

CHAPTER 2**INCORPORATION****§201. Incorporators**

One or more persons may serve as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Secretary of State for filing. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF).

§202. Articles of incorporation

1. Required elements. The articles of incorporation of a corporation must set forth:

A. A corporate name for the corporation that satisfies the requirements of section 401; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. The number of shares the corporation is authorized to issue and, if there are 2 or more classes of shares, the number of shares and a description of the rights in each class, as provided in section 601, subsection 1; [PL 2003, c. 344, Pt. B, §41 (AMD).]

C. The information required by Title 5, section 105, subsection 1; and [PL 2007, c. 323, Pt. C, §9 (AMD); PL 2007, c. 323, Pt. G, §4 (AFF).]

D. The name and address of each incorporator. [PL 2003, c. 344, Pt. B, §41 (AMD).]

E. [PL 2003, c. 344, Pt. B, §42 (RP).]

[PL 2007, c. 323, Pt. C, §9 (AMD); PL 2007, c. 323, Pt. G, §4 (AFF).]

2. Optional elements. The articles of incorporation of a corporation may set forth:

A. The names and addresses of the individuals who are to serve as the initial directors; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. A provision not inconsistent with law regarding:

(1) The purpose or purposes for which the corporation is organized;

(2) Managing the business and regulating the affairs of the corporation;

(3) Defining, limiting and regulating the powers of the corporation, its board of directors and its shareholders;

(4) A par value for authorized shares or classes of shares; or

(5) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

C. Any provision that under this Act is required or permitted to be set forth in the bylaws of the corporation; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

D. A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for an action taken or a failure to take an action as a director, except liability for:

(1) The amount of a financial benefit received by a director to which the director is not entitled;

- (2) An intentional infliction of harm on the corporation or its shareholders;
- (3) A violation of section 833; or
- (4) An intentional violation of criminal law; [PL 2015, c. 259, §2 (AMD).]

E. A provision permitting or making obligatory indemnification of a director for liability, as defined in section 851, subsection 5, to any person for an action taken or a failure to take an action as a director, except liability for:

- (1) Receipt of a financial benefit to which the director is not entitled;
- (2) An intentional infliction of harm on the corporation or its shareholders;
- (3) A violation of section 833; or
- (4) An intentional violation of criminal law; and [PL 2015, c. 259, §2 (AMD).]

F. A provision limiting or eliminating any duty of a director or any other person to offer the corporation the right to have or participate in any, or one or more classes or categories of, business opportunities, prior to the pursuit or taking of the opportunity by the director or other person; only if any application of the provision to an officer or a related person of that officer:

- (1) Also requires a determination by the board of directors by action of qualified directors taken in compliance with the same procedures as are set forth in section 873 subsequent to the effective date of the provision applying the provision to a particular officer or any related person of that officer; and
- (2) May be limited by the authorizing action of the board. [PL 2015, c. 259, §3 (NEW).]

[PL 2015, c. 259, §§2, 3 (AMD).]

2-A. Related person. As used in this section, "related person" has the meaning set forth in section 871, subsection 3.

[PL 2015, c. 259, §4 (NEW).]

3. Enumeration of corporate powers unnecessary. The articles of incorporation of a corporation need not set forth any of the corporate powers enumerated in this Act.

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

4. Incorporation prior to effective date of Act. If a corporation was incorporated in this State before the effective date of this Act, the corporation's articles of incorporation as of the effective date of this Act are deemed to include a provision eliminating monetary liability of directors to the fullest extent permitted by subsection 2, paragraph D. The corporation may, by later amendment approved in accordance with section 1002 or 1003, repeal or restrict this limitation of liability with regard to conduct of a director that occurs subsequent to that amendment.

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

5. Filing of clerk's signed acceptance required.

[PL 2009, c. 56, §15 (RP).]

6. Extrinsic facts. Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with section 121, subsection 10.

[PL 2003, c. 344, Pt. B, §43 (NEW).]

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2003, c. 344, §§B41-43 (AMD). PL 2007, c. 323, Pt. C, §9 (AMD). PL 2007, c. 323, Pt. G, §4 (AFF). PL 2009, c. 56, §15 (AMD). PL 2015, c. 259, §§2-4 (AMD).

§203. Incorporation

1. Beginning of corporate existence. Unless a later effective date is specified, the corporate existence of a corporation begins when its articles of incorporation are filed.

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

2. Filing constitutes proof of satisfaction of conditions. The Secretary of State's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the State to cancel or revoke the incorporation or involuntarily dissolve the corporation.

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

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF).

§204. Liability for preincorporation transactions

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this Act, are jointly and severally liable for all liabilities created while so acting. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF).

§205. Organization of corporation

1. Organizational meeting. An organizational meeting must be held before or after incorporation in accordance with this subsection.

A. If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws and carrying on any other business brought before the meeting. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. If initial directors are not named in the articles of incorporation, the incorporator or incorporators shall hold an organizational meeting, at the call of a majority of the incorporators:

(1) To elect directors and complete the organization of the corporation; or

(2) To elect a board of directors who shall complete the organization 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).]

2. Action permitted without organizational meeting. Action required or permitted by this section to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

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

3. Location of organizational meeting. An organizational meeting may be held in or out of this State.

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

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF).

§206. Bylaws

1. Adoption of bylaws. The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

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

2. Contents of bylaws. The bylaws of a corporation may contain any provision that is not inconsistent with law or its articles of incorporation.

[PL 2011, c. 274, §14 (AMD).]

3. Provisions for solicitation of proxies or consents. The bylaws may contain one or both of the following provisions:

A. A requirement that if the corporation solicits proxies or consents with respect to an election of directors, the corporation include in its proxy statement and any form of its proxy or consent, to the extent and subject to such procedures or conditions as are provided in the bylaws, one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors; and [PL 2011, c. 274, §14 (NEW).]

B. A requirement that the corporation reimburse the expenses incurred by a shareholder in soliciting proxies or consents in connection with an election of directors, to the extent and subject to such procedures or conditions as are provided in the bylaws, as long as no bylaw so adopted applies to elections for which any record date precedes its adoption. [PL 2011, c. 274, §14 (NEW).]

[PL 2011, c. 274, §14 (NEW).]

4. Reasonable, practicable and orderly process. Notwithstanding section 1020, subsection 2, paragraph B, the shareholders in amending, repealing or adopting a bylaw described in subsection 3 may not limit the authority of the board of directors to amend or repeal any condition or procedure set forth in or to add any procedure or condition to such a bylaw in order to provide for a reasonable, practicable and orderly process.

[PL 2011, c. 274, §14 (NEW).]

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2011, c. 274, §14 (AMD).

§207. Emergency bylaws

1. Emergency defined. For purposes of this section, an emergency exists if a quorum of the corporation's directors can not readily be assembled because of some catastrophic event.

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

2. Emergency bylaws authorized. Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during an emergency, including:

A. Procedures for calling a meeting of the board of directors; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. Quorum requirements for a meeting of the board of directors; and [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

C. Designation of additional or substitute directors. [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).]

3. Effect of nonemergency bylaws. All provisions of the regular bylaws that are consistent with the emergency bylaws remain effective during an emergency. The emergency bylaws are not effective after the emergency ends.

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

4. Effect of corporate action in accord with emergency bylaws. Corporate action taken in good faith in accordance with the emergency bylaws:

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

B. May not be used to impose liability on a corporate director, officer, employee or agent. [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).]

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF).

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