec. 13. "Includes" denotes a partial definition.

As added by P.L.149-1986, SEC.4.

IC 23-1-20-14

"Individual"

Sec. 14. "Individual" includes the guardianship estate of an incapacitated person (as defined in IC 29-3-1-7.5), or the estate of a decedent.

As added by P.L.149-1986, SEC.4. Amended by P.L.33-1989, SEC.20.

IC 23-1-20-15

"Mail"

Sec. 15. "Mail" means:

- (1) first class, certified, or registered United States mail, postage prepaid; or
- (2) private carrier service, fees prepaid or billed to the sender.

As added by P.L.149-1986, SEC.4.

IC 23-1-20-16

"Means"

Sec. 16. "Means" denotes an exhaustive definition.

As added by P.L.149-1986, SEC.4.

IC 23-1-20-17

"Notice"

Sec. 17. "Notice" has the meaning set forth in section 29 of this chapter.

As added by P.L.149-1986, SEC.4.

IC 23-1-20-17.5

"Other entity"

Sec. 17.5. "Other entity" means:

- (1) a limited liability company;
- (2) a limited liability partnership;
- (3) a limited partnership;
- (4) a general partnership;
- (5) a business trust;
- (6) a real estate investment trust; or
- (7) any entity that:
 - (A) is formed under the requirements of applicable law; and
 - (B) is not a corporation.

As added by P.L.133-2009, SEC.12.

IC 23-1-20-18

"Person"

Sec. 18. "Person" includes individual and entity.

As added by P.L.149-1986, SEC.4.

IC 23-1-20-19

"Principal office"

Sec. 19. "Principal office" means the office (in or out of Indiana) so designated in the annual or biennial report where the principal executive offices of a domestic or foreign corporation are located.

As added by P.L.149-1986, SEC.4. Amended by P.L.228-1995, SEC.6.

IC 23-1-20-20

"Proceeding"

Sec. 20. "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

As added by P.L.149-1986, SEC.4.

IC 23-1-20-21

"Record date"

Sec. 21. "Record date" means the date established under IC 23-1-25 through IC 23-1-28 or IC 23-1-29 through IC 23-1-32 by the corporation for determining the identity of its shareholders for purposes of this article.

As added by P.L.149-1986, SEC.4.

IC 23-1-20-22

"Secretary"

Sec. 22. "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under IC 23-1-36-1 for

custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.
As added by P.L.149-1986, SEC.4.

IC 23-1-20-23

"Share"

Sec. 23. "Share" means the unit into which the proprietary interests in a corporation are divided.
As added by P.L.149-1986, SEC.4.

IC 23-1-20-24

"Shareholder"

Sec. 24. "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted pursuant to a recognition procedure or a disclosure procedure established under IC 23-1-30-4.
As added by P.L.149-1986, SEC.4. Amended by P.L.145-1988, SEC.3.

IC 23-1-20-24.5

"Sign" or "signature"

Sec. 24.5. "Sign" or "signature" includes any manual, facsimile, or conformed signature, or an electronic signature (as defined in IC 26-2-8-102(10)).
As added by P.L.133-2009, SEC.13.

IC 23-1-20-25

"State"

Sec. 25. "State", when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory, and insular possession (and their agencies and governmental subdivisions) of the United States.
As added by P.L.149-1986, SEC.4.

IC 23-1-20-26

"Subscriber"

Sec. 26. "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.
As added by P.L.149-1986, SEC.4.

IC 23-1-20-27

"United States"

Sec. 27. "United States" includes district, authority, bureau, commission, department, and any other agency of the United States.
As added by P.L.149-1986, SEC.4.

IC 23-1-20-28

"Voting group"

Sec. 28. "Voting group" means all shares of one (1) or more classes or series that under the articles of incorporation or this article are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this article to vote generally on the matter are for that purpose a single voting group.

As added by P.L.149-1986, SEC.4.

IC 23-1-20-29

Method of giving notice; effectiveness

Sec. 29. (a) Notice under this article shall be in writing (including electronic transmission) unless oral notice is authorized by a corporation's articles of incorporation or bylaws.

(b) Notice, if otherwise in proper form under this article, may be communicated:

- (1) in person;
- (2) by telephone, telegraph, teletype, or other form of wire or wireless communication;
- (3) by mail; or
- (4) electronically.

If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published or by radio, television, or other form of public broadcast or electronic communication.

(c) Written notice by a domestic or foreign corporation to a shareholder is effective when mailed, if correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

(d) Written notice to a domestic or foreign corporation (authorized to transact business in Indiana) may be addressed to its registered agent at its registered office or to the secretary of the corporation at its principal office shown in the most recent filing of the corporation under this article.

(e) Except as provided in subsection (c), written notice is effective at the earliest of the following:

- (1) When received.
- (2) Five (5) days after its mailing, as evidenced by the postmark or private carrier receipt, if correctly addressed to the address listed in the most current records of the corporation.
- (3) On the date shown on the return receipt, if sent by registered or certified United States mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Oral notice is effective when communicated.

(g) If this article prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this article, those requirements govern.

(h) Written notice, including reports or statements from the corporation, to shareholders who share a common address is effective

if:

- (1) the corporation delivers one (1) copy of a notice, report, or statement to the common address;
- (2) the corporation addresses the notice, report, or statement to the:
 - (A) shareholders either as a group or to each of the shareholders individually; or
 - (B) shareholders in a form in which each of the shareholders has consented; and
- (3) each of the shareholders consents to delivery of a single copy of the notice, report, or statement to the common address of the shareholders.

Consent given under subdivision (3) is revocable by a shareholder who delivers written notice of revocation to the corporation. If a shareholder delivers written notice of revocation to a corporation, the corporation shall begin providing individual notices, reports, or other statements to the shareholder not later than thirty (30) days after delivery of the written notice of revocation.

(i) A shareholder who fails to object to the receipt of the notice, report, or statement at a common address by written notice to the corporation within sixty (60) days after written notice by the corporation of the corporation's intention to send single copies of notices to shareholders who share a common address as permitted by subsection (h) is considered to have consented to receiving a single copy at the common address.

As added by P.L.149-1986, SEC.4. Amended by P.L.228-1995, SEC.7; P.L.133-2009, SEC.14.

IC 23-1-20-30

Persons or entities constituting one shareholder

Sec. 30. (a) For purposes of this article, each of the following, identified as a shareholder in a corporation's current record of shareholders, constitutes one (1) shareholder:

- (1) Three (3) or fewer coowners. However, if there are four (4) or more coowners, each coowner shall be counted as a shareholder.
- (2) A corporation, limited liability company, partnership, trust, estate, or other entity.
- (3) The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(b) For purposes of this article, shareholdings registered in substantially similar names constitute one (1) shareholder if it is reasonable to believe that the names represent the same person.

As added by P.L.149-1986, SEC.4. Amended by P.L.8-1993, SEC.302.