

§121. Requirements for documents; extrinsic facts

To be entitled to filing with the office of the Secretary of State, a document must satisfy the following requirements and the requirements of any other section of this Act. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

1. Filing in office of Secretary of State. Filing of the document in the office of the Secretary of State must be permitted or required by this Act. [PL 2003, c. 344, Pt. B, §33 (AMD).]

2. Information. The document must contain the information required by this Act. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

3. Form; format. The document must be legibly typewritten or printed in ink or, if electronically transmitted, it must be in a format that can be retrieved or reproduced in typewritten or printed form. [PL 2003, c. 344, Pt. B, §33 (AMD).]

4. English language. The document must be in the English language, except that:

A. A corporate name need not be in English if written using the Roman alphabet or Arabic or Roman numerals; and [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. The certificate of existence required of foreign corporations under section 130 need not be in English if accompanied by a reasonably authenticated English translation. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

5. Executed. The document must be executed and dated:

A. By the chair of the board of directors of a domestic or foreign corporation, by its president or by another of its officers; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. By an incorporator, if directors have not been selected or the corporation has not been formed; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

C. By a fiduciary, if the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary; or [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

D. By the clerk of the corporation. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

6. Signature; corporate seal. The person executing the document shall sign it and state beneath or opposite that signature the person's name and the capacity in which the person signs. The document may but need not contain a corporate seal, attestation, acknowledgment or verification.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

7. Prescribed form. If the Secretary of State has prescribed a mandatory form for the document under section 122, the document must be in or on the prescribed form.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

8. Delivery. The document must be delivered to the office of the Secretary of State for filing. Delivery may be made by electronic transmission if and to the extent permitted by the Secretary of State.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

9. Fee. At the time of delivery, the correct filing fee and any reinstatement fee or penalty must be paid or provision for payment made in a manner permitted by the Secretary of State.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

10. Extrinsic facts. This subsection applies whenever a provision of this Title permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document.

A. The manner in which the facts will operate upon the terms of the plan or filed document must be set forth in the plan or filed document. [PL 2003, c. 344, Pt. B, §33 (NEW).]

B. The facts upon which the terms of a plan or filed document depend may include, but are not limited to:

(1) Any of the following that is available in a nationally recognized news or information medium either in print or electronically:

- (a) Statistical or market indices;
- (b) Market prices of any security or group of securities;
- (c) Interest rates;
- (d) Currency exchange rates; or
- (e) Similar economic or financial data;

(2) A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

(3) The terms of, or actions taken under, an agreement to which the corporation is a party or any other agreement or document. [PL 2003, c. 344, Pt. B, §33 (NEW).]

C. As used in this subsection:

(1) "Filed document" means a document filed with the Secretary of State under any provision of this Title except chapter 15 or section 1621; and

(2) "Plan" means a plan of domestication, nonprofit conversion, entity conversion, merger or share exchange. [PL 2003, c. 344, Pt. B, §33 (NEW).]

D. The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:

- (1) The name and address of any person required in a filed document;
- (2) The registered office of any entity required in a filed document;
- (3) The clerk or registered agent of any entity required in a filed document;
- (4) The number of authorized shares and designation of each class or series of shares;
- (5) The effective date of a filed document; and
- (6) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given. [PL 2003, c. 344, Pt. B, §33 (NEW).]

E. If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in paragraph B, subparagraph (1) or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the Secretary of State articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or changes. Articles of amendment under this paragraph are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders. [PL 2003, c. 344, Pt. B, §33 (NEW).]

[PL 2003, c. 344, Pt. B, §33 (NEW).]

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2003, c. 344, §B33 (AMD).

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