

ARTICLE 13

Business Corporations; Amendment of Articles of Incorporation

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53-13-1. Right to amend articles of incorporation.

A corporation may amend its articles of incorporation from time to time in as many respects as may be desired, so long as its articles of incorporation, as amended, contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making the amendment, and, if a change in shares or the rights of shareholders, or an exchange, reclassification or cancellation of shares or rights of shareholders is to be made, provisions as may be necessary to effect the change, exchange, reclassification or cancellation. In particular, and without limitation upon the general power of amendment, a corporation may amend its articles of incorporation from time to time to:

- A. change its corporate name;
- B. change its period of duration;
- C. change, enlarge or diminish its corporate purposes;
- D. increase or decrease the aggregate number of shares or shares of any class which the corporation has authority to issue;
- E. provide or eliminate any provision with respect to the minimum consideration for any shares or class of shares;
- F. exchange, classify, reclassify or cancel all or any part of its shares, whether issued or unissued;
- G. change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations and the relative rights in respect of all or any part of its shares, whether issued or unissued;
- H. change the shares of any class, whether issued or unissued, into a different number of shares of the same class or into the same or a different number of shares of other classes;
- I. create new classes of shares having rights and preferences, either prior and superior or subordinate and inferior, to the shares of any class then authorized, whether issued or unissued;
- J. cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared;
- K. divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designation of the series and the variations in the relative rights and preferences as between the shares of the series;
- L. authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established;
- M. authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed;
- N. revoke, diminish or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established; or

O. limit, deny or grant to shareholders of any class the preemptive right to acquire additional shares of the corporation, whether then or thereafter authorized.

53-13-2. Procedure to amend articles of incorporation.

Amendments to the articles of incorporation shall be made in the following manner:

A. if shares have been issued, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either the annual or a special meeting. If no shares have been issued, the amendment shall be adopted by resolution of the board of directors, and the provisions for adoption by shareholders shall not apply. If the corporation has only one class of shares outstanding, an amendment solely to change the number of authorized shares to effectuate a split of, or stock dividend in, the corporation's own shares, or solely to do so and to change the number of authorized shares in proportion thereto, may be adopted by the board of directors; and the provisions for adoption by shareholders shall not apply, unless otherwise provided by the articles of incorporation. The resolution may incorporate the proposed amendment in restated articles of incorporation which contain a statement that, except for the designated amendment, the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended and that the restated articles of incorporation together with the designated amendment supersede the original articles of incorporation and all amendments thereto;

B. written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978] for the giving of notice of meetings of shareholders. If the meeting is an annual meeting, the proposed amendment or the summary may be included in the notice of the annual meeting; and

C. at the meeting, a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Any number of amendments may be submitted to the shareholders and voted upon by them at one meeting.

53-13-3. Class voting on amendments.

The holders of the outstanding shares of a class may vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

A. effect an exchange, reclassification or cancellation of all or part of the shares or the class;

B. effect an exchange or create a right of exchange of all or any part of the shares of another class into the shares of the class;

C. change the designations, preferences, limitations or relative rights of the shares of the class;

D. change the shares of the class into the same or a different number of shares of the same class or another class;

E. create a new class of shares having rights and preferences prior and superior to the shares of the class or increase the rights and preferences or the number of authorized shares of any class having rights and preferences prior or superior to the shares of the class;

F. in the case of a preferred or special class of shares, divide the shares of the class into series and fix and determine the designation of the series and the variations in the

relative rights and preferences between the shares of the series or authorize the board of directors to do so;

G. limit or deny the existing preemptive rights of the shares of the class; or

H. cancel or otherwise affect dividends on the shares of the class which have accrued but have not been declared.

53-13-4. Articles of amendment.

The articles of amendment shall be executed by the corporation by an authorized officer and shall set forth:

A. the name of the corporation;

B. the amendment adopted;

C. the date of the adoption of the amendment by the shareholders or by the board of directors where no shares have been issued;

D. the number of shares outstanding and the number of shares entitled to vote on the amendment and, if the shares of any class are entitled to vote on it as a class, the designation and number of outstanding shares entitled to vote of each class;

E. the number of shares voted for and against the amendment, respectively, and, if the shares of any class are entitled to vote on the amendment as a class, the number of shares of each class voted for and against the amendment, respectively, or if no shares have been issued, a statement to that effect; and

F. if the amendment provides for an exchange, reclassification or cancellation of issued shares and if the manner in which the action shall be effected is not set forth in the amendment, then a statement of the manner in which it shall be effected.

53-13-5. Filing of articles of amendment.

A. An original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, of the articles of amendment shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the articles of amendment conform to law, it shall, when all fees have been paid:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing;

(2) file the original in its office; and

(3) issue a certificate of amendment to which it shall affix the copy.

