

be included in a notice of such annual meeting, provided the notice is given at least sixty days before the date of the annual meeting. The resolution shall be adopted upon receiving the consent of the persons holding the larger amount in value of the common stock, when represented in person or by proxy, at such regular or special meeting. Nothing herein contained shall be construed to apply to indebtedness contracted in the usual course of business transacted by the association.]

Unless otherwise provided in the articles of association or by-laws, any cooperative agricultural association organized under the provisions of this act may increase its indebtedness in the manner, to the extent, for the purpose, and upon such terms and conditions, and upon such security as shall be authorized by resolution, adopted by its board of directors, and in such case, no authorization or consent of the stockholders shall be required.

Increase of
indebtedness.

Section 2. This act shall take effect immediately.

Act effective
immediately.

APPROVED—The 11th day of July, A. D. 1957.

GEORGE M. LEADER

No. 370

AN ACT

Amending the act of May 5, 1933 (P. L. 364), entitled "An act relating to business corporations; defining and providing for the organization, merger, consolidation, reorganization, winding up and dissolution of such corporations; conferring certain rights, powers, duties and immunities upon them and their officers and shareholders; prescribing the conditions on which such corporations may exercise their powers; providing for the inclusion of certain existing corporations of the second class within the provisions of this act; prescribing the terms and conditions upon which foreign business corporations may be admitted, or may continue, to do business within the Commonwealth; conferring powers and imposing duties on the courts of common pleas, and certain State departments, commissions, and officers; authorizing certain State departments, boards, commissions, or officers to collect fees for services required to be rendered by this act; imposing penalties; and repealing certain acts and parts of acts relating to corporations," defining and redefining certain terms; specifying certain corporations as subject to the act; reducing or eliminating the requirement that stock and indebtedness may be increased only after shareholders' meetings held on sixty days notice; clarifying certain provisions; requiring corporations to change their names after consenting to the use thereof or of a similar name by other corporations; eliminating the requirement that articles state the value of corporate property and the related penalty for doing business before that amount is paid in or before incorporation is advertised; permitting advertisements to be published after certain corporate actions as well as before them; changing certain general corporate powers, including the power to grant pensions and

allowances; specifying when shareholders' consent is required for and when they may dissent from corporate actions and their rights in such cases; eliminating the requirement that corporations in court reorganizations obtain clearance certificates and advertise actions not required for corporations not in reorganization; changing shareholders' rights to receive notice of meetings, to vote and to consent in certain instances; authorizing redemptions of shares in any manner approved by shareholders; authorizing the directors to fix the consideration to be received for certain shares; specifying such consideration in certain instances; authorizing the omission from share certificates of a summary of shareholders' rights and preferences in certain cases; authorizing share purchase and share option plans and permitting directors to adopt them in certain cases without shareholders' consent and in others with the consent of only a majority of the shareholders affected; correcting obsolete cross-references; fixing the requirements as to stated capital and surplus and reserves and changes therein and distributions thereof to shareholders and as to the redemption, purchase and cancellation of shares; specifying the effect of failure to surrender securities converted by reorganizations or otherwise; combining certain sections; changing the liability of directors and fixing that of shareholders for illegal distributions; authorizing amendments to articles in their entirety; changing certain provisions relating to mergers and consolidations; changing the requirements for articles of amendment; specifying certain transactions by foreign corporations as not constituting doing business in Pennsylvania for qualification purposes; eliminating the requirement that foreign corporations qualified in Pennsylvania file certified copies of their articles; changing certain provisions with respect to the liquidation and dissolution of corporations and the survival of corporate rights after dissolution; and repealing an inconsistent act.

Business Corporation Law.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Sections and parts of sections, act of May 5, 1933, P. L. 364, amended, added, reenacted or repealed.

Section 1. The hereinafter designated sections and parts of sections of the act of May 5, 1933 (P. L. 364), known as the "Business Corporation Law," are amended, added, reenacted or repealed as follows:

Section 2.

Section 2.

Section 2. Definitions.—The following words or phrases, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

"Articles" includes the original articles of incorporation, any or all amendments thereto, and articles of merger [or], consolidation or domestication and also includes what have heretofore been designated by law as certificates of incorporation or charters. *If an amendment made in the manner permitted by this act restates articles in their entirety, thenceforth the "articles" shall not include any prior documents.*

"Assets" includes all the property and rights of every kind of the corporation.

[“Authorized Capital Stock” means the aggregate number of shares of all classes, either with or without par value, which the corporation is authorized to issue.]

“*Capital Surplus*” means capital contributed for or assigned to shares in excess of the stated capital applicable thereto (whether as a result of original issue of shares at amounts in excess of their par or stated value, reduction in par or stated value after issuance, transactions by the corporation in its own shares, or otherwise) capital received other than for shares whether from shareholders or others, and amounts of surplus arising from revaluation of or unrealized appreciation in assets.

“Corporation for Profit” means a corporation organized for the direct or indirect pecuniary profit of its shareholders.

“Domestic Business Corporation” or “Business Corporation” means a corporation for profit organized or domesticated under this act, or heretofore organized under or by virtue of any other law of this Commonwealth, for any purpose or purposes for which a corporation may be organized under this act.

“*Earned Surplus*” means the entire surplus of a corporation other than its capital surplus, and includes surplus acquired by merger or consolidation available for the payment of cash dividends on common shares under section 907 of this act.

“Foreign Business Corporation” means a corporation for profit, organized under or by virtue of any laws other than those of this Commonwealth, for any purpose or purposes for which a corporation may be formed under this act.

“Incorporator” means a signer of the original articles of incorporation.

[“Paid-in Surplus” means that part of the consideration received by a business corporation, for or on account of all shares issued, which does not constitute stated capital.]

“*Insolvency*” means inability of a corporation to pay its debts as they become due in the usual course of its business.

“*Net Assets*” means the amount by which the total assets of a corporation exceed the total liabilities of the corporation excluding stated capital and surplus.

“*Open-end Investment Company*” means a management investment company which is offering for sale or has outstanding any security of which it is the issuer, which is redeemable at the option of the holder.

“Registered Office” means that office maintained by a domestic or foreign business corporation in this Commonwealth, the address of which is filed with the Department of State.

“Share Certificate” means a written instrument signed by the proper corporate officers, as required by this act, and evidencing the fact that the person or corporation therein named is the registered owner of the shares therein described, and also includes the term “Certificate of Stock” as used in existing laws.

“Shareholder” means a registered owner of shares in a business corporation.

“Shares” are the units into which the shareholders’ rights to participate in the control of a business corporation, in its surplus or profits, or in the distribution of its assets, are divided.

“Stated Capital” means, at any particular time, the sum of the par value of all shares then issued having a par value, the consideration received by a business corporation for all shares then issued without par value, except such part thereof as may have been allocated otherwise than to stated capital in a manner permitted by this act, and such other amounts as may have been transferred to the stated capital account of the corporation, whether from the issue of shares [as a share dividend] or otherwise, minus such formal reductions from such sum as may have been effected in a manner permitted by this act.

“Subscriber” means one who subscribes for [shares in], or otherwise agrees to take from, a business corporation shares other than treasury shares, whether before or after incorporation.

“Subscription” means the promise to pay a consideration or the agreement fixing the amount of the consideration paid or to be paid for shares by a subscriber.

“Surplus” means the excess of the net assets of a corporation over its stated capital.

“Treasury Shares” means shares of a business corporation which have been issued, have been subsequently acquired by and belong to the corporation otherwise than in a fiduciary capacity, and have not, either by reason of the acquisition or thereafter, been cancelled. Treasury shares shall be deemed to be “issued” shares but not “outstanding” shares.

“Unreserved” means not reserved pursuant to section 704 E of this act.

“Unrestricted” means not restricted by section 701 F (3) of this act.

“Written” includes printed, typewritten, engraved, lithographed, telegraphed, cabled, radiogramed, photographed, photostated, telephotographed, or other form of recordation.

Section 4, amended July 2, 1937 (P. L. 2828).

Section 4,
amended July 2,
1937, P. L. 2828.

Section 4. Scope of Act.—This act does not relate to, does not affect, and does not apply to:

(1) Cooperative associations, whether for profit or not for profit.

(2) Any corporation which may be organized under the Nonprofit Corporation Law, or which, if not existing, would be required to incorporate under that act.

(3) Any corporation which, by the laws of this Commonwealth, is subject to the supervision of the Department of Banking, the Insurance Department, the Pennsylvania Public Utility Commission, or the Water and Power Resources Board, *except a corporation formed for the purpose of acting as—*

(i) *an insurance agent, insurance broker, public adjuster or public adjuster solicitor as defined in the Insurance Department Act of one thousand nine hundred and twenty-one;*

(ii) *contract carrier by motor vehicle or as broker as defined in the Public Utility Law;*

(iii) *a small loan company or loan broker regulated by the act of June 17, 1915 (P. L. 1012), and its amendments and supplements; or*

(iv) *a consumer discount company regulated by the Consumer Discount Company Act.*

Subsections A, B and E of section 8, subsection E, added May 23, 1949 (P. L. 1773).

Subsections A, B
and E, section 8,
subsection E,
added May 23,
1949, P. L. 1773.

Section 8. Notice of Meetings.—A. Whenever written notice is required to be given to any person under the provisions [of the Constitution or] of this act or by the articles or by-laws of any business corporation, it may be given to such person, either personally or by sending a copy thereof through the mail, or by telegram, charges prepaid, to his address appearing on the books of the corporation, or supplied by him to the corporation for the purpose of notice. If the notice is sent by mail or by telegraph, it shall be deemed to have been given to the person entitled thereto when deposited in the United States mail or with a telegraph office for transmission to such person. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the general nature of the business to be transacted.

B. Whenever any written notice is required to be given under the provisions [of the Constitution or] of this act or the articles or by-laws of any corporation, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the

time stated therein, shall be deemed equivalent to the giving of such notice. Except in the case of a special meeting, neither the business to be transacted at nor the purpose of the meeting need be specified in the waiver of notice of such meeting.

* * * * *

[E. Whenever by this act written notice is required to be given to shareholders of a business corporation of a proposal to be considered at a meeting of shareholders, such notice, unless waived, shall be given at least sixty days before such meeting in any case where the proposal would increase either the aggregate par value of shares of all classes having par value which the corporation is authorized to issue or the aggregate number of shares of all classes without par value which the corporation is authorized to issue: Provided, however, That this subsection shall not apply to (1) an increase by virtue of which issued shares of a corporation are changed into a greater, equal or smaller number of shares of the same or a different class or classes, whether with or without par value, and if with par value, whether with a greater, equal or smaller aggregate par value, through the issuance of dividends in shares of the corporation, or otherwise: Provided, That if the stated capital applicable to such issued shares is thereby increased, surplus equal to the amount of such increase is at or before such increase transferred to stated capital; (2) a change of unissued shares with par value into an equal or smaller number of shares without par value; or (3) a change of unissued shares without par value into an equal or smaller number of shares with par value.]

Subsection D, section 202, amended July 17, 1935, P. L. 1123, addition of new subsection E, section 202.

Subsection D of section 202, amended July 17, 1935 (P. L. 1123), addition of new subsection E to section 202.

Section 202. The Corporate Name * * *

D. The [assumption] use of a name in violation of this section shall not vitiate or otherwise affect the corporate existence, but the court of common pleas of Dauphin County may, upon the application of the Attorney General, acting on his own motion or at the instance of any administrative department, board, or commission of the Commonwealth, and the court of common pleas of any county having jurisdiction over the corporation may, upon the application of any person, unincorporated body or corporation adversely affected, enjoin the corporation from using or continuing to use a name [assumed] in violation of this section.

E. If a business corporation has used a name the same as, or deceptively similar to, the name of another corporation as permitted by subsection B (1) hereof

with the consent of such other corporation, and the other corporation continues to use its name in this Commonwealth and does not change its name, cease to do business, be wound up, or withdraw as it proposed to do in its consent, the court of common pleas of Dauphin County may, upon the application of the Attorney General, acting on his own motion or at the instance of the Commonwealth, and the court of common pleas of any county having jurisdiction over the other corporation may, upon the application of any person, unincorporated body or corporation adversely affected, enjoin the other corporation from continuing to use its name or a name deceptively similar thereto.

Section 204, amended May 23, 1949 (P. L. 1773).

Section 204,
amended May 23,
1949, P. L. 1773.

Section 204. Articles of Incorporation.—Articles of incorporation shall be signed by each of the incorporators, and acknowledged by at least two of them before any officer within or without this Commonwealth authorized to take acknowledgments, and shall set forth, in the English language :

(1) The name of the corporation, unless the name is in a foreign language, in which case it shall be set forth in English letters or characters.

(2) The location and post office address of its initial registered office in this Commonwealth.

(3) A statement of the purpose or purposes for which the corporation is organized and that it is organized under the provisions of this act.

(4) The term for which it is to exist, which may be perpetual.

(5) The aggregate number of shares which the corporation shall have authority to issue, and, if the shares are to consist of one class only, the par value of each of the shares or a statement that all of the shares are without par value, or, if the shares are to be divided into classes, the number of shares of each class, if any, that are to have a par value and the par value of each share of each class, and the number of shares of each class, if any, that are to be without par value.

(6) If the shares are to be divided into classes, a description of each class and a statement of the preferences, qualifications, limitations, restrictions, and the special or relative rights granted to or imposed upon the shares of each class.

(7) If the corporation is to issue the shares of any preferred or special class in series, a description of each series and a statement of the variations in the relative rights and preferences as between different series, in so

far as the same are to be fixed in the articles, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series.

[(8) The value of property with which the corporation will begin business.]

(9) The names of the first directors, their post office addresses, including street and number, if any, who shall serve until the first annual meeting.

(10) The name and post office address of each of the incorporators and a statement of the number of shares subscribed by each, which shall not be less than one, and the class of shares for which each subscribes.

