

## IC 28-13-2

### Chapter 2. Issuance of Shares

#### IC 28-13-2-1

##### **Subscription for shares; terms; call for payment; nonassessable shares; default in payment**

Sec. 1. (a) A subscription for shares entered into before incorporation is irrevocable for six (6) months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(b) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies terms. A call for payment by the board of directors must be uniform as far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(c) Shares issued under subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(d) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty (20) days after the corporation sends written demand for payment to the subscriber.

*As added by P.L.14-1992, SEC.163.*

#### IC 28-13-2-2

##### **Subscription agreement; powers of directors; consideration; escrowed or restricted shares for future services or benefits**

Sec. 2. (a) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to this section.

(b) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(c) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including the following:

- (1) Cash.
- (2) Promissory notes.
- (3) Services performed.
- (4) Contracts for services to be performed.
- (5) Other securities of the corporation. If shares are authorized to be issued for promissory notes or for promises to provide services in the future, the corporation shall report in writing to the shareholders the number of shares authorized to be so issued with or before the notice of the next shareholders' meeting.

However, a corporation that is subject to the Securities Exchange Act of 1934, as amended, satisfies the reporting requirement of this subsection by complying with the proxy disclosure provisions of that act.

(d) The corporation may issue shares for the consideration received or to be received as the board of directors determines to be adequate. The determination by the board of directors is conclusive with regard to the adequacy of consideration for the issuance of shares and with regard to whether the shares are validly issued, fully paid, and nonassessable.

(e) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued are fully paid and nonassessable.

(f) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note or make other arrangements to restrict the transfer of the shares and may credit distributions in respect of the shares against the purchase price until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be canceled in whole or in part.

*As added by P.L.14-1992, SEC.163. Amended by P.L.1-1993, SEC.210.*

### **IC 28-13-2-3**

#### **Shareholder liability for corporate acts or indebtedness**

Sec. 3. (a) A purchaser from a corporation of the corporation's own shares is not liable to the corporation or the corporation's creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued or specified in the subscription agreement.

(b) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that the shareholder may become personally liable by reason of the shareholder's own acts or conduct.

*As added by P.L.14-1992, SEC.163.*

### **IC 28-13-2-4**

#### **Pro rata shares; share dividend or split; record date of dividend**

Sec. 4. (a) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of at least one (1) class or series. An issuance of shares under this subsection may be in the form of a share dividend or a share split, but shall be considered a share dividend for purposes of this article.

(b) Shares of one (1) class or series may not be issued as a share dividend in respect of shares of another class or series unless:

(1) the articles of incorporation so authorize;

(2) a majority of the votes entitled to be cast by the class or series to be issued approve the issue; or

(3) there are no outstanding shares of the class or series to be issued.

(c) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date is the date the board of directors authorizes the share dividend.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-2-5**

##### **Purchase rights, options, or warrants; corporate shares or other securities**

Sec. 5. A corporation, acting through the corporation's board of directors, may create or issue rights, options, or warrants for the purchase of shares or other securities of the corporation or any successor in interest of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares or other securities are to be issued. The rights, options, or warrants may be issued with or without consideration and may be issued pro rata.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-2-6**

##### **Share certificates; contents; requisites; validity of signature**

Sec. 6. (a) Shares may be represented by certificates. Unless this article or another statute expressly provides otherwise, the rights and obligations of shareholders of the same class or series of shares are identical whether or not the shares are represented by certificates.

(b) At a minimum each share certificate must state on the certificate face the following:

(1) The name of the issuing corporation and that the corporation is organized under Indiana law.

(2) The name of the person to whom issued.

(3) The number and class of shares and the designation of the series, if any, the certificate represents.

(c) If the issuing corporation is authorized to issue different classes of shares or different series within a class:

(1) the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series and the authority of the board of directors to determine variations for future series must be summarized on the front or back of each certificate; or

(2) each certificate may state conspicuously on the front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(d) Each share certificate:

(1) must be signed either manually or in facsimile by at least

two (2) officers designated in the bylaws or by the board of directors; and

(2) may bear the seal or a facsimile of the seal of the corporation.

(e) If the person who signed either manually or in facsimile a share certificate no longer holds office when the certificate is issued, the certificate remains valid.

*As added by P.L.14-1992, SEC.163. Amended by P.L.79-1998, SEC.89.*

#### **IC 28-13-2-7**

##### **Classes or series of shares without certificates; furnishing shareholder information**

Sec. 7. (a) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all classes or series without certificates. The authorization does not affect shares already represented by certificates until the certificates are surrendered to the corporation.

(b) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by section 6(b) and 6(c) of this chapter, and, if applicable, section 8 of this chapter.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-2-8**

##### **Shares subject to registration or transfer restrictions; previously issued shares; enforcement of restrictions against holder or transferee**

Sec. 8. (a) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

(b) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of any class or series of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(c) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and the restriction's existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by section 7(b) of this chapter. Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

(d) A restriction on the transfer or registration of transfer of shares

is authorized:

- (1) to preserve exemptions under federal or state securities law;  
or
- (2) for any other reasonable purpose.

(e) A restriction on the transfer or registration of transfer of shares may do any of the following:

- (1) Obligate the shareholder first to offer the corporation or other persons separately, consecutively, or simultaneously an opportunity to acquire the restricted shares.
- (2) Obligate the corporation or other persons separately, consecutively, or simultaneously to acquire the restricted shares.
- (3) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable.
- (4) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-2-9**

##### **Expenses payable from consideration received for shares**

Sec. 9. A corporation may pay the expenses of:

- (1) selling or underwriting the corporation's shares; and
- (2) organizing or reorganizing the corporation;

from the consideration received for shares.

*As added by P.L.14-1992, SEC.163.*