**ALLOCATION OF POWERS BETWEEN DIRECTORS AND SHAREHOLDERS**

**1.MANAGEMENT OF CORPORATION’S BUSINESS**--corporate statutes vest the power to manage in the **board of directors**, except as provided by valid agreement in a close corp. He board’s power is limited to proper purposes.

**2.SHAREHOLDER APPROVAL OF FUNDAMENTAL CHANGES**--shs must approve certain fundamental changes in the corp, e.g., amendment of articles, merger, sale of substantially all assets, and dissolution.

**3.POWER TO ELECT DIRECTORS**--shs have the power to elect dirs and to remove them **for cause**, absent provisions for removal without cause in the certificate, bylaws, or in statutes. Some statutes also permit the board or the courts to remove a dir for certain specific reasons (e.g., felony conviction).

**4.POWER TO RATIFY MANAGEMENT TRANSACTIONS**--shs have the power to ratify certain management transactions and insulate the transactions against a claim that managers lacked authority, or shift the burden on the issue of self-interest.

**5.POWER TO ADOPT PRECATORY RESOLUTIONS**--shs may also adopt advisory but nonbinding (precatory) resolutions on proper subjects of their concern.

**6.BYLAWS**--shs usually have the power to adopt and amend bylaws, although some statutes give the board of dirs the concurrent power to do this.

**7.CLOSE CORPORATION**--this is a corp owned by a small number of shs who may actively manage; it has no general market for its stock, and it has some limitations regarding transferability of stock.

**8.STATUTORY CLOSE CORPORATION STATUS**--the basic requirements to qualify for special treatment under the statutes are that, in its cert of incorp’n, a statutory close corp must identify itself as such, and must include certain limitations as to the number of shs, transferability of shares, or both.

**a)Functioning As a Close Corporation**--there may be sh agreements relating to any phase of the corp affairs.

**B.DIRECTORS**

**1.APPOINTMENT OF DIRECTORS**--initial dirs are either designated in the articles of incorporation or elected at a meeting of incorporators. Subsequent elections are by shs at their annual meetings. The number of dirs is usually set by the articles or bylaws.

**a)Qualifications**--absent a contrary provision in the articles or bylaws, dirs need not be shs of the corp or residents of the state of incorporation.

**b)Vacancies**--statutes vary, but under Model Act, a vacancy may be filled by either the shs or dirs.

1)Compare--removal: some statutes require that vacancies created by removal of a dir be filled by the shs unless the articles or bylaws provide otherwise.

**2.TENURE OF OFFICE**

**a)Term of Appointment**--under most statutes, office is held until the next meeting, although on a classified board, dirs may serve staggered multi year terms.

**b)Power to Bind Corporation Beyond Term**--unless limited by the articles, the board has the power to make contracts biding the corp beyond the dirs’ term of office.

**c)Removal of Director During Term**--at common law, shs can remove a dir for **cause** (e.g., fraud, incompetence, dishonesty) unless an article or bylaw provision permits removal without cause. a dir being removed for cause is entitled to a hearing by shs before a vote to remove. a number of statutes permit removal without cause.

1)Removal by Board--board can **NEVER** remove a dir unless authorized by statute;

2)Removal by Court--there is a split authority as to whether a court can remove a dir for cause.

I)Statutes--some statutes permit courts to remove a dir for specified reasons. Usually, a petition for removal can be brought only by a certain percentage of shs or the attorney general.

**3.FUNCTIONING OF BOARD**

**a)Meetings**--absent a statute, dirs can act only at a duly convened meeting consisting of a quorum. In most jurisdictions, a meeting can be conducted by telephone or other means whereby participants can hear each other simultaneously. Most statutes also allow board action by unanimous written consent without a meeting.

1)Notice--although formal notice is unnecessary for a regular meeting, special meetings require notice to every dir of date, time, and place. Usually, notice can be waived in writing before or after a meeting. Attendance waives notice unless the dir attends only to protest the meeting.

2)Quorum--a majority of the **authorized** number of dirs constitutes a quorum. Many statutes permit the articles or bylaws to require more than simple majority or less than that.

3)Voting--absent a contrary provision, an affirmative vote of a majority of those **present**, not a majority of those voting, is required for board action.

**b)Effect of Noncompliance With Formalities**--today, most courts hold that **informal but unanimous** approval of a transaction is **effective**, as is a matter receiving the explicit approval by a majority of dirs without a meeting, plus acquiescence by the remaining dirs.

**c)Delegation of Authority**--the board has the power to appoint committees of its own members to act for it either in particular matters or to handle day-to-day management between board meetings. Typically, these committees **cannot** amend the articles or bylaws, adopt or recommend major corporate changes (e.g., merger), recommend dissolution, declare a dividend, or authorize issuance of stock **unless** permitted by the articles or bylaws. Note that while the board may delegate operation of the business to an officer or management company, the ultimate control must be retained by the board.

**d)Provisional Directors**--some statutes allow them to be appointed by court if the board is deadlocked and corporate business is endangered. a provisional dir serves until the deadlock is broken or until removed by a court order or by majority of shs.

**e)Voting Agreements**--an agreement in advance among dirs as to how they will vote is void as contrary to public policy. There are certain exceptions for statutory close corps.

**4.COMPENSATION**--dirs are NOT entitled to compensation unless they render extraordinary services or such compensation is otherwise provided for. Officers are entitled to reasonable compensation for services.