(11) Any provisions which the incorporators may choose to insert granting to shareholders preemptive rights to subscribe to any or all issues of shares or securities of the corporation.

(12) Any provisions not inconsistent with law which the incorporators may choose to insert for the regulation of the internal affairs of the corporation and the business of the corporation.

Section 205,
amended August
19, 1953, P. L.
1119.

Section 205, amended August 19, 1953 (P. L. 1119).

Section 205. Advertisement.—The incorporators shall advertise their intention to file or the corporation shall advertise the filing of articles of incorporation with the Department of State one time in two newspapers published in the English language, one of which shall be a newspaper of general circulation, and the other the legal newspaper, if any, designated by the rules of the court for the publication of legal notices; otherwise, in two newspapers of general circulation published in the county in which the initial registered office of the corporation is to be located. When there is but one newspaper of general circulation published in any county, advertisement in such newspaper shall be sufficient. Advertisements may appear prior to or after the day the articles of incorporation are filed with the Department of State, and shall set forth briefly:

(1) The name of the proposed corporation,

(2) A statement that the [proposed] corporation is to be *or has been* organized under the provisions of this act,

(3) The purpose or purposes of the [proposed] corporation,

(4) The time when the articles will be *or were* filed with the Department of State.

Section 208, amended May 23, 1949 (P. L. 1773), and August 19, 1953 (P. L. 1119).

Section 208,
amended May 23,
1949, P. L. 1773.

[Section 208. Conditions Precedent to Beginning Business; Penalty for Violation of Section.—A. A corporation formed under this act shall not incur any indebtedness or begin the transaction of any business except such as shall be incident to its organization or to the obtaining of subscriptions to, or the payment for, its shares until—

The value of property with which it will begin business, as stated in the articles, has been fully paid or received.

B. If a corporation shall transact any business in violation of this section or prior to the publication of the advertisement required by section 205 hereof, the officers who participated therein and the directors, except those who dissented therefrom and caused their dissent to be filed at the time in the registered office of the corporation, or who, being absent, filed their dissent upon learning of the action, shall be severally liable for the debts and liabilities of the corporation arising therefrom.]

Section 209, amended June 12, 1951 (P. L. 519) and January 19, 1952 (P. L. 2167).

Section 209,
amended June
12, 1951, P. L.
519, and January
19, 1952, P. L.
2167.

Section 209. Cemetery and Burial Corporations.—In the case of the incorporation of a cemetery or burial corporation as a business corporation, the articles shall, in addition to the information heretofore required by this article, contain a provision (1) that a sum equal to at least one-tenth of the gross amount of the funds arising from the sale of lots in the burial ground or cemetery of the corporation shall be set apart for the perpetual care and preservation of the grounds and the repair and renewal of the buildings and property of such corporation; that such sum shall be invested by the board of directors in securities which are legal investments for trustees under the laws of this Commonwealth; and that the income arising therefrom shall be applied by the board of directors to the foregoing purposes; (2) that a permanent lot care fund shall be established prior to the disposal or sale of any burial lots as required by section 209.1; and (3) that a sum equal to at least one-tenth of the gross sales price of each lot sold shall be deposited in the permanent lot care fund: Provided, however, That any such cemetery or burial corporation may, by appropriate action of its stockholders and board of directors and with the approval of the orphans' court of the county in which the cemetery or burial grounds are situated, transfer any of such funds to one or more bank and trust companies, trust companies or national bank-

ing associations having fiduciary powers, as trustee, and with like investment restrictions, said transfer to be either revocable, or absolute and irrevocable, and upon the transfer of any such funds, the cemetery or burial corporation shall be relieved of all liability for the investment and reinvestment thereof. The corporate trustee shall pay, semi-annually, the net income from the said funds to the cemetery or burial corporation for the purposes above expressed, and shall file accounts in the orphans' court of the county in which the cemetery grounds are situated, which accounts shall be filed triennially and at such other times as the said court may direct, and which accounts shall be audited, adjudicated and confirmed by said court, upon such notice to the parties in interest as the said court may determine.

Section 302,
amended May 23,
1947, P. L. 290.

Section 302, amended May 23, 1947 (P. L. 290).

Section 302. General Powers.—Subject to the limitations and restrictions contained in this act or in its articles, every business corporation shall have power:

(1) To continue as a corporation for the time specified in its articles, subject to the power of the General Assembly under the Constitution of this Commonwealth.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal, which may be altered at pleasure, and to use the same by causing it or a facsimile thereof to be impressed or affixed, or in any manner reproduced.

(4) To purchase, take, receive, lease as lessee, take by gift, [devise] or bequest, or otherwise acquire, and to own, hold, use and otherwise deal with any [real or] personal property, or any interest therein, situated in or out of this Commonwealth, which may be appropriate to enable it to accomplish fully and properly its corporate purpose or purposes.

(4.1) To purchase, take, receive, lease as lessee, take by gift or devise, or otherwise acquire, and to own, hold, use and otherwise deal with any real property, or any interest therein, situated in or out of this Commonwealth, which may be necessary and proper for its legitimate business.

(5) To sell and convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property and assets.

(6) Whenever appropriate to enable it to accomplish any or all of the purposes for which it is organized, to guarantee, *become surety for*, purchase, take, receive, or otherwise acquire, hold, sell, assign, transfer, mortgage,

loan, pledge, or otherwise dispose of, and otherwise use and deal in and with the *obligations*, shares, bonds, securities, and [other] evidences of indebtedness of any other domestic corporation or of any corporation formed under any laws other than those of this Commonwealth, and, while the owner of the same, to exercise all the rights, powers, or privileges of ownership, including the right to vote thereon.

[(7) To purchase, take, receive, or otherwise acquire, hold on pledge, transfer, or otherwise dispose of its own shares, except that no such purchase or acquisition shall be made at a time when the net assets of the corporation are less than its stated capital, or which would reduce its net assets below its stated capital.]

(8) To borrow money for any or all of the purposes for which it is organized, to issue its promissory notes, bonds, or other forms of certificates of indebtedness, for [the repayment thereof, with interest,] *money, labor done, or money or property, including shares of the corporation properly acquirable by it under this act, actually received* and to secure any of its obligations by mortgage, pledge, or deed of trust of, or on, any of its property, franchises and income.

(9) To invest its surplus funds from time to time, to lend money for any or all of the purposes for which it is organized, and to take and hold real and personal property as security for the payment of funds so invested or loaned.

(10) To conduct its business, carry on its operations, and have offices within and outside of this Commonwealth, and to exercise in any other state, territory, district, or possession of the United States, or in any foreign country and the territories and colonies thereof, the powers granted by this act.

(11) To make, alter, amend, and repeal by-laws, not inconsistent with its articles or with law, for the administration and regulation of the affairs of the corporation.

(12) To elect or appoint and remove officers and agents of the corporation, and to define their duties and fix their compensation.

(13) To enter into any obligation [necessary] *appropriate* for the transaction of its affairs.

(14) To have and exercise all of the powers and means [necessary or essential] *appropriate* to effect the purpose or purposes for which the corporation is organized.

(15) To dissolve and wind up.

(16) To make contributions [to or for the use or benefit of—

(a) The United States, any state, territory, or any political subdivision thereof, or the District of Columbia or any possession of the United States for exclusively public purposes, or

(b) A corporation, trust or community chest fund, or foundation created or organized in the United States or in any possession thereof, or under the laws of the United States or of any state or territory, or of the District of Columbia, or of any possession of the United States and organized and operated exclusively for religious, charitable, scientific, veteran rehabilitation service, literary or educational purposes, or for the prevention of cruelty to children, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation to the extent authorized, approved, or ratified by action of the board of directors of the corporation, except as otherwise specifically provided or limited by its articles of incorporation, or its by-laws or by resolution duly adopted by its shareholders. All contributions made heretofore by authority of the board of directors of the corporation for the purposes prescribed by this act are hereby ratified and confirmed] *and donations for the public welfare or for religious, charitable, scientific or educational purposes.*

The powers herein enumerated shall not be construed as limiting or enlarging the grant of authority hereinbefore made by this article, or as a limitation on the purposes for which a corporation may be organized. It shall not be *permissible or necessary* to set forth any of such enumerated powers in the articles of the corporation. Except as otherwise provided in this act or in the articles or in the by-laws, the powers herein enumerated shall be exercised by the board of directors of the corporation.

Section 309,
amended August
19, 1953, P. L.
1119.

Section 309, amended August 19, 1953 (P. L. 1119).

[Section 309. Procedure to Increase Indebtedness of Corporation.—No business corporation shall increase its indebtedness, except in the manner provided in this section. The board of directors of the corporation shall adopt a resolution setting forth the desired increase, and directing that the question of the proposed increase be submitted to a vote of the shareholders entitled under the articles to vote thereon at an annual meeting of the shareholders or at a special meeting of the shareholders entitled to vote thereon. Written notice stating that the purpose, or one of the purposes, of such meet-

ing is to consider the question of increasing the indebtedness of the corporation, shall be given to each shareholder of record entitled to vote thereon at least sixty days before the date of the meeting. If such meeting be an annual meeting, such purpose may be included in a notice of such annual meeting, provided the notice is given at least sixty days before the date of the annual meeting. The resolution shall be adopted upon receiving the affirmative vote of the holders of at least a majority of the outstanding shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed resolution shall require for its adoption the affirmative vote of the holders of at least a majority of the outstanding shares of each class entitled to vote as a class thereon, and at least the affirmative vote of the holders of a majority of all outstanding shares entitled to vote thereon. Nothing herein contained shall be construed to apply to indebtedness contracted in the usual course of corporate business.

Increases heretofore so authorized are hereby validated.]

Section 311.

Section 311.

Section 311. Voluntary Transfer of Corporate Assets.—A. The sale, lease, or exchange of all, or substantially all, the property and assets of a corporation, when made in the usual and regular course of the business of a corporation, *or for the purpose of relocating the business of the corporation*, may be made upon such terms and conditions, and for such considerations, which may consist in whole or in part of money or property, real or personal, including shares, or bonds, or other evidences of indebtedness of any other corporation, domestic or foreign, as shall be authorized by its board of directors. In every such case, no authorization or consent of the shareholders shall be required. *A sale, lease, or exchange of all, or substantially all, the property or assets of a corporation, in connection with its dissolution or liquidation, shall be governed by the provisions of Article XI. of this act. In every such case, no authorization or consent of the shareholders other than that specified in said Article XI. shall be required.*

B. A sale, lease, or exchange of all, or substantially all, the property and assets, with or without the good will of a corporation, whether to a subsidiary corporation or not, if [not] made *neither (1) in the usual and regular course of its business, nor (2) for the purpose of relocating the business of the corporation, nor (3) in connection with its dissolution or liquidation*, may be made upon such terms and conditions and for such considerations which may consist, in whole or in part, of

money or property, real or personal, including shares, or bonds, or other evidences of indebtedness of any other corporation, domestic or foreign, as may be authorized in the manner hereinafter provided in this subsection. The board of directors shall adopt a resolution recommending such sale, lease or exchange, and directing the submission thereof, to a vote of the shareholders entitled to vote in respect thereof at a meeting which may be either an annual meeting of the shareholders or a special meeting of the shareholders entitled to vote in respect of such sale, lease, or exchange. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, or exchange of all, or substantially all, the property and assets of the corporation, shall be given to each shareholder of record, whether or not entitled to vote, at least ten days prior to the date of the meeting, in the manner provided by this act for the giving of notice of meetings of shareholders. If such meeting be an annual meeting, such purpose may be included in the notice of the annual meeting. *There shall be included in, or enclosed with, such notice a copy of subsection D of this section and of subsections B, C and D of section 515 of this act.* At such meeting, the shareholders may authorize such sale, lease, or exchange, and fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof, and the consideration to be received by the corporation therefor. Such authorization shall receive the affirmative vote of the holders of at least a majority of the outstanding shares entitled to vote on the question, unless any class of shares is entitled to vote as a class on the question, in which event such authorization shall receive the affirmative vote of the holders of at least a majority of the outstanding shares of each class of shares entitled to vote as a class on the question, and at least a majority of all outstanding shares entitled to vote thereon. After such authorization by a vote of the shareholders, the board of directors, in its discretion, may abandon such sale, lease, or exchange, subject to the rights of third parties under any contracts relating thereto, without further action or approval by the shareholders.

C. Nothing in this section shall be construed to authorize the conversion or exchange of assets in fraud of corporate creditors, or of minority shareholders or shareholders without voting rights, or in violation of [the act approved the twenty-third day of May, one thousand nine hundred nineteen (Pamphlet Laws, two hundred sixty-two), and its amendments and supplements, or The Fiscal Code, approved the ninth day of

April, one thousand nine hundred twenty-nine (Pamphlet Laws, three hundred forty-three), and its amendments and supplement] law.

D. If any shareholder of a business corporation which sells, leases or exchanges all or substantially all of its property and assets otherwise than (1) in the usual and regular course of its business, (2) for the purpose of relocating its business, or (3) in connection with its dissolution and liquidation, shall object to such sale, lease or exchange and comply with the provisions of section 515 of this act, such shareholder shall be entitled to the rights and remedies of dissenting shareholders as therein provided.

E. A mortgage or pledge shall not be deemed a sale within the meaning of this section.

F. The shareholders of a business corporation which acquires by sale, lease or exchange all or substantially all of the property of another corporation by the issuance of stock, securities or otherwise shall not be entitled to the rights and remedies of dissenting shareholders provided in section 515 of this act.

Section 316.

Section 316.

Section 316. Pensions.—Every business corporation may, *by resolution of its board of directors*, grant allowances or pensions [out of the earnings of the corporation] to its directors, officers [or employes for faithful and long-continued service who have in such service become old, infirm or disabled] *and employes and, after their death, to their dependents or beneficiaries, whether or not such a grant was made during their lifetime.*

Section 320, added June 24, 1939 (P. L. 698), amended September 26, 1951 (P. L. 1475).

