

CHAPTER 16 - WYOMING BUSINESS CORPORATION ACT

ARTICLE 1 - GENERAL PROVISIONS

**17-16-101. Short title.**

This act shall be known and may be cited as the "Wyoming Business Corporation Act."

**17-16-102. Reservation of power to amend or repeal; applicability.**

(a) The legislature has power to amend or repeal all or part of this act at any time and all domestic and foreign corporations subject to this act are governed by the amendment or repeal.

(b) The Financial Technology Sandbox Act shall apply to this act.

**17-16-120. Requirements for documents.**

(a) A document shall satisfy the requirements of this section, and of any other section that adds to or varies from these requirements, to be entitled to filing by the secretary of state.

(b) This act shall require or permit filing the document in the office of the secretary of state.

(c) The document shall contain the information required by this act. It may contain other information as well.

(d) The document shall be typewritten or printed or, if electronically transmitted, it shall be in a format that can be retrieved or reproduced in typewritten or printed form.

(e) The document shall be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by an English translation acceptable to the secretary of state.

(f) The document shall be executed:

(i) By the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(ii) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(iii) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(g) The person executing the document shall sign it and shall state beneath or opposite his signature his name and the capacity in which he signs. The document may but need not contain:

(i) The corporate seal;

(ii) An attestation by the secretary or an assistant secretary;

(iii) An acknowledgment, verification or proof.

(h) If the secretary of state has prescribed a mandatory form for the document under W.S. 17-16-121, the document shall be in or on the prescribed form.

(i) The document shall be delivered to the office of the secretary of state for filing. Delivery may be made by electronic transmission if and to the extent permitted by the secretary of state. If it is filed in typewritten or printed form and not transmitted electronically, the secretary of state may require one (1) exact copy to be delivered with the document, except as provided in W.S. 17-28-103.

(j) When any document is delivered to the office of the secretary of state for filing, the correct filing fee, and any franchise tax, license fee, penalty or past due fees, taxes or penalties required to be paid by this act or other law shall be paid or provision for payment made in a manner provided by the secretary of state.

(k) Reserved.

#### **17-16-121. Forms.**

(a) If the secretary of state so requires, use of forms provided by the secretary of state pursuant to this subsection is mandatory. The secretary of state may prescribe and furnish on request forms for:

- (i) An application for a certificate of existence;
- (ii) A foreign corporation's application for a certificate of authority to transact business in this state;
- (iii) A foreign corporation's application for a certificate of withdrawal;
- (iv) The annual report;
- (v) A foreign corporation's application for a certificate of continuance;
- (vi) An application for a certificate of transfer;
- (vii) A foreign corporation's application for certificate of domestication; and
- (viii) A consent of registered agent to appointment.

(b) The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by this act but their use is not mandatory.

**17-16-122. Filing, service and copying fees.**

The secretary of state shall set and collect filing, service and copying fees to recover his costs to administer this act. Fees shall not exceed the costs of providing these services.

**17-16-123. Effective time and date of document.**

(a) Except as provided in subsection (b) of this section and W.S. 17-16-124(c), a document accepted for filing pursuant to W.S. 17-16-120 is effective:

- (i) As of the time received for filing, as evidenced by such means as the secretary of state may use for the purpose of recording the date and time of filing; or
- (ii) At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth (90th) day after the date it is filed.

**17-16-124. Correcting filed document.**

(a) A domestic or foreign corporation may correct a document filed with the secretary of state if the document:

(i) Contains an inaccuracy;

(ii) Was defectively executed, attested, sealed, verified, or acknowledged; or

(iii) The electronic transmission was defective.

(b) A document is corrected:

(i) By preparing articles of correction that:

(A) Describe the document, including its filing date, or attach a copy of the document to the articles of correction;

(B) Specify the inaccuracy or defect to be corrected; and

(C) Correct the inaccuracy or defect.

(ii) By delivering the articles of correction to the secretary of state for filing.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

**17-16-125. Filing duty of secretary of state.**

(a) If a document delivered to the office of the secretary of state for filing satisfies the requirements of W.S. 17-16-120, the secretary of state shall file the document.

(b) The secretary of state files a document by stamping or otherwise endorsing "Filed," together with his official title and the date and time of filing, on both the original and the document copy and on the receipt for the filing fee. The secretary of state may prescribe rules for filing of electronic transmissions. After filing a document, except as provided in W.S. 17-28-103, the secretary of state shall deliver the document copy, with the filing fee receipt (or acknowledgement of receipt if no fee is required) attached, to the domestic or foreign corporation or its representative. The secretary of state, in his discretion, may issue a certificate evidencing the filing of a document upon the payment of the requisite fee.

(c) If the secretary of state refuses to file a document, he shall return it to the domestic or foreign corporation or its representative within fifteen (15) days after the document was delivered, together with a brief, written explanation of the reason for his refusal.

(d) The secretary of state's duty to file documents under this section is ministerial. His filing or refusing to file a document does not:

(i) Affect the validity or invalidity of the document in whole or part;

(ii) Relate to the correctness or incorrectness of information contained in the document; or

(iii) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

**17-16-126. Appeal from secretary of state's refusal to file document.**

(a) If the secretary of state refuses to file a document delivered to his office for filing, the domestic or foreign corporation may, within thirty (30) days after the return of the document, appeal the refusal to the district court of the county where the corporation's principal office is located in the state or, if the corporation does not have a principal office in the state, the district court of the county where its registered office is or will be located, or the district court of the county of residence of an incorporator for a domestic corporation, or in the district court of Laramie county. The

appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of his refusal to file.

(b) The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

**17-16-127. Evidentiary effect of copy of filed document.**

A certificate from the secretary of state delivered with a copy of a document filed by the secretary of state is conclusive evidence that the original document is on file with the secretary of state.

**17-16-128. Certificate of existence.**

(a) Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(b) A certificate of existence or authorization sets forth:

(i) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(ii) That:

(A) The domestic corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual; or

(B) The foreign corporation is authorized to transact business in this state.

(iii) That all fees, taxes, and penalties owed to this state have been paid, if:

(A) Payment is reflected in the records of the secretary of state; and

(B) Nonpayment affects the existence or authorization of the domestic or foreign corporation.

(iv) That its most recent annual report required by W.S. 17-16-1630 has been filed by the secretary of state;

(v) That articles of dissolution have not been filed;  
and

(vi) Other facts of record in the office of the secretary of state that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

**17-16-129. Repealed by Laws 2008, Ch. 91, § 3.**

**17-16-130. Powers.**

The secretary of state has the power reasonably necessary to perform the duties required of him by this act. The secretary of state shall promulgate reasonable forms, rules and regulations necessary to carry out the purposes of this act.

**17-16-140. Definitions.**

(a) In this act:

(i) "Articles of incorporation" means the original articles of incorporation, all amendments thereof and any other documents permitted or required to be filed by a domestic business corporation with the secretary of state under any provision of this act. If an amendment of the articles or any other document filed under this act restates the articles in their entirety thenceforth the articles shall not include any prior documents;

(ii) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue;

(iii) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or

contrasting color, or typing in capitals or underlined, is conspicuous;

(iv) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this act;

(v) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery and electronic transmission;

(vi) "Distribution" means a direct or indirect transfer of money or other property, except the corporation's own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend, a purchase, redemption, or other acquisition of shares, a distribution of indebtedness, or otherwise;

(vii) "Domestic unincorporated entity" means an unincorporated entity whose internal affairs are governed by the laws of this state;

(viii) "Effective date of notice" is defined in W.S. 17-16-141;

(ix) "Electronic transmission" or "transmitted electronically" means any process of communication that does not directly involve the physical transfer of paper, including a process of communication that uses one (1) or more distributed or other electronic networks or databases, and that is suitable for the retention, retrieval and reproduction of information by the recipient;

(x) "Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign nonprofit corporation;

(xi) "Eligible interests" means interests;

(xii) "Employee" includes an officer but not a director. A director may accept duties that make him also an employee;

(xiii) "Entity" includes domestic corporation and foreign corporation, domestic nonprofit corporation and foreign nonprofit corporation, domestic and foreign profit and not-for-profit unincorporated association, business trust, statutory trust, estate, partnership, trust, or two (2) or more persons having a joint or common economic interest, and state, United States or foreign government;

(xiv) "Expenses" means reasonable expenses of any kind that are incurred in connection with a matter, including but not limited to attorney and expert witness fees;

(xv) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state;

(xvi) "Governmental subdivision" includes authority, county, district, municipality, and any other political subdivision;

(xvii) "Includes" denotes a partial definition;

(xviii) "Individual" means a natural person and includes the estate of an incompetent or deceased individual;

(xix) "Interest" means either or both of the following rights under the organic law of an unincorporated entity:

(A) The right to receive distributions from the entity either in the ordinary course or upon liquidation; or

(B) The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy or person responsible for managing its business and affairs.

(xx) "Interest holder" means a person who holds of record an interest;

(xxi) "Means" denotes an exhaustive definition;

(xxii) "Net assets" means the amount by which the total assets of a corporation exceed the total debts of the corporation;

(xxiii) "Notice" is defined in W.S. 17-16-141;

(xxiv) "Organic document" means a public organic document or a private organic document;

(xxv) "Organic law" means the statute governing the internal affairs of a domestic or foreign business or nonprofit corporation or unincorporated entity;

(xxvi) "Owner liability" means personal liability for a debt, obligation or liability of a domestic or foreign business or nonprofit corporation or unincorporated entity that is imposed on a person:

(A) Solely by reason of the person's status as a shareholder or interest holder; or

(B) By the articles of incorporation, bylaws or an organic document under a provision of the organic law of an entity authorizing the articles of incorporation, bylaws or an organic document to make one (1) or more specified shareholders or interest holders liable in their capacity as shareholders or interest holders for all or specified debts, obligations or liabilities of the entity.

(xxvii) "Person" includes an individual, partnership, joint venture, corporation, joint stock company, limited liability company or any other association or entity, public or private;

(xxviii) "Principal office" means the office within or outside of this state, so designated in the annual report;

(xxix) "Private organic document" means any document other than the public organic document, if any, that determines the internal governance of an unincorporated entity. Where a private organic document has been amended or restated, the term means the private organic document as last amended or restated;

(xxx) "Proceeding" includes civil suit and criminal, administrative, and investigatory action;

(xxxi) "Public corporation" means a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one (1) or more members of a national securities association;

(xxxii) "Public organic document" means the document, if any, that is filed of public record to create an unincorporated entity. Where a public organic document has been amended or restated, the term means the public organic document as last amended or restated;

(xxxiii) "Qualified director" is defined in W.S. 17-16-143;

(xxxiv) "Record date" means the date established under article 6 or 7 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this act. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed;

(xxxv) "Registered agent" means as provided in W.S. 17-28-101 through 17-28-111;

(xxxvi) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under W.S. 17-16-840(c) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation;

(xxxvii) "Shareholder" means the person in whose name shares are registered in the records of a corporation, the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation or the owner of a private key that is uniquely associated with a data address that facilitates or records the sending and receiving of shares;

(xxxviii) "Shares" means the units into which the proprietary interests in a corporation are divided;

(xxxix) "Sign" or "signature" includes any manual, facsimile, conformed or electronic signature or a network signature;

(xl) "State," when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States;

(xli) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation;

(xliv) "Unincorporated entity" means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following: a domestic or foreign business or nonprofit corporation, an estate, a trust, a state, the United States or a foreign government. The term includes, but is not limited to, a general partnership, limited liability company, limited partnership, limited liability limited partnership, registered limited liability partnership, business trust, statutory trust, cooperative, joint stock association, joint venture and unincorporated nonprofit association;

(xlv) "United States" includes district, authority, bureau, commission, department, and any other agency of the United States;

(xlvi) "Voting group" means all shares of one (1) or more classes or series that under the articles of incorporation or this act are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this act to vote generally on the matter are for that purpose a single voting group;

(xlvii) "Voting power" means the current power to vote in the election of directors;

(xlviii) "Identity" means the name of a shareholder or the data address for which the shareholder has knowledge or possession of the private key uniquely associated with the data address;

(xlix) "Data address" means the string of alphanumeric characters on one (1) or more distributed or other electronic networks or databases that may only be accessed by knowledge or possession of a private key in order to facilitate or record transactions on the distributed or other electronic network or database;

(l) "Network signature" means a string of alphanumeric characters that, when broadcast by a person to the data address's corresponding distributed or other electronic network or database, provides reasonable assurances to a recipient that the broadcasting person has knowledge or

possession of the private key uniquely associated with the data address;

(xlix) "Record of shareholders" means one (1) or more records administered by or on behalf of a corporation that records the identity of all the corporation's shareholders and the number and class of shares held by each shareholder in accordance with W.S. 17-16-1601. "Record of shareholders" includes a record of all issuances and transfers of shares of a corporation at the discretion of the corporation;

(1) "This act" means W.S. 17-16-101 through 17-16-1810.

### **17-16-141. Notice.**

(a) Notice under this act shall be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice.

(b) Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communication.

(c) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective:

(i) Upon deposit in the United States mail, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders;

(ii) When an electronic transmission has been made to a data address provided by the shareholder; or

(iii) When electronically transmitted to the shareholder in a manner otherwise authorized by the shareholder.

(d) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign

corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(e) Except as provided in subsection (c) of this section, written notice, if in a comprehensible form, is effective at the earliest of the following:

(i) When received;

(ii) Five (5) days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed; or

(iii) On the date shown on the return receipt, if sent by registered or certified mail, or comparable private carrier, return receipt requested, and the receipt is signed, either manually or in facsimile, by or on behalf of the addressee.

(f) Oral notice is effective when communicated if communicated in a comprehensible manner.

(g) If this act prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this act, those requirements govern.

#### **17-16-142. Number of shareholders.**

(a) For purposes of this act, the following identified as a shareholder in a corporation's current record of shareholders constitutes one (1) shareholder:

(i) Three (3) or fewer coowners;

(ii) A corporation, partnership, trust, estate, or other entity;

(iii) The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account; or

(iv) One (1) data address.

(b) For purposes of this act, shareholdings registered in substantially similar names constitute one (1) shareholder if it

is reasonable to believe that the names represent the same person.

**17-16-143. Qualified director.**

(a) A "qualified director" is a director who, at the time action is to be taken under:

(i) W.S. 17-16-744, does not have:

(A) A material interest in the outcome of the proceeding; or

(B) A material relationship with a person who has such an interest.

(ii) W.S. 17-16-853 or 17-16-855:

(A) Is not a party to the proceeding;

(B) Is not a director as to whom a transaction is a director's conflicting interest transaction or who sought a disclaimer of the corporation's interest in a business opportunity under W.S. 17-16-870, which transaction or disclaimer is challenged in the proceeding; and

(C) Does not have a material relationship with a director described in either subparagraph (A) or (B) of this paragraph.

(iii) W.S. 17-16-862, is not a director as to whom the transaction is a director's conflicting interest transaction, or a director who has a material relationship with another director as to whom the transaction is a director's conflicting interest transaction; or

(iv) W.S. 17-16-870, would be a qualified director under paragraph (iii) of this subsection if the business opportunity were a director's conflicting interest transaction.

(b) For purposes of this section:

(i) "Material interest" means an actual or potential benefit or detriment, other than one which would devolve on the corporation or the shareholders generally, that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken;

(ii) "Material relationship" means a familial, financial, professional, employment or other relationship that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

(c) The presence of one (1) or more of the following circumstances shall not automatically prevent a director from being a qualified director:

(i) Nomination or election of the director to the current board by any director who is not a qualified director with respect to the matter, or by any person that has a material relationship with that director, acting alone or participating with others;

(ii) Service as a director of another corporation of which a director who is not a qualified director with respect to the matter, or any individual who has a material relationship with that director, is or was also a director; or

(iii) With respect to action to be taken under W.S. 17-16-744, status as a named defendant, as a director against whom action is demanded or as a director who approved the conduct being challenged.

**17-16-144. Reserved.**

ARTICLE 2 - INCORPORATION

**17-16-201. Incorporators.**

One (1) or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

**17-16-202. Articles of incorporation.**

(a) The articles of incorporation shall set forth:

(i) A corporate name for the corporation that satisfies the requirements of W.S. 17-16-401;

(ii) The number of shares the corporation is authorized to issue, which may be unlimited if so stated;

(iii) The street address of the corporation's initial registered office and the name of its initial registered agent at that office; and

(iv) The name and address of each incorporator.

(b) The articles of incorporation may set forth:

(i) The names and addresses of the individuals who are to serve as the initial directors;

(ii) Provisions not inconsistent with law including:

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

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

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

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

(E) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions.

(iii) Any provision that under this act is required or permitted to be set forth in the bylaws;

(iv) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for:

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

(B) An intentional infliction of harm on the corporation or shareholders;

(C) A violation of W.S. 17-16-833; or

(D) An intentional violation of criminal law;  
and

(v) A provision permitting or making obligatory indemnification of a director for liability (as defined in W.S. 17-16-850(a)(iii)) to any person for any action taken, or failure to take any action, as a director, except liability for:

(A) Receipt of a financial benefit to which he is not entitled;

(B) An intentional infliction of harm on the corporation or its shareholders;

(C) A violation of W.S. 17-16-833; or

(D) An intentional violation of criminal law.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in this act.

(d) Reserved.

(e) The articles of incorporation shall be accompanied by a written consent to appointment signed by the registered agent.

### **17-16-203. Incorporation.**

(a) Unless a delayed effective date is specified, the corporate existence becomes effective when the articles of incorporation are filed.

(b) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

### **17-16-204. Liability for preincorporation transactions.**

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this act, are jointly and severally liable for all liabilities created while so acting.

### **17-16-205. Organization of corporation.**

(a) After incorporation:

(i) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;

(ii) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators to:

(A) Elect directors and complete the organization of the corporation; or

(B) Elect a board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by this act to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one (1) or more written consents describing the action taken and signed by each incorporator.

(c) An organizational meeting may be held within or outside of this state.

(d) Within sixty (60) days after filing articles of incorporation, a corporation shall provide information to its registered agent as required by W.S. 17-28-107.

### **17-16-206. Bylaws.**

(a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(b) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

(c) If bylaws are not adopted:

(i) An annual meeting shall be held within three (3) months after the close of the corporation's fiscal year;

(ii) The required officers shall be the president, the secretary and the treasurer; and

(iii) Bylaws may be adopted at any director or shareholder meeting.

### **17-16-207. Emergency bylaws.**

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

(i) Procedures for calling a meeting of the board of directors;

(ii) Quorum requirements for the meeting; and

(iii) Designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws:

(i) Binds the corporation; and

(ii) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some extraordinary event.

## ARTICLE 3 - PURPOSES AND POWERS

### **17-16-301. Purposes.**

(a) Every corporation incorporated under this act has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under this act only if permitted by, and subject to all limitations of, the other statute.

### **17-16-302. General powers.**

(a) Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power to:

(i) Sue and be sued, complain and defend in its corporate name;

(ii) Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

(iii) Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;

(iv) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(v) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(vi) Purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;

(vii) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations which may be convertible into or include the option to purchase other securities of the corporation, and secure any

of its obligations by mortgage or pledge of any of its property, franchises, or income;

(viii) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(ix) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(x) Conduct its business, locate offices, and exercise the powers granted by this act within or without this state;

(xi) Elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(xii) Pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(xiii) Make donations for the public welfare or for charitable, scientific, or educational purposes;

(xiv) Transact any lawful business; and

(xv) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

### **17-16-303. Emergency powers.**

(a) In anticipation of or during an emergency defined in subsection (d) of this section, the board of directors of a corporation may:

(i) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(ii) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency defined in subsection (d) of this section, unless emergency bylaws provide otherwise:

(i) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(ii) One (1) or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

(i) Binds the corporation; and

(ii) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for the purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some extraordinary event.

**17-16-304. Ultra vires.**

(a) Except as provided in subsection (b) of this section, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged in a proceeding by:

(i) A shareholder against the corporation to enjoin the act;

(ii) The corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(iii) The attorney general under W.S. 17-16-1430.

