

IC 23-1-38

Chapter 38. Amendment of Articles of Incorporation

IC 23-1-38-1

Required and permitted changes; vested property rights

Sec. 1. (a) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted to be in the articles of incorporation or to delete a provision not required to be in the articles of incorporation. Whether a provision is required or permitted to be in the articles of incorporation is determined as of the effective date of the amendment.

(b) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, or authorized to be in the bylaws by this article or the articles of incorporation including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

As added by P.L.149-1986, SEC.22.

IC 23-1-38-2

Amendments by board of directors without shareholder action

Sec. 2. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one (1) or more amendments to the corporation's articles of incorporation without shareholder action to:

- (1) extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;
- (2) delete the names and addresses of the initial directors;
- (3) delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state;
- (4) change each issued and unissued authorized share of an outstanding class into a greater number of whole shares or a lesser number of whole shares and fractional shares if the corporation has only shares of that class outstanding;
- (5) change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name;
- (6) reduce the number of authorized shares solely as the result of a cancellation of treasury shares; or
- (7) make any other change expressly permitted by this article to be made without shareholder action.

As added by P.L.149-1986, SEC.22. Amended by P.L.107-1987, SEC.15.

IC 23-1-38-3

Proposal of amendment for submission to shareholders; procedure for adoption

Sec. 3. (a) A corporation's board of directors may propose one (1) or more amendments to the articles of incorporation for submission to the shareholders.

(b) For the amendment to be adopted:

(1) the board of directors must recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and

(2) the shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (e).

(c) The board of directors may condition its submission of the proposed amendment on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with IC 23-1-29-5. The notice of meeting must also state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed amendment and must contain or be accompanied by a copy or summary of the amendment.

(e) Unless this article, the articles of incorporation, or the board of directors (acting under subsection (c)) require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:

(1) a majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights; and

(2) the votes required by IC 23-1-30-6 and IC 23-1-30-7 by every other voting group entitled to vote on the amendment.

As added by P.L.149-1986, SEC.22.

IC 23-1-38-4

Voting by shareholders

Sec. 4. (a) The holders of the outstanding shares of a class are entitled to vote as a separate voting group (if shareholder voting is otherwise required by this article) on a proposed amendment if the amendment would:

(1) increase or decrease the aggregate number of authorized shares of the class;

(2) effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(3) effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

(4) change the designation, rights, preferences, or limitations of all or part of the shares of the class;

(5) change the shares of all or part of the class into a different number of shares of the same class;

- (6) create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;
- (7) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;
- (8) limit or deny an existing preemptive right of all or part of the shares of the class; or
- (9) cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

(b) If a proposed amendment would affect a series of a class of shares in one (1) or more of the ways described in subsection (a), the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(c) If a proposed amendment that entitles two (2) or more series of shares to vote as separate voting groups under this section would affect those two (2) or more series in the same or a substantially similar way, the shares of all the series so affected must vote together as a single voting group on the proposed amendment.

(d) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

As added by P.L.149-1986, SEC.22.

IC 23-1-38-5

Corporation not yet issuing shares; adoption of amendments by board of directors

Sec. 5. If a corporation has not yet issued shares, its board of directors (or if a board of directors has not been selected, then the incorporators) may adopt one (1) or more amendments to the corporation's articles of incorporation.

As added by P.L.149-1986, SEC.22.

IC 23-1-38-6

Filing articles of amendment

Sec. 6. (a) A corporation amending its articles of incorporation shall deliver to the secretary of state for filing articles of amendment setting forth:

- (1) the name of the corporation;
- (2) the text of each amendment adopted;
- (3) if an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;
- (4) the date of each amendment's adoption;
- (5) if an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect

and that shareholder action was not required;

(6) if an amendment was approved by the shareholders:

(A) the designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group represented at the meeting;

(B) either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

(b) If a corporation amends its articles of incorporation to change its corporate name, it may, after the amendment has become effective, file for record with the county recorder of each county in Indiana in which it has real property at the time the amendment becomes effective a file-stamped copy of the articles of amendment. The validity of a change in name is not affected by a corporation's failure to record the articles of amendment.

As added by P.L.149-1986, SEC.22.

IC 23-1-38-7

Restated articles of incorporation

Sec. 7. (a) A corporation's board of directors or, if the board of directors has not been selected, the incorporators may restate its articles of incorporation at any time with or without shareholder action.

(b) The restatement may include one (1) or more amendments to the articles. If the restatement includes an amendment requiring shareholder approval, it must be adopted as provided in section 3 of this chapter.

(c) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with IC 23-1-29-5. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed restatement and must contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles.

(d) A corporation restating its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(1) whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement; or

(2) if the restatement contains an amendment to the articles requiring shareholder approval, the information required by section 6 of this chapter.

(e) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(f) The secretary of state may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (d).

As added by P.L.149-1986, SEC.22.

IC 23-1-38-8

Court-ordered reorganization; articles of amendment; dissenters' rights; application of section

Sec. 8. (a) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted by IC 23-1-21-2.

(b) The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth:

- (1) the name of the corporation;
- (2) the text of each amendment approved by the court;
- (3) the date of the court's order or decree approving the articles of amendment;
- (4) the title of the reorganization proceeding in which the order or decree was entered; and
- (5) a statement that the court had jurisdiction of the proceeding under federal statute.

(c) Shareholders of a corporation undergoing reorganization do not have dissenters' rights except as provided in the reorganization plan.

(d) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

As added by P.L.149-1986, SEC.22.

IC 23-1-38-9

Effect of amendment

Sec. 9. An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the preexisting rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

As added by P.L.149-1986, SEC.22.