



Ohio Revised Code

Section 1701.70 Procedure for amending articles by directors - incorporators.

Effective: September 30, 2008

Legislation: House Bill 374 - 127th General Assembly

(A) If initial directors are not named in the articles, before subscriptions to shares have been received and before the incorporators have elected directors, the incorporators may adopt an amendment to the articles by a writing signed by them. If initial directors are named in the articles, or if the incorporators have elected directors and have not received subscriptions, then before subscriptions to shares have been received, the directors may adopt an amendment to the articles.

(B) The directors may adopt an amendment to the articles in the following cases:

(1) When and to the extent authorized by the articles, the directors may adopt an amendment determining, in whole or in part, the express terms, within the limits set forth in this chapter, of any class of shares before the issuance of any shares of that class, or of one or more series within a class before the issuance of shares of that series. When no shares of a series created by an amendment to the articles under division (B)(1) of this section have been issued and no option or right to acquire any share of that series is outstanding, the directors may adopt an amendment to reduce the number of shares in that series or to eliminate from the articles all references to the series and to make other appropriate changes that are required by the elimination of the series.

(2) When the corporation has issued shares or obligations convertible into shares of the corporation or has granted options to purchase any shares, and the conversion or option rights are set forth in the articles or have been approved by the same vote of shareholders as, at the time of the approval, would have been required to amend the articles to authorize the shares required for that purpose, and the corporation does not have sufficient authorized but unissued shares to satisfy those conversion or option rights, the directors may adopt an amendment to authorize the shares.

(3) Whenever shares of any class or series have been redeemed, or have been surrendered to or acquired by the corporation upon conversion, exchange, purchase, or otherwise, the directors may adopt an amendment to reduce the authorized number of shares of that class or series by the number so redeemed, surrendered, or acquired; and when all of the issued shares of a class or series have



been redeemed or surrendered to or acquired by the corporation, the directors may adopt an amendment to eliminate from the articles all references to the shares of that class or series and to make other appropriate changes that are required by the elimination.

(4) When articles have been amended and any change of issued or unissued shares provided for in the amendment or amended articles has become effective, the directors may adopt an amendment to eliminate from the articles all references to the change of shares and to make any other appropriate changes that are required by the elimination; however, an amendment to articles that is so adopted by the directors shall contain a statement with respect to the authorized number and the par value, if any, of the shares of each class.

(5) After a merger or consolidation, in which the surviving or new corporation is a domestic corporation, becomes effective, the directors may adopt an amendment:

(a) To eliminate from the articles any statement or provision pertaining exclusively to the merger or consolidation, or that was required to be set forth in the agreement of merger or consolidation and that would not be required in original articles or amendments to articles filed at the time the statement or provision was adopted;

(b) To make any other appropriate changes required by that elimination.

An amendment to articles adopted by the directors under division (B)(5) of this section need not contain or continue any statement with respect to the amount of stated capital.

(6) Unless otherwise provided in the articles, the directors may adopt an amendment changing the name of the corporation.

(7) The directors may adopt an amendment changing the place in this state where the principal office of the corporation is to be located.

(8) When the directors have declared a dividend or distribution on any class of outstanding shares of the corporation to be paid in shares of the same class, the directors may adopt an amendment to proportionately increase the authorized number of shares of the class, provided that the corporation



has only one class of shares outstanding or the dividend or distribution is not substantially prejudicial to the holders of any other class of the corporation's shares, and further provided that such an amendment be adopted concurrently with the amendment described in division (B)(10) of this section when the dividend or distribution is declared on outstanding shares with par value.

(9) The directors may adopt an amendment to change each issued and unissued authorized share of an outstanding class into a greater number of shares of that class and to proportionately increase the authorized number of shares of that class, provided that the corporation has only one class of shares outstanding or the change is not substantially prejudicial to the holders of any other class of the corporation's shares, and further provided that such an amendment be adopted concurrently with the amendment described in division (B)(10) of this section when the change is made to outstanding shares with par value.

(10) Concurrently with the adoption of an amendment under division (B)(8) or (9) of this section, the directors may adopt an amendment decreasing the par value of issued and unissued shares of a particular class to the extent necessary to prevent an increase in the aggregate par value of the outstanding shares of the class as a result of the dividend or distribution described in division (B)(8) of this section or the change described in division (B)(9) of this section.

(C) If a vote on the adoption of an amendment is required by division (B)(4) of section 1701.71 of the Revised Code, any amendment to the articles adopted pursuant to division (B) of this section that creates a class or series of shares the express terms of which provide for the convertibility of the shares into shares of another class shall also require the approval of the holders, voting as a class, of any issued and outstanding shares into which the shares may be converted.

(D) Divisions (B)(6) to (10) of this section shall not apply to a corporation with one hundred or fewer shareholders unless the corporation was created on or after May 16, 2002, or the articles of the corporation have been amended in compliance with section 1701.71 or 1701.73 of the Revised Code specifically to make those divisions applicable.