(c) In a shareholder's proceeding under paragraph (b) (i) of this section to enjoin an unauthorized corporate act the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

#### ARTICLE 4 - NAME

##### **17-16-401. Corporate name.**

(a) A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by W.S. 17-16-301 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d) of this section, a corporate name shall not be the same as, or deceptively similar to any trademark or service mark registered in this state and shall be distinguishable upon the records of the secretary of state from the name of any profit or nonprofit corporation, trade name, limited liability company, statutory trust company, statutory foundation, limited partnership or other business entity organized, continued or domesticated under the laws of this state or licensed or registered as a foreign profit or nonprofit corporation, foreign limited partnership, foreign joint stock company, foreign statutory trust company, foreign foundation, foreign limited liability company or other foreign business entity in this state or any fictitious or reserved name.

(c) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subsection (b) of this section. The secretary of state shall authorize use of the name applied for if:

(i) The other person whose name is not distinguishable from the name which the applicant desires to register or reserve, irrevocably consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applicant; or

(ii) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the proposed user corporation:

(i) Has merged with the other corporation; or

(ii) Has been formed by reorganization of the other corporation; or

(iii) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation; or

(iv) Repealed By Laws 1996, ch. 80, § 3.

(v) Where the other corporation is affiliated with the proposed user corporation and has consented in writing to the use of the name by the proposed user corporation, and the written consent also sets forth a description of a proposed merger, consolidation, dissolution, amendment to articles of incorporation or other intended corporate action which establishes to the reasonable satisfaction of the secretary of state that the coexistence of two (2) corporations using the same name will not continue for more than one hundred twenty (120) days.

(e) This act does not control the use of fictitious names.

(f) A name is distinguishable from other names, on the records of the secretary of state, if it contains one (1) or more different letters or numerals, or if it has a different sequence of letters or numerals from the other names on the secretary of state's records. Differences which are not distinguishable are:

(i) The words or abbreviations of the words "corporation," "company," "incorporated," "limited partnership," "L.P.," "limited," "ltd.," "limited liability company," "limited company," "L.C." or "L.L.C.";

(ii) The presence or absence of the words or symbols of the words "the," "and" or "a";

(iii) Differences in punctuation and special characters;

(iv) Differences in capitalization; or

(v) Differences between singular and plural forms of words.

(g) The secretary of state has the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed by this section.

#### **17-16-402. Reserved name.**

(a) A person may apply to reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, he shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty (120) day period.

(b) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a manually signed notice of the transfer that states the name and address of the transferee.

#### **17-16-403. Reserved.**

### RTICLE 5 - OFFICE AND AGENT

#### **17-16-501. Registered office and registered agent.**

(a) Each corporation shall continuously maintain in this state:

(i) A registered office as provided in W.S. 17-28-101 through 17-28-111; and

(ii) A registered agent as provided in W.S. 17-28-101 through 17-28-111.

(A) Repealed by Laws 2008, Ch. 90, § 3.

(B) Repealed by Laws 2008, Ch. 90, § 3.

(C) Repealed by Laws 2008, Ch. 90, § 3.

(b) The provisions of W.S. 17-28-101 through 17-28-111 shall apply to all corporations.

**17-16-502. Repealed by Laws 2008, Ch. 90, § 3.**

**17-16-503. Repealed by Laws 2008, Ch. 90, § 3.**

**17-16-504. Repealed by Laws 2008, Ch. 90, § 3.**

**17-16-505. Repealed by Laws 2008, Ch. 90, § 3.**

**17-16-506. Repealed by Laws 2008, Ch. 90, § 3.**

**17-16-507. Repealed by Laws 2008, Ch. 90, § 3.**

**17-16-508. Repealed by Laws 2008, Ch. 90, § 3.**

**17-16-509. Repealed by Laws 2008, Ch. 90, § 3.**

#### ARTICLE 6 - SHARES AND DISTRIBUTIONS

**17-16-601. Authorized shares.**

(a) The articles of incorporation shall set forth the classes of shares and series of shares within a class, and the number, which may be unlimited, of shares of each class and series that the corporation is authorized to issue. If more than one (1) class or series of shares is authorized, the articles of incorporation shall prescribe a distinguishing designation for each class or series, and shall prescribe, prior to the issuance of shares of a class or series, the terms, including preferences, rights and limitations of that class or series. Except to the extent varied as permitted by this section, all shares of a class or series shall have terms, including preferences, rights and limitations that are identical with those of other shares of the same class or series.

(b) The articles of incorporation shall authorize:

(i) One (1) or more classes or series of shares that together have unlimited voting rights; and

(ii) One (1) or more classes or series of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

(c) The articles of incorporation may authorize one (1) or more classes or series of shares that:

(i) Have special, conditional, or limited voting rights, or no right to vote, except to the extent otherwise provided by this act;

(ii) Are redeemable or convertible as specified in the articles of incorporation:

(A) At the option of the corporation, the shareholder, or another person or upon the occurrence of a specified event;

(B) For cash, indebtedness, securities, or other property; and

(C) At prices and in amounts specified or determined in accordance with a formula.

(iii) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(iv) Have preference over any other class or series of shares with respect to distributions, including distributions upon the dissolution of the corporation.

(d) Terms of shares may be made dependent upon facts objectively ascertainable outside the articles of incorporation.

(e) Any of the terms of shares may vary among holders of the same class or series so long as such variations are expressly set forth in the articles of incorporation.

(f) The description of the preferences, rights and limitations of classes or series of shares in subsection (c) of this section is not exhaustive.

**17-16-602. Terms of class or series determined by board of directors.**

(a) If the articles of incorporation so provide, the board of directors is authorized, without shareholder approval, to:

(i) Classify any unissued shares into one (1) or more classes or into one (1) or more series within a class;

(ii) Reclassify any unissued shares of any class into one (1) or more classes or into one (1) or more series within one (1) or more classes; or

(iii) Reclassify any unissued shares of any series of any class into one (1) or more classes or into one (1) or more series within a class.

(b) If the board of directors acts pursuant to subsection (a) of this section, it shall determine the terms, including the preferences, rights and limitations, to the same extent permitted under W.S. 17-16-601, of:

(i) Any class of shares before the issuance of any shares of that class; or

(ii) Any series within a class before the issuance of any shares of that series.

(c) Before issuing any shares of a class or series created under this section, the corporation shall deliver to the secretary of state for filing articles of amendment effecting the provisions of this section in accordance with article 10 of this act and setting forth the terms determined under subsection (a) of this section.

**17-16-603. Issued and outstanding shares.**

(a) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or cancelled.

(b) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (c) of this section and to W.S. 17-16-640.

(c) At all times that shares of the corporation are outstanding, one (1) or more shares that together have unlimited voting rights and one (1) or more shares that together are entitled to receive the net assets of the corporation upon dissolution shall be outstanding.

**17-16-604. Fractional shares.**

(a) A corporation may:

(i) Issue fractions of a share or pay in money the value of fractions of a share;

(ii) Arrange for disposition of fractional shares by the shareholders; or

(iii) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(b) Each certificate representing scrip shall be conspicuously labeled "scrip" and shall contain the information required by W.S. 17-16-625(b).

(c) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(d) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

(i) That the scrip will become void if not exchanged for full shares before a specified date; and

(ii) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

**17-16-605. Construction of terms relating to stock and certificate tokens.**

(a) As used in this title, any reference to:

(i) Share certificate, share, stock, share of stock or words of similar import shall be construed to include a certificate token;

(ii) A requirement to print information on a share certificate or words of similar import shall be construed to be satisfied if the information satisfies the requirements set forth in W.S. 17-16-625(g);

(iii) Certificated shares or words of similar import shall be construed to include shares represented by certificate tokens, and any reference to the delivery or deposit of these shares to the corporation shall be construed to refer to any method of granting control of the tokens to the corporation;

(iv) A certificate being duly endorsed or words of similar import shall be construed to mean that the transaction authorizing transfer of control of the certificate token was signed by the lawful holder of the token with the network signature corresponding to the lawful holder's data address to which the certificate token was issued or last lawfully transferred.

#### **17-16-620. Subscription for shares before incorporation.**

(a) A subscription for shares entered into before incorporation is irrevocable for six (6) months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(b) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors shall be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(c) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(d) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement

provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty (20) days after the corporation sends written demand for payment to the subscriber.

(e) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to W.S. 17-16-621.

### **17-16-621. Issuance of shares.**

(a) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(b) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(c) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(d) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

(e) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be cancelled in whole or part.

(f) (i) An issuance of shares or other securities convertible into or rights exercisable for shares, in a transaction or a series of integrated transactions, requires

approval of the shareholders, at a meeting at which a quorum exists, if:

(A) The shares, other securities, or rights are issued for consideration other than cash or cash equivalents; and

(B) The voting power of shares that are issued and issuable as a result of the transaction or series of integrated transactions will comprise more than twenty percent (20%) of the voting power of the shares of the corporation that were outstanding immediately before the transaction.

(ii) In this subsection:

(A) For purposes of determining the voting power of shares issued and issuable as a result of a transaction or series of integrated transactions, the voting power of shares shall be the greater of:

(I) The voting power of the shares to be issued; or

(II) The voting power of the shares that would be outstanding after giving effect to the conversion of convertible shares and other securities and the exercise of rights to be issued.

(B) A series of transactions is integrated if consummation of one (1) transaction is made contingent on consummation of one (1) or more of the other transactions.

### **17-16-622. Liability of shareholders.**

(a) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued pursuant to W.S. 17-16-621 or specified in the subscription agreement pursuant to W.S. 17-16-620.

(b) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.

**17-16-623. Share dividends.**

(a) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one (1) or more classes or series. An issuance of shares under this subsection is a share dividend.

(b) Shares of one (1) class or series may not be issued as a share dividend in respect of shares of another class or series unless:

(i) The articles of incorporation so authorize;

(ii) A majority of the votes entitled to be cast by the class or series to be issued approve the issue; or

(iii) There are no outstanding shares of the class or series to be issued.

(c) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

**17-16-624. Share options.**

(a) A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued and the terms, including the consideration for which the shares are to be issued. The authorization by the board of directors for the corporation to issue the rights, options or warrants constitutes authorization of the issuance of the shares or other securities for which the rights, options or warrants are exercisable.

(b) The terms and conditions of such rights, options or warrants, including those outstanding on July 1, 2009, may include, without limitation, restrictions or conditions that:

(i) Preclude or limit the exercise, transfer or receipt of such rights, options or warrants by any person owning or offering to acquire a specified number or percentage of the outstanding shares or other securities of the corporation or by any transferee of any such person; or

(ii) Invalidate or void the rights, options or warrants held by any such person or transferee.

**17-16-625. Form and content of certificates.**

(a) Shares may but need not be represented by certificates. Unless this act or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(b) At a minimum each share certificate shall state on its face:

(i) The name of the issuing corporation and that it is organized under the law of this state;

(ii) The name of the person to whom, or in the case of a certificate token, the data address to which the token was issued; and

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

(c) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series, and the authority of the board of directors to determine variations for future series, shall be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(d) Except as otherwise provided by subsection (g) of this section, each share certificate:

(i) Shall be signed, either manually or in facsimile, by two (2) officers designated in the bylaws or by the board of directors; and

(ii) May bear the corporate seal or its facsimile.

(e) If the person who signed a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

(f) In no case shall a corporation issue share certificates in bearer form. For purposes of this subsection "bearer form" means a form in which the certificate is payable to the bearer of the certificate according to its terms but not by reason of an endorsement. If a corporation formed under this act or qualified to do business under this act has bearer shares outstanding, the entity shall conform those shares to comply with this section on or before October 1, 2007. Failure to do so shall be prima facie evidence of an ultra vires act pursuant to W.S. 17-16-304.

(g) The articles of incorporation or bylaws of a corporation may specify that all or a portion of the shares of the corporation may be represented by share certificates in the form of certificate tokens. The electronic message, command or transaction that transmits the certificate tokens to the data address to which a certificate token was issued shall be authorized at the time of issuance by one (1) or more messages, commands or transactions signed with the network signatures of two (2) officers designated in the bylaws or by the board of directors of the corporation.

(h) As used in this section:

(i) "Blockchain" means a digital ledger or database which is chronological, consensus based, decentralized and mathematically verified in nature;

(ii) "Certificate token" means a representation of shares that is stored in an electronic format which contains the information specified under subsections (b) and (c) of this section, and this information is:

(A) Entered into a blockchain or other secure, auditable database;

(B) Linked to or associated with the certificate token; and

(C) Able to be transmitted electronically to the issuing corporation, the person to whom the certificate token was issued and any transferee.

**17-16-626. Shares without certificates.**

(a) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(b) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall give the shareholder a written statement of the information required on certificates by W.S. 17-16-625(b) and (c), and, if applicable, W.S. 17-16-627.

**17-16-627. Restriction on transfer of shares and other securities.**

(a) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(b) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by W.S. 17-16-626(b). Unless so noted or contained, a restriction is not enforceable against a person without knowledge of the restriction.

(c) A restriction on the transfer or registration of transfer of shares is authorized:

(i) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(ii) To preserve exemptions under federal or state securities law; or

(iii) For any other reasonable purpose.

(d) A restriction on the transfer or registration of transfer of shares may:

(i) Obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(ii) Obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;

(iii) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or

(iv) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(e) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

#### **17-16-628. Expense of issue.**

A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.

#### **17-16-630. Shareholders' preemptive rights.**

(a) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.

(b) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights," or words of similar import, means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(i) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire

proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them;

(ii) A shareholder may waive his preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration;

(iii) There is no preemptive right with respect to:

(A) Shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;

(B) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;

(C) Shares authorized in articles of incorporation that are issued within six (6) months from the effective date of incorporation; or

(D) Shares sold otherwise than for money.

(iv) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class;

(v) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights;

(vi) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one (1) year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one (1) year is subject to the shareholders' preemptive rights.

(c) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

**17-16-631. Corporation's acquisition of its own shares.**

(a) A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares.

(b) If the articles of incorporation prohibit the reissue of the acquired shares, the number of authorized shares is reduced by the number of shares acquired.

(c) The board of directors may adopt articles of amendment effecting the provisions of this section under article 10 of this act without shareholder action and deliver them to the secretary of state for filing.

**17-16-640. Distributions to shareholders.**

(a) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (c) of this section.

(b) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one (1) involving a purchase, redemption, or other acquisition of the corporation's shares, it is the date the board of directors authorizes the distribution.

(c) No distribution may be made if, after giving it effect:

(i) The corporation would not be able to pay its debts as they become due in the usual course of business; or

(ii) The corporation's total assets would be less than the sum of its total liabilities plus (unless the articles of incorporation permit otherwise) the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(d) The board of directors may base a determination that a distribution is not prohibited under subsection (c) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(e) Except as provided in subsection (g) of this section, the effect of a distribution under subsection (c) of this section is measured:

(i) In the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:

(A) The date money or other property is transferred or debt incurred by the corporation; or

(B) The date the shareholder ceases to be a shareholder with respect to the acquired shares.

(ii) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(iii) In all other cases, as of:

(A) The date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization; or

(B) The date the payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

(f) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(g) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (c) of this section if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the

indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

(h) This section shall not apply to distributions in liquidation under article 14 of this act.

## ARTICLE 7 - SHAREHOLDERS

### **17-16-701. Annual meeting.**

(a) Unless directors are elected by written consent in lieu of an annual meeting as permitted by W.S. 17-16-704, a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(b) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office. The board of directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held by means of remote communication. The board shall take into consideration stockholders' ability to participate by remote communication and provide an alternative means of participation for those stockholders unable to participate by remote communication. If authorized by the board of directors in its sole discretion, and subject to guidelines and procedures the board of directors may adopt, stockholders and proxies not physically present at a meeting of stockholders may, by means of remote communication:

(i) Participate in a meeting of stockholders; and

(ii) Be deemed present in person and vote at a meeting of stockholders, whether the meeting is held at a designated place or solely by means of remote communication, provided that the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxy. The corporations shall implement reasonable measures to provide the stockholders and proxies a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with the proceeding. If any stockholder or proxy votes or takes other action at the meeting

by means of remote communication, a record of the vote or other action shall be maintained by the corporation.

(c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

#### **17-16-702. Special meeting.**

(a) A corporation shall hold a special meeting of shareholders:

(i) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(ii) If the holders of at least ten percent (10%) of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation one (1) or more written demands for the meeting describing the purpose or purposes for which it is to be held, provided that the articles of incorporation may fix a lower percentage or a higher percentage not exceeding twenty-five percent (25%) of all the votes entitled to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

(b) If not otherwise fixed under W.S. 17-16-703 or 17-16-707, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(c) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(d) Only business within the purpose or purposes described in the meeting notice required by W.S. 17-16-705(c) may be conducted at a special shareholders' meeting.

#### **17-16-703. Court-ordered meeting.**

(a) The district court of the county where a corporation's principal office or, if none in this state, its registered office is located may summarily order a meeting to be held:

(i) On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held or action by written consent in lieu thereof did not become effective within the earlier of six (6) months after the end of the corporation's fiscal year or fifteen (15) months after its last annual meeting; or

(ii) On application of a shareholder who signed a demand for a special meeting valid under W.S. 17-16-702, if:

(A) Notice of the special meeting was not given within thirty (30) days after the date the demand was delivered to the corporation's secretary; or

(B) The special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

#### **17-16-704. Action without meeting.**

(a) Action required or permitted by this act to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action shall be evidenced by one (1) or more written consents bearing the date of signature and describing the action taken, signed by the holders of the requisite number of shares entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) The articles of incorporation may provide that any action required or permitted by this act to be taken at a shareholders' meeting may be taken without a meeting, and

without prior notice, if consents in writing setting forth the action so taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. The written consent shall bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(c) If not otherwise fixed under W.S. 17-16-703 or 17-16-707, and if prior board action is not required respecting the action to be taken without a meeting, the record date for determining shareholders entitled to take action without a meeting shall be the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under W.S. 17-16-707 and if prior board action is required respecting the action to be taken without a meeting, the record date shall be the close of business on the day the resolution of the board taking such prior action is adopted. No written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest date on which a consent delivered to the corporation as required by this section was signed, written consents signed by sufficient shareholders to take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to take corporate action are delivered to the corporation.

(d) A consent signed pursuant to the provisions of this section has the effect of a vote taken at a meeting and may be described as such in any document. Unless the articles of incorporation, bylaws or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written consent shall be effective when written consents signed by sufficient shareholders to take the action are delivered to the corporation.

(e) If this act requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation shall give its nonvoting shareholders written notice of the action not more than ten (10) days after written consents sufficient to take the action have been delivered to the corporation or the later date that tabulation of consents is completed pursuant to the authorization under subsection (d) of

this section. The notice shall reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this act, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

(f) If action is taken by less than unanimous written consent of the voting shareholders, the corporation shall give its nonconsenting voting shareholders written notice of the action not more than ten (10) days after written consents sufficient to take the action have been delivered to the corporation, or the later date that tabulation of consents is completed pursuant to an authorization under subsection (d) of this section. The notice shall reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this act, would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

(g) The notice requirements in subsections (e) and (f) of this section shall not delay the effectiveness of actions taken by written consent, and a failure to comply with such notice requirements shall not invalidate actions taken by written consent, provided that this subsection shall not be deemed to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give the notice within the required time period.

(h) An electronic transmission may be used to consent to an action, if the electronic transmission contains or is accompanied by information from which the corporation can determine the date on which the electronic transmission was signed and that the electronic transmission was authorized by the shareholder, the shareholder's agent or the shareholder's attorney-in-fact.

(i) Delivery of a written consent to the corporation under this section is delivery to the corporation's registered agent at its registered office or to the secretary of the corporation at its principal office.

#### **17-16-705. Notice of meeting.**

(a) A corporation shall notify shareholders of the date, time, place and means of communication of each annual and

special shareholders' meeting no fewer than ten (10) nor more than sixty (60) days before the meeting date. Unless this act or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(b) Unless this act or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting shall include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under W.S. 17-16-703 or 17-16-707, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, place or means of communication, notice need not be given of the new date, time, place or means of communication if the new date, time place or means of communication is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or shall be fixed under W.S. 17-16-707, however, notice of the adjourned meeting shall be given under this section to persons who are shareholders as of the new record date.

#### **17-16-706. Waiver of notice.**

(a) A shareholder may waive any notice required by this act, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver shall be in writing, be signed or shall be sent by electronic transmission by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A shareholder's attendance at a meeting:

(i) Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning

of the meeting objects to holding the meeting or transacting business at the meeting; and

(ii) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

#### **17-16-707. Record date.**

(a) The bylaws may fix or provide the manner of fixing the record date for one (1) or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(b) A record date fixed under this section may not be more than seventy (70) days before the meeting or action requiring a determination of shareholders.