B. The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the commission [secretary of state], shall be returned to the corporation or its representative.

53-13-6. Effect of certificate of amendment.

Unless the commission [secretary of state] disapproves pursuant to Subsection A of Section 53-18-2 NMSA 1978, the amendment shall become effective upon delivery of the articles of amendment to the commission [secretary of state] or on such later date, not more than thirty days subsequent to the delivery thereof to the commission [secretary of state], as shall be provided for in the articles of amendment. No amendment shall affect any existing cause of action in favor of or against the corporation or any pending suit to which the corporation is a party or the existing rights of persons other than shareholders; and, in the event the corporate name is changed by amendment, no suit brought by or against the corporation under its former name shall abate for that reason.

53-13-7. Restated articles of incorporation.

A. A domestic corporation may at any time restate its articles of incorporation, as amended, by a resolution adopted by the board of directors.

B. Upon the adoption of such resolution, restated articles of incorporation shall be executed by the corporation by an authorized officer and shall set forth all of the operative provisions of the articles of incorporation as amended together with a statement that the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as amended and that the restated articles of incorporation supersede the original articles of incorporation and all previous amendments.

C. The original of the restated articles of incorporation together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the restated articles of incorporation conform to law, it shall, when all fees have been paid:

- (1) endorse on the original and a copy the word "filed" and the month, day and year of the filing;
- (2) file the original in its office; and
- (3) issue a restated certificate of incorporation to which it shall affix the file-stamped copy.

D. The restated certificate of incorporation, together with the file-stamped copy of the restated articles of incorporation affixed to it shall be returned by the commission [secretary of state] to the corporation or its representative. Unless the commission [secretary of state] disapproves pursuant to Subsection A of Section 53-18-2 NMSA 1978, upon delivery of the restated articles of incorporation to the commission [secretary of state], the restated articles of incorporation shall become effective and shall supersede the original articles of incorporation and all previous amendments.

53-13-8. Amendment of articles of incorporation in reorganization proceedings.

A. Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of the corporation, pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended in the manner provided in this section in as many respects as necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only those provisions that may be lawfully contained in original articles of incorporation at the time of making the amendment. The articles of incorporation may be amended for the foregoing purpose to:

- (1) change the corporate name, period of duration or corporate purposes of the corporation;
- (2) repeal, alter or amend the bylaws of the corporation;
- (3) change the aggregate number of shares or shares of any class that the corporation has authority to issue;
- (4) change the preferences, limitations and relative rights in respect of all or any part of the shares of the corporation and classify, reclassify or cancel all or any part of the shares, whether issued or unissued;
- (5) authorize the issuance of bonds, debentures or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and
- (6) constitute or reconstitute and classify or reclassify the board of directors of the corporation and appoint directors and officers in place of, or in addition to, all or any of the directors or officers then in office.

B. Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

(1) articles of amendment approved by decree or order of court shall be executed by the person the court designates or appoints for the purpose and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered and a statement that the decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States;

(2) an original of the articles of amendment together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the articles of amendment conform to law, it shall, when all fees have been paid:

(a) endorse on the original and copy the word "filed" and the month, day and year of the filing;

(b) file the original in its office; and

(c) issue a certificate of amendment to which it shall affix the file-stamped copy;

and

(3) the certificate of amendment, together with the file-stamped copy of the articles of amendment affixed to it shall be returned by the commission [secretary of state] to the corporation or its representative. Unless the commission [secretary of state] disapproves pursuant to Subsection A of Section 53-18-2 NMSA 1978, the amendment shall become effective upon delivery of the articles of amendment to the commission [secretary of state] or on a later date, not more than thirty days subsequent to the delivery of the articles to the commission [secretary of state], as shall be provided for in the articles of amendment without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation.

53-13-9 to 53-13-12. Repealed.

53-13-13. Procedure for share exchange.

All the issued or all the outstanding shares of one or more classes of any domestic corporation may be acquired through the exchange of all such shares of such class or classes by another domestic corporation pursuant to a plan of exchange approved in the manner provided in the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978]. The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of exchange setting forth:

A. the name of the corporation the shares of which are proposed to be acquired by exchange and the name of the corporation to acquire the shares of such corporation in the exchange, which is hereinafter designated as the acquiring corporation;

B. the terms and conditions of the proposed exchange;

C. the manner and basis of exchanging the shares to be acquired for shares, obligations or other securities of the acquiring corporation or any other corporation, or, in whole or in part, for cash or other property; and

D. such other provisions with respect to the proposed exchange as are deemed necessary or desirable.

The procedure authorized by this section shall not be deemed to limit the power of a corporation to acquire all or part of the shares of any class or classes of a corporation through a voluntary exchange or otherwise by agreement with the shareholders.