Section 320,
added June 24,
1939, P. L. 698,
amended September
26, 1951,
P. L. 1475.

Section 320. Arrangement and Reorganization Under National Bankruptcy Act.—(1) Any business corporation having a plan of reorganization or an arrangement which, pursuant to the provisions of the Act of Congress of July first, one thousand eight hundred and ninety-eight, entitled “An act to establish a uniform system of bankruptcy throughout the United States,” as amended and supplemented, or of any similar Act of Congress (said act and such acts being herein referred to as the National Bankruptcy Act), has been or shall be confirmed by the decree or order of a court of competent jurisdiction, shall have full power and authority to put into effect and carry out the plan or arrangement and the decrees and orders of the court, or judge or referee relative thereto, and may take any proceeding and do

any act provided in the plan or arrangement or directed by such decrees and orders, without further action by its directors or shareholders. Such power and authority may be exercised, and such proceedings and acts may be taken, as may be directed by such decrees or orders, by the trustee or trustees, or receiver or receivers, of such corporation appointed in the bankruptcy proceedings (or a majority thereof), or if none be appointed and acting, by designated officers of the corporation, or by a master or other representative appointed by the court or judge or referee, with like effect as if exercised and taken by unanimous action of the directors and shareholders of the corporation [, but a business corporation shall not increase its indebtedness or its authorized capital stock except after the approval of such increase at a meeting of its shareholders held in accordance with the provisions of this act].

(2) Such corporation may, in the manner above provided, but without limiting the generality or effect of the foregoing, alter, amend, or repeal its by-laws; constitute or reconstitute and classify or reclassify its board *of directors and name, constitute or appoint directors and officers in place of or in addition to all or some of the directors or officers then in office; amend its articles of incorporation, and make any change in its stated capital [or authorized capital stock], or any other amendment, change, alteration, or provision, authorized by this act, including the cancellation *or modification of the relative rights or preferences* of any or all authorized classes of shares, whether or not any shares thereof are outstanding; be dissolved, transfer all or part of its assets, merge or consolidate as permitted by this act, in which case, however, no shareholder shall have any statutory right of appraisal of his shares; change the location of its principal office; authorize and fix the terms, manner and conditions of the issuance of bonds, debentures or other obligations, whether or not convertible into [stock] *shares* of any class, or bearing warrants or other evidences of optional rights to purchase or subscribe for [stock] *shares* of any class; or lease its property and franchises to any corporation, if permitted by law.

(3) A certificate of any amendment to articles of incorporation, a certificate of change of registered office, a certificate of dissolution, a certificate of reduction of stated capital or a certificate of merger or consolidation, executed as hereinafter provided, and made by such corporation pursuant to the foregoing provisions, together with a certificate or certificates from the proper department or departments evidencing payment by the corporation of all bonus, taxes and charges, [as required by law] *if such certificate or certificates would be required*

* "or" in original.

by this act for a corporation not in bankruptcy, shall be delivered to the Department of State. If the Department of State finds that the certificate of amendment, change of registered office, dissolution, reduction of stated capital, or of merger or consolidation, conforms to law, and if advertisement would be required by this act for a corporation not in bankruptcy, that notice of intention to file such certificate has been duly advertised in accordance with the provisions of this act, and, if required, that the certificate evidencing payment of bonus or taxes or charges is in proper form, it shall, upon payment of the filing fee, forthwith endorse its approval thereon and shall issue to the corporation a certificate of amendment, dissolution, reduction of stated capital, merger, or consolidation, to which shall be attached the certificate so delivered to it. Upon the approval of such certificate by the Department of State, the amendment, dissolution, reduction of stated capital, merger, or consolidation shall be effective. Such certificate shall be made, executed, and acknowledged, as may be directed by such decrees or orders, by the trustee or trustees, or receiver or receivers, appointed in the bankruptcy proceedings (or a majority thereof), or, if none be appointed and acting, by officers of the corporation, or by a master or other representative appointed by the court, or judge, or referee, and shall certify that (a) provision for the making of such certificate, agreement, or instrument is contained in the plan of reorganization or arrangement, or in a decree or order of the court, or judge, or referee relative thereto; and (b) that the plan or arrangement has been confirmed, as provided in the National Bankruptcy Act, but no final decree has been entered in the bankruptcy proceedings closing the case and discharging the trustee or trustees, or receiver or receivers, if any.

(4) On filing any certificate, agreement, report or other paper made or executed pursuant to the provisions of this section, there shall be paid to the Secretary of the Commonwealth for the use of the Commonwealth, the same fees as are payable by corporations not in bankruptcy upon the filing of like certificates, agreements, reports or other papers.

Section 504.

Section 504.

Section 504. *Voting Rights of Shareholders* [May Vote in Person or by Proxy].—A. Except as otherwise provided in the articles and this act, every shareholder of record shall have the right, at every shareholders' meeting, to one vote for every share standing in his name on the books of the corporation. Every shareholder may vote either in person or by proxy. Every proxy shall

be executed in writing by the shareholder, or by his duly authorized attorney in fact, and filed with the secretary of the corporation. A proxy, unless coupled with an interest, shall be revocable at will, notwithstanding any other agreement or any provision in the proxy to the contrary, but the revocation of a proxy shall not be effective until notice thereof has been given to the secretary of the corporation. No unrevoked proxy shall be valid after eleven months from the date of its execution, unless a longer time is expressly provided therein, but in no event shall a proxy, unless coupled with an interest, be voted on after three years from the date of its execution. A proxy shall not be revoked by the death or incapacity of the maker unless before the vote is counted or the authority is exercised, written notice of such death or incapacity is given to the secretary of the corporation. A shareholder shall not sell his vote or execute a proxy to any person for any sum of money or anything of value.

B. Except as otherwise provided in the articles, redeemable shares which have been called for redemption shall not be entitled to vote on any matter, and shall not be deemed outstanding shares after written notice has been mailed to holders thereof that such shares have been called for redemption, and that a sum sufficient to redeem such shares has been deposited with a specified bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders of the shares upon surrender of certificates therefor, and such sum has been so deposited.

Section 505,
amended August
19, 1953, P. L.
1119.

Section 505, amended August 19, 1953 (P. L. 1119).

Section 505. Elections of Directors; Cumulative Voting.—Unless otherwise provided in the by-laws, elections for directors need not be by ballot, except upon demand made by a shareholder at the election and before the voting begins. In [all elections] *each election* for directors, every shareholder entitled to vote shall have the right, in person or by proxy, to multiply the number of votes to which he may be entitled by the total number of directors to be elected in the same election by [either] the holders of the class or classes of shares of which his shares are a part [or by the holders of any other class or classes of shares], and he may cast the whole number of such votes for one candidate or he may distribute them among any two or more candidates. The candidates receiving the highest number of votes from each class or group of classes entitled to elect directors separately up to the number of directors to be elected in the same election by such class or group of classes shall be elected.

Section 506.

Section 506.

Section 506. Voting by [Trustees] *Fiduciaries* and *Pledgees.—Shares standing in the name of a trustee [appointed by the court of common pleas,] or *other fiduciary*, and shares held by an assignee for the benefit of creditors, or by a receiver, may be voted either in person or by proxy of the trustee, *fiduciary*, assignee or receiver. A shareholder whose shares are pledged shall be entitled to vote thereon, in person or by proxy, until the shares have been transferred on the books of the corporation to the pledgee or nominee, and thereafter the pledgee or nominee shall be entitled to vote the shares in person or by proxy.

Section 508, amended September 26, 1951 (P. L. 1475).

Section 508,
amended Septem-
ber 26, 1951,
P. L. 1475.

Section 508. Voting Shares Held by Corporation.—Any corporation owning shares in a domestic business corporation may vote the same by any of its officers, or by proxy appointed by any such officer, unless some other person, by resolution of its board of directors, shall be appointed its general or special proxy, in which case such person shall be entitled to vote the shares. [Shares of its own capital stock belonging to] *Treasury shares* of a domestic business corporation shall not be voted, directly or indirectly, at any meeting, and shall not be counted in determining the total number of outstanding shares for voting purposes at any given time [, but shares of its own capital stock held by it in a fiduciary capacity may be voted and shall be counted in determining the total number of outstanding shares at any given time].

Section 509, amended May 23, 1949 (P. L. 1773).

Section 509,
amended May 23,
1949, P. L. 1773.

Section 509. Determination of Shareholders of Record.—Unless the by-laws otherwise provide, the board of directors may fix a time, not more than [seventy] *fifty* days prior to the date of any meeting of shareholders, or the date fixed for the payment of any dividend or distribution, or the date for the allotment of rights, or the date when any change or conversion or exchange of shares will be made or go into effect, as a record date for the determination of the shareholders entitled to notice of, [and] *or* to vote at, any such meeting, or entitled to receive payment of any such dividend or distribution, or to receive any such allotment of rights, or to exercise the rights in respect to any such change, conversion, or exchange of shares. In such case, only such shareholders as shall be shareholders of record on the date so fixed shall be entitled to notice of, [and] *or* to vote at, such meeting or to receive payment

* "Pledges" in original.

of such dividend, or to receive such allotment of rights, or to exercise such rights, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after any record date fixed, as aforesaid. The board of directors may close the books of the corporation against transfers of shares during the whole or any part of such period, and in such case written or printed notice thereof shall be mailed at least ten days before the closing thereof to each shareholder of record at the address appearing on the records of the corporation or supplied by him to the corporation for the purpose of notice. While the stock transfer books of the corporation are closed, no transfer of shares shall be made thereon. Unless a record date is fixed by the by-laws or the board of directors for the determination of shareholders entitled to receive notice of, or vote at, a shareholders' meeting, transferees of shares which are transferred on the books of the corporation within ten days next preceding the date of such meeting shall not be entitled to notice of or to vote at such meeting.

Subsection B,
section 511.

Subsection B of section 511.

Section 511. Voting Trusts.— * * *

B. The share certificates of shares so transferred shall be surrendered and cancelled, and new certificates therefor shall be issued to the transferee or transferees, as voting trustee or trustees, in which new certificates it shall appear that they are issued pursuant to the agreement. In the registration of the transfer of the shares on the books of the corporation it shall be noted that the transfer is made pursuant to the agreement. The trustee or trustees may execute and deliver to the transferors voting trust certificates, which shall be transferable in the same manner and with the same effect as certificates [of] *for* shares [, under the provisions of the Uniform Stock Transfer Act, approved the fifth day of May, one thousand nine hundred eleven (Pamphlet Laws one hundred twenty-six), and its amendments and supplements, upon the transfer and registration of the shares]. The trustee or trustees shall possess all voting and other rights pertaining to the shares so transferred and registered, subject to the terms and conditions of, and for the period specified in, the agreement.

* * * * *

Section 513,
amended May 23,
1949, P. L. 1773.

Section 513, amended May 23, 1949 (P. L. 1773).

Section 513. Informal Action by Shareholders.—[Except for the action required by subsection E of section eight or section three hundred nine of this act to be taken at a meeting of shareholders held after sixty days'

notice, any action required by this act to be taken at a meeting of the shareholders of a corporation] *Unless the articles or by-laws otherwise provide, any action which may be taken at a meeting of the shareholders may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all of the shareholders who would be entitled to vote at a meeting for such purpose and shall be filed with the secretary of the corporation.*

New section 515.

Section 515, new.

Section 515. Rights of Dissenting Shareholders.—

A. If any shareholder of a business corporation objects to any proposed plan of action of such corporation authorized under any section of this act, and such section provides that such shareholders shall be entitled to the rights and remedies of dissenting shareholders, such shareholder shall be entitled to the following rights and remedies:

B. If any shareholder of a business corporation shall file with such corporation, prior to the commencement of the voting by shareholders upon the plan at the meeting of shareholders at which a plan is submitted to a vote, a written objection to such plan, and shall not vote in favor thereof, and such shareholder, within twenty days after the corporation shall have mailed him notice that the plan has become effective, shall also make written demand on the corporation, or the surviving or new corporation resulting from the plan, for the payment of the fair value of his shares as of the day prior to the date on which the vote was taken approving the plan, without regard to any depreciation or appreciation thereof in consequence of the plan, such corporation shall pay to such shareholder the fair value of his shares upon surrender of the share certificate or certificates representing his shares. The demand of the shareholder shall state the number and class of the shares owned by him. Unless a shareholder files such written objection and also makes such demand within the twenty-day period, he shall be conclusively presumed to have consented to the plan, and shall be bound by the terms thereof. If within thirty days after such notice shall have been mailed to him the value of such shares shall be agreed upon between the dissenting shareholder and such corporation, payment thereof shall be made in cash within ninety days after the effective date of such plan, upon the surrender of the share certificate or certificates representing his shares. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in such shares or in such corporation.

C. *If within such period of *thirty days the shareholder and the corporation, or the surviving or new corporation resulting from the plan, do not so agree, then the dissenting shareholder may, within sixty days after the expiration of the thirty-day period, petition a court of common pleas for the appointment of three disinterested persons to appraise the fair value of his shares without regard to any depreciation or appreciation thereof in consequence of any such plan. Such petition shall be filed in the court of common pleas, in equity, within the county in which the registered office of the corporation is situated, or if a new business corporation has been created by such plan, within the county in which the registered office of the new business corporation is situated, or, if the new corporation be a foreign corporation, within the county in which was situated the registered office of the corporation of which such petitioner was a shareholder, which county, as the case may be, shall be deemed to be the county in which the cause of action of such petitioner arose, and all process in such proceedings shall be served upon any foreign corporation resulting from such plan as provided in section one thousand and eleven of this act. The award of the appraisers, or of a majority of them, shall be submitted to the court for determination, and the judgment of the court thereon shall be final and conclusive. The costs of such appraisal, including a reasonable fee to the appraisers, shall be fixed by the court and shall be borne by such corporation unless, in the opinion of the court, the action of any shareholder in refusing the offer of such corporation has been arbitrary, vexatious, or in bad faith, in which case the costs shall be assessed in the discretion of the court. The award shall be payable only upon, and simultaneously with, the surrender to such corporation of the share certificate or certificates representing the shares of the dissenting shareholder. If the award shall not be paid by such corporation within thirty days after the order of the court thereon, the amount of the award shall be a judgment against such corporation and may be collected as other judgments in such court are by law collectible. Upon the payment of the award or judgment, the dissenting shareholder shall cease to have any interest in such shares or in such corporation. Such shares may be held and disposed of by such corporation as it may see fit. Unless the dissenting shareholder shall file a petition within the time herein limited, such shareholder and all persons claiming under him shall be conclusively presumed to have approved and ratified the plan and shall be bound by the terms thereof.*

* "thirty" in original.