(c) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it shall do if the meeting is adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting.

(d) If a court orders a meeting adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

#### **17-16-708. Conduct of the meeting.**

(a) At each meeting of shareholders, a chair shall preside. The chair shall be appointed as provided in the bylaws or, in the absence of such provision, by the board.

(b) The chair, unless the articles of incorporation or bylaws provide otherwise, shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.

(c) Any rules adopted for, and the conduct of, the meeting shall be fair to shareholders.

(d) The chair of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes nor any revocations or changes thereto may be accepted.

#### **17-16-720. Shareholders' list for meeting.**

(a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical or numerical list of the identities of all its shareholders who are entitled to notice of a shareholders' meeting. The list shall be arranged by voting group, and within each voting group by class or series of shares, and show the number of shares held by each shareholder. The list shall also show each shareholder's physical mailing address, if the identity of a shareholder on the list consists of the shareholder's name, and each shareholder's authorized means of receipt for electronic transmissions, if the identity of a shareholder on the list consists of the shareholder's data address.

(b) The shareholders' list shall be available for inspection by any shareholder, beginning two (2) business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, his agent, or attorney is entitled on written demand to inspect and, subject to the requirements of W.S. 17-16-1602(c), to copy the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

(c) The corporation shall make the shareholders' list available at the meeting, and any shareholder, his agent, or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a shareholder, his agent, or attorney to inspect the shareholders' list before or at the meeting, or to copy the list as permitted by subsection (b) of this section, the district court of the county where a corporation's principal office or, if none in this state, its

registered office, is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense, order payment by the corporation of the shareholder's cost of suit including reasonable attorney fees and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

### **17-16-721. Voting entitlement of shares.**

(a) Except as provided in subsections (b) and (d) of this section or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one (1) vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(b) Unless authorized by a district court, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(c) Subsection (b) of this section does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(d) Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

### **17-16-722. Proxies.**

(a) A shareholder may vote his shares in person or by proxy.

(b) A shareholder or his agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission shall contain or be accompanied by information from which one can determine that the shareholder,

the shareholder's agent, or the shareholder's attorney-in-fact authorized the electronic transmission.

(c) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for eleven (11) months unless a longer period is expressly provided in the appointment form.

(d) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(i) A pledgee;

(ii) A person who purchased or agreed to purchase the shares;

(iii) A creditor of the corporation who extended it credit under terms requiring the appointment;

(iv) An employee of the corporation whose employment contract requires the appointment; or

(v) A party to a voting agreement created under W.S. 17-16-731.

(e) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment.

(f) An appointment made irrevocable under subsection (d) of this section is revoked when the interest with which it is coupled is extinguished.

(g) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he did not know of its existence when he acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(h) Subject to W.S. 17-16-724 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

**17-16-723. Shares held by nominees.**

(a) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(b) The procedure may set forth:

(i) The types of nominees to which it applies;

(ii) The rights or privileges that the corporation recognizes in a beneficial owner;

(iii) The manner in which the procedure is selected by the nominee;

(iv) The information that shall be provided when the procedure is selected;

(v) The period for which selection of the procedure is effective; and

(vi) Other aspects of the rights and duties created.

**17-16-724. Corporation's acceptance of votes.**

(a) If the name or network signature signed on a vote, consent, waiver, or proxy appointment corresponds to the name or data address of a shareholder, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

(b) If the name or network signature signed on a vote, consent, waiver, or proxy appointment does not correspond to the name or data address of its shareholder, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

(i) The shareholder is an entity and the name or network signature signed purports to be that of an officer or agent of the entity;

(ii) The name or network signature signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(iii) The name or network signature signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(iv) The name or network signature signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(v) Two (2) or more persons are the shareholder as cotenants or fiduciaries and the name or network signature signed purports to be the name or data address of at least one (1) of the coowners and the person signing appears to be acting on behalf of all the coowners.

(c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or W.S. 17-16-722(b) are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section or W.S. 17-16-722(b) is valid unless a court of competent jurisdiction determines otherwise.

**17-16-725. Quorum and voting requirements for voting groups.**

(a) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this act provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(b) Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or shall be set for that adjourned meeting.

(c) If a quorum exists, action on a matter other than the election of directors by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this act require a greater number of affirmative votes.

(d) An amendment of articles of incorporation adding, changing or deleting a quorum or voting requirement for a voting group greater or lesser than specified in subsection (a) or (c) of this section is governed by W.S. 17-16-727.

(e) The election of directors is governed by W.S. 17-16-728.

**17-16-726. Action by single and multiple voting groups.**

(a) If the articles of incorporation or this act provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in W.S. 17-16-725.

(b) If the articles of incorporation or this act provide for voting by two (2) or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in W.S. 17-16-725. Action may be taken by one (1) voting group on a matter even

though no action is taken by another voting group entitled to vote on the matter.

**17-16-727. Changing quorum or voting requirements.**

(a) The articles of incorporation may provide for a greater or lesser quorum or voting requirement for shareholders, or voting groups of shareholders, than is provided for by this act.

(b) An amendment to the articles of incorporation that adds, changes or deletes a quorum or voting requirement shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

**17-16-728. Voting for directors; cumulative voting.**

(a) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(b) Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

(c) A statement included in the articles of incorporation that "[all] [a designated voting group of] shareholders are entitled to cumulate their votes for directors," or words of similar import, means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two (2) or more candidates.

(d) Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:

(i) The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or

(ii) A shareholder who has the right to cumulate his votes gives notice to the corporation not less than forty-eight (48) hours before the time set for the meeting of the

shareholder's intent to cumulate his votes during the meeting. If one (1) shareholder gives this notice all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

### **17-16-729. Inspectors of election.**

(a) A public corporation shall, and any other corporation may, appoint one (1) or more inspectors to act at a meeting of shareholders and make a written report of the inspectors' determinations. Each inspector shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of the inspector's ability.

(b) The inspectors shall:

- (i) Ascertain the number of shares outstanding and the voting power of each;
- (ii) Determine the shares represented at a meeting;
- (iii) Determine the validity of proxies and ballots;
- (iv) Count all votes; and
- (v) Determine the result.

(c) An inspector may be an officer or employee of the corporation.

### **17-16-730. Voting trusts.**

(a) One (1) or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the identities of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust. The list shall also show each shareholder's physical mailing address, if the identity of a shareholder on the list consists of the shareholder's name, and each shareholder's authorized means of receipt for electronic transmissions, if the identity of a shareholder on the list consists of the shareholder's data address. Copies of the list

and agreement shall be delivered to the corporation's principal office.

(b) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than ten (10) years after its effective date unless extended under subsection (c) of this section.

(c) All or some of the parties to a voting trust may extend it for additional terms of not more than ten (10) years each by signing written consent to the extension. An extension is valid for ten (10) years from the date the first shareholder signs the extension agreement. The voting trustee shall deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

#### **17-16-731. Voting agreements.**

(a) Two (2) or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of W.S. 17-16-730.

(b) A voting agreement created under this section is specifically enforceable.

#### **17-16-732. Shareholder agreements.**

(a) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one (1) or more other provisions of this act in that it:

(i) Eliminates the board of directors or restricts the discretion or powers of the board of directors;

(ii) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in W.S. 17-16-640;

(iii) Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;

(iv) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(v) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer or employee of the corporation or among any of them;

(vi) Transfers to one (1) or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(vii) Requires dissolution of the corporation at the request of one (1) or more of the shareholders or upon the occurrence of a specified event or contingency; or

(viii) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors and the corporation, or among any of them, and is not contrary to public policy.

(b) An agreement authorized by this section shall be:

(i) Set forth:

(A) In the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

(B) In a written agreement that is signed by all persons who are shareholders at the time of the agreement and which agreement is made known to the corporation.

(ii) Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; and

(iii) Valid for ten (10) years, unless the agreement provides otherwise. Nothing herein affects agreements in force on July 1, 1997.

(c) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by W.S. 17-16-626(b). If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of ninety (90) days after discovery of the existence of the agreement or two (2) years after the time of purchase of the shares.

(d) An agreement authorized by this section shall cease to be effective when the corporation becomes a public corporation. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(e) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(f) The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in

failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(g) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

**17-16-740. Subarticle definitions.**

(a) As used in this subarticle:

(i) "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in W.S. 17-16-747, in the right of a foreign corporation;

(ii) "Shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

**17-16-741. Standing.**

(a) A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(i) Was a shareholder of the corporation at the time of the act or omission complained of, or became a shareholder through transfer by operation of law from one who was a shareholder at the time; and

(ii) Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

**17-16-742. Demand.**

(a) No shareholder may commence a derivative proceeding until:

(i) A written demand has been made upon the corporation to take suitable action; and

(ii) Ninety (90) days have expired from the date the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the ninety (90) day period.

**17-16-743. Stay of proceedings.**

If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

**17-16-744. Dismissal.**

(a) A derivative proceeding shall be dismissed by the court on motion by the corporation if one (1) of the groups specified in subsection (b) or (e) of this section has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(b) Unless a panel is appointed pursuant to subsection (e) of this section, the determination in subsection (a) of this section shall be made by:

(i) A majority vote of qualified directors present at a meeting of the board of directors if the qualified directors constitute a quorum; or

(ii) A majority vote of a committee consisting of two (2) or more qualified directors appointed by majority vote of qualified directors present at a meeting of the board of directors, regardless of whether such qualified directors constitute a quorum.

(c) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing either:

(i) That a majority of the board of directors did not consist of qualified directors at the time the determination was made; or

(ii) That the requirements of subsection (a) of this section have not been met.

(d) If a majority of the board of directors consisted of qualified directors at the time the determination was made, the plaintiff shall have the burden of proving that the requirements of subsection (a) of this section have not been met; if not, the

corporation shall have the burden of proving that the requirements of subsection (a) of this section have been met.

(e) Upon motion by the corporation or any interested party, the court may appoint a panel of one (1) or more individuals to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the requirements of subsection (a) of this section have not been met.

**17-16-745. Discontinuance or settlement.**

A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

**17-16-746. Payment of expenses.**

(a) On termination of the derivative proceeding the court may:

(i) Order the corporation to pay the plaintiff's reasonable expenses, including counsel fees, incurred in the proceeding if it finds that the proceeding resulted in a substantial benefit to the corporation;

(ii) Order the plaintiff to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(iii) Order a party to pay an opposing party's reasonable expenses, including counsel fees, incurred because of the filing of a pleading, motion or other paper, if it finds that the pleading, motion or other paper was not well grounded in fact, after reasonable inquiry, or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law and was interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

**17-16-747. Applicability to foreign corporations.**

In any derivative proceeding in the right of a foreign corporation, the matters covered by this subarticle shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for W.S. 17-16-743, 17-16-745 and 17-16-746.

**17-16-748. Shareholder action to appoint custodian or receiver.**

(a) The district court may appoint one (1) or more persons to be custodians, or, if the corporation is insolvent, to be receivers, of and for a corporation in a proceeding by a shareholder where it is established that:

(i) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or

(ii) The directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

(b) The court:

(i) May issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing is held;

(ii) Shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and

(iii) Has jurisdiction over the corporation and all of its property, wherever located.

(c) The court may appoint an individual or domestic or foreign corporation authorized to transact business in this state as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

(d) The court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended from time to time. Among other powers:

(i) A custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation; and

(ii) A receiver:

(A) May dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and

(B) May sue and defend in the receiver's own name as receiver in all courts of this state.

(e) The court during a custodianship may redesignate the custodian a receiver, and during a receivership may redesignate the receiver a custodian, if doing so is in the best interests of the corporation.

(f) The court from time to time during the custodianship or receivership may order compensation paid and expense disbursements or reimbursements made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

## ARTICLE 8 - DIRECTORS AND OFFICERS

### **17-16-801. Requirement for and functions of board of directors.**

(a) Except as provided in W.S. 17-16-732, each corporation shall have a board of directors.

(b) All corporate powers shall be exercised by or under the authority of the board of directors of the corporation, and the business and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under W.S. 17-16-732.

(c) In the case of a public corporation, the board's oversight responsibilities include attention to:

- (i) Business performance and plans;
- (ii) Major risks to which the corporation is or may be exposed;
- (iii) The performance and compensation of the chief executive officer;
- (iv) Policies and practices to foster the corporation's compliance with law and ethical conduct;
- (v) Preparation of the corporation's financial statements;
- (vi) The effectiveness of the corporation's internal controls;
- (vii) Arrangements for providing adequate and timely information to directors; and
- (viii) The composition of the board and its committees, taking into account the important role of independent directors.

**17-16-802. Qualifications of directors.**

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

**17-16-803. Number and election of directors.**

(a) A board of directors shall consist of one (1) or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws.

(c) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under W.S. 17-16-806.

(d) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time within the minimum and maximum, by the shareholders or the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable-range size board or vice versa.

**17-16-804. Election of directors by certain classes of shareholders.**

If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one (1) or more authorized classes of shares. A class or classes of shares entitled to elect one (1) or more directors is a separate voting group for purposes of the election of directors.

**17-16-805. Terms of directors generally.**

(a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(b) The terms of all other directors expire at the next, or if their terms are staggered in accordance with W.S. 17-16-806, at the applicable second or third, annual shareholders' meeting following their election except to the extent:

(i) Provided in W.S. 17-16-1022 if a bylaw electing to be governed by that section is in effect; or

(ii) A shorter term is specified in the articles of incorporation in the event of a director nominee failing to receive a specified vote for election.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(e) Despite the expiration of a director's term, he continues to serve until his successor is elected and qualifies or until there is a decrease in the number of directors.

**17-16-806. Staggered terms for directors.**

The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two (2) or three (3) groups, with each group containing one-half (1/2) or one-third (1/3) of the total, as near as may be practicable. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two (2) years or three (3) years, as the case may be, to succeed those whose terms expire.

**17-16-807. Resignation of directors.**

(a) A director may resign at any time by written notice or by electronic transmission delivered to the board of directors, its chairman, or to the corporation.

(b) A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that it is irrevocable.

**17-16-808. Removal of directors by shareholders.**

(a) The shareholders may remove one (1) or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that director.

(c) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against his removal. If cumulative voting is not authorized, a director may be

removed only if the number of votes cast to remove the director exceeds the number of votes cast not to remove the director.

(d) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director and the meeting notice shall state that the purpose, or one (1) of the purposes, of the meeting is removal of the director.

**17-16-809. Removal of directors by judicial proceeding.**

(a) The district court of the county where a corporation's principal office, or if none in this state, its registered office, is located may remove a director of the corporation from office in a proceeding commenced by or in the right of the corporation if the court finds that:

(i) The director engaged in fraudulent conduct with respect to the corporation or its shareholders, grossly abused the position of director, or intentionally inflicted harm on the corporation; and

(ii) Considering the director's course of conduct and the inadequacy of other available remedies, removal would be in the best interest of the corporation.

(b) A shareholder proceeding on behalf of the corporation under subsection (a) of this section shall comply with all of the requirements of W.S. 17-16-740 through 17-16-747 excluding W.S. 17-16-741(a)(i).

(c) The court in addition to removing a director may bar the director from reelection for a period prescribed by the court.

(d) Nothing in this section limits the equitable powers of the court to order other relief including, but not limited to, an award of expenses.

**17-16-810. Vacancy on board.**

(a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(i) The shareholders may fill the vacancy;

(ii) The board of directors may fill the vacancy; or

(iii) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders, and only the directors elected by that voting group are entitled to fill the vacancy if it is filled by the directors.

(c) A vacancy that will occur at a later date, by reason of a resignation effective at a later date under W.S. 17-16-807(b) or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

#### **17-16-811. Compensation of directors.**

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

#### **17-16-820. Meetings.**

(a) The board of directors may hold regular or special meetings within or outside of this state.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication, including electronic transmission by which all directors participating may communicate with each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

#### **17-16-821. Action without meeting.**

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this act to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by the requisite number of members of the board. The action shall be evidenced by one (1) or more written

consents describing the action taken, signed by the requisite number of directors, or shall be sent by electronic transmission by the requisite number of directors, and shall be included in the minutes or filed with the corporate records reflecting the action taken.

(b) Action taken under this section is the act of the board of directors when one (1) or more consents signed by the requisite number of directors are delivered to the corporation. The consent may specify the time at which the action taken thereunder is to be effective. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by the requisite number of directors. If action is taken by less than unanimous written consent of the directors, the corporation shall give the nonconsenting or nonvoting directors written notice of the action not more than ten (10) days after written consents sufficient to take the action have been delivered to the corporation. The notice shall reasonably describe the action taken. The requirement to give the notice shall not delay the effectiveness of actions taken by the written consent, and a failure to comply with the notice requirements shall not invalidate actions taken by written consent, provided that this subsection shall not be deemed to limit judicial power to fashion any appropriate remedy in favor of a director adversely affected by a failure to give the notice within the required time period.

(c) A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

#### **17-16-822. Notice of meeting.**

(a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place or purpose of the meeting.

(b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors shall be preceded by at least two (2) days notice of the date, time and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

**17-16-823. Waiver of notice.**

(a) A director may waive any notice required by this act, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (b) of this section, the waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting or promptly upon his arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

**17-16-824. Quorum and voting.**

(a) Unless the articles of incorporation or bylaws require a greater number or unless otherwise specifically provided in this act, a quorum of a board of directors consists of:

(i) A majority of the fixed number of directors if the corporation has a fixed board size; or

(ii) A majority of the number of directors prescribed, or if no number is prescribed the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

(b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third (1/3) of the fixed or prescribed number of directors determined under subsection (a) of this section.

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(d) The right to dissent or abstention is not available to a director who votes in favor of the action taken. A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless:

(i) The director objects at the beginning of the meeting or promptly upon his arrival to holding the meeting or transacting business at the meeting;

(ii) The director's dissent or abstention from the action taken is entered in the minutes of the meeting; or

(iii) The director delivers written notice of his dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting.

### **17-16-825. Committees.**

(a) Unless this act, the articles of incorporation or bylaws provide otherwise, a board of directors may create one (1) or more committees and appoint one (1) or more members of the board of directors to serve on any committee.

(b) The creation of a committee and appointment of members to it shall be approved by the greater of:

(i) A majority of all the directors in office when the action is taken; or

(ii) The number of directors required by the articles of incorporation or bylaws to take action under W.S. 17-16-824.

(c) W.S. 17-16-820 through 17-16-824 apply to committees and their members as well.

(d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under W.S. 17-16-801.

(e) A committee may not, unless specifically authorized by the board of directors:

(i) Authorize or approve distributions except according to a formula or method, or within limits, prescribed by the board of directors;

(ii) Approve or propose to shareholders action that this act requires to be approved by shareholders;

(iii) Fill vacancies on the board of directors or, subject to subsection (g) of this section, on any of its committees;

(iv) Adopt, amend or repeal bylaws.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in W.S. 17-16-830.

(g) The board of directors may appoint one (1) or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification. Unless the articles of incorporation or the bylaws or the resolution creating the committee provide otherwise, in the event of the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, unanimously, may appoint another director to act in place of the absent or disqualified member.

**17-16-830. General standards for directors.**

(a) Each member of the board of directors, when discharging the duties of a director, shall act:

(i) In good faith; and

(ii) In a manner he reasonably believes to be in or at least not opposed to the best interests of the corporation.

(b) The members of the board of directors or a committee of the board, when becoming informed in connection with their decision making function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

(c) In discharging board or committee duties a director shall disclose, or cause to be disclosed, to the other board or committee members information not already known by them but known by the director to be material to the discharge of their decision making or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a

legally enforceable obligation of confidentiality or a professional ethics rule.

(d) In discharging board or committee duties a director who does not have knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the persons specified in paragraph (f) (i) or (iii) of this section to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one (1) or more of the board's functions that are delegable under applicable law.

(e) In discharging board or committee duties a director who does not have knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (f) of this section.

(f) A director is entitled to rely in accordance with subsections (d) and (e) of this section on:

(i) One (1) or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;

(ii) Legal counsel, public accountants or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters:

(A) Within the person's professional or expert competence; or

(B) As to which the particular person merits confidence; or

(iii) A committee of the board of directors of which he is not a member if the director reasonably believes the committee merits confidence.

(g) For purposes of subsection (a) of this section, a director, in determining what he reasonably believes to be in or not opposed to the best interests of the corporation, shall consider the interests of the corporation's shareholders and, in his discretion, may consider any of the following:

(i) The interests of the corporation's employees, suppliers, creditors and customers;

(ii) The economy of the state and nation;

(iii) The impact of any action upon the communities in or near which the corporation's facilities or operations are located;

(iv) The long-term interests of the corporation and its shareholders, including the possibility that those interests may be best served by the continued independence of the corporation; and

(v) Any other factors relevant to promoting or preserving public or community interests.

### **17-16-831. Standards of liability for directors.**

(a) A director shall not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action including abstaining from voting after full disclosure, as a director, unless the party asserting liability in a proceeding establishes that:

(i) No defense interposed by the director based on the following precludes liability:

(A) Any provision in the articles of incorporation authorized by W.S. 17-16-202(b)(iv); or

(B) The protection afforded by W.S. 17-16-861 for action taken in compliance with W.S. 17-16-862 or 17-16-863; or

(C) The protection afforded by W.S. 17-16-870; and

(ii) The challenged conduct consisted or was the result of:

(A) Action not in good faith; or

(B) A decision:

(I) Which the director did not reasonably believe to be in or at least not opposed to the best interests of the corporation; or

(II) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or

(C) Lack of objectivity due to the director's familial, financial or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct:

(I) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation; and

(II) After a reasonable expectation to such effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in or at least not opposed to the best interests of the corporation; or

(D) A sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation, or a failure to devote timely attention, by making or causing to be made appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefore; or

(E) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

(b) The party seeking to hold the director liable:

(i) For money damages, shall also have the burden of establishing that:

(A) Harm to the corporation or its shareholders has been suffered; and

(B) The harm suffered was proximately caused by the director's challenged conduct.

(ii) For other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever burden of proof may be called for to establish that the payment sought is appropriate in the circumstances; or

(iii) For other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever burden of proof may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(c) Nothing contained in this section shall:

(i) In any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under W.S. 17-16-861(b)(iii), alter the burden of proving the fact or lack of fairness otherwise applicable;

(ii) Alter the fact or lack of liability of a director under another section of this act, such as the provisions governing the consequences of an unlawful distribution under W.S. 17-16-833 or a transactional interest under W.S. 17-16-861; or

(iii) Affect any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States.

**17-16-832. Reserved.**

**17-16-833. Director's liability for unlawful distributions.**

(a) A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to W.S. 17-16-640 or 17-16-1409(a) is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating W.S. 17-16-640 or 17-16-1409(a) if the party asserting liability establishes that when taking the action the director did not comply with W.S. 17-16-830.

(b) A director held liable under subsection (a) of this section for an unlawful distribution is entitled to:

(i) Contribution from every other director who could be held liable under subsection (a) of this section for the unlawful distribution; and

(ii) Recoupment from each shareholder of the pro-rata portion of the amount of the unlawful distribution the shareholder accepted knowing the distribution was made in violation of W.S. 17-16-640 or 17-16-1409(a).

(c) A proceeding to enforce:

(i) The liability of a director under subsection (a) of this section is barred unless it is commenced within two (2) years after the date:

(A) On which the effect of the distribution was measured under W.S. 17-16-640(e) or (g);

(B) As of which the violation of W.S. 17-16-640(a) occurred as the consequence of disregard of a restriction in the articles of incorporation; or

(C) On which the distribution of assets to shareholders under W.S. 17-16-1409(a) was made.

(ii) Contribution or recoupment under subsection (b) of this section is barred unless it is commenced within one (1) year after the liability of the claimant has been finally adjudicated under subsection (a) of this section.

#### **17-16-840. Required officers.**

(a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(b) The board of directors may elect individuals to fill one (1) or more offices of the corporation. An officer may appoint one (1) or more officers if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors shall assign to one (1) of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for maintaining

and authenticating records of the corporation required to be kept under W.S. 17-16-1601(a) and (e).

(d) The same individual may simultaneously hold more than one (1) office in a corporation.

#### **17-16-841. Functions of officers.**

Each officer has the authority and shall perform the functions set forth in the bylaws or, to the extent consistent with the bylaws, the functions prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the functions of other officers.

#### **17-16-842. Standards of conduct for officers.**

(a) An officer when performing in such capacity, has the duty to act:

(i) In good faith;

(ii) With the care that a person in a like position would reasonably exercise under similar circumstances; and

(iii) In a manner the officer reasonably believes to be in or at least not opposed to the best interests of the corporation.

(b) The duty of an officer includes the obligation:

(i) To inform the superior officer to whom, or the board of directors or the committee thereof to which, the officer reports of information about the affairs of the corporation known to the officer, within the scope of the officer's functions, and known to the officer to be material to the superior officer, board or committee; and

(ii) To inform the officer's superior officer, or another appropriate person within the corporation, or the board of directors, or a committee thereof, of any actual or probable material violation of law involving the corporation or material breach of duty to the corporation by an officer, employee or agent of the corporation, that the officer believes has occurred or is likely to occur.

(c) In discharging his duties an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on:

(i) The performance of properly delegated responsibilities by one (1) or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated; or

(ii) Information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by one (1) or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented or by legal counsel, public accountants or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters:

(A) Within the particular person's professional or expert competence; or

(B) As to which the particular person merits confidence.

(d) An officer shall not be liable to the corporation or its shareholders for any decisions to take or not to take action as an officer, or any failure to take any action, if he performed the duties of his office in compliance with this section. Whether an officer who does not comply with this section shall have liability shall depend in such instance on applicable law, including those principles of W.S. 17-16-831 that have relevance.

(e) For purposes of subsection (a) of this section, an officer, in determining what he reasonably believes to be in or not opposed to the best interests of the corporation, shall consider the interests of the corporation's shareholders and, in his discretion, may consider any of the following:

(i) The interests of the corporation's employees, suppliers, creditors and customers;

(ii) The economy of the state and nation;

(iii) The impact of any action upon the communities in or near which the corporation's facilities or operations are located;

(iv) The long-term interests of the corporation and its shareholders, including the possibility that those interests may be best served by the continued independence of the corporation; and

(v) Any other factors relevant to promoting or preserving public or community interests.

### **17-16-843. Resignation and removal of officers.**

(a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time and the board or appointing officer accepts the future effective time, the board or appointing officer may fill the pending vacancy before the effective time if the board or appointing officer provides that the successor does not take office until the effective time.

(b) An officer may be removed at any time with or without cause by:

(i) The board of directors;

(ii) The officer who appointed such officer, unless the bylaws or the board of directors provide otherwise; or

(iii) Any other officer if authorized by the bylaws or the board of directors.

(c) In this section, "appointing officer" means the officer, including any successor to that officer, who appointed the officer resigning or being removed.

### **17-16-844. Contract rights of officers.**

(a) The appointment of an officer does not itself create contract rights.

(b) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

### **17-16-850. Subarticle definitions.**

(a) In this subarticle:

(i) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger;

(ii) "Director" or "officer" means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, manager, partner, trustee, employee or agent of another entity or employee benefit plan. A director or officer is considered to be serving an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer;

(iii) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

#### **17-16-851. Permissible indemnification.**

(a) Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because the individual is a director against liability incurred in the proceeding if:

(i) (A) The director conducted himself in good faith; and

(B) He reasonably believed that his conduct was in or at least not opposed to the corporation's best interests; and

(C) In the case of any criminal proceeding, the director had no reasonable cause to believe his conduct was unlawful; or

(ii) The director engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation, as authorized by W.S. 17-16-202(b)(v).

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subparagraph (a) (i) (B) of this section.

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(d) Unless ordered by a court under W.S. 17-16-854(a) (iii) a corporation may not indemnify a director under this section:

(i) In connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the standard of conduct under subsection (a) of this section; or

(ii) In connection with any proceeding with respect to conduct for which he was adjudged liable on the basis that he received a financial benefit to which he was not entitled, whether or not involving action in the director's capacity.

(e) Repealed By Laws 1997, ch. 190, § 3.

#### **17-16-852. Mandatory indemnification.**

A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because he was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding.

#### **17-16-853. Advance for expenses.**

(a) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the expenses incurred in connection with the proceeding by an individual who is a party to a proceeding because that individual is a member of the board of directors if he delivers to the corporation:

(i) A written affirmation of his good faith belief that the standard of conduct described in W.S. 17-16-851 has been met by the director or that the proceeding involves conduct for which liability has been eliminated under a provision of the

articles of incorporation as authorized by W.S. 17-16-202(b)(iv); and

(ii) His written undertaking to repay any funds advanced if the director is not entitled to mandatory indemnification under W.S. 17-16-852 and it is ultimately determined under W.S. 17-16-854 or 17-16-855 that he has not met the standard of conduct described in W.S. 17-16-851.

(iii) Repealed By Laws 1997, ch. 190, § 3.

(b) The undertaking required by paragraph (a)(ii) of this section shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(c) Authorizations under this section shall be made:

(i) By the board of directors:

(A) If there are two (2) or more qualified directors, by a majority vote of all the qualified directors (a majority of whom shall for such purpose constitute a quorum) or by a majority of the members of a committee of two (2) or more qualified directors appointed by such a vote; or

(B) If there are fewer than two (2) qualified directors, by the vote necessary for action by the board in accordance with W.S. 17-16-824(c), in which authorization directors who are not qualified directors may participate; or

(ii) By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the authorization.

**17-16-854. Court-ordered indemnification and advance for expenses.**

(a) A director who is a party to a proceeding because he is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the court shall:

(i) Order indemnification if the court determines that the director is entitled to mandatory indemnification under W.S. 17-16-852;

(ii) Order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by W.S. 17-16-858(a); or

(iii) Order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable:

(A) To indemnify the director; or

(B) To advance expenses to the director, even if he has not met the standard of conduct set forth in W.S. 17-16-851(a), failed to comply with W.S. 17-16-853 or was adjudged liable in a proceeding referred to in W.S. 17-16-851(d) (i) or (ii), but if the director was adjudged so liable his indemnification shall be limited to expenses incurred in connection with the proceeding.

(b) If the court determines that the director is entitled to indemnification under paragraph (a)(i) of this section or to indemnification or advance for expenses under paragraph (a)(ii) of this section, it shall also order the corporation to pay the director's expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under paragraph (a)(iii) of this section, it may also order the corporation to pay the director's expenses to obtain court-ordered indemnification or advance for expenses.

**17-16-855. Determination and authorization of indemnification.**

(a) A corporation may not indemnify a director under W.S. 17-16-851 unless authorized for a specific proceeding after a determination has been made that indemnification of the director is permissible because the director has met the standard of conduct set forth in W.S. 17-16-851.

(b) The determination shall be made:

(i) If there are two (2) or more qualified directors, by the board of directors by majority vote of all the qualified

directors (a majority of whom shall for such purpose constitute a quorum), or by a majority of the members of a committee of two (2) or more qualified directors appointed by such a vote;

(ii) By special legal counsel:

(A) Selected in the manner prescribed in paragraph (i) of this subsection; or

(B) If there are fewer than two (2) qualified directors, selected by the board of directors (in which selection directors who are not qualified directors may participate); or

(iii) By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the determination.

(c) Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two (2) qualified directors, authorization of indemnification shall be made by those entitled under paragraph (b)(ii) of this section to select special legal counsel.

#### **17-16-856. Indemnification of officers.**

(a) A corporation may indemnify and advance expenses under this subarticle to an officer of the corporation who is a party to a proceeding because he is an officer of the corporation:

(i) To the same extent as a director; and

(ii) If he is an officer but not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors or contract, except for:

(A) Liability in connection with a proceeding by or in the right of the corporation other than for expenses incurred in connection with the proceeding; or

(B) Liability arising out of conduct that constitutes:

(I) Receipt by the officer of a financial benefit to which he is not entitled;

(II) An intentional infliction of harm on the corporation or the shareholders; or

(III) An intentional violation of criminal law.

(iii) A corporation may also indemnify and advance expenses to a current or former officer, employee or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors or contract.

(b) The provisions of paragraph (a)(ii) of this section shall apply to an officer who is also a director if the basis on which he is made a party to the proceeding is an act or omission solely as an officer.

(c) An officer of a corporation who is not a director is entitled to mandatory indemnification under W.S. 17-16-852, and may apply to a court under W.S. 17-16-854 for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those provisions.

#### **17-16-857. Insurance.**

A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by the individual in that capacity or arising from his status as a director or officer whether or not the corporation would have power to indemnify or advance expenses to the individual against the same liability under this subarticle.

#### **17-16-858. Variation by corporate action; application of subarticle.**

(a) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a

proceeding to provide indemnification in accordance with W.S. 17-16-851 or advance funds to pay for or reimburse expenses in accordance with W.S. 17-16-853. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in W.S. 17-16-853(c) and 17-16-855(c). Any provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with W.S. 17-16-853 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(b) Any provision pursuant to subsection (a) of this section shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by W.S. 17-16-1107(a) (iv).

(c) A corporation may, by provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this subarticle.

(d) This subarticle does not limit a corporation's power to pay or reimburse expenses incurred by a director or officer in connection with his appearance as a witness in a proceeding at a time when he is not a party.

(e) This subarticle does not limit a corporation's power to indemnify, advance expenses to or provide or maintain insurance on behalf of an employee or agent.

**17-16-859. Exclusivity of subarticle.**

A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by this subarticle.

**17-16-860. Subarticle definitions.**

(a) In this subarticle:

(i) "Control", including the term "controlled by", means:

(A) Having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract or otherwise; or

(B) Being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

(ii) "Director's conflicting interest transaction" means a transaction effected or proposed to be effected by the corporation, or by an entity controlled by the corporation:

(A) To which, at the relevant time, the director is a party; or

(B) Respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director; or

(C) Respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

(iii) "Fair to the corporation" means, for purposes of W.S. 17-16-861(b)(iii), that the transaction as a whole was beneficial to or at least not harmful to the corporation, taking into appropriate account whether it was:

(A) Fair in terms of the director's dealings with the corporation; and

(B) Comparable to what might have been obtainable in an arm's length transaction, given the consideration paid or received by the corporation.

(iv) "Material financial interest" means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's judgment when participating in action on the authorization of the transaction;

(v) "Related person" means:

(A) The director's spouse;

(B) A child, stepchild, grandchild, parent, stepparent, grandparent, sibling, stepsibling, half sibling, aunt, uncle, niece or nephew, or spouse of any thereof, of the director or of the director's spouse;

(C) An individual living in the same home as the director;

(D) An entity, other than the corporation or an entity controlled by the corporation, controlled by the director or any person specified above in this paragraph;

(E) A domestic or foreign:

(I) Business or nonprofit corporation, other than the corporation or an entity controlled by the corporation, of which the director is a director;

(II) Unincorporated entity of which the director is a general partner or a member of the governing body; or

(III) Individual, trust or estate for whom or of which the director is a trustee, guardian, personal representative or like fiduciary; or

(F) A person that is, or an entity that is controlled by, an employer of the director.

(vi) "Relevant time" means:

(A) The time at which directors' action respecting the transaction is taken in compliance with W.S. 17-16-862; or

(B) If the transaction is not brought before the board of directors of the corporation or its committee for action under W.S. 17-16-862, at the time the corporation or an entity controlled by the corporation becomes legally obligated to consummate the transaction.

(vii) "Required disclosure" means disclosure of:

(A) The existence and nature of the director's conflicting interest; and

(B) All facts known to the director respecting the subject matter of the transaction that a director free of such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

**17-16-861. Judicial action.**

(a) A transaction effected or proposed to be effected by the corporation, or by an entity controlled by the corporation, may not be the subject of equitable relief, or give rise to an award of damages or other relief against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, on the ground that the director has an interest respecting the transaction, if it is not a director's conflicting interest transaction.

(b) A director's conflicting interest transaction may not be the subject of equitable relief, or give rise to an award of damages or other relief against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, on the ground that the director has an interest respecting the transaction, if:

(i) Directors' action respecting the transaction was taken in compliance with W.S. 17-16-862 at any time; or

(ii) Shareholders' action respecting the transaction was taken in compliance with W.S. 17-16-863 at any time; or

(iii) The transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation.

**17-16-862. Directors' action.**

(a) Directors' action respecting a director's conflicting interest transaction is effective for purposes of W.S. 17-16-861(b)(i) if the transaction has been authorized by the affirmative vote of a majority, but no fewer than two (2), of the qualified directors who voted on the transaction, after required disclosure by the conflicted director of information not already known by such qualified directors, or after modified disclosure in compliance with subsection (b) of this section, provided that:

(i) The qualified directors have deliberated and voted outside the presence of and without the participation by any other director; and

(ii) Where the action has been taken by a committee, all members of the committee were qualified directors, and either:

(A) The committee was composed of all the qualified directors on the board of directors; or

(B) The members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board.

(b) Notwithstanding subsection (a) of this section, when a transaction is a director's conflicting interest transaction only because a related person described in W.S. 17-16-860(a)(v)(E) or (F) is a party to or has a material financial interest in the transaction, the conflicted director is not obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule, provided that the conflicted director discloses to the qualified directors voting on the transaction:

(i) All information required to be disclosed that is not so violative;

(ii) The existence and nature of the director's conflicting interest; and

(iii) The nature of the conflicted director's duty not to disclose the confidential information.

(c) A majority, but no fewer than two (2), of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this section.

(d) Where directors' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws or a provision of law, independent action to satisfy those authorization requirements shall be

taken by the board of directors or a committee, in which action directors who are not qualified directors may participate.

**17-16-863. Shareholders' action.**

(a) Shareholders' action respecting a director's conflicting interest transaction is effective for purposes of W.S. 17-16-861(b)(ii) if a majority of the votes cast by the holders of all qualified shares are in favor of the transaction after:

(i) Notice to shareholders describing the action to be taken respecting the transaction;

(ii) Provision to the corporation of the information referred to in subsection (b) of this section; and

(iii) Communication to the shareholders entitled to vote on the transaction of the information that is the subject of required disclosure, or modified disclosure as described in W.S. 17-16-862(b) if the director's conflicting interest transaction is of the type described in that subsection, to the extent the information is not known by them.

(b) A director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes, in writing, of the number of shares that the director knows are not qualified shares under subsection (c) of this section and the identity of the holders of those shares.

(c) For purposes of this section:

(i) "Holder" means and "held by" refers to shares held by both a record shareholder, as defined in W.S. 17-16-1301(a)(vi), and a beneficial shareholder as defined in W.S. 17-16-1301(a)(i);

(ii) "Qualified shares" means all shares entitled to be voted with respect to the transaction except for shares that the secretary or other officer or agent of the corporation authorized to tabulate votes either knows, or under subsection (b) of this section is notified, are held by:

(A) A director who has a conflicting interest respecting the transaction; or

(B) A related person of the director, excluding a person described in W.S. 17-16-860(a)(v)(F).

(d) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of compliance with this section. Subject to the provisions of subsection (e) of this section, shareholders' action that otherwise complies with this section is not affected by the presence of holders, or by the voting, of shares that are not qualified shares.

(e) If a shareholders' vote does not comply with subsection (a) of this section solely because of a director's failure to comply with subsection (b) of this section, and if the director establishes that the failure was not intended to influence and did not in fact determine the outcome of the vote, the court may give the effect, if any, to the shareholders' vote, as the court considers appropriate in the circumstances.

(f) Where shareholders' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the shareholders, in which action shares that are not qualified shares may participate.

#### **17-16-870. Business opportunities.**

(a) A director's taking advantage, directly or indirectly, of a business opportunity may not be the subject of equitable relief, or give rise to an award of damages or other relief against the director, in a proceeding by or in the right of the corporation on the ground that the opportunity should have first been offered to the corporation, if before becoming legally obligated respecting the opportunity the director brings it to the attention of the corporation and:

(i) Action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in W.S. 17-16-862, as if the decision being made concerned a director's conflicting interest transaction; or

(ii) Shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance

with the procedures set forth in W.S. 17-16-863, as if the decision being made concerned a director's conflicting interest transaction, except that, rather than making required disclosure as defined in W.S. 17-16-860, in each case the director shall have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity that are then known to the director.

(b) In any proceeding seeking equitable relief or other remedies based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ the procedure described in subsection (a) of this section before taking advantage of the opportunity shall not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.

#### ARTICLE 9 - RESERVED

#### ARTICLE 10 - AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

##### **17-16-1001. Authority to amend.**

(a) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles of incorporation.

(b) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement or purpose, or duration of the corporation.

##### **17-16-1002. Amendment before issuance of shares.**

If a corporation has not yet issued shares, its board of directors, or its incorporators if it has no board of directors, may adopt one (1) or more amendments to the corporation's articles of incorporation.

##### **17-16-1003. Amendment by board of directors and shareholders.**

(a) If a corporation has issued shares, an amendment to the articles of incorporation shall be adopted in the following manner:

(i) The proposed amendment shall be adopted by the board of directors;

(ii) Except as provided in W.S. 17-16-1005, 17-16-1007 and 17-16-1008, after adopting the proposed amendment the board of directors shall submit the amendment to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless the board of directors makes a determination that because of conflict of interest or other special circumstances it should not make such a recommendation in which case the board of directors shall transmit the basis for that determination to the shareholders;

(iii) The board of directors may condition its submission of the amendment to the shareholders on any basis;

(iv) If the amendment is required to be approved by the shareholders and the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the shareholders' meeting at which the amendment is to be submitted for approval. The notice shall state that the purpose, or one (1) of the purposes, of the meeting is to consider the amendment and shall contain or be accompanied by a copy of the amendment;

(v) Unless the articles of incorporation, or the board of directors acting pursuant to paragraph (iii) of this subsection require a greater vote or a greater number of shares to be present, approval of the amendment requires the approval of the shareholders at a meeting at which a quorum exists, and, if any class or series of shares is entitled to vote as a separate group on the amendment, except as provided in W.S. 17-16-1004(c), the approval of each such separate voting group at a meeting at which a quorum of the voting group exists.

#### **17-16-1004. Voting on amendments by voting groups.**

(a) If a corporation has more than one (1) class of shares outstanding, the holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by this act, on a proposed

amendment to the articles of incorporation if the amendment would:

(i) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(ii) Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

(iii) Change the rights, preferences, or limitations of all or part of the shares of the class;

(iv) Change the shares of all or part of the class into a different number of shares of the same class;

(v) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class;

(vi) Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class;

(vii) Limit or deny any existing preemptive right of all or part of the shares of the class; or

(viii) Cancel or otherwise affect rights to distributions that have accumulated but not yet been authorized on all or part of the shares of the class.

(b) If a proposed amendment would affect a series of a class of shares in one (1) or more of the ways described in subsection (a) of this section, the holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(c) If a proposed amendment that entitles two (2) or more classes or series of shares to vote as separate voting groups under this section would affect those two (2) or more classes or series in the same or a substantially similar way, the holders of shares of all the classes or series so affected shall vote together as a single voting group on the proposed amendment, unless otherwise provided in the articles of incorporation or required by the board of directors.

(d) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

**17-16-1005. Amendment by board of directors.**

(a) Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval:

(i) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(ii) To delete the names and addresses of the initial directors;

(iii) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state;

(iv) If the corporation has only one (1) class of shares outstanding:

(A) To change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or

(B) To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend.

(v) To change the corporate name by substituting the word "corporation," "incorporated," "company," "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name;

(vi) To reflect a reduction in authorized shares, as a result of the operation of W.S. 17-16-631(b), when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares;

(vii) To delete a class of shares from the articles of incorporation, as a result of the operation of W.S. 17-16-

631(b), when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares; or

(viii) To make any change expressly permitted by W.S. 17-16-602(a) or (b) to be made without shareholder approval.

**17-16-1006. Articles of amendment.**

(a) After an amendment to the articles of incorporation has been adopted and approved in the manner required by this act and by the articles of incorporation, the corporation shall deliver to the secretary of state for filing articles of amendment setting forth:

(i) The name of the corporation;

(ii) The text of each amendment adopted;

(iii) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself which may be made dependent upon facts objectively ascertainable outside the articles of amendment;

(iv) The date of each amendment's adoption; and

(v) If an amendment:

(A) Was adopted by the incorporators or board of directors without shareholder approval, a statement that the amendment was duly approved by the incorporators or by the board of directors as the case may be and that shareholder approval was not required; or

(B) Required approval by the shareholders, a statement that the amendment was duly approved by the shareholders in the manner required by this act and by the articles of incorporation;

(C) Reserved.

(vi) Repealed By Laws 2010, Ch. 82, § 2.

**17-16-1007. Restated articles of incorporation.**

(a) A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder approval, to consolidate all amendments into a single document.

(b) If the restated articles include one (1) or more new amendments requiring shareholder approval, the amendments shall be adopted and approved as provided in W.S. 17-16-1003.

(c) A corporation restating its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate which states that the restated articles consolidate all amendments into a single document and, if a new amendment is included in the restated articles, which also includes the statements required under W.S. 17-16-1006.

(d) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(e) The secretary of state may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (c) of this section.

**17-16-1008. Amendment pursuant to court-ordered reorganization.**

(a) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States.

(b) The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth:

(i) The name of the corporation;

(ii) The text of each amendment approved by the court;

(iii) The date of the court's order or decree approving the articles of amendment;

(iv) The title of the reorganization proceeding in which the order or decree was entered; and

(v) A statement that the court had jurisdiction of the proceeding under federal statute.

(c) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

**17-16-1009. Effect of amendment.**

An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

**17-16-1020. Amendment by board of directors or shareholders.**

(a) A corporation's shareholders may amend or repeal the corporation's bylaws.

(b) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(i) The articles of incorporation, W.S. 17-16-1021 or if applicable W.S. 17-16-1022 reserve this power exclusively to the shareholders in whole or part; or

(ii) The shareholders in amending, repealing or adopting a bylaw provide expressly that the board of directors may not amend, repeal or reinstate that bylaw.

**17-16-1021. Bylaw increasing quorum or voting requirement for directors.**

(a) A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:

(i) If originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides;

(ii) If adopted by the board of directors, either by the shareholders or by the board of directors.

(b) A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(c) Action by the board of directors under subsection (a) of this section to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors shall meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

**17-16-1022. Bylaw provisions relating to the election of directors.**

(a) Unless the articles of incorporation specifically prohibit the adoption of a bylaw pursuant to this section, alter the vote specified in W.S. 17-16-728(a) or provide for cumulative voting, a public corporation may elect in its bylaws to be governed in the election of directors as follows:

(i) Each vote entitled to be cast may be voted for or against up to that number of candidates that is equal to the number of directors to be elected, or a shareholder may indicate an abstention, but without cumulating the votes;

(ii) To be elected, a nominee shall have received a plurality of the votes cast by holders of shares entitled to vote in the election at a meeting at which a quorum is present, provided that a nominee who is elected but receives more votes against than for election shall serve as a director for a term that shall terminate on the date that is the earlier of ninety (90) days from the date on which the voting results are determined pursuant to W.S. 17-16-729(b) (v) or is the date on which an individual is selected by the board of directors to fill the office held by such director, which selection shall be deemed to constitute the filling of a vacancy by the board to which W.S. 17-16-810 applies. Subject to paragraph (iii) of this subsection, a nominee who is elected but receives more votes against than for election shall not serve as a director beyond the ninety (90) day period referenced above; and

(iii) The board of directors may select any qualified individual to fill the office held by a director who received more votes against than for election.

(b) Subsection (a) of this section does not apply to an election of directors by a voting group if at the expiration of the time fixed under a provision requiring advance notification of director candidates, or absent such a provision, at a time fixed by the board of directors which is not more than fourteen (14) days before notice is given of the meeting at which the election is to occur, there are more candidates for election by the voting group than the number of directors to be elected, one (1) or more of whom are properly proposed by shareholders. An individual shall not be considered a candidate for purposes of this subsection if the board of directors determines before the notice of meeting is given that such individual's candidacy does not create a bona fide election contest.

(c) A bylaw electing to be governed by this section may be repealed:

(i) If originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides; or

(ii) If adopted by the board of directors, by the board of directors or the shareholders.

## ARTICLE 11 - MERGER, SHARE EXCHANGE, CONSOLIDATION AND CONVERSION

**17-16-1101. Reserved.**

**17-16-1102. Merger.**

(a) One (1) or more domestic business corporations may merge with one (1) or more domestic or foreign business corporations or eligible entities pursuant to a plan of merger, or two (2) or more foreign business corporations or domestic or foreign eligible entities may merge into a new domestic business corporation to be created in the merger in the manner provided in this chapter.

(b) A foreign business corporation, or a foreign eligible entity, may be a party to a merger with a domestic business corporation, or may be created by the terms of the plan of merger, only if the merger is permitted by the foreign business corporation or eligible entity. If Wyoming law does not

otherwise provide procedures for the approval of a merger, a plan of merger may be adopted and approved, the merger effectuated, and appraisal rights exercised in accordance with the procedures in this article and article 13 of this chapter. For the purposes of applying this article and article 13 of this chapter:

(i) The eligible entity, its members or interest holders, eligible interests and organic documents taken together shall be deemed to be a domestic business corporation, shareholders, shares and articles of incorporation, respectively and vice versa as the context may require; and

(ii) If the business and affairs of the eligible entity are managed by a group of persons that is not identical to the members or interest holders, that group shall be deemed to be the board of directors.

(c) The plan of merger shall include:

(i) The name of each domestic or foreign business corporation or eligible entity that will merge and the name of the domestic or foreign business corporation or eligible entity that will be the survivor of the merger;

(ii) The terms and conditions of the merger;

(iii) The manner and basis of the disposition, if any, of the shares of each domestic or foreign business corporation and eligible interests of each domestic or foreign eligible entity;

(iv) The articles of incorporation of any domestic or foreign business or nonprofit corporation, or the organic documents of any domestic or foreign unincorporated entity, to be created by the merger, or if a new domestic or foreign business or nonprofit corporation or unincorporated entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or organic documents; and

(v) Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organic document of any party to the merger.

(d) The terms of the plan of merger may be made dependent on facts objectively ascertainable outside the plan.

(e) The plan of merger may also include a provision that the plan may be amended prior to filing articles of merger, but if the shareholders of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by the shareholders the plan may not be amended to change:

(i) The disposition of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, or other property, if any, to be received under the plan by the shareholders of or owners of eligible interests in any party to the merger;

(ii) The articles of incorporation of any corporation, or the organic documents of any unincorporated entity, that will survive or be created as a result of the merger, except for changes permitted by W.S. 17-16-1005 or by comparable provisions of the organic laws of any such foreign corporation or domestic or foreign unincorporated entity; or

(iii) Any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

(f) Property held in trust or for charitable purposes under the laws of this state by a domestic or foreign eligible entity shall not be diverted by a merger from the objects for which it was donated, granted or devised, unless and until the eligible entity obtains an order of the district court specifying the disposition of the property to the extent required by and pursuant to the laws of this state.

### **17-16-1103. Share exchange.**

(a) Through a share exchange:

(i) A domestic corporation may acquire all of the shares of one (1) or more classes or series of shares of another domestic or foreign corporation, or all of the interests of one (1) or more classes or series of interests of a domestic or foreign other entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange; or

(ii) All of the shares of one (1) or more classes or series of shares of a domestic corporation may be acquired by another domestic or foreign corporation or other entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange.

(b) A foreign corporation or eligible entity, may be a party to a share exchange only if the share exchange is permitted by the organic law under which the corporation or other entity is organized or by which it is governed. If Wyoming law does not otherwise provide procedures for the approval of a share exchange, a plan of share exchange may be adopted and approved, and the share exchange effectuated, in accordance with the procedures, if any, for a merger. If Wyoming law does not otherwise provide procedures for the approval of either a share exchange or a merger, a plan of share exchange may be adopted and approved, the share exchange effectuated, and appraisal rights exercised, in accordance with the procedures in this article and article 13 of this chapter. For the purposes of applying this article and article 13 of this chapter:

(i) The other entity, its interest holders, interests and organic documents taken together shall be deemed to be a domestic business corporation, shareholders, shares and articles of incorporation, respectively and vice versa as the context may require; and

(ii) If the business and affairs of the other entity are managed by a group of persons that is not identical to the interest holders, that group shall be deemed to be the board of directors.

(c) The plan of exchange shall include:

(i) The name of each corporation or other entity whose shares or interests will be acquired and the name of the corporation or other entity that will acquire those shares or interests;

(ii) The terms and conditions of the share exchange;

(iii) The manner and basis of exchanging the shares of a corporation or interests in any other entity whose shares or interests will be acquired under the share exchange into shares or other securities, interests, obligations, rights to

acquire shares, other securities or interests, cash, other property or any combination of the foregoing; and

(iv) Any other provisions required by the laws under which any party to the share exchange is organized or by the articles of incorporation or organic document of any party to the share exchange.

(d) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan.

(e) The plan of share exchange may also include a provision that the plan may be amended prior to filing articles of share exchange, but if the shareholders of a domestic corporation that is a party to the share exchange are required or permitted to vote on the plan, the plan shall provide that subsequent to approval of the plan by the shareholders the plan may not be amended to change:

(i) The amount or kind of shares or other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, or other property to be issued by the corporation or to be received under the plan by the shareholders of or owners of interests in any party to the share exchange; or

(ii) Any of the other terms or conditions of the plan if the change would adversely affect the shareholders of the domestic corporation in any material respect.

(f) This section does not limit the power of a domestic corporation to acquire shares of another corporation or interests in another entity in a transaction other than a share exchange.

**17-16-1104. Action on plan of merger or share exchange.**

(a) In the case of a domestic corporation that is a party to a merger or share exchange, the plan of merger or share exchange shall be adopted by the board of directors. After adopting a plan of merger or share exchange, the board of directors except as provided in subsection (g) of this section and W.S. 17-16-1105, shall submit the plan to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a

determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination.

(b) Reserved.

(c) The board of directors may condition its submission of the proposed merger or share exchange to the shareholders on any basis.

(d) If the plan of merger or share exchange is required to be approved by the shareholders and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the shareholders' meeting at which the plan is to be submitted for approval. The notice shall state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan and contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or other entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organizational documents of that corporation or other entity. If the corporation is to be merged into a corporation or other entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation or organizational documents of the new corporation or other entity.

(e) Unless the articles of incorporation or the board of directors acting pursuant to subsection (c) of this section require a greater vote or a greater number of votes to be present, approval of the plan of merger or share exchange requires the approval of the shareholders at a meeting at which a quorum exists, and, if any class or series of shares is entitled to vote as a separate group on the plan of merger or share exchange, the approval of each such separate voting group at a meeting at which a quorum of the voting group is present.

(f) Separate voting by voting groups is required:

(i) On a plan of merger by each class or series of shares that:

(A) Are to be converted under the plan of merger into other securities, interests, obligations, rights to acquire

shares, other securities or interests, cash, other property, or any combination of the foregoing; or

(B) Would be entitled to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under W.S. 17-16-1004;

(ii) On a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and

(iii) On a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange.

(g) Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger or share exchange is not required if:

(i) The corporation will survive the merger or is the acquiring corporation in a share exchange;

(ii) Except for amendments permitted by W.S. 17-16-1005, its articles of incorporation will not be changed;

(iii) Each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger or share exchange will hold the same number of shares, with identical preferences, limitations, and relative rights, immediately after the effective date of change; and

(iv) The issuance in the merger or share exchange of shares or other securities convertible into or rights exercisable for shares does not require a vote under W.S. 17-16-621(f).

(h) If as a result of a merger or share exchange one (1) or more shareholders of a domestic corporation would become subject to owner liability for the debts, obligations or liabilities of any other person or entity, approval of the plan of merger or share exchange shall require the execution, by each shareholder of the domestic corporation, of a separate written consent to become subject to owner liability.

(j) After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

**17-16-1105. Merger between parent and subsidiary or between subsidiaries.**

(a) A domestic parent corporation that owns shares of a domestic or foreign subsidiary corporation that carry at least eighty percent (80%) of the voting power of each class and series of the outstanding shares of a subsidiary that have voting power may merge the subsidiary into itself or into another such subsidiary, or merge itself into the subsidiary, without approval of the board of directors or shareholders of the subsidiary, unless the articles of incorporation of any of the corporations otherwise provide, and unless, in the case of a foreign subsidiary, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized.

(b) If under subsection (a) of this section approval of a merger by the subsidiary's shareholders is not required, the parent corporation shall, within ten (10) days after the effective date of the merger, notify each of the subsidiary's shareholders that the merger has become effective.

(c) Except as provided in subsections (a) and (b) of this section, a merger between a parent and a subsidiary shall be governed by the provisions of this article applicable to mergers generally.

**17-16-1106. Articles of merger or share exchange.**

(a) After a plan of merger or share exchange has been adopted and approved as required by this act, articles of merger or share exchange shall be executed on behalf of the surviving or acquiring corporation by any officer or other duly authorized representative. The articles shall set forth:

(i) The names of the parties to the merger or share exchange;

(ii) If the articles of incorporation of the survivor of a merger are amended, or if a new corporation is created as a result of a merger, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation;

(iii) If the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by this act and the articles of incorporation;

(iv) If the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement to that effect; and

(v) As to each foreign corporation or eligible entity that was a party to the merger or share exchange, a statement that the participation of the foreign corporation or eligible entity was duly authorized as required by the organic law of the corporation or eligible entity.

(b) Articles of merger or share exchange shall be delivered to the secretary of state for filing by the survivor of the merger or the acquiring corporation in a share exchange, and shall take effect upon the effective time provided in W.S. 17-16-123. Articles of merger or share exchange filed under this section may be combined with any filing required under any other provision of Wyoming law if the combined filing satisfies the requirements of both this section and any other provision of Wyoming law.

**17-16-1107. Effect of merger or share exchange.**

(a) When a merger becomes effective:

(i) The corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be and the separate existence of every corporation or eligible entity that is merged into the survivor ceases;

(ii) Reserved;

(iii) All property owned by, and every contract right possessed by, each corporation or eligible entity that merges into the survivor is vested in the survivor without reversion or impairment;

(iv) All liabilities of each corporation or eligible entity that is merged into the survivor are vested in the survivor;

(v) The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(vi) The articles of incorporation or organic documents of the survivor are amended to the extent provided in the plan of merger;

(vii) The shares of each corporation that is a party to the merger, and the interests in an eligible entity that is a party to a merger, that are to be converted under the plan of merger into shares, eligible interests, obligations, rights to acquire securities, other securities, or eligible interests, cash, other property, or any combination of the foregoing, are converted, and the former holders of the shares or eligible interests are entitled only to the rights provided in the plan of merger or to any rights they may have under article 13 of this chapter or the organic law of the eligible entity; and

(viii) The articles of incorporation or organic documents of a survivor that is created by the merger become effective.

(b) When a share exchange becomes effective, the shares of each domestic corporation that are to be exchanged for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under article 13 of this chapter.

(c) A person who becomes subject to owner liability for some or all of the debts, obligations or liabilities of any entity as a result of a merger or share exchange shall have owner liability only to the extent provided in the organic law of the entity and only for those debts, obligations and liabilities that arise after the effective time of the articles of merger or share exchange.

(d) Upon a merger becoming effective, a foreign corporation, or a foreign eligible entity, that is the survivor of the merger is deemed to:

(i) Appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights; and

(ii) Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under article 13.

(e) The effect of a merger or share exchange on the owner liability of a person who had owner liability for some or all of the debts, obligations or liabilities of a party to the merger or share exchange shall be as follows:

(i) The merger or share exchange does not discharge any owner liability under the organic law of the entity in which the person was a shareholder or interest holder to the extent any owner liability arose before the effective time of the articles of merger or share exchange;

(ii) The person shall not have owner liability under the organic law of the entity in which the person was a shareholder or interest holder prior to the merger or share exchange for any debt, obligation or liability that arises after the effective time of the articles of merger or share exchange;

(iii) The provisions of the organic law of any entity for which the person had owner liability before the merger or share exchange shall continue to apply to the collection or discharge of any owner liability preserved by paragraph (i) of this subsection, as if the merger or share exchange had not occurred;

(iv) The person shall have whatever rights of contribution from other persons are provided by the organic law of the entity for which the person had owner liability with respect to any owner liability preserved by paragraph (i) of this subsection, as if the merger or share exchange had not occurred.

**17-16-1108. Abandonment of a merger or share exchange.**

(a) Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign business corporation or a domestic or foreign eligible entity that is a party to a merger or a share exchange is organized or by which it is governed, after the plan has been adopted and approved as required by this chapter, and at any time before the merger or share exchange has become effective, it may be abandoned by a domestic business corporation that is a party thereto without action by its shareholders in accordance with any procedures set forth in the plan of merger or share exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors, subject to any contractual rights of other parties to the merger or share exchange.

(b) If a merger or share exchange is abandoned under subsection (a) of this section after articles of merger or share exchange have been filed with the secretary of state but before the merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this section, executed on behalf of a party to the merger or share exchange by an officer or other duly authorized representative, shall be delivered to the secretary of state for filing prior to the effective date of the merger or share exchange. Upon filing, the statement shall take effect and the merger or share exchange shall be deemed abandoned and shall not become effective.

#### **17-16-1110. Consolidation.**

(a) Any two (2) or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this act.

(b) The board of directors of each corporation shall, by a resolution adopted by each board, approve a plan of consolidation setting forth:

(i) The names of the corporations proposing to consolidate, and the name of the new corporation into which they proposed to consolidate, which is hereinafter designated as the new corporation;

(ii) The terms and conditions of the proposed consolidation;

(iii) The manner and basis of converting the shares of each corporation into shares or other securities or

obligations of the new corporation or of any other corporation or, in whole or in part, into cash or other property;

(iv) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this act; and

(v) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

**17-16-1111. Approval by shareholders; abandonment of plan.**

(a) The board of directors of each corporation, upon approving the plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written or printed notice shall be given to each shareholder of record whether or not entitled to vote at the meeting, not less than twenty (20) days before the meeting, in the manner provided in this act for the giving of notice of meetings of shareholders, and shall state that the purpose or one (1) of the purposes of the meeting is to consider the proposed plan of consolidation, whether the meeting be an annual or a special meeting. A copy of a summary of the plan of consolidation shall be included in or enclosed with the notice.

(b) At the shareholder's meeting for each corporation, a vote of the shareholders shall be taken on the proposed plan. The plan shall be approved upon receiving the affirmative vote of the holders of at least a majority of the shares entitled to vote. However, if any class of shares of each corporation is entitled to vote as a class, the plan shall be approved upon receiving the affirmative vote of the holders of at least a majority of the shares of each class of shares entitled to vote as a class. Any class of shares of each corporation shall be entitled to vote as a class if the plan contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle the class of shares to vote as a class.

(c) After approval by a vote of the shareholders of each corporation, and at any time prior to the filing of the articles of consolidation, the consolidation may be abandoned pursuant to provisions of the articles of consolidation, if any, set forth in the plan.

**17-16-1112. Articles of consolidation.**

(a) Upon approval, articles of consolidation shall be delivered to the secretary of state for filing. The articles of consolidation shall set forth:

(i) The plan of consolidation;

(ii) As to each corporation the shareholders of which were required to vote on the plan, the number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each class;

(iii) As to each corporation the shareholders of which were required to vote on the plan, the number of shares voted for and against the plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each class voted for and against the plan respectively.

**17-16-1113. Effect of consolidation.**

(a) A consolidation becomes effective upon filing by the secretary of state, or on a later date, not more than thirty (30) days subsequent to filing the plan with the secretary of state, as shall be provided in the plan.

(b) When a consolidation takes effect:

(i) The several corporations party to the plan of consolidation are a single corporation, which is the new corporation provided for in the plan of consolidation;

(ii) The separate existence of all corporations party to the plan of consolidation except the new corporation ceases;

(iii) The new corporation has all the rights, privileges, immunities and powers and is subject to all the duties and liabilities of a corporation organized under this act;

(iv) The new corporation has all the rights, privileges, immunities and franchises, public or private, of each corporation party to the plan of consolidation. The title to all real estate and other property owned by each corporation

party to the plan of consolidation is vested in the new corporation without reversion or impairment;

(v) The new corporation has all the liabilities and obligations of each corporation party to the plan of consolidation. Any claim existing or proceeding pending by or against any corporation party to the plan of consolidation may be continued as if the consolidation did not occur or the new corporation may be substituted for the corporation whose existence ceased. Neither the rights of creditors nor any liens upon the property of any corporation party to the plan of consolidation shall be impaired by the consolidation;

(vi) The statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this act shall be deemed to be the original articles of incorporation of the new corporation;

(vii) The shares of each corporation party to the plan of consolidation that are to be converted into shares, obligations or other securities of the new corporation or into cash or other property are converted, and the former holders of the shares are entitled only to the rights provided in the plan of consolidation or to their rights under article 13 of this act.

**17-16-1114. Consolidation of domestic and foreign corporations.**

(a) One (1) or more foreign corporations and one (1) or more domestic corporations may be consolidated in the following manner, if the consolidation is permitted by the laws of the state under which each foreign corporation is organized:

(i) Each domestic corporation shall comply with the provisions of this act with respect to the consolidation of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized;

(ii) If the new corporation in a consolidation is to be governed by the laws of any state other than Wyoming, it shall comply with the provisions of this act with respect to foreign corporations if it is to transact business in Wyoming, and in every case it shall file with the secretary of state of Wyoming:

(A) An agreement that it may be served with process in Wyoming in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the new corporation;

(B) An irrevocable appointment of the secretary of state of Wyoming as its agent to accept service of process in any such proceeding; and

(C) An agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this act with respect to the rights of dissenting shareholders.

**17-16-1115. Conversion of corporation to limited liability company.**

(a) A domestic corporation may be converted to a domestic limited liability company pursuant to chapter 26 of this title.

(b) A foreign corporation may be converted to a domestic limited liability company pursuant to chapter 26 of this title.

(c) Repealed By Laws 2009, Ch. 115, § 3.

(d) After the conversion is approved by the shareholders, the limited liability company shall file articles of organization which satisfy the requirements of W.S. 17-29-201 and include:

(i) A statement that the corporation was converted to a limited liability company;

(ii) Its former name;

(iii) The state of formation and the date of organization; and

(iv) A statement of the number of votes cast by the shareholders for and against conversion and if the vote is less than unanimous, the number or percentage required to approve the conversion under the articles of incorporation or bylaws.

(e) The conversion takes effect when the articles of organization are filed or at any later date specified in the articles.

**17-16-1116. Effect of conversion.**

(a) Upon conversion:

(i) All property owned by the corporation remains in the limited liability company;

(ii) All obligations of the converting corporation continue as obligations of the resulting limited liability company; and

(iii) An action or proceeding pending against the converting corporation may be continued as if the conversion had not occurred.

ARTICLE 12 - SALE OF ASSETS

**17-16-1201. Disposition of assets not requiring shareholder approval.**

(a) No approval of the shareholders of a corporation is required unless the articles of incorporation otherwise provide:

(i) To sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;

(ii) To mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of the corporation's assets whether or not in the usual and regular course of business; or

(iii) To transfer any or all of the corporation's assets to one (1) or more corporations or other entities all of the shares or interests of which are owned by the corporation; or

(iv) To distribute assets pro rata to the holders of one (1) or more classes or series of the corporation's shares.

(b) Repealed by Laws 2009, Ch. 115, § 3.

**17-16-1202. Shareholder approval of certain dispositions.**

(a) A sale, lease, exchange, or other disposition of assets, other than a disposition described in W.S. 17-16-1201, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. If a significant business activity of the corporation prior to any such disposition of assets was the active or passive holding, maintenance or management of investments, then such holding, maintenance or management of investments shall be considered a significant continuing business activity. If a corporation retains a business activity that represented at least twenty-five percent (25%) of total assets at the end of the most recently completed fiscal year, and twenty-five percent (25%) of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis, the corporation will conclusively be deemed to have retained a significant continuing business activity.

(b) A disposition that requires approval of the shareholders under subsection (a) of this section shall be initiated by a resolution by the board of directors authorizing the disposition. After adoption of such a resolution, the board of directors shall submit the proposed disposition to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the proposed disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination.

(c) The board of directors may condition its submission of a disposition to the shareholders under subsection (b) of this section on any basis.

(d) If a disposition is required to be approved by the shareholders under subsection (a) of this section and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the disposition is to be submitted for approval. The notice shall state that the purpose, or one (1) of the purposes, of the meeting is to consider the disposition and shall contain a description of the disposition,

including the terms and conditions thereof and the consideration to be received by the corporation.

(e) Unless the articles of incorporation or the board of directors, acting pursuant to subsection (c) of this section, require a greater vote or a greater number of votes to be present, the approval of a disposition by the shareholders shall require the approval of the shareholders at a meeting at which a quorum exists.

(f) After a disposition has been approved by the shareholders under subsection (b) of this section and at any time before the disposition has been consummated, it may be abandoned by the corporation without action by the shareholders, subject to any contractual rights of other parties to the disposition.

(g) A disposition of assets in the course of dissolution under article 14 is not governed by this section.

(h) For purposes of this section, the ownership interests of a parent corporation in its subsidiaries, whether owned directly by the parent corporation or indirectly through other subsidiaries shall be valued at the net asset values of such subsidiaries, without application of any discount to the valuation of such ownership interests because of a lack of marketability or otherwise.

## ARTICLE 13 - APPRAISAL RIGHTS

### **17-16-1301. Definitions.**

(a) As used in this article:

(i) "Beneficial shareholder" means the person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf;

(ii) "Corporation" means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in W.S. 17-16-1322 through 17-16-1331, includes the surviving entity in a merger;

(iii) Repealed By Laws 2009, Ch. 115, § 3.

(iv) "Fair value" means the value of the corporation's shares determined:

(A) Immediately before the effectuation of the corporate action to which the shareholder objects;

(B) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(C) Without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles pursuant to W.S 17-16-1302(a)(v).

(v) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans, or, if none, at a rate that is fair and equitable under all the circumstances;

(vi) "Record shareholder" means the person in whose names shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation;

(vii) "Shareholder" means the record shareholder or the beneficial shareholder.

(viii) "Affiliate" means a person that directly or indirectly through one (1) or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive thereof;

(ix) "Beneficial owner" means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares; except that a member of a national securities exchange is not deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because the member is the record holder of the securities if the member is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two (2) or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby is deemed to have acquired beneficial ownership, as of the date of the agreement, of all

voting shares of the corporation beneficially owned by any member of the group;

(x) "Preferred shares" means a class or series of shares whose holders have preference over any other class or series with respect to distributions.

### **17-16-1302. Right to appraisal.**

(a) A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of his shares in the event of, any of the following corporate actions:

(i) Consummation of a plan of merger or consolidation to which the corporation is a party if:

(A) Shareholder approval is required for the merger or the consolidation by W.S. 17-16-1104 or 17-16-1111 and the shareholder is entitled to vote on the merger or consolidation, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger; or

(B) The corporation is a subsidiary that is merged with its parent under W.S. 17-16-1105.

(ii) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the exchange, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

(iii) Consummation of a disposition of assets pursuant to W.S. 17-16-1202 if the shareholder is entitled to vote on the disposition;

(iv) An amendment of the articles of incorporation with respect to a class or series of shares that:

(A) Alters or abolishes a preferential right of the shares;

(B) Creates, alters or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares;

(C) Alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;

(D) Excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or

(E) Reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created.

(v) Any other amendment to the articles of incorporation, merger, share exchange or disposition of assets if specifically provided in the articles of incorporation, bylaws or a resolution of the board of directors;

(vi) Consummation of a transfer or domestication if the shareholder does not receive shares in the foreign corporation resulting from the transfer or domestication that have terms as favorable to the shareholder in all material respects, and represent at least the same percentage interest of the total voting rights of the outstanding shares of the corporation, as the shares held by the shareholder before the transfer or domestication;

(vii) Consummation of a conversion of the corporation to nonprofit status; or

(viii) Consummation of a conversion of the corporation to an unincorporated entity.

(b) Notwithstanding subsection (a) of this section, the availability of appraisal rights under paragraphs (a) (i), (ii), (iii), (iv), (vi) and (viii) of this section shall be limited in accordance with the following provisions:

(i) Appraisal rights shall not be available for the holders of shares of any class or series of shares which is:

(A) A covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933, as amended; or

(B) Traded in an organized market and has at least two thousand (2,000) shareholders and a market value of at

least twenty million dollars (\$20,000,000.00), exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors and beneficial shareholders owning more than ten percent (10%) of such shares; or

(C) Issued by an open end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and may be redeemed at the option of the holder at net asset value.

(ii) The applicability of paragraph (i) of this subsection shall be determined as of:

(A) The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

(B) The day before the effective date of such corporate action if there is no meeting of shareholders.

(iii) Paragraph (i) of this subsection shall not be applicable and appraisal rights shall be available pursuant to subsection (a) of this section for the holders of any class or series of shares who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in paragraph (i) of this subsection at the time the corporate action becomes effective;

(iv) Reserved.

**17-16-1303. Assertion of rights by nominees and beneficial owners.**

(a) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder and notifies the corporation in writing of the name and address of each beneficial shareholder on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be

determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(b) A beneficial shareholder may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if the shareholder:

(i) Submits to the corporation the record shareholder's written consent to the assertion of those rights not later than the date provided in W.S. 17-16-1322(b)(ii)(B); and

(ii) Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder.

#### **17-16-1320. Notice of appraisal rights.**

(a) If proposed corporate action described in W.S. 17-16-1302 is to be submitted to a vote at a shareholders' meeting, the meeting notice shall state that corporation has concluded that shareholders are, are not or may be entitled to assert appraisal rights under this article. If the corporation concludes that appraisal rights are or may be available, a copy of this article shall accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

(b) In a merger pursuant to W.S. 17-16-1105, the parent corporation shall notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. The notice shall be sent within ten (10) days after the corporate action became effective and include the materials described in W.S. 17-16-1322.

(c) Where any corporate action specified in W.S. 17-16-1302(a) is to be approved by written consent of the shareholders pursuant to W.S. 17-16-704:

(i) Written notice that appraisal rights are, are not or may be available shall be given to each record shareholder from whom a consent is solicited at the time consent of such shareholder is first solicited and, if the corporation has concluded that appraisal rights are or may be available, shall be accompanied by a copy of this article; and

(ii) Written notice that appraisal rights are, are not or may be available shall be delivered together with the notice to nonconsenting and nonvoting shareholders required by W.S. 17-16-704(e) and (f), may include the materials described in W.S. 17-16-1322 and, if the corporation has concluded that appraisal rights are or may be available, shall be accompanied by a copy of this article.

(d) Where corporate action described in W.S. 17-16-1302(a) is proposed, or a merger pursuant to W.S. 17-16-1105 is effected, the notice referred to in subsection (a) or (c) of this section, if the corporation concludes that appraisal rights are or may be available, and in subsection (b) of this section shall be accompanied by:

(i) The annual financial statements specified in W.S. 17-16-1620(a) of the corporation that issued the shares that may be subject to appraisal, which shall be as of a date ending not more than sixteen (16) months before the date of the notice and shall comply with W.S. 17-16-1620(b); provided that, if the annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and

(ii) The latest available quarterly financial statements of such corporation, if any.

(e) The right to receive the information described in subsection (d) of this section may be waived in writing by a shareholder before or after the corporate action.

**17-16-1321. Notice of intent to demand payment and consequences of voting or consenting.**

(a) If proposed corporate action requiring appraisal under W.S. 17-16-1302 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(i) Shall deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment if the proposed action is effectuated; and

(ii) Shall not vote or cause or permit to be voted any shares of the class or series in favor of the proposed action.

(b) If a corporate action specified in W.S. 17-16-1302(a) is to be approved by written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares shall not execute a consent in favor of the proposed action with respect to that class or series of shares.

(c) A shareholder who does not satisfy the requirements of subsection (a) or (b) of this section is not entitled to payment for his shares under this article.

### **17-16-1322. Appraisal notice and form.**

(a) If corporate action requiring appraisal under W.S. 17-16-1302(a) becomes effective, the corporation shall deliver a written appraisal notice to all shareholders who satisfied the requirements of W.S. 17-16-1321(a) or (b). In the case of a merger under W.S. 17-16-1105, the parent shall deliver a written appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(b) The appraisal notice shall be sent no later than ten (10) days after the corporate action specified in W.S. 17-16-1302(a) became effective, and shall:

(i) Supply a form that:

(A) Specifies the first date of any announcement to shareholders made prior to the date the corporate action became effective of the principal terms of the proposed corporate action; and

(B) If such announcement was made, requires that the shareholder asserting appraisal rights certify whether beneficial ownership of the shares for which appraisal rights are asserted was acquired before that date; and

(C) Requires the shareholder asserting appraisal rights to certify that such shareholder did not vote for or consent to the transaction.

(ii) State:

(A) Where the form shall be sent and where certificates for certificated shares shall be deposited and the date by which those certificates shall be deposited, which date may not be earlier than the date for receiving the required form under subparagraph (B) of this paragraph;

(B) Date by which the corporation shall receive the form, which date may not be fewer than forty (40) nor more than sixty (60) days after the date the appraisal notice and form are sent pursuant to subsection (a) of this section, and state that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date;

(C) The corporation's estimate of the fair value of the shares;

(D) That, if requested in writing, the corporation will provide, to the shareholder so requesting, within ten (10) days after the date specified in subparagraph (B) of this paragraph the number of shareholders who return the forms by the specified date and the total number of shares owned by them; and

(E) The date by which the notice to withdraw under W.S. 17-16-1323 must be received, which date shall be within twenty (20) days after the date specified in subparagraph (B) of this paragraph.

(iii) Be accompanied by a copy of this article.

**17-16-1323. Perfection of rights; right to withdraw.**

(a) A shareholder who receives notice pursuant to W.S. 17-16-1322 and who wishes to exercise appraisal rights shall sign and return the form sent by the corporation and, in the case of certificated shares, deposit his certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to W.S. 17-16-1322(b)(ii)(B). In addition, if applicable, the shareholder shall certify on the form whether the beneficial owner of such shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to W.S. 17-16-1322(b)(i). If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after acquired shares under W.S. 17-16-1324. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the signed forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection (b) of this section.

(b) The shareholder who has complied with subsection (a) of this section may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to W.S. 17-16-1322(b)(ii)(E). A shareholder who fails to so withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(c) A shareholder who does not sign and return the form and, in the case of certificated shares, deposit his share certificates where required, each by the date set forth in the notice described in W.S. 17-16-1322(b), is not entitled to payment under this article.

#### **17-16-1324. Payment.**

(a) Except as provided in W.S. 17-16-1325, within one hundred twenty (120) days after the form required by W.S. 17-16-1322(b)(ii)(B) is due, the corporation shall pay in cash or other agreed upon consideration to those shareholders who complied with W.S. 17-16-1323 the amount the corporation estimates to be the fair value of his shares, plus interest.

(b) The payment to each shareholder pursuant to subsection (a) of this section shall be accompanied by:

(i) The annual financial statements specified in W.S. 17-16-1620(a) of the corporation that issued the shares to be appraised, which shall be of a date ending not more than sixteen (16) months before the date of payment and shall comply with W.S. 17-16-1620(b), provided that if such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information. The corporation shall also provide the latest available quarterly financial statements, if any;

(ii) A statement of the corporation's estimate of the fair value of the shares which estimate shall equal or exceed the corporation's estimate given pursuant to W.S. 17-16-1322(b)(ii)(C);

(iii) A statement that shareholders described in subsection (a) of this section have the right to demand further payment under W.S. 17-16-1326 and that if any shareholder does not do so within the time period specified therein, the shareholder shall be deemed to have accepted such payment in

full satisfaction of the corporation's obligations under this article.

**17-16-1325. After-acquired shares.**

(a) A corporation may elect to withhold payment required by W.S. 17-16-1324 from any shareholder who was required to, but did not certify that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to W.S. 17-16-1322(b)(i).

(b) If the corporation elected to withhold payment under subsection (a) of this section, it shall, within thirty (30) days after the form required by W.S. 17-16-1322(b)(ii)(B) is due, notify all shareholders described in subsection (a) of this section:

(i) Of the information required by W.S. 17-16-1324(b)(i);

(ii) Of the corporation's estimate of fair value pursuant to W.S. 17-16-1324(b)(ii);

(iii) That they may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under W.S. 17-16-1326;

(iv) That those shareholders who wish to accept the offer shall so notify the corporation of their acceptance of the corporation's offer within thirty (30) days after receiving the offer; and

(v) That those shareholders who do not satisfy the requirements for demanding appraisal under W.S. 17-16-1326 shall be deemed to have accepted the corporation's offer.

(c) Within ten (10) days after receiving the shareholder's acceptance pursuant to subsection (b) of this section, the corporation shall pay in cash or other agreed upon consideration the amount it offered under paragraph (b)(ii) of this section to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

(d) Within one hundred thirty (130) days after sending the notice described in subsection (b) of this section, the corporation shall pay in cash the amount it offered to pay under

paragraph (b) (ii) of this section to each shareholder described in paragraph (b) (v) of this section.

**17-16-1326. Procedure if shareholder dissatisfied with payment or offer.**

(a) A shareholder paid pursuant to W.S. 17-16-1324 who is dissatisfied with the amount of the payment may notify the corporation in writing of that shareholder's estimate of the fair value of his shares and demand payment of his estimate plus interest, less any payment under W.S. 17-16-1324. A shareholder offered payment under W.S. 17-16-1325 who is dissatisfied with that offer shall reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares plus interest.

(b) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (a) of this section within thirty (30) days after receiving the corporation's payment or offer of payment under W.S. 17-16-1324 or 17-16-1325, respectively, waives the right to demand payment under this section and shall be entitled only to the payment made or offered pursuant to those respective sections.

**17-16-1330. Court action.**

(a) If a shareholder makes a demand for payment under W.S. 17-16-1326 which remains unsettled, the corporation shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty (60) day period, it shall pay each shareholder demanding appraisal rights whose demand remains unsettled the amount demanded pursuant to W.S. 17-16-1326 plus interest.

(b) The corporation shall commence the proceeding in the district court of the county where a corporation's principal office, or if none in this state, its registered office, is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the principal office or registered office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located at the time of the transaction.

(c) The corporation shall make all shareholders, whether or not residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties shall be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) of this section is plenary and exclusive. The court may appoint one (1) or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in the amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings.

(e) Each shareholder made a party to the proceeding is entitled to judgment for:

(i) The amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation to the shareholder for those shares; or

(ii) The fair value, plus accrued interest, of his after-acquired shares for which the corporation elected to withhold payment under W.S. 17-16-1325.

**17-16-1331. Court costs and counsel fees.**

(a) The court in an appraisal proceeding commenced under W.S. 17-16-1330 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds the shareholders demanding appraisal rights acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this article.

(b) The court in an appraisal proceeding may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(i) Against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the

corporation did not substantially comply with the requirements of W.S. 17-16-1320 through 17-16-1326; or

(ii) Against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this article.

(c) If the court in an appraisal proceeding finds that the services of counsel and any other expenses incurred for any shareholder demanding appraisal were of substantial benefit to other shareholders similarly situated, and that the fees for those services and other expenses should not be assessed against the corporation, the court may direct that those fees and expenses be paid out of the amounts awarded the shareholders who were benefited.

(d) To the extent the corporation fails to make a required payment pursuant to W.S. 17-16-1324, 17-16-1325 or 17-16-1326, the shareholder may sue directly for the amount owed, and to the extent successful, shall be entitled to recover from the corporation all expenses of the suit.

#### **17-16-1340. Other remedies limited.**

(a) The legality of a proposed or completed corporate action described in W.S. 17-16-1302(a) may not be contested, nor may the corporate action be enjoined, set aside or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

(b) Subsection (a) of this section does not apply to a corporate action that:

(i) Was not authorized and approved in accordance with the applicable provisions of:

(A) Article 9, 10, 11 or 12 of this act;

(B) The articles of incorporation or bylaws; or

(C) The resolution of the board of directors authorizing the corporate action.

(ii) Was procured as a result of fraud, a material misrepresentation or an omission of a material fact necessary to

make statements made, in light of the circumstances in which they were made, not misleading;

(iii) Reserved;

(iv) Is approved by less than unanimous consent of the voting shareholders pursuant to W.S. 17-16-704 if:

(A) The challenge to the corporate action is brought by a shareholder who did not consent and as to whom notice of the approval of the corporate action was not effective at least ten (10) days before the corporate action was effected; and

(B) The proceeding challenging the corporate action is commenced within ten (10) days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.

#### ARTICLE 14 - DISSOLUTION

##### **17-16-1401. Dissolution by incorporators or initial directors.**

(a) A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth:

(i) The name of the corporation;

(ii) The date of its incorporation;

(iii) Either:

(A) That none of the corporation's shares has been issued; or

(B) That the corporation has not commenced business.

(iv) That no debt of the corporation remains unpaid;

(v) That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and

(vi) That a majority of the incorporators or initial directors authorized the dissolution.

**17-16-1402. Dissolution by board of directors and shareholders.**

(a) A corporation's board of directors may propose dissolution for submission to the shareholders.

(b) For a proposal to dissolve to be adopted:

(i) The board of directors shall recommend dissolution to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(ii) The shareholders entitled to vote shall approve the proposal to dissolve as provided in subsection (e) of this section.

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with W.S. 17-16-705. The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider dissolving the corporation.

(e) Unless the articles of incorporation or the board of directors, acting pursuant to subsection (c) of this section, require a greater vote or a vote by voting groups, adoption of the proposal to dissolve shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast exists.

**17-16-1403. Articles of dissolution.**

(a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth:

(i) The name of the corporation;

(ii) The date dissolution was authorized;

(iii) If dissolution was approved by the shareholders a statement that the proposal to dissolve was duly approved by the shareholders in the manner required by this act and by the articles of incorporation.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

(c) For purposes of this article, "dissolved corporation" means a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

#### **17-16-1404. Revocation of dissolution.**

(a) A corporation may revoke its dissolution within one hundred twenty (120) days of the effective date of the dissolution.

(b) Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(i) The name of the corporation which shall satisfy the requirements of W.S. 17-16-401;

(ii) The effective date of the dissolution that was revoked;

(iii) The date that the revocation of dissolution was authorized;

(iv) If the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

(v) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(vi) If shareholder action was required to revoke the dissolution, the information required by W.S. 17-16-1403(a)(iii).

(d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(e) When the revocation of dissolution is effective, it relates back to and takes effect as if the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred, except the corporation may be required to adopt some other name by amending its articles of incorporation in the manner provided by this act so its name satisfies the requirements of W.S. 17-16-401.

#### **17-16-1405. Effect of dissolution.**

(a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(i) Collecting its assets;

(ii) Disposing of its properties that will not be distributed in kind to its shareholders;

(iii) Discharging or making provision for discharging its liabilities;

(iv) Distributing its remaining property among its shareholders according to their interests; and

(v) Doing every other act necessary to wind up and liquidate its business and affairs.

(b) Dissolution of a corporation does not:

(i) Transfer title to the corporation's property;

(ii) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(iii) Subject its directors or officers to standards of conduct different from those prescribed in article 8;

(iv) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;

(v) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(vi) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(vii) Terminate the authority of the registered agent of the corporation.

**17-16-1406. Known claims against dissolved corporation.**

(a) A dissolved corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after its effective date.

(b) The written notice shall:

(i) Describe information that shall be included in a claim;

(ii) Provide a mailing address where a claim may be sent;

(iii) State the deadline, which may not be fewer than one hundred twenty (120) days from the effective date of the written notice, by which the dissolved corporation shall receive the claim; and

(iv) State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

(i) If a claimant who was given written notice under subsection (b) of this section does not deliver the claim to the dissolved corporation by the deadline; or

(ii) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety (90) days from the effective date of the rejection notice.

(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

(e) A claim that is not barred by this section may be enforced in accordance with W.S. 17-16-1407(d).

**17-16-1407. Other claims against dissolved corporation.**

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice shall:

(i) Be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation's principal office, or, if none in this state, its registered office, is or was last located;

(ii) Describe the information that shall be included in a claim and provide a mailing address where the claim may be sent; and

(iii) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within three (3) years or the applicable statute of limitations, whichever is less, after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within three (3) years after the publication date of the newspaper notice:

(i) A claimant who did not receive written notice under W.S. 17-16-1406;

(ii) A claimant whose claim was timely sent to the dissolved corporation but not acted on; or

(iii) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim that is not barred by W.S. 17-16-1406(c) or subsection (c) of this section may be enforced:

(i) Against the dissolved corporation, to the extent of its undistributed assets; or

(ii) Except as provided in W.S. 17-16-1408(d), if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of his pro rata share of the claim or the corporate assets distributed to him in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

#### **17-16-1408. Court proceedings.**

(a) A dissolved corporation that has published a notice under W.S. 17-16-1407 may file an application with the district court of the county where the dissolved corporation's principal office, or, if none in this state, its registered office is located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under W.S. 17-16-1407(c).

(b) Within ten (10) days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(c) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding

brought under this section. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

(d) Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection (a) of this section shall satisfy the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a shareholder who received assets in liquidation.

**17-16-1409. Directors' duties.**

(a) Directors shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims and make distributions of assets to shareholders after payment or provision for claims.

(b) Directors of a dissolved corporation which has disposed of claims under W.S. 17-16-1406, 17-16-1407 or 17-16-1408 shall not be liable for breach of this section with respect to claims against the dissolved corporation.

**17-16-1420. Grounds for administrative dissolution.**

(a) The secretary of state may commence a proceeding under W.S. 17-16-1421 to administratively dissolve a corporation if any of the following has occurred:

(i) The corporation does not deliver its annual reports or pay the annual license taxes to the secretary of state when due pursuant to W.S. 17-16-1630;

(ii) Reserved;

(iii) The corporation is without a registered agent or registered office in this state;

(iv) The corporation does not notify the secretary of state within thirty (30) days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;

(v) The corporation's period of duration stated in its articles of incorporation expires;

(vi) It is in the public interest and the corporation:

(A) Failed to provide records to the registered agent as required in W.S. 17-28-107;

(B) Has provided fraudulent information or has failed to correct false information upon request of the secretary of state on any filing under this act with the secretary of state; or

(C) Cannot be served by either the secretary of state or the registered agent at its address provided pursuant to W.S. 17-28-107.

(vii) An incorporator, director, officer or agent of the corporation signed a document he knew was false in any material respect with intent that the document be delivered to the secretary of state for filing;

(viii) The corporation has failed to respond to a valid and enforceable subpoena;

(ix) The corporation is in violation of W.S. 17-16-401(d) (v) or 17-16-1506(d) (v);

(x) The corporation has failed to pay any penalties imposed under W.S. 17-28-109.

(b) Prior to commencing a proceeding under W.S. 17-16-1421 the secretary of state may classify a corporation as delinquent awaiting administrative dissolution if the corporation meets any of the criteria in subsection (a) of this section.

**17-16-1421. Procedure for and effect of administrative dissolution.**

(a) If the secretary of state determines that one (1) or more grounds exist under W.S. 17-16-1420 for dissolving a corporation, he shall serve the corporation with written notice of his determination under W.S. 17-28-104, except for W.S. 17-16-1420(a) (v) in which case dissolution is by choice and therefore automatic.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty (60) days after service of the notice is perfected under W.S. 17-28-104, the secretary of state shall administratively dissolve the corporation by signing, either manually or in facsimile, a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under W.S. 17-28-104.

(c) A corporation administratively dissolved under W.S. 17-16-1420 continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under W.S. 17-16-1405 and notify claimants under W.S. 17-16-1406 and 17-16-1407.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

**17-16-1422. Reinstatement following administrative dissolution.**

(a) An officer or other person with proper authority at the time a corporation was administratively dissolved under W.S. 17-16-1421 may apply to the secretary of state for reinstatement within two (2) years after the effective date of dissolution. Reinstatement may be denied by the secretary of state if the corporation has been the subject of secretary of state and law enforcement investigation pertaining to fraud or any other violation of state or federal law, or if there is other reason to believe the corporation was engaged in illegal operations. The application shall:

(i) Recite the name of the corporation and the effective date of its administrative dissolution;

(ii) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(iii) Reserved;

(iv) If the corporation was administratively dissolved for failing to deliver its annual report or pay the annual license taxes to the secretary of state when due pursuant to W.S. 17-16-1630, include payment of fees and taxes then

delinquent and a reinstatement certificate fee prescribed pursuant to W.S. 17-16-122; and

(v) If the corporation was administratively dissolved for failure to maintain a registered agent, include payment of a two hundred fifty dollar (\$250.00) reinstatement fee and payment of any fees and taxes then delinquent.

(b) If the secretary of state determines that the application contains the information required by subsection (a) of this section and that the information is correct, he shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under W.S. 17-28-104.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

(d) The corporation shall retain its registered corporate name during the two (2) year reinstatement period.

(e) A person who files any document under this section without proper corporate authority to do so is in violation of W.S. 6-5-308.

**17-16-1423. Appeal from denial of reinstatement.**

(a) If the secretary of state denies a corporation's application for reinstatement following administrative dissolution, he shall serve the corporation under W.S. 17-28-104 with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the district court within thirty (30) days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial.

(c) The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

**17-16-1430. Grounds for judicial dissolution.**

(a) The district court may dissolve a corporation:

(i) In a proceeding by the attorney general if it is established that:

(A) The corporation obtained its articles of incorporation through fraud; or

(B) The corporation has continued to exceed or abuse the authority conferred upon it by law.

(ii) In a proceeding by a shareholder if it is established that:

(A) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(B) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive or fraudulent;

(C) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two (2) consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(D) The corporate assets are being misapplied or wasted.

(iii) In a proceeding by a creditor if it is established that:

(A) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(B) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

(iv) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision;

(v) In a proceeding by a shareholder, if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

(b) Reserved.

(c) Reserved.

#### **17-16-1431. Procedure for judicial dissolution.**

(a) Venue for a proceeding by the attorney general to dissolve a corporation lies in Laramie county district court. Venue for a proceeding brought by any other party named in W.S. 17-16-1430 lies in the county where a corporation's principal office, or, if none in this state, its registered office, is or was last located.

(b) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(d) Within ten (10) days of the commencement of a proceeding under W.S. 17-16-1430(a)(ii) to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one (1) or more members of a national or affiliated securities association, the corporation must send to all shareholders, other than the petitioner, a notice stating that the

shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under W.S. 17-16-1434 and accompanied by a copy of W.S. 17-16-1434.

**17-16-1432. Receivership or custodianship.**

(a) A court in a judicial proceeding brought to dissolve a corporation may appoint one (1) or more receivers to wind up and liquidate, or one (1) or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The court may appoint an individual or a domestic or foreign corporation authorized to transact business in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(i) The receiver may:

(A) Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and

(B) Sue and defend in his own name as receiver of the corporation in all Wyoming courts.

(ii) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders and creditors.

(e) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his counsel from the assets of the corporation or proceeds from the sale of the assets.

**17-16-1433. Decree of dissolution.**

(a) If after a hearing the court determines that one (1) or more grounds for judicial dissolution described in W.S. 17-16-1430 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with W.S. 17-16-1405 and the notification of claimants in accordance with W.S. 17-16-1406 and 17-16-1407.

**17-16-1434. Election to purchase in lieu of dissolution.**

(a) In a proceeding under W.S. 17-16-1430(a)(ii) to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one (1) or more members of a national or affiliated securities association, the corporation may elect or, if it fails to elect, one (1) or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

(b) An election to purchase pursuant to this section may be filed with the court at any time within ninety (90) days after the filing of the petition under W.S. 17-16-1430(a)(ii) or at such later time as the court in its discretion may allow. If the election to purchase is filed by one (1) or more shareholders, the corporation shall, within ten (10) days thereafter, give written notice to all shareholders, other than the petitioner. The notice must state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and must advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to

participate must file notice of their intention to join in the purchase no later than thirty (30) days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one (1) or more shareholders, the proceeding under W.S. 17-16-1430(a)(ii) may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale or other disposition.

(c) If, within sixty (60) days of the filing of the first election, the parties reach agreement as to the fair value in terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

(d) If the parties are unable to reach an agreement as provided for in subsection (c) of this section, the court, upon application of any party, shall stay the W.S. 17-16-1430(a)(ii) proceedings and determine the fair value of the petitioner's shares as of the day before the date on which the petition under W.S. 17-16-1430(a)(ii) was filed or as of such other date as the court deems appropriate under the circumstances.

(e) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments, where necessary in the interest of equity, provision for security to assure payment of the purchase price and any additional costs, fees and expenses as may have been awarded, and, if the shares are to be purchased by the shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court should attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that the holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or

otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under W.S. 17-16-1430(a)(ii)(B) or (D), it may award to the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by him.

(f) Upon entry of an order under subsection (c) or (e) of this section, the court shall dismiss the petition to dissolve the corporation under W.S. 17-16-1430, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to him by the order of the court which shall be enforceable in the same manner as any other judgment.

(g) The purchase order pursuant to subsection (e) of this section shall be made within ten (10) days after the date the order becomes final unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to W.S. 17-16-1402 and 17-16-1403, which articles must then be adopted and filed within fifty (50) days thereafter. Upon filing of such articles of dissolution, the corporation shall be dissolved in accordance with provisions of W.S. 17-16-1405 through 17-16-1407, and the order entered pursuant to subsection (e) of this section shall no longer be of any force or effect, except that the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of the last sentence of subsection (e) of this section and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

(h) Any payment by the corporation pursuant to an order under subsection (c) or (e) of this section, other than an award of fees and expenses pursuant to subsection (e) of this section, is subject to the provisions of W.S. 17-16-640.

#### **17-16-1440. Deposit with state treasurer.**

Assets of a dissolved corporation that should be transferred to a creditor, claimant or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the state treasurer for safekeeping. When the creditor, claimant or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the state treasurer shall pay him or his representative that amount.

ARTICLE 15 - FOREIGN CORPORATIONS

**17-16-1501. Authority to transact business required.**

(a) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a) of this section:

(i) Maintaining, defending or settling any proceeding;

(ii) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

(iii) Maintaining bank accounts;

(iv) Maintaining offices or agencies for the transfer, exchange and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;

(v) Selling through independent contractors;

(vi) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(vii) Creating or acquiring indebtedness, mortgages and security interests in real or personal property;

(viii) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(ix) Owning, without more, real or personal property;

(x) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature; or

(xi) Transacting business in interstate commerce.

(c) The list of activities in subsection (b) of this section is not exhaustive.

(d) A foreign corporation, foreign limited partnership or foreign limited liability company which is either an organizer, a manager or member of a company is not required to obtain a certificate of authority to undertake its duties in these capacities.

**17-16-1502. Consequences of transacting business without authority.**

(a) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation which transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees and license taxes, plus interest of eighteen percent (18%), which would have been imposed by law upon such corporation had it duly applied for and received a certificate of authority to transact business in this state as required by this act and thereafter filed all reports required by law, and in addition shall be liable for a penalty in the amount of five thousand dollars (\$5,000.00), reasonable audit expenses and reasonable attorney fees. The secretary of state may refuse to issue a certificate of authority until all taxes, fees, interest, expenses and penalties due under this section have been paid to him. The attorney general may collect all penalties and other sums due under this subsection.

(e) Notwithstanding subsections (a) and (b) of this section, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

**17-16-1503. Application for certificate of authority.**

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application shall set forth:

(i) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of W.S. 17-16-1506;

(ii) The name of the state or country under whose law it is incorporated;

(iii) Its date of incorporation and period of duration;

(iv) The street address of its principal office and an email address for the foreign corporation;

(v) The address of its registered office in this state and the name of its registered agent at that office;

(vi) The names and usual business addresses of its current directors and officers; and

(vii) Repealed By Laws 2009, Ch. 115, § 3.

(viii) A statement that the corporation accepts the constitution of the state of Wyoming in compliance with the requirement of article 10, section 5 of the Wyoming constitution.

(ix) Repealed By Laws 2009, Ch. 115, § 3.

(b) The foreign corporation shall deliver with the completed application a certificate of existence, or a document of similar import, dated not more than sixty (60) days prior to filing in Wyoming, duly authenticated by the secretary of state

or other official having custody of corporate records in the state or country under whose law it is incorporated.

(c) The application for certificate of authority shall be accompanied by a written consent to appointment executed by the registered agent.

**17-16-1504. Amended certificate of authority.**

(a) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

- (i) Its corporate name;
- (ii) The period of its duration; or
- (iii) The state or country of its incorporation.

(b) The requirements of W.S. 17-16-1503 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

**17-16-1505. Effect on certificate of authority.**

(a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this act.

(b) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by this act is subject to the same duties, restrictions, penalties and liabilities now or later imposed on, a domestic corporation of like character.

(c) This act does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

**17-16-1506. Corporate name of foreign corporation.**

(a) If the corporate name of a foreign corporation does not satisfy the requirements of W.S. 17-16-401, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state may use a fictitious name to

transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d) of this section, the corporate name, including a fictitious name, of a foreign corporation shall not be the same as, or deceptively similar to the name of any trademark or service mark registered in this state and shall be distinguishable upon the records of the secretary of state from other business names as required by W.S. 17-16-401.

(c) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to do business in this state, that is not distinguishable in accordance with the provisions of W.S. 17-16-401(c).

(i) Reserved;

(ii) Reserved.

(d) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation has:

(i) Merged with the other corporation; or

(ii) Been formed by reorganization of the other corporation; or

(iii) Acquired all or substantially all of the assets, including the corporate name, of the other corporation; or

(iv) Repealed By Laws 1996, ch. 80, § 3.

(v) Has received the written consent of the other corporation, which written consent also sets forth a description of a proposed merger, consolidation, dissolution, amendment to articles of incorporation or other intended corporate action which establishes to the reasonable satisfaction of the secretary of state that the coexistence of two (2) corporations

using the same name will not continue for more than one hundred twenty (120) days.

(e) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of W.S. 17-16-401, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of W.S. 17-16-401 and obtains an amended certificate of authority under W.S. 17-16-1504.

**17-16-1507. Registered office and registered agent of foreign corporation.**

(a) Each foreign corporation authorized to transact business in this state shall continuously maintain in this state:

(i) A registered office as provided in W.S. 17-28-101 through 17-28-111; and

(ii) A registered agent as provided in W.S. 17-28-101 through 17-28-111.

(A) Reserved;

(B) Reserved;

(C) Reserved.

(b) The provisions of W.S. 17-28-101 through 17-28-111 shall apply to all foreign corporations.

**17-16-1508. Reserved.**

**17-16-1509. Reserved.**

**17-16-1510. Reserved.**

**17-16-1511. Merger of foreign corporation authorized to transact business in this state.**

(a) Whenever a foreign corporation authorized to transact business in this state shall be a party to a statutory merger permitted by the laws of the state or country of incorporation, it shall, within thirty (30) days after a merger becomes

effective, file with the secretary of state a current certificate of evidence issued by the proper officer of the state or country of incorporation which sets forth:

(i) The date of filing;

(ii) The names of each corporation involved and the states of incorporation; and

(iii) The name of the surviving corporation.

(b) It shall not be necessary for the corporation to procure either a new or amended certificate of authority to transact business in this state unless the name of the corporation is changed by merger or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state.

#### **17-16-1520. Withdrawal of foreign corporation.**

(a) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(b) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application shall set forth:

(i) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(ii) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(iii) That it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(iv) A mailing address and an email address to which the secretary of state may provide a copy of any process served on him under paragraph (iii) of this subsection; and

(v) A commitment to notify the secretary of state in the future of any change in its mailing address and email address.

(c) After the withdrawal of the corporation is effective, service of process on the secretary of state under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall provide a copy of the process to the foreign corporation at the mailing address or email address set forth under subsection (b) of this section.

**17-16-1521. Reserved.**

**17-16-1522. Reserved.**

**17-16-1523. Reserved.**

**17-16-1530. Grounds for revocation.**

(a) The secretary of state may commence a proceeding under W.S. 17-16-1531 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(i) The corporation does not deliver its annual reports or pay the annual license taxes to the secretary of state when due pursuant to W.S. 17-16-1630;

(ii) Reserved;

(iii) The foreign corporation is without a registered agent or registered office in this state;

(iv) The foreign corporation does not inform the secretary of state under W.S. 17-28-102 or 17-28-103 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within thirty (30) days of the change, resignation or discontinuance;

(v) An incorporator, director, officer or agent of the foreign corporation signed a document he knew was false in any material respect with intent that the document be delivered to the secretary of state for filing;

(vi) Reserved;

(vii) The corporation has failed to respond to a valid and enforceable subpoena; or

(A) Has provided fraudulent information or has failed to correct false information upon request of the secretary of state on any filing under this act with the secretary of state; or

(B) Cannot be served either by the registered agent or by mail or electronically by the secretary of state acting as the agent for process.

(viii) It is in the public interest and the corporation:

(A) Has provided fraudulent information or has failed to correct false information upon request of the secretary of state on any filing under this act with the secretary of state; or

(B) Cannot be served either by the registered agent or by mail or electronically by the secretary of state acting as the agent for process.

(ix) The foreign corporation has failed to pay any penalties imposed under W.S. 17-28-109.

(b) Prior to commencing a proceeding under W.S. 17-16-1531 the secretary of state may classify a foreign corporation as delinquent awaiting administrative revocation if the foreign corporation meets any of the criteria in subsection (a) of this section.

### **17-16-1531. Procedure for and effect of revocation.**

(a) If the secretary of state determines that one (1) or more grounds exist under W.S. 17-16-1530 for revocation of a certificate of authority, he shall serve the foreign corporation with written notice of his determination under W.S. 17-28-104.

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty (60) days after service of the notice is perfected under W.S. 17-28-104, the secretary of state may revoke the foreign corporation's certificate of authority by signing, either

manually or in facsimile, a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign corporation under W.S. 17-28-104.

(c) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(d) The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon receipt of process, the secretary of state shall either:

(i) Mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority; or

(ii) Electronically submit a copy of the process to the foreign corporation's email address.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

### **17-16-1532. Appeal from revocation.**

(a) A foreign corporation may appeal the secretary of state's revocation of its certificate of authority pursuant to W.S. 16-3-114, within thirty (30) days after service of the certificate of revocation is perfected under W.S. 17-28-104. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

(b) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

**17-16-1533. Applicability of chapter to foreign limited liability companies.**

To the extent not inconsistent with the Wyoming Limited Liability Company Act, W.S. 17-29-101 through 17-29-1105 and the provisions of this chapter, a limited liability company organized in another jurisdiction shall do business in Wyoming by complying with the applicable provisions of this article. The certificate of authority of a limited liability company organized in another jurisdiction shall be revoked and reinstated as provided in this act.

**17-16-1534. Applicability of chapter 23 to foreign statutory trust companies.**

To the extent not inconsistent with the Wyoming Statutory Trust Act, W.S. 17-23-101 through 17-23-302, a statutory trust as defined in W.S. 17-23-102(a)(v), which is organized in another jurisdiction may do business in Wyoming by complying with W.S. 17-16-1501 through 17-16-1507, 17-16-1520 and 17-16-1530 through 17-16-1532.

**17-16-1535. Reinstatement following revocation of certificate of authority.**

(a) An officer or other person with proper authority at the time a foreign corporation had its certificate of authority revoked under W.S. 17-16-1531 may apply to the secretary of state for reinstatement of its certificate of authority within two (2) years after the effective date of revocation. Reinstatement may be denied by the secretary of state if the corporation has been the subject of a secretary of state and law enforcement investigation pertaining to fraud or any other violation of state or federal law, or if there is other reason to believe the corporation was engaged in illegal operations. The application shall:

(i) Recite the name of the corporation and the effective date of the revocation of its certificate of authority;

(ii) State that the ground or grounds for revocation either did not exist or have been eliminated;

(iii) Reserved;

(iv) If the foreign corporation's certificate of authority was revoked for failing to deliver its annual report or pay the annual license taxes to the secretary of state when due pursuant to W.S. 17-16-1630, include payment of fees and taxes then delinquent and a reinstatement certificate fee prescribed pursuant to W.S. 17-16-122;

(v) If the foreign corporation's certificate of authority was revoked for failure to maintain a registered agent, include payment of a two hundred fifty dollar (\$250.00) reinstatement fee and payment of any fees and taxes then delinquent; and

(vi) Include proof that the foreign corporation is currently in good standing in the state of formation.

(b) If the secretary of state determines that the application contains the information required by subsection (a) of this section and that the information is correct, he shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under W.S. 17-28-104.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the revocation of the certificate of authority and the foreign corporation resumes carrying on its business as if the revocation had never occurred.

(d) The foreign corporation shall retain its registered corporate name during the two (2) year reinstatement period.

(e) If more than two (2) years has elapsed since the revocation of a foreign corporation's certificate of authority, the foreign corporation may reapply for a certificate of authority to transact business pursuant to W.S. 17-16-1503. If the foreign corporation continues transacting business in Wyoming after the two (2) year period elapsed, the foreign corporation shall be subject to the penalty for transacting business without authority as set forth in W.S. 17-16-1502(d).

(f) A person who files any document under this section without proper corporate authority to do so is in violation of W.S. 6-5-308.

**17-16-1536. Appeal from denial of reinstatement.**

(a) If the secretary of state denies a foreign corporation's application for reinstatement following administrative revocation, he shall serve the corporation under W.S. 17-28-104 with a written notice that explains the reason or reasons for denial.

(b) The foreign corporation may appeal the denial of reinstatement to the district court within thirty (30) days after service of the notice of denial is perfected. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of the secretary of state's certificate of revocation, the foreign corporation's application for reinstatement and the secretary of state's notice of denial.

(c) The court may summarily order the secretary of state to reinstate the foreign corporation's certificate of authority or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

ARTICLE 16 - RECORDS AND REPORTS

**17-16-1601. Corporate records.**

(a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A record of shareholders administered by or on behalf of a corporation shall be kept in a form that permits preparation of a list of the identities of all shareholders, in alphabetical or numerical order by class of shares showing the

number and class of shares held by each. The list shall also show each shareholder's physical mailing address, if the identity of a shareholder on the list consists of the shareholder's name, and each shareholder's authorized means of receipt for electronic transmissions, if the identity of a shareholder on the list consists of the shareholder's data address. A record of shareholders may show both the shareholder's name and data address.

(d) Records administered by or on behalf of, or maintained by, a corporation may be kept on, or by means of, or be in the form of any information storage device or method or any one (1) or more distributed or other electronic networks or databases provided that the records are kept in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(i) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(ii) Its bylaws or restated bylaws and all amendments to them currently in effect;

(iii) Resolutions adopted by its board of directors creating one (1) or more classes or series of shares, and fixing their relative rights, preferences and limitations, if shares issued pursuant to those resolutions are outstanding;

(iv) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three (3) years;

(v) All written communications to shareholders generally within the past three (3) years, including the financial statements furnished for the past three (3) years under W.S. 17-16-1620;

(vi) A list of the names and business addresses of its current directors and officers; and

(vii) Its most recent annual report delivered to the secretary of state under W.S. 17-16-1630.

**17-16-1602. Inspection of records by shareholders.**

(a) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in W.S. 17-16-1601(e) if the shareholder gives the corporation written notice of the shareholder's demand at least five (5) business days before the date on which the shareholder wishes to inspect and copy.

(b) A shareholder who has been of record for at least six (6) months immediately preceding his demand and who shall be the holder of record of at least five percent (5%) of all the outstanding shares of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (c) of this section and gives the corporation written notice of the shareholder's demand at least five (5) business days before the date on which the shareholder wishes to inspect and copy:

(i) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under W.S. 17-16-1602(a);

(ii) Accounting records of the corporation; and

(iii) The record of shareholders.

(c) A shareholder may inspect and copy the records described in subsection (b) of this section only if:

(i) The shareholder's demand is made in good faith and for a proper purpose;

(ii) The shareholder describes with reasonable particularity his purpose and the records he desires to inspect; and

(iii) The records are directly connected with the shareholder's purpose.

(d) The right of inspection granted by this section may not be abolished or limited, but may be expanded, by a corporation's articles of incorporation or bylaws.

(e) This section does not affect:

(i) The right of a shareholder to inspect records under W.S. 17-16-720 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(ii) The power of a court, independently of this act, to compel the production of corporate records for examination.

(f) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on his behalf.

### **17-16-1603. Scope of inspection right.**

(a) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder he represents.

(b) The right to copy records under W.S. 17-16-1602 includes, if reasonable, the right to receive copies by xerographic or other means, including copies through an electronic transmission if available and so requested by the shareholder.

(c) The corporation may comply with a shareholder's demand to inspect the record of shareholders under W.S. 17-16-1602(b)(iii) by providing the shareholder with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.

(d) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of production, reproduction or transmission of the records.

### **17-16-1604. Court ordered inspection.**

(a) If a corporation does not allow a shareholder who complies with W.S. 17-16-1602(a) to inspect and copy any records required by that subsection to be available for inspection, the district court of the county where the corporation's principal

office, or, if none in this state, its registered office, is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(b) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with W.S. 17-16-1602(b) and (c) may apply to the district court in the county where the corporation's principal office, or, if none in this state, its registered office, is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's expenses, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(d) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

#### **17-16-1605. Inspection of records by directors.**

(a) A director of a corporation is entitled to inspect and copy the books, records and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(b) The district court of the county where the corporation's principal office, or if none in this state, its registered office, is located may order inspection and copying of the books, records and documents at the corporation's expense, upon application of a director who has been refused inspection rights, unless the corporation establishes that the director is not entitled to those inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the court may include provisions protecting the corporation from undue burden or

expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's expenses, including reasonable counsel fees, incurred in connection with the application unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the director to inspect the records demanded.

**17-16-1606. Exception to notice requirement.**

(a) Whenever notice is required to be given under any provision of this act to any shareholder, the notice shall not be required to be given if:

(i) Notice of two (2) consecutive annual meetings, and all notices of meetings during the period between the two (2) consecutive annual meetings, have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned undeliverable; or

(ii) All, but not less than two (2), payments of dividends on securities during a twelve (12) month period, or two (2) consecutive payments of dividends on securities during a period of more than twelve (12) months, have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned undeliverable.

(b) If any shareholder shall deliver to the corporation a written notice setting forth the shareholder's then current address, the requirement that notice be given to the shareholder shall be reinstated.

**17-16-1620. Financial statements for shareholders.**

(a) A corporation shall furnish, upon request, to its shareholders annual financial statements, which may be consolidated or combined statements of the corporation and one (1) or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis. If detailed

financial statements are not prepared for the corporation on an annual basis, then a copy of its federal income tax return will satisfy the requirements of this section.

(b) If the annual financial statements are reported upon by a public accountant, his report shall accompany them. If not, the statements shall be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(i) Stating his reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(ii) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) A corporation shall mail, upon request, the annual financial statements to each shareholder within one hundred twenty (120) days after the close of each fiscal year. Thereafter, on written request from a shareholder who was not mailed the statements, the corporation shall mail the shareholder the latest financial statements.

**17-16-1621. Reserved.**

**17-16-1622. Other reports to shareholders.**

(a) If a corporation indemnifies or advances expenses to a director under W.S. 17-16-851 through 17-16-854 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting.

(b) If a corporation issues or authorizes the issuance of shares for promissory notes or for promises to render services in the future, the corporation shall report in writing to the shareholders the number of shares authorized or issued, and the consideration received by the corporation, with or before the notice of the next shareholders' meeting.

**17-16-1630. Filing of reports and payment of tax required; amount of tax; exemptions; records.**

(a) Every corporation organized under the laws of this state and every foreign corporation which obtains the right to transact and carry on business within this state (except banks, insurance companies and savings and loan associations) shall file with the secretary of state on or before the first day of the month of registration of every year a certification, under the penalty of perjury, by its treasurer or other fiscal agent setting forth its capital, property and assets located and employed in the state of Wyoming. The statement shall give the names and addresses of its officers and directors and the address of its principal office. On or before the first day of the month of registration of every year the corporation shall pay to the secretary of state in addition to all other statutory taxes and fees a license tax based upon the sum of its capital, property and assets reported, of sixty dollars (\$60.00) or two-tenths of one mill on the dollar (\$.0002), whichever is greater.

(b) The provisions of W.S. 17-16-1630(a) shall be modified as follows:

(i) Repealed By Laws 2000, Ch. 35, § 2.

(ii) Any corporation engaged in the public calling of carrying goods, passengers or information interstate is not required to comply with the provisions of W.S. 17-16-1630(a) except to the extent of capital, property and assets used in intrastate business in this state;

(iii) The value of all mines and mining claims from which gold, silver and other precious metals, soda, saline, coal, mineral oil or other valuable deposit, is or shall be produced is deemed equivalent to the assessed value of the gross product thereof, for the previous year;

(iv) The assessed value of any property shall be its actual value.

(c) Financial information in the annual report shall be current as of the end of the corporation's fiscal year immediately preceding the date the annual report is executed on behalf of the corporation. All other information in the annual report shall be current as of the date the annual report is executed on behalf of the corporation.

(d) If an annual report does not contain the information required by this section, the secretary of state shall promptly

notify the reporting domestic or foreign corporation in writing and return the report to it for correction.

(e) Every corporation registered or authorized to do business in the state of Wyoming shall preserve for three (3) years at its principal place of business, suitable records and books as may be necessary to determine the amount of tax for which it is liable for under this act. All records and books shall be available for examination by the secretary of state or his designee during regular business hours except as arranged by mutual consent.

(f) In addition to other fees provided under this section, each corporation shall pay one hundred dollars (\$100.00), except for foreign corporations which shall pay one hundred fifty dollars (\$150.00), to the secretary of state for initial incorporation or qualification to do business in Wyoming.

**17-16-1631. Repealed By Laws 1997, ch. 192, § 3.**

**17-16-1632. Repealed By Laws 1997, ch. 192, § 3.**

**17-16-1633. Repealed By Laws 1997, ch. 192, § 3.**

#### ARTICLE 17 - TRANSITION PROVISIONS

**17-16-1701. Application to existing domestic corporations.**

(a) Except as provided in subsection (b) of this section, this act applies to domestic corporations in existence on its effective date that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

(b) For corporations incorporated in Wyoming prior to the effective date of this act, the cumulative voting and shareholder preemptive rights provisions contained in former W.S. 17-1-123 and 17-1-130 are continued for a period of four (4) years from the effective date of this act unless the corporation amends its articles of incorporation to provide otherwise.

**17-16-1702. Applications to qualified foreign corporations.**

A foreign corporation authorized to transact business in this state on the effective date of this act is subject to this act but is not required to obtain a new certificate of authority to transact business under this act.

**17-16-1703. Saving provisions.**

(a) Except as provided in subsection (b) of this section, the repeal of a statute by this act does not affect:

(i) The operation of the statute or any action taken under it before its repeal;

(ii) Any ratification, right, remedy, privilege, obligation or liability acquired, accrued or incurred under the statute before its repeal;

(iii) Any violation of the statute, or any penalty, forfeiture or punishment incurred because of the violation, before its repeal; or

(iv) Any proceeding, reorganization or dissolution commenced under the statute before its repeal, and the proceeding, reorganization or dissolution may be completed in accordance with the statute as if it had not been repealed.

(b) If a penalty or punishment imposed for violation of a statute repealed by this act is reduced by this act, the penalty or punishment if not already imposed shall be imposed in accordance with this act.

**17-16-1704. Reserved.**

**17-16-1705. Reserved.**

**17-16-1706. Reserved.**

**17-16-1720. Transfer of a Wyoming corporation to another jurisdiction.**

(a) A corporation incorporated, domesticated or continued under this act may, if authorized by resolution duly adopted as set forth in subsection (g) of this section, and by the laws of any other jurisdiction, within or without the United States, apply to the proper officer of the other jurisdiction for a

certificate of registration, and to the secretary of state of this state for a certificate of transfer. The application for certificate of transfer shall set forth the following:

(i) The name of the corporation immediately prior to the transfer, and if that name is unavailable for use in the foreign jurisdiction or the corporation desires to change its name in connection with the transfer, the name by which the corporation will be known in the foreign jurisdiction;

(ii) A statement of the jurisdiction to which the corporation is to be transferred;

(iii) A statement that the corporation shall surrender its certificate of incorporation under this act upon the effectiveness of the transfer;

(iv) A statement that the transfer was duly approved by the directors and the shareholders in the manner required under subsection (g) of this section; and

(v) Any other terms and conditions of the transfer, including any desired amendments to the articles of incorporation of the corporation following its transfer.

(b) The secretary of state shall require that the corporation maintain within the state an agent for service of process for at least one (1) year after the transfer is effected and shall impose any conditions he considers appropriate for the protection of creditors and stockholders, including the provision of notice to the public of the application described in subsection (a) of this section, the provision of a bond or a deposit of funds in an appropriate depository located in Wyoming and subject