D. Any shareholder, who desires to object to, or to dissent from, any proposed plan authorized under any section of this act, and where this act provides that shareholders so objecting or dissenting shall have the rights and remedies herein provided, shall be limited to the rights and remedies prescribed under this section, and the rights and remedies prescribed by this section shall be exclusive.

Subsections A and B of section 603.

Subsections A
and B, section
603.

Section 603. Consideration for Shares.—A. Shares of a business corporation shall not be issued except for money, labor done, or money or property actually received. Subscriptions for shares having a par value shall be made payable with money to an amount not less than the aggregate par value of the shares subscribed for or with consideration other than money, the fair value of which to the corporation is not less than the aggregate par value of the shares subscribed for. Subscriptions for shares [having no par value] which are made before incorporation, shall be made payable with consideration of the character and value determined by the incorporators. Subscriptions for shares [having no par value], which are made after incorporation, shall be made payable with consideration of the character and value determined [by the shareholders at any annual or special meeting duly called and held for that purpose, or determined] by the board of directors [acting under authority conferred by the shareholders or by the articles of the corporation. Shares of a corporation issued and thereafter acquired by it]. *Treasury shares* may be *pledged, transferred or* disposed of by the corporation for such consideration as may be fixed from time to time by the board of directors. For the purpose of determining whether shares have been fully paid for, in order to fix the extent of the outstanding obligation of a shareholder to the corporation with respect to such shares, the value placed by the incorporators [the shareholders] or the board of directors, as the case may be, upon the consideration, other than cash, with which the subscriptions for shares are made payable, shall be conclusive.

B. The consideration for the issuance of shares [as a share dividend] *distributed to shareholders pursuant to section 702.1 of this act shall be the consideration originally received for the shares to the holders of which the distribution is made and that part of the surplus, if any, of a business corporation which is [hereinafter required by this act to be] transferred to stated capital upon the issuance of such shares.*

Subsection A.
section 607.

Subsection A of section 607.

Section 607. Share Certificates.—A. The shares of a corporation shall be represented by share certificates, which shall state:

(1) That the corporation is organized under the laws of this Commonwealth.

(2) The name of the registered holder of the shares represented thereby.

(3) The number and class of shares and the designation of the series, if any, which the certificate represents.

(4) The par value of each share represented, or a statement that the shares are without par value.

[(5) If the corporation is authorized to issue shares of more than one class, the designations, preferences, voting power, qualifications, privileges, limitations, options, conversion rights, and other special rights of the shares of each class to be issued, which shall be stated in full or in the form of a summary either upon the face or back of the certificate.

(6) If the corporation is authorized to issue any preferred or special class in series, the variations and the relative rights and preferences between the shares of each series, so far as they have been fixed and determined, and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.]

Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate, or shall state that the corporation will furnish to any shareholder, upon request and without charge, a full or summary statement of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued and, if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined, and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

* * * * *

Section 612.

Section 612.

Section 612. Employees' Share Purchase *Plans and Share Options.—Unless otherwise provided in its articles, every business corporation may provide and carry out a plan for the [issue and] sale of, or the granting of options with respect to, its [authorized but unissued] shares to some or all of its officers and employees or [to]

* "Plan" in original.

the *officers and* employes of any subsidiary corporation, or to a trustee on their behalf, without first offering such shares to its shareholders, upon such terms and condition, and in such manner as shall be provided in the by-laws or by the board of directors, except that *authorized but unissued* shares subject to preemptive rights may be [so] issued and sold under such plan only with the written consent or affirmative vote of the holders of [two-thirds] a majority of the shares entitled to exercise preemptive rights with respect thereto. *Such shares may be sold or optioned as an incentive to service or continued service with the corporation or such subsidiary corporation, or for such other consideration or purpose or upon such other terms as its directors, including directors who may benefit by their action, shall deem advantageous to the corporation; and in the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for any rights or options to purchase shares under such a plan shall be conclusive.*

Subsection A of section 613.

Subsection A,
section 613.

Section 613. Transfer of Share Certificates and Shares.—A. The transfer of share certificates and the shares represented thereby may be regulated by the by-laws, provided such by-laws are not inconsistent with [the provisions of the Uniform Stock Transfer Act, approved the fifth day of May, one thousand nine hundred eleven (Pamphlet Laws, one hundred twenty-six), and its amendments and supplements] *law.*

* * * * *

Section 614.

Section 614.

Section 614. Stated Capital and [Paid-in] *Capital Surplus.*—Every business corporation shall have a stated capital, which shall [consist of] *include* the aggregate par value of all its issued shares having a par value, and the aggregate amount of value of the agreed consideration received for all its issued shares without par value, unless the board of directors, by resolution [and subject to the limitations hereinafter contained in this section], shall determine, [(a)] *with respect to shares without par value and having no preferential right in the assets of the corporation in the event of involuntary liquidation* before or at the time of issue of any shares of the corporation [issued for cash, or (b) within sixty days after the issuance of any shares issued for labor or services actually performed for the corporation or issued for property other than cash] that only a part of the consideration for shares so issued shall be stated capital, and that the remainder of the consideration so

received shall be [paid-in] *capital surplus, in which event the amount determined to be capital surplus shall not be included in stated capital.* [In the event of any such determination—

(1) If the shares to be issued shall consist wholly of shares having a par value, then the stated capital represented by such shares shall be the aggregate par value of the shares so to be issued.

(2) If the shares to be issued shall consist wholly of shares without par value, all of which shares have a preferential right in the assets of the corporation in the event of involuntary liquidation, then the stated capital represented by such shares shall be not less than the aggregate amount of value of the agreed consideration to be received for such shares.

(3) If the shares to be issued consist wholly of shares without par value, and none of such shares has a preferential right in the assets of the corporation in the event of its involuntary liquidation, then the stated capital represented by such shares shall be the total consideration received therefor less such part thereof as may be allocated to paid-in surplus.

(4) If the shares to be issued shall consist of several or all of the classes of shares enumerated above, then the stated capital to be represented by such shares shall be not less than the aggregate par value of any shares to be issued having a par value, and the aggregate amount of value of the agreed consideration to be received for any shares to be issued without par value having a preferential right, in the event of involuntary liquidation.]

In each such case, the resolution of the board of directors shall specify, in dollars, the part of such consideration which shall be stated capital. Every business corporation shall at all times keep its books in such manner as to indicate clearly the allocation of consideration received for shares between stated capital and [paid-in] *capital surplus.* The stated capital of the corporation may be increased from time to time by resolution of the board of directors, directing that all or a part of the surplus of the corporation be transferred to stated capital. The board of directors may direct that the amount of the surplus so transferred shall be deemed to be stated capital in respect of any designated class or series of shares.

Section 615, new.

New section 615.

Section 615. Effect of Failure to Surrender Securities Converted by Reorganization.—Whenever any outstanding securities are converted into new shares or other securities or property by any merger, consolidation, reclassification, amendment to articles or otherwise,

the plan or other instrument effecting such conversion may fix a period of not less than two years within which the outstanding securities must be surrendered for exchange and provide that, in the event any outstanding securities are not surrendered for exchange within such period, the shares, securities or property which would otherwise have been issued or delivered in exchange for such unsurrendered outstanding securities shall be sold and the net proceeds of such sale shall be held for the holders of the unsurrendered outstanding securities to be paid to them upon surrender of their outstanding securities. From and after any such sale, the sole right of the holders of the unsurrendered outstanding securities shall be the right to collect the net sales proceeds held for their account.

Section 701, amended July 17, 1935 (P. L. 1123).

Section 701,
amended July 17,
1935, P. L. 1123.

Section 701. [Directors May Declare Dividends.—

A. Subject to any restrictions contained in the articles of the corporation and the provisions of this article, any business corporation, by its board of directors, may declare and pay dividends upon the outstanding shares of the corporation out of its surplus, as hereinafter provided, from time to time and to such extent as the board of directors may deem advisable. Dividends may be paid in cash, in property, or in shares of the corporation, but no corporation shall pay dividends:

(1) In cash or property, except from the surplus of the aggregate of its assets over the aggregate of its liabilities, including in the latter the amount of its stated capital, after deducting from such aggregate of its assets the amount by which such aggregate was increased by unrealized appreciation in value or revaluation of fixed assets, unless the amount thereof shall have been transferred to, or included in, its stated capital.

(2) In shares of the corporation, except from the surplus of the aggregate of its assets over the aggregate of its liabilities, including in the latter the amount of its stated capital.

B. In computing the aggregate of the assets of the corporation, the board of directors shall determine and make proper allowance for depreciation and depletion sustained, and losses of every character, except as otherwise provided in this section. Deferred assets and prepaid expenses shall be written off at least annually in proportion to their use, as may be determined by the board of directors. Amounts of surplus arising from an unrealized appreciation or revaluation of fixed assets shall be shown on the books of the corporation as a separate item apart from surplus profits or paid-in surplus.

C. A corporation engaged solely or substantially in the exploitation of mines, oil wells, gas wells, patents, or other wasting assets, or organized solely or substantially to liquidate specific assets, need not make any deduction for the depletion of such assets by lapse of time, consumption, liquidation, or exploitation in computing the fund available for dividends, and such a corporation may pay dividends from the net profits arising from its business without deduction of such depletion, subject, however, to the rights of shareholders of different classes.] *Right of Corporation to Acquire its Own Shares.—A. Unless its articles otherwise provide, a business corporation shall have the right to purchase or otherwise acquire, and to hold and own its own shares which are not subject to redemption.*

*B. All purchases by a business corporation of its own shares which are not subject to redemption however, whether direct or indirect, shall be subject to the limitations contained in subsection F hereof, and shall not be made *except:*

(1) To the extent of its unrestricted and unreserved earned surplus, or

(2) If it has no such earned surplus, to the extent of its unrestricted capital surplus, but only pursuant to the prior affirmative vote obtained within one year of such purchase of the holders of at least a majority of its outstanding shares of each class, whether or not entitled to vote thereon by the provisions of the articles, or

(3) If it has no such earned surplus, to the extent of the aggregate of its unrestricted capital surplus, and, if it has no such capital surplus, to the extent of its unrestricted stated capital but only if such purchase shall be for the purpose of eliminating fractional shares, collecting or compromising indebtedness to the corporation, or paying dissenting shareholders entitled to payment for their shares under the provisions of this act.

C. A business corporation may effect, subject to the other provisions of this act, the retirement of its redeemable shares by redemption or by purchase.

D. A business corporation may acquire its own shares on conversion thereof into or exchange thereof for other shares of the corporation, and may apply thereto the aggregate of its capital surplus and stated capital represented by the shares so acquired. In every such case, the corporation shall, by resolution of its board of directors, cancel the shares so acquired and shall file a statement of cancellation as required by section 709 of this act. If the resolution so provides, such corporation may thereby reduce the number of shares of

* "except" in original.

the class so cancelled which the corporation is authorized to issue by the number of shares so cancelled. If the articles prohibit the reissue of such shares, such resolution shall so provide.

E. Notwithstanding any limitations contained in this act, an open-end investment company may, subject to the limitations contained in subsections F (1) and F (2) hereof, by resolution of its board of directors, purchase its own shares and apply thereto the amount of stated capital and capital surplus represented thereby, and thereupon its stated capital and capital surplus shall be reduced by such amounts.

F. (1) No purchase of its shares shall be made at a time when a business corporation is insolvent or when such purchase would render the corporation insolvent.

(2) No purchase of its own shares shall be made which would reduce the remaining net assets of a business corporation below the aggregate preferential amount payable in the event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

(3) To the extent that earned surplus or capital surplus or stated capital is used as the measure of a business corporation's right to purchase its own shares, such surplus and stated capital shall be restricted so long as such shares are held as treasury shares. Upon the disposition of any such shares, the restriction shall be removed to the extent of the consideration received therefor, and upon the cancellation thereof to the extent of its stated capital and capital surplus reduced thereby, and any remaining surplus and stated capital restricted by the purchase thereof shall be eliminated.

Section 702.

Section 702.

Section 702. [Additional Limitations on Cash or Property Dividends.—Cash or property dividends shall not be paid out of surplus due to or arising from:

- (1) Any profit on treasury shares before resale; or
- (2) Any unrealized profits due to increase in valuation of inventories before sale; or
- (3) The accrued portion of unrealized profits on notes, bonds, or obligations for the payment of money purchased or acquired at a discount; or
- (4) The unaccrued or unearned portion of any unrealized profit in any form whatever, whether in the form of notes, bonds, obligations for the payment of money, installment sales, credits or otherwise.] *Dividends.—A. The board of directors of a business corporation may, from time to time, declare and the cor-*

poration may pay dividends on its outstanding shares in cash or property other than its own shares, except when the corporation is insolvent or when the payment thereof would render the corporation insolvent or when the declaration or payment thereof would be contrary to any restriction contained in its articles, but —

(1) Dividends may be declared and paid in cash or property only out of unreserved and unrestricted earned surplus of the corporation except as otherwise provided in this section;

(2) No dividend shall be paid which would reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation;

(3) If a business corporation is engaged in the business of exploiting natural resources or was organized solely or substantially to liquidate specific assets, dividends may be declared and paid by it in cash without deduction from assets for the depletion of such resources or assets, but each such dividend which is allowable only because of the failure to make such deduction shall be identified, and the amount per share so paid shall be disclosed to the shareholders receiving the same concurrently with the distribution thereof.

B. The board of directors of a business corporation may also, from time to time, distribute to the holders of its outstanding shares having a cumulative preferential right to receive dividends, in discharge of their cumulative dividend rights, dividends payable in cash out of the capital surplus of the corporation, if at the time the corporation has no earned surplus and is not insolvent and would not thereby be rendered insolvent. Each such distribution, when made, shall be identified as a payment of cumulative dividends out of capital surplus.

Section 702.1,
new.

New section 702.1.

Section 702.1. *Distribution of Shares of Corporations.*—A. The board of directors of a business corporation may, from time to time, distribute pro rata to holders of any class or classes of its issued shares treasury shares and authorized but unissued shares, but—

(1) If distribution is made in its own authorized but unissued shares having a par value, there shall be transferred to stated capital at the time of such distribution an amount of surplus at least equal to the aggregate par value of the shares so issued;

(2) If a distribution is made in its own authorized but unissued shares without par value, the board of di-

rectors may fix a stated value for the shares so issued, and there shall be transferred to stated capital at the time of such distribution an amount of surplus equal to the aggregate stated value, if any, so fixed;

(3) The amount per share so transferred to stated capital, or the fact that there was no such transfer, shall be disclosed to the shareholders receiving such distribution concurrently with the distribution thereof;

(4) No distribution of shares of any class shall be made to holders of shares of any other class unless the articles so provide or such distribution is authorized by the affirmative vote or written consent of the holders of a majority of the outstanding shares of the class in which the distribution is to be made.

B. In lieu of issuing fractional shares in any such distribution, the corporation may pay in cash the fair value thereof, as determined by the board of directors, to shareholders entitled thereto.

Section 703.

Section 703.

Section 703. [Limitations on Dividends Payable in Shares.—Dividends in shares of the corporation may be payable in shares with or without par value. If a dividend is declared payable in shares having a par value, such shares shall be issued at the par value thereof, and there shall be transferred to stated capital at the time such dividend is declared an amount of surplus equal to the aggregate par value of the shares to be issued as a dividend. If a dividend is declared payable in shares having no par value, such shares shall be issued at such value as shall be fixed by the board of directors by resolution at the time such dividend is declared, and there shall be transferred to stated capital at the time such dividend is declared an amount of surplus equal to the aggregate value so fixed in respect to such shares. For the purpose of determining whether shares have been fully paid for, in order to fix the extent of the outstanding obligation of a shareholder to the corporation with respect to such shares, the value placed by the board of directors upon the corporate assets in estimating the surplus to be transferred to stated capital as payment for shares issued as a share dividend shall be conclusive. Shares issued as share dividends shall be fully paid shares and non-assessable. No dividend payable in shares of any class shall be paid to shareholders of any other class, unless the articles so provide, or such payment is authorized by the vote of the holders of a majority of the shares of the class in which the payment is to be made. A split-up or division of issued shares into a greater number of shares of the same class shall not be construed to be a share dividend within the meaning of

this section.] *Distributions in Partial Liquidation.*—The board of directors of a business corporation may, from time to time, distribute to its shareholders in partial liquidation, out of unrestricted capital surplus of the corporation a portion of its assets, in cash or property, subject to the following provisions:

(1) No such distribution shall be made at a time when the corporation is insolvent or when such distribution would render the corporation insolvent;

(2) No such distribution shall be made unless such distribution shall have been authorized by the prior affirmative vote obtained within one year of such distribution of the holders of at least a majority of the outstanding shares of each class whether or not entitled to vote thereon by the provisions of its articles;

(3) No such distribution shall be made to the holders of any class of shares unless all cumulative dividends accrued on all classes of shares entitled to preferential dividends prior to dividends on the shares to the holders of which such distribution is to be made shall have been fully paid;

(4) No such distribution shall be made to the holders of any class of shares which would reduce the remaining net assets of the corporation below the aggregate preferential amount payable in event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation;

(5) Each such distribution, when made, shall be identified as a distribution in partial liquidation and the amount per share disclosed to the shareholders receiving the same concurrently with the distribution thereof.

Section 704,
amended May 22,
1951, P. L. 331.

Section 704, amended May 22, 1951 (P. L. 331).

Section 704. [Dividends Payable Out of Paid-in Surplus.—Dividends in shares of the corporation may be paid out of paid-in surplus. Dividends in cash may be paid out of paid-in surplus only upon shares having a preferential right to receive dividends, provided, that in each such case the source of such dividends shall be disclosed to the shareholders entitled thereto, prior to or concurrently with the payment of such dividends.] *Special Provisions Relating to Surplus and Reserves.*—

A. The capital surplus of a business corporation may be increased, from time to time, by resolution of the board of directors, directing that all or a part of the earned surplus of the corporation be transferred to capital surplus.

B. The portion, if any, of the capital surplus of a business corporation arising from revaluation of or unrealized appreciation in assets may be decreased, from

time to time, by resolution of the board of directors, directing such decrease and an equal decrease in the book value of such assets. Upon the realization of any such increase in value, the board of directors may, by resolution, transfer from capital surplus to earned surplus the amount realized.

C. A business corporation may, with the prior affirmative vote obtained within one year of such application of the holders of a majority of the outstanding shares of each class whether or not entitled to vote thereon by the provisions of the articles of the corporation, apply any part or all of its unrestricted capital surplus to the reduction or elimination of any deficit in earned surplus. Earned surplus thereafter acquired shall be stated to be earned surplus since the date of the latest such application of capital surplus.

D. The capital surplus of a business corporation shall not be reduced except as expressly permitted by this act.

E. A business corporation may, by resolution of its board of directors, create a reserve or reserves out of its earned surplus for any proper purpose or purposes, and may abolish any such reserve in the same manner.

Section 705, amended September 26, 1951 (P. L. 1475).

Section 705,
amended Septem-
ber 26, 1951,
P. L. 1475.

Section 705. Redemption, Purchase, and Cancellation of Redeemable Shares.—A. Whenever any business corporation shall have issued any shares which are subject to redemption [and cancellation], it may, by resolution of its board of directors, *purchase or redeem* [and cancel] such shares [for consideration not in excess of that provided in the articles.] *Thereafter, such corporation may, by like resolution, cancel such shares. If the resolution so provides, such corporation may thereby reduce the number of shares of the class so cancelled which the corporation is authorized to issue by the number of shares so cancelled. If the articles prohibit the reissue of such shares, such resolution shall so provide.* Such corporation may apply to such *purchase or redemption* an amount out of its stated capital and *capital surplus* which shall not be greater than that portion of the stated capital and *capital surplus* represented by such shares at the time of such *purchase or redemption*, and the stated capital and *capital surplus* of the corporation shall be [deemed to be] reduced to this extent. *Earned surplus shall be reduced by an amount equal to the excess of the purchase or redemption price over the aggregate of such reductions of stated capital and capital surplus.* No redemption or *purchase* of such shares shall be made [which will reduce the remaining assets of the corporation below an

amount sufficient to pay all debts and known liabilities of the corporation as they mature except such debts and liabilities as have been otherwise adequately provided for] *by a corporation when it is insolvent or when such redemption or purchase would render it insolvent or which [will] would reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon voluntary dissolution.*

B. In [every such case, a statement of redemption and cancellation shall be executed under the seal of the corporation, signed and verified by two duly authorized officers thereof, which shall set forth] *the case of every such cancellation, the corporation shall file a statement of cancellation as required by section 709 of this act.*

[(1) The name of the corporation and the address of its registered office.

(2) The aggregate number of shares which the corporation had authority to issue, itemized by classes and series.

(3) The number of shares redeemed and cancelled, itemized by classes and series.

(4) The number of shares which the corporation has authority to issue, itemized by classes and series, after giving effect to the redemption and cancellation.

(5) A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, after giving effect to such redemption and cancellation.

(6) A statement, expressed in dollars, of the amount of the stated capital and the amount of paid-in surplus of the corporation after giving effect to such redemption and cancellation.

C. The statement shall be delivered to the Department of State, either prior to or within thirty days after the date of such redemption and cancellation. If the Department of State finds that the statement conforms to law, it shall, upon payment of the filing fee, endorse its approval thereon, shall issue to the corporation or its representative the approved statement and shall make and retain a copy thereof. The approval of such statement shall operate as an amendment to the articles of the corporation and shall reduce the number of shares of the class so redeemed which the corporation is authorized to issue by the number of the shares so redeemed and cancelled. Nothing contained in this section shall be construed to prohibit a reduction of authorized capital stock or a reduction of stated capital in any other manner permitted by this act.]

Subsection B of section 706.

Subsection B,
section 706.

Section 706. Reduction of Stated Capital Without Change in Share Structure.—* * *

B. Upon the approval of the resolution by the shareholders, a statement shall be executed under the seal of the corporation, signed and verified by at least two duly authorized officers thereof, which shall set forth:

(1) The name of the corporation and the address of its registered office.

(2) The number of shares outstanding, the number of shares entitled to vote in respect of such reduction, and, if the shares of any class are entitled to vote as a class, the number of shares of such class and the number of shares of all other classes entitled to vote thereon.

(3) The number of shares voted for and against such reduction, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class and the number of shares of all other classes voted for and against such reduction, respectively.

(4) A statement, expressed in dollars, of the amount of stated capital [and the amount of paid-in surplus] of the corporation adjusted to give effect to such resolution.

* * * * *

Section 707.

Section 707.

Section 707. Liability for Unlawful Dividends and Distributions.—A. The directors of a business corporation shall not declare or pay dividends, or authorize or ratify the withdrawal or distribution of any part of its assets to shareholders *by the purchase of its shares or otherwise*, except as authorized in this act. If any dividend shall be paid, or if any withdrawal or distribution of the corporate assets shall be made, except as provided in this act, the directors under whose administration the same were made, except those who shall have caused their dissent therefrom to be entered on the minutes of the meeting at which such action was authorized, or who being absent at the time shall have promptly filed their written objection thereto with the secretary of the corporation upon learning of such action, shall be jointly and severally liable to the corporation in an amount equal to the amount of the unlawful dividend or the unlawful withdrawal or distribution of assets. Any director against whom a claim shall be asserted under or pursuant to this section, and who shall be held liable thereon, shall be entitled to a contribution from the other directors who are likewise liable thereon, pro rata, according to the number of such directors. Any two or more directors may be sued in the same action.

A director shall not be liable under this section if he relied and acted in good faith upon financial statements of the corporation represented to him to be correct by the president or the officer of such corporation having charge of its books of account, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such corporation.

B. If any dividend shall be paid or if any withdrawal or distribution of any part of the corporate assets shall be made except as provided in this act, each shareholder shall be liable to the corporation in an amount equal to the amount of the unlawful dividend or unlawful withdrawal or distribution of assets to him if, but only if, he is sued therefor within two years from the date of his receipt thereof. Where, at or after the time of such payment, withdrawal or distribution, the corporation is not insolvent, and it has net assets in excess of the aggregate preferential amount payable in the event of involuntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation, a shareholder shall not be so liable unless he knew or should have known from facts within his own knowledge of the illegality of such dividend, withdrawal or distribution at the time of his receipt thereof. Any two or more shareholders may be sued in the same action.

Section 708,
added May 23,
1949, P. L. 1773,
and amended
September 26,
1951, P. L. 1475.

Section 708, added May 23, 1949 (P. L. 1773), and amended September 26, 1951 (P. L. 1475).

Section 708. Cancellation of [Shares Acquired by Corporation] *Treasury Shares*.—A. Whenever any business corporation shall have acquired any [shares of any class of its own capital stock, either pursuant to the power granted it by subdivision (7) of section 302 of this act or by the surrender of such shares to the corporation on the conversion thereof into or the exchange thereof for other shares pursuant to its articles of incorporation,] *treasury shares*, it may, by resolution of its board of directors, *with the prior affirmative vote obtained within one year of such cancellation of the holders of a majority of the outstanding shares of each class, whether or not entitled to vote thereon by the provisions of the articles of the corporation*, cancel any or all of such shares. If the resolution so provides, such corporation may thereby reduce the number of shares of the class so cancelled which the corporation is authorized to issue by the number of shares so cancelled. If the articles [of incorporation] prohibit the reissue of such shares, such resolution shall so provide. Such cor-

poration may apply to such cancellation an amount out of its stated capital *and capital surplus* which shall not be greater than that portion of the stated capital *and capital surplus* represented by *or restricted by the purchase of* such shares at the time of such cancellation, and the stated capital *and capital surplus* of the corporation shall [be deemed to] be reduced to this extent.

B. In every such case *the corporation shall file a statement of cancellation as required by section 709 of this act.* [a statement of cancellation shall be executed under the seal of the corporation, signed and verified by two duly authorized officers thereof which shall set forth:

(1) The name of the corporation and the address of its registered office;

(2) The aggregate number of shares which the corporation had authority to issue, itemized by classes and series;

(3) The number of shares cancelled, itemized by classes and series;

(4) A copy of the resolution of the board of directors directing such cancellation, which shall recite either the provision of the articles of incorporation prohibiting the reissue of such shares or the absence of such provision;

(5) The number of shares which the corporation has authority to issue, itemized by classes and series, after giving effect to such cancellation;

(6) A statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class after giving effect to such cancellation;

(7) A statement, expressed in dollars, of the amount of stated capital and the amount of the paid-in surplus of the corporation after giving effect to such cancellation;

(8) Either a statement that at the time or times when the shares cancelled were acquired by the corporation the net assets of the corporation were not less than its stated capital and that their acquisition did not reduce its net assets below its stated capital, or a statement that the cancelled shares were surrendered to the corporation on the conversion thereof into, or the exchange thereof for, other shares, pursuant to its articles of incorporation.

C. The statement shall be delivered to the Department of State within thirty days after the adoption of the resolution aforesaid. If the Department of State finds that the statement conforms to law, it shall endorse

its approval thereon, shall issue to the corporation or its representative the approved statement, and shall make and retain a copy thereof. If the resolution aforesaid provided for a reduction in the number of shares which the corporation is authorized to issue, the approval of such statement shall operate as an amendment to the articles of the corporation and shall reduce the number of shares of the class so cancelled which the corporation is authorized to issue by the number of shares so cancelled; otherwise, the shares so cancelled shall, upon such approval, have the status of authorized but unissued shares. Nothing contained in this section shall be construed to prohibit a reduction of authorized capital stock or a reduction of stated capital in any other manner permitted by this act.]

Section 709, new.

New section 709.

Section 709. Filing of Statement of Cancellation of Shares by Corporation.—A. Whenever any business corporation shall have acquired any treasury shares and shall have cancelled such shares, it shall file a statement of cancellation which shall be executed under the seal of the corporation, signed and verified by two duly authorized officers thereof, which shall set forth:

(1) The name of the corporation and the address of its registered office;

(2) The aggregate number of shares which the corporation had authority to issue, itemized by classes and series;

(3) A brief statement as to how such shares were acquired, showing that the acquisition was authorized by this act;

(4) The number of shares cancelled, itemized by classes and series;

(5) A copy of the resolution of the board of directors directing such cancellation, which shall recite either the provision of the articles prohibiting the reissue of such shares or the absence of such provision, and, if required by this act, a copy of the resolution of the shareholders so directing and the numbers of the shares of each class outstanding and voting for and against such resolution;

(6) The number of shares which the corporation has authority to issue, itemized by classes and series, after giving effect to such cancellation;

(7) The aggregate number of issued shares of the corporation itemized by classes, par value of shares, shares without par value, and series, after giving effect to such cancellation;

(8) *A statement, expressed in dollars, of the amount of stated capital of the corporation, after giving effect to such cancellation.*

B. The statement shall be delivered to the Department of State. If the Department of State finds that the statement conforms to law, it shall endorse its approval thereon, shall issue to the corporation or its representative the approved statement, and shall make and retain a copy thereof. If the resolution aforesaid provided for a reduction in the number of shares which the corporation is authorized to issue, the approval of such statement shall operate as an amendment to the articles and shall reduce the number of shares of the class of those cancelled which the corporation is authorized to issue by the number of shares so cancelled; otherwise the shares so cancelled shall, upon such approval, have the status of authorized but unissued shares.

Section 801, amended May 23, 1949 (P. L. 1773).

Section 801,
amended May 23,
1949, P. L. 1773.

Section 801. Amendment of Articles Authorized.—

A. A business corporation, in the manner hereinafter provided in this article, may from time to time amend its articles for one or more of the following purposes:

(1) To adopt a new name, subject to the restrictions heretofore provided in this act;

(2) To modify any provision thereof limiting its term of existence by increasing such term, or to remove such provision and provide for perpetual existence;

(3) To change, add to, or diminish its powers or purposes, or to set forth different or additional powers or purposes;

(4) To increase or diminish [its authorized capital stock] *the number of shares which the corporation has authority to issue*, or to reclassify the same by changing the number, par value, designations, preferences, or relative, participating, optional or other special rights of the shares, or the qualifications, limitations, or restrictions of such rights, or by changing shares with par value into shares without par value, or shares without par value into shares with par value, either with or without increasing or decreasing the number of shares;

(4.1) *To restate the articles in their entirety;*

(5) In any and as many other respects as desired [: Provided, That the articles as so amended would be authorized by this act as original articles of incorporation].

B. No amendment adopted under this section shall amend articles in such a way that as so amended they

would not be authorized by this act as original articles of incorporation, except that restated *articles shall state the location and post office address of the corporation's current instead of its initial registered office in this Commonwealth, and need not state the names and addresses of the first directors or of the incorporators, or the number and class of shares subscribed for by the incorporators.

Section 803,
amended August
19, 1953, P. L.
1119.

Section 803, amended August 19, 1953 (P. L. 1119).

Section 803. Notice of Shareholders' Meetings.—Written notice shall, not less than ten days before the shareholders' meetings called by the board of directors for the purpose of considering proposed amendments, be given to each shareholder of record entitled under the articles to vote thereon [except that such notice shall be given sixty days before meetings called to consider proposals, sixty days' notice of which is required by section eight E of this act]. Such notice shall set forth the proposed amendment or a summary of the changes to be effected thereby. *If the adoption of the proposed amendments shall be subject to the provisions of section 810 of this act, there shall also be included in, or enclosed with, such notice a copy of section 810 and of subsections B, C and D of section 515 of this act.*

Section 804.

Section 804.

Section 804. Shares Entitled to Vote on Amendments.—Except as hereinafter provided, only the holders of outstanding shares who, under the articles are entitled to vote on proposed amendments to the articles of the corporation, shall be entitled to vote thereon. If a proposed amendment would authorize the board of directors to fix and determine the relative rights and preferences, as between series, of any preferred or special class, or would revoke the authority of the board of directors to do so, then the holders of the outstanding shares of any such class shall be entitled to vote in respect to such amendment. If a proposed amendment would make any change in the preferences, qualifications, limitations, restrictions, or special or relative rights of the shares of any class *adverse to such class* or increase or decrease the par value or the authorized number of shares of any class or limit or deny the existing preemptive rights of the shares of any class, or authorize a new class of shares, senior or superior in any respect to the shares of any class then authorized, or increase the number of authorized shares of any class senior or superior in any respect

* "article" in original.

to the shares of any class then authorized, the holders of the outstanding shares of [the class or classes affected adversely by the proposed amendment] *such class* shall be entitled to vote as a class on such amendment regardless of any limitations stated in the articles on the voting rights of such class [or classes].

Section 806, amended May 23, 1949 (P. L. 1773).

Section 806,
amended May 23,
1949, P. L. 1773.

Section 806. Articles of Amendment.—After an amendment has been adopted by the shareholders, articles of amendment shall be executed under the seal of the corporation and verified by two duly authorized officers of the corporation, and shall set forth:

(1) The name and location of the registered office of the corporation.

(2) The act of Assembly under which the corporation was formed and the date [when and the place where the original articles were recorded] *of incorporation*.

(3) The time and place of the meeting of the shareholders of the corporation at which the amendment was adopted, and the kind and period of notice given to the shareholders.

(4) The number of shares outstanding, the number of shares entitled to vote on the amendment, and, if the shares of any class are entitled to vote as a class, then the number of shares of each class and the number of shares of all other classes entitled to vote thereon.

(5) The number of shares voted for and against such amendment, respectively, and if shares of any class are entitled to vote as a class, the number of shares of such class and the number of shares of all other classes voted for and against such amendment, respectively.

(6) The amendment adopted by the shareholders which shall be set forth in full.

Section 807, amended August 19, 1953 (P. L. 1119).

Section 807,
amended August
19, 1953, P. L.
1119.

Section 807. Advertisement.—Before or after an amendment has been adopted by the shareholders the corporation shall advertise its intention to file or the filing of articles of amendment with the Department of State in a manner similar to that heretofore prescribed in this act in the case of the formation of a business corporation. Advertisements may appear prior to or after the day upon which the articles of amendment are presented to the Department of State, and shall set forth briefly:

(1) The name and location of the registered office of the corporation.

(2) A statement that the articles of amendment are to be *or were* filed under the provisions of this act.

(3) The nature and character of the [proposed] amendment.

(4) The time when the articles of amendment will be *or were* filed with the Department of State.

Section 808,
amended September
26, 1951,
P. L. 1475.

Section 808, amended September 26, 1951 (P. L. 1475).

Section 808. Filing of Articles of Amendment.—The articles of amendment [proof of the advertisement heretofore required in this article] shall be delivered by the corporation, or its representative, to the Department of State. If the Department of State finds that such articles conform to law, it shall, upon payment of the filing fee, forthwith, [but not prior to the day specified in the advertisement required by the preceding section] endorse its approval thereon, shall issue to the corporation, or its representative, a certificate of amendment, to which shall be attached the approved articles, and shall make and retain a copy thereof.

Section 810,
added September
26, 1951, P. L.
1475.

Section 810, added September 26, 1951 (P. L. 1475).

Section 810. Rights of Dissenting Shareholders.—A. If any amendment to the articles [of a corporation] shall limit or deny any preemptive right of any outstanding shares, *or without express permission in the articles reduce the rate or amount of dividends payable on any outstanding shares entitled to preferential dividends or the redemption price of any outstanding shares which are redeemable or the amount payable in the event of voluntary or involuntary liquidation on any outstanding shares having preferential rights to the assets of the corporation in the event of liquidation or the conversion rate of any outstanding convertible shares*, the holder of any outstanding shares affected adversely by such amendment, who shall *object to such amendment and who shall comply with section 515, shall be entitled to the rights and remedies of dissenting shareholders as therein provided*. [have filed with the corporation, prior to or at the meeting of shareholders at which the proposed amendment was submitted to a vote, written objection to such proposed amendment and shall not have voted in favor thereof, and who, within twenty days after the effective date of the amendment, shall also make written demand on the corporation for the payment of the fair value of his shares as of the day prior to the date on which the vote was taken approving the amendment, without regard to any depreciation or appreciation thereof in consequence of the amendment, shall be paid

by the corporation the fair value of his shares, upon surrender of the share certificate or certificates representing his shares. The demand of the shareholder shall state the number and class of the shares owned by him. Unless a shareholder files such written objection and also makes such demand within the twenty-day period, he shall be conclusively presumed to have consented to the amendment and shall be bound by the terms thereof. If within thirty days after the date on which such amendment become effective, the value of such shares shall be agreed upon between the dissenting shareholder and the corporation, payment thereof shall be made, in cash, within ninety days after the date on which such amendment became effective, upon the surrender of the share certificate or certificates representing his shares. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

B. If, within such period of thirty days, the shareholder and the corporation do not so agree, then the dissenting shareholder may, within sixty days after the expiration of the thirty-day period, apply by petition to the court of common pleas, in equity, within the county in which the registered office of the corporation is situated, for the appointment by the court of three disinterested persons to appraise the fair value of his shares, without regard to any depreciation or appreciation thereof in consequence of the amendment. The award of the appraisers or of a majority of them shall be submitted to the court for determination, and the judgment of the court thereon shall be final and conclusive. The costs of such appraisal, including a reasonable fee to the appraisers, shall be fixed by the court, and shall be borne by the corporation unless, in the opinion of the court, the action of any shareholder in refusing the offer of the corporation has been arbitrary, vexatious, or in bad faith, in which case the costs shall be assessed in the discretion of the court. The award shall be payable only upon and simultaneously with the surrender to the corporation of the share certificate or certificates representing the shares of the dissenting shareholder. If the award shall not be paid by the corporation within thirty days after the order of the court thereon, the amount of the award shall be a judgment against the corporation, and may be collected as other judgments in such court are by law collectible. Upon the payment of the award or judgment, the dissenting shareholder shall cease to have any interest in such shares or in the corporation. Such shares may be held and disposed of by the corporation as it may see fit. Unless the dissenting shareholder shall file a petition within

the time herein limited, such shareholder and all persons claiming under him shall be conclusively presumed to have approved and ratified the amendment and shall be bound by the terms thereof.

C. The rights and remedies, at law or in equity, of any shareholder who desires to object to or to dissent from any such amendment shall be limited to those prescribed under this section, and such rights and remedies under this section shall be exclusive.

D. Whenever any such amendment is proposed, a copy of this section 810 shall be enclosed with the written notice mentioned in section 803 of this act, and said written notice shall state that section 810 sets forth the exclusive rights and remedies of shareholders who would be affected adversely by the proposed amendment and who object thereto.

E] B. The provisions of this section shall apply only to those business corporations which are or may become subject to the provisions of this act but which were not incorporated hereunder *and shall not apply to the holders of shares of a class issued after July 3, 1933.*

Subsection B,
section 902,
amended September
26, 1951,
P. L. 1475.

Subsection B of section 902, amended
September 26, 1951 (P. L. 1475).

Section 902. Approval of Joint Plan of Merger or Consolidation.—

* * * * *

B. The board of directors of each domestic corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote of the shareholders of such corporation entitled to vote thereon at an annual or special meeting of the shareholders. Written notice shall, not less than ten days before such annual or special meeting, be given to each shareholder of record of such corporation, whether or not entitled to vote on such plan [, unless the plan of merger or plan of consolidation contemplates that the aggregate par value or aggregate authorized number of shares of the surviving or new corporation shall be so increased over the aggregate par value or aggregate authorized number of shares of a domestic corporation party to such plan that the increase if effectuated by amendment to the articles of incorporation of such corporation would necessitate a meeting of shareholders called on sixty days' notice under section 8 E of this act in which event, sixty days' notice of such meeting shall be given to each shareholder of each such domestic corporation]. The notice shall state the place, day, hour, and purpose of the meeting. [and] *There*

shall be included in, or enclosed with, such notice a copy or a summary of the plan of merger or plan of consolidation, as the case may be, [shall be included in or enclosed with such notice] and unless subsection B of section 908 of this act is applicable, a copy of subsection A of section 908 and of subsections B, C and D of section 515 of this act.

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Section 904, amended September 26, 1951 (P. L. 1475).

Section 904,
amended Septem-
ber 26, 1951,
P. L. 1475.

Section 904. Advertisement.—The constituent domestic corporations shall advertise, before or after the approval of plan of merger by the shareholders, their intentions to file *or their filing of* articles of merger or articles of consolidation, as the case may be, with the Department of State, in newspapers published in the counties in which the registered offices of the corporations are located, in a manner similar to that heretofore prescribed in this act in the case of the formation of a business corporation. Advertisements shall appear [at least three days] prior to *or after* the day on which the articles of merger or articles of consolidation are presented to the Department of State, and shall set forth briefly:

(1) The name and the location of the registered office of each of the corporations intending to merge or consolidate.

(2) The name and the location of the [proposed] registered office of the domestic surviving or new corporation, or in the case of a foreign surviving or new corporation, the name of such corporation and its domiciliary state, together with the location of its office registered with the state.

(3) A statement that the articles of merger or consolidation are to be *or were* filed under the provisions of this act.

(4) The purpose or purposes of the surviving or new corporation.

(5) The time when the articles of merger or consolidation will be *or were* delivered to the Department of State.

Section 905, amended August 19, 1953 (P. L. 1119).

Section 905,
amended August
19, 1953, P. L.
1119.

Section 905. Filing of Articles of Merger or Consolidation.—The articles of merger or articles of consolidation, as the case may be, [and proof of the advertisement required by the preceding section,] and a certificate or certificates from the proper department or departments evidencing payment by the corporation of all bonus, taxes and charges as required by law, shall be

delivered to the Department of State, except that no such certificates shall be required if the surviving or new corporation is to be a domestic corporation, or shall, on the effective date of the merger or consolidation, be a foreign business corporation authorized, under Article X. of this act, to do business in this Commonwealth. If the Department of State finds that such articles conform to law, and that the certificate or certificates evidencing payment of bonus or taxes or charges delivered therewith *if required* is in proper form, it shall, upon payment of the filing fee, forthwith, [but not prior to the day specified in the advertisement required by the preceding section] endorse its approval thereon, and issue to the surviving or new corporation, or its representative, a certificate of merger or a certificate of consolidation, as the case may be, to which shall be attached the approved articles, and shall make and retain a copy thereof.

Section 907,
amended August
19, 1953, P. L.
1119.

Section 907, amended August 19, 1953 (P. L. 1119).

Section 907. Effect of Merger or Consolidation.— Upon the merger or consolidation becoming effective, the several corporations parties to the plan of merger or consolidation shall be a single corporation which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation. The separate existence of all corporations parties to the plan of merger or consolidation shall cease, except that of the surviving corporation, in the case of a merger. The surviving or new corporation, as the case may be, if it be a domestic corporation, shall not thereby acquire authority to engage in any business or exercise any right which a corporation may not be formed under this act to engage in or exercise. All the property, real, personal, and mixed, of each of the corporations parties to the plan of merger or consolidation, and all debts due on whatever account to any of them, including subscriptions to shares and other choses in action belonging to any of them, shall be taken and deemed to be transferred to and vested in the surviving or new corporation, as the case may be, without further act or deed. The surviving or new corporation shall thenceforth be responsible for all the liabilities and obligations of each of the corporations so merged or consolidated, but the liabilities of the merging or consolidating corporations, or of their shareholders, directors, or officers, shall not be affected, nor shall the rights of the creditors thereof or of any persons dealing with such corporations, or any liens upon the property of such corporations, be impaired by such merger or con-

solidation, and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or the surviving or new corporation may be proceeded against or substituted in its place. Any taxes, bonus, penalties and public accounts of the Commonwealth, claimed against any of the merging or consolidating corporations, but not settled, assessed or determined prior to such merger or consolidation, shall be settled, assessed or determined against the surviving or new corporation, and, together with interest thereon, shall be a lien against the franchises and property, both real and personal, of the surviving or new corporation. In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles are stated in the articles of merger; and in the case of a consolidation, the statements which are set forth in the articles of consolidation, and, if the new corporation be a domestic corporation, which are required or permitted to be set forth in the articles of incorporation of corporations formed under this act, shall be deemed to be the articles of incorporation of the new corporation. The aggregate amount of the net assets of the merging or consolidating corporations which was available for the payment of dividends immediately prior to such merger or consolidation, to the extent that the value thereof is not transferred to stated capital or *capital surplus* by the issuance of shares or otherwise, shall continue to be available for the payment of dividends by such surviving or new corporation.

Section 908, subsections A and B, amended May 23, 1949 (P. L. 1773), subsections C and D, added March 31, 1941 (P. L. 13), and subsection E, added September 26, 1951 (P. L. 1475).

Section 908, subsections A and B, amended May 23, 1949, P. L. 1773, subsections C and D, added March 31, 1941, P. L. 13, and subsection E, added September 26, 1951, P. L. 1475.

Section 908. Rights of Dissenting Shareholders.—A. If any shareholder of a domestic corporation which becomes a party to a plan of merger or consolidation shall *object to such plan of merger or consolidation and shall comply with the provisions of section 515, such shareholder shall be entitled to the rights and remedies of dissenting shareholders therein provided.* [file with such corporation, prior to or at the meeting of shareholders at which the plan of merger or consolidation is submitted to a vote, a written objection to such plan of merger or consolidation, and shall not vote in favor thereof, and such shareholder, within twenty days after the merger or consolidation was effected, shall also make written demand on the surviving or new corporation for the payment of the fair value of his shares as of the day

prior to the date on which the vote was taken approving the merger or consolidation, without regard to any depreciation or appreciation thereof in consequence of the merger or consolidation, the surviving or new corporation shall pay to such shareholder the fair value of his shares upon surrender of the share certificate or certificates representing his shares. The demand of the shareholder shall state the number and class of the shares owned by him. Unless a shareholder files such written objection and also makes such demand within the twenty-day period he shall be conclusively presumed to have consented to the merger or consolidation, and shall be bound by the terms thereof. If within thirty days after the date on which such merger or consolidation was effected the value of such shares shall be agreed upon between the dissenting shareholder and the surviving or new corporation, payment thereof shall be made in cash within ninety days after the date on which such merger or consolidation was effected, upon the surrender of the share certificate or certificates representing his shares. Upon payment of the agreed value the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

B. If within such period of thirty days the shareholder and the surviving or new corporation do not so agree, then the dissenting shareholder may within sixty days after the expiration of the thirty-day period, apply, by petition to the court of common pleas, in equity, within the county in which the registered office of the surviving or new corporation is situated, if it be a domestic corporation, or, if it be a foreign corporation, to the court of common pleas, in equity, within the county in which was situated the registered office of the corporation of which such petitioner was a shareholder, which shall be deemed to be the county in which the cause of action of such petitioner arose, and all process in such proceeding shall be served upon the surviving or new foreign corporation as provided in section one thousand eleven of this act, for the appointment by the court of three disinterested persons to appraise the fair value of his shares without regard to any depreciation or appreciation thereof in consequence of the merger or consolidation. The award of the appraisers, or of a majority of them, shall be submitted to the court for determination, and the judgment of the court thereon shall be final and conclusive. The costs of such appraisal, including a reasonable fee to the appraisers, shall be fixed by the court, and shall be borne by the surviving or new corporation unless, in the opinion of the court, the action of any shareholder in refusing the offer of the corporation has been arbitrary, vexatious, or in bad

faith, in which case the costs shall be assessed in the discretion of the court. The award shall be payable only upon, and simultaneously with, the surrender to the surviving or new corporation of the share certificate or certificates representing the shares of the dissenting shareholder. If the award shall not be paid by the surviving or new corporation within thirty days after the order of the court thereon, the amount of the award shall be a judgment against the surviving or new corporation, as the case may be, and may be collected as other judgments in such court are by law collectible. Upon the payment of the award or judgment, the dissenting shareholder shall cease to have any interest in such shares or in the surviving or new corporation. Such shares may be held and disposed of by the surviving or new corporation as it may see fit. Unless the dissenting shareholder shall file a petition within the time herein limited, such shareholder and all persons claiming under him shall be conclusively presumed to have approved and ratified the merger or consolidation, and shall be bound by the terms thereof.

C. The rights and remedies at law or in equity of any shareholder who desires to object to, or to dissent from, any merger or consolidation shall be limited to those prescribed under this section, and such rights and remedies under this section shall be exclusive.

D. A copy of this section 908 shall be enclosed with the written notice mentioned in clause B of section 902 of this act, and said written notice shall state that said section 908 sets forth the exclusive rights and remedies of shareholders who object to the plan of merger or plan of consolidation.

E. The provisions of subsections A and B of this section 908] *B. The rights of dissenting shareholders granted by subsection A of this section 908 shall not apply to the merger or consolidation of two or more corporations, one of which owns all of the outstanding shares of all the others immediately prior to the approval of the plan of merger or consolidation and at all times thereafter: Provided, That neither the state of incorporation nor the preferences, qualifications, limitations, restrictions, or special or relative rights, granted to or imposed upon the shares of any class of the parent corporation are altered by such plan. The shareholders of such parent corporation shall have no right to dissent from any such merger or consolidation.*

C. The right of dissenting shareholders granted by subsection A of this section 908 shall not apply to the purchase by a corporation of assets whether or not the consideration therefor be money or property, real or

personal, including shares or bonds or other evidences of indebtedness of such corporation. The shareholders of such corporation shall have no right to dissent from any such purchase.

Section 1002,
amended July 17,
1935, P. L. 1123,
June 24, 1939,
P. L. 696, and
May 23, 1945,
P. L. 937.

Section 1002, amended July 17, 1935 (P. L. 1123), June 24, 1939 (P. L. 696), and May 23, 1945 (P. L. 937).

Section 1002. Restriction on Admission of Foreign Business Corporations.—The Department of State shall not issue a certificate of authority to any foreign business corporation:

(1) If the application for the certificate of authority, hereinafter required by this article to be filed, sets forth any kind of business for the transaction of which a domestic business corporation could not be formed under the laws of the Commonwealth.

(2) The name of which is not expressed in English letters or characters, or does not contain the word "corporation," "company," or "incorporated," or an abbreviation thereof as provided in this act in the case of domestic business corporations, unless such corporation, for use in this Commonwealth, expresses its name in English letters or characters, and includes in or adds to the end of its name one of such words or an abbreviation thereof, in the manner heretofore provided in this act.

(3) Which has a name the same as or deceptively similar to the name of any domestic corporation or any other foreign corporation authorized to do business in this Commonwealth, or the name of any unincorporated body voluntarily registered with the Department of State under any act of Assembly, unless such other domestic or foreign corporation or unincorporated body is about to change its name, or to cease to do business, or is being wound up, or such foreign corporation is about to withdraw from doing business in this Commonwealth, and the written consent of such other domestic or foreign corporation or unincorporated body to the adoption of its name or a deceptively similar name has been given and is filed with the statement hereinafter required by this act, or unless such other domestic or foreign corporation has filed with the Department of Revenue a certificate of out of existence, or unless such domestic or foreign corporation has failed for a period of three successive years to file with the Department of Revenue or with the Department of State a report or return required by law, and such failure to file with the Department of Revenue has been certified by the Department of Revenue to the Department of State: Provided, That nothing herein contained shall be con-

strued to refer or apply to any assumed or fictitious name required by law to be filed with the Department of State.

(4) Which has a name the same as, or deceptively similar to, a name the exclusive right to which is at the time reserved by another corporation, in the manner provided in this act or any other act of Assembly.

(5) Which has as part of its name any word or phrase not permitted by this act to be a part of the name of a domestic business corporation.

If a foreign business corporation which has procured a certificate of authority to do business in this Commonwealth has a name the same as or deceptively similar to the name of another corporation as permitted by clause (3) hereof with the consent of such other corporation, and the other corporation does not change its name, cease to do business, be wound up, or withdraw as it proposed to do in its consent, the Court of Common Pleas of Dauphin County may, upon application of the Attorney General acting on his own motion or at the instance of any administrative department or commission of the Commonwealth, and the court of common pleas of any county having jurisdiction over the other corporation may, upon the application of any person, unincorporated body or corporation adversely affected, enjoin the other corporation from continuing to use its name or a name deceptively similar thereto.

Section 1003, amended May 23, 1945 (P. L. 937).

Section 1003,
amended May 23,
1945, P. L. 937.

Section 1003. Advertisement.—A foreign business corporation [before it may procure a certificate of authority] shall advertise its intention to apply *or its application* for a certificate of authority by publication in a manner similar to that heretofore prescribed in this act in the case of the formation of a domestic business corporation. Advertisements shall appear [at least three days] prior to *or after* the day on which application is made to the Department of State, and shall set forth briefly:

(a) A statement that the corporation will apply *or has applied* for a certificate of authority under the provisions of this act.

(b) The name of the corporation and of the state or country under the laws of which it is formed.

(c) The address, including street and number, if any, of its principal office in the state or country under the laws of which it is incorporated.

(d) The address, including street and number, if any, of its proposed registered office in this Commonwealth.

(e) The character and nature of the business it proposes to do within this Commonwealth.

(f) The date when its application for a certificate of authority will be *or was* presented to the Department of State.

Section 1004,
amended May 23,
1949, P. L. 1773.

Section 1004, amended May 23, 1949 (P. L. 1773).

Section 1004. Application for a Certificate of Authority.—The foreign business corporation, or its representative, shall deliver to the Department of State [a copy of its articles and all amendments thereto, duly certified by the proper public officer of the state or country of its incorporation, or, if the corporation is created by a special law and has no articles, a duly certified copy of such law, a verified translation of any part of such articles, amendments or law which is in a foreign language, proof of the advertisement heretofore required by this article, and] an application for a certificate of authority, executed under the seal of the corporation, and signed and verified by at least two duly authorized officers thereof, which shall set forth:

(1) The name of the corporation.

(2) If the name of the corporation does not contain one of the words "corporation," "company," or "incorporated," or does not end with an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this Commonwealth.

(3) The name of the state or country under the laws of which it is formed.

(4) The address, including street and number, if any, of its principal office in the state or country under the laws of which it is formed.

(5) The address, including street and number, if any, of its proposed registered office in this Commonwealth.

(6) A designation of the Secretary of the Commonwealth and his successor in office as the true and lawful attorney of the corporation upon whom all lawful process in any action or proceeding against it may be served, that the service of process upon the Secretary of the Commonwealth shall be of the same legal force and validity as if served on the corporation, and that the authority for such service of process shall continue in force as long as any liability remains outstanding against the corporation in this Commonwealth.

(7) A brief statement of the business it proposes to do within this Commonwealth *and a statement that such business is authorized by its articles.*

(8) A statement of the aggregate number of shares which it has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(9) A statement of the aggregate number of its issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(10) Such further and additional information as the Department of State may from time to time require for the purpose of ascertaining whether or not the applicant corporation is entitled to a certificate of authority.

Subsection A of section 1005, amended September 26, 1951 (P. L. 1475).

Subsection A,
section 1005,
amended Septem-
ber 26, 1951,
P. L. 1475.

Section 1005. Issuance of Certificate of Authority.—

A. If the Department of State finds that the provisions of this article have been complied with and that the applicant corporation is entitled to a certificate of authority to do business in this Commonwealth, it shall forthwith [but not prior to the day specified in the advertisement heretofore required in this article,] endorse its approval upon the application for a certificate of authority, and when all bonus, fees and charges have been paid, as required by law, shall issue to the corporation a certificate of authority to do business in this Commonwealth, to which the application may be attached, and shall make and retain a copy thereof. The certificate of authority shall set forth the name of the corporation, the address of its registered office in this Commonwealth, and the character and nature of the business it is authorized to transact in this Commonwealth, or a summary thereof. Upon the approval of the application for a certificate of authority by the Department of State, the corporation may do, in this Commonwealth, any or all of the kinds of the business referred to in the certificate of authority and no other, subject however, to the right of the Commonwealth to cancel or revoke such right to transact business in this Commonwealth, as provided in this act. The certificate of authority shall be delivered to the corporation or its representative.

* * * * *

Section 1007, amended May 23, 1945 (P. L. 937), May 23, 1949 (P. L. 1773), and September 26, 1951 (P. L. 1475).

Section 1007,
amended May 23,
1945, P. L. 937,
May 23, 1949,
P. L. 1773, and
September 26,
1951, P. L. 1475.

Section 1007. Amended Certificate of Authority.—

A. After receiving a certificate of authority, a foreign business corporation may, subject to the provisions of this act, change its name, or be authorized to do in this

Commonwealth other or additional business than that authorized by its certificate of authority, by filing with the Department of State an application for an amended certificate of authority [together with a copy of the amendment, merger or change of name duly authenticated by the proper official of the state or country under the laws of which such corporation is organized and proof of the advertisement hereinafter required by this section]. Such application shall be executed under the seal of the corporation, signed and verified by two duly authorized officers thereof, and shall set forth the changes desired by the corporation, *and shall state:*

(1) *The name under which the applicant corporation received a certificate of authority to do business within the Commonwealth of Pennsylvania.*

(2) *The name of the state or *country under the laws of which the corporation is formed and the address of its principal office in said state or country.*

(3) *The address of its present registered office in Pennsylvania.*

(4) *The change in the corporation's certificate of authority which is desired and a statement that the change of name reflects a change effected in the state or country of incorporation or that the amended statement of the business proposed to be done in Pennsylvania is such as is authorized by the corporation's articles in its domiciliary state.*

B. A foreign business corporation shall [before making application to the Department of State,] advertise its intention to apply *or its application* for an amended certificate of authority by publication in a manner similar to that prescribed in this act in the case of the filing of an application for a certificate of authority. Advertisements shall appear [at least three days] prior to *or after* the day on which application is made to the Department of State, and shall in addition to the foregoing requirements set forth briefly:

(1) If the application is for permission to do in this Commonwealth other or additional business, the character and nature of the business it proposes to do under the amended certificate of authority.

(2) If the application is for a change of name, the new name under which it proposes to do business.

C. If the Department of State finds that the provisions of this article have been complied with and that the applicant corporation is entitled to an amended certificate of authority, it shall, upon payment of the

* "county" in original.

filing fee, forthwith, [but not prior to the day specified in the advertisement heretofore required by this section] endorse its approval upon the application, issue to the applicant corporation an amended certificate of authority setting forth the desired changes, to which the application shall be attached, and shall make and retain a copy thereof.

Section 1008, amended May 23, 1945 (P. L. 937).

Section 1008,
amended May 23,
1945, P. L. 937.

[Section 1008. Amendments to Articles of Foreign Business Corporations.—Upon amendment of the articles of any foreign corporation authorized by a certificate of authority to transact business in this Commonwealth, or upon the filing by said corporation of a certificate of change of principal office, or other instrument required to be filed under the law of the state in which said corporation is organized, such corporation shall forthwith file with the Department of State a copy of such amendment or certificate, duly authenticated by the proper official of the state or country under the laws of which such corporation is organized. The filing of any such amendment shall not, of itself, enlarge or alter the nature or kind of business which such corporation is authorized to transact in this Commonwealth, *nor authorize such corporation to transact business in this Commonwealth under any other name than the name set forth in its certificate of authority, unless such corporation shall apply for and receive an amended certificate of authority, as hereinbefore provided in this article.]

Section 1009, amended May 23, 1945 (P. L. 937),
and September 26, 1951 (P. L. 1475).

Section 1009,
amended May 23,
1945, P. L. 937,
and September
26, 1951, P. L.
1475.

Section 1009. Merger or Consolidation of Foreign Business Corporations.—[A.] Whenever a foreign business corporation authorized by a certificate of authority to transact business in this Commonwealth shall be a party to a statutory merger or consolidation permitted by the laws of the state or country under which it is organized, and such corporation shall be the surviving corporation, it shall forthwith file with the Department of State [a copy of the articles of merger, duly authenticated by the proper officer of the state or country under the laws of which such statutory merger was effected, and pay to the Department of State the prescribed fee for such filing. Such copy shall be accompanied with certificates from the proper department, board or commission evidencing payment by the merging corporation or corporations of all bonus, fees, or taxes owing the

* "nor" omitted in original.

Commonwealth, except that no such certificates shall be required of the surviving corporation in cases of merger.] *a statement of merger or consolidation on a form to be prescribed by the Department of State. The filing of such statement shall operate to cancel the certificate of authority of any constituent corporations other than the surviving corporation which may have held such certificates in Pennsylvania as of the effective date of the merger or consolidation. The Department of State shall thereupon issue a certificate of withdrawal to each constituent corporation whose certificate of authority has been so cancelled.* It shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in this Commonwealth, unless the name of such corporation be changed thereby, or unless the corporation desires to transact in this Commonwealth other or additional business than that which it is then authorized to transact in this Commonwealth.

[B. If such merger or consolidation requires the procurement of an amended certificate of authority, the filing of a certified copy of such merger or consolidation with the application shall constitute full compliance with the requirements of this section.]

Subsection C, section 1011, amended August 19, 1953, P. L. 1119.

Subsection C of section 1011, amended August 19, 1953 (P. L. *1119).

Section 1011. Service of Process Upon the Secretary of the Commonwealth.— * * *

[C. For the purposes of this act, the entry of any corporation into this Commonwealth for the doing of a series of similar acts for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object, or doing a single act in this Commonwealth for such purpose with the intention of thereby initiating a series of such acts, shall constitute "doing business."]

Subsections B and C, section 1015, amended July 31, 1941, P. L. 636, and May 23, 1945, P. L. 937.

Subsections B and C of section 1015, amended July 31, 1941 (P. L. 636), and May 23, 1945 (P. L. 937).

Section 1015. Surrender of Certificate of Authority.— * * *

B. A foreign business corporation shall, before *or after* making application for a certificate of withdrawal, advertise its intention to withdraw *or its withdrawal* from doing business in this Commonwealth in a manner similar to that hereinafter required by this act in the case of the voluntary dissolution of a domestic business corporation, and shall procure from the proper depart-

* "1110" in original.

ment or departments a certificate or certificates evidencing payment by the corporation of all bonus, taxes and charges payable to the Commonwealth. The advertisement shall set forth briefly:

(1) The name of the corporation and of the state or country under the laws of which it is formed.

(2) The address, including street and number, if any, of its principal office in the state or country under the laws of which it is incorporated.

(3) The address, including street and number, if any, of its present registered office in this Commonwealth.

(4) The date when its application for a certificate of withdrawal will be *or was* presented to the Department of State.

C. Upon the filing of such application [, proof of the advertisement] and certificate or certificates evidencing payment by the corporation of all bonus, taxes and charges due to the Commonwealth, and the return for cancellation of the corporation's certificate of authority, or the filing of proof that it has been lost or destroyed, the Department of State, upon payment of the filing fee, shall cancel the certificate of authority, if any, and shall issue to the corporation, or its representative, a certificate of withdrawal. Upon the issuance of the certificate of withdrawal, the authority of the corporation to do business within this Commonwealth shall cease and determine. The issuance of such certificate shall not affect any action pending at the time thereof, or affect any right of action upon any contract made by such corporation in the Commonwealth before the issuance of the certificate. Process against the corporation in an action upon any liability or obligation incurred within this Commonwealth, before the issuance of such certificate, may be served thereafter upon the Secretary of the Commonwealth.

Section 1101, amended September 26, 1951 (P. L. 1475).

Section 1101,
amended September 26, 1951,
P. L. 1475.

Section 1101. Voluntary Dissolution by [Incorporators.—The incorporators] *Shareholders*.—*The shareholders* of a business corporation which has not commenced business [or which has not issued any shares,] may effect the dissolution of the corporation by filing articles of dissolution with the Department of State. The articles of dissolution shall be executed under the seal of the corporation, signed and verified by a majority of the [incorporators] *shareholders*, and shall set forth:

(1) The name of the corporation.

(2) The address, including street and number, if any, of its registered office.

(3) The date of its incorporation.

(4) That the corporation has not commenced business [and that none of its shares has been issued].

(5) That the amount, if any, actually paid in on subscriptions to its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto.

(6) That no debts of the corporation remain unpaid *or that adequate provision has been made therefor*.

(7) That all the [incorporators] *shareholders* elect that the corporation be dissolved.

The articles of dissolution shall be delivered to the Department of State. If the Department of State finds that the articles conform to law, it shall, upon payment of the filing fee, endorse its approval thereon, and issue a certificate of dissolution to the [incorporators] *shareholders*, or their representative, to which shall be attached the approved articles, and shall make and retain a copy thereof. Upon the approval of the articles of dissolution, the existence of the corporation shall cease.

Subsection C,
section 1104.

Subsection C of section 1104.

Section 1104. Winding Up in Voluntary Dissolution Proceedings.— * * *

C. The board of directors shall, as speedily as possible, proceed to collect all sums due or owing to the corporation, to sell and convert into cash any and all corporate assets *the conversion of which into cash is required to pay its debts and liabilities*, to collect the whole or so much as may be necessary or just of any amounts remaining unpaid on subscriptions to shares, and, out of the sum so realized, to pay, satisfy, and discharge all debts and liabilities of the corporation, according to their respective priorities. Any surplus *of cash or property* remaining after paying off all debts and liabilities of the corporation shall be paid *to or distributed among the shareholders* by the board of directors [to the shareholders], according to their respective rights and preferences.

* * * * *

Section 1111,
amended June
24, 1939, P. L.
698.

Section 1111, amended June 24, 1939 (P. L. 698).

Section 1111. Survival of Remedies *and Rights* After Dissolution.—A. The dissolution of a business corporation, either by the issuance of a certificate of dissolution by the Department of State, or by the decree of a court of common pleas, when the court has not liquidated the assets and property of the corporation, or by expiration of its period of duration, or by the sale of all its franchises, property and assets to another business corpora-

tion, shall not take away or impair any remedy given against such corporation, its directors or shareholders, for any liability incurred prior to such dissolution, if suit thereon is brought and service of process had before or within two years after the date of such dissolution. Such suits may be prosecuted against and defended by the corporation in its corporate name.

B. The dissolution of a business corporation shall not take away or impair any property right, tangible or intangible, including any right of action, of such corporation. Should any such property right be discovered after the dissolution of the corporation, the surviving member or members of the board of directors which wound up the affairs of the corporation, or a receiver appointed by the court of common pleas of the county in which the registered office of the corporation was located, shall have authority to enforce such property right and to collect and divide its assets so discovered among the persons entitled thereto and to prosecute suits in the corporate name of the corporation.

Section 2. The act of August 19, 1953 (P. L. 1075), entitled "An act authorizing corporations to grant stock options, pensions and allowances under certain circumstances and validating stock options, pensions and allowances heretofore granted," is repealed in so far as it relates to business corporations.

Repeal.

APPROVED—The 11th day of July, A. D. 1957.

GEORGE M. LEADER

No. 371

AN ACT

Amending the act of February 9, 1901 (P. L. 3), entitled "An act to provide for increasing the capital stock and indebtedness of corporations," changing the prescribed manner of increasing capital stock and indebtedness of corporations.

The General Assembly of the *Commonwealth of Pennsylvania hereby enacts as follows:

Increase of corporate debt.

Section 1. Section 1, act of February 9, 1901 (P. L. 3), entitled "An act to provide for increasing the capital stock and indebtedness of corporations," amended April 22, 1905 (P. L. 280), is amended to read:

Section 1, act of February 9, 1901, P. L. 3, amended April 22, 1905, P. L. 280, further amended.

Section 1. Be it enacted, &c., That the capital stock [or indebtedness, or both,] of any corporation created by general or special law may, with the consent of the persons or bodies corporate holding the larger amount in value of its stock, be increased to such an amount [in

Capital stock or indebtedness of corporations may be increased to amount deemed necessary.

* "Comomnwealth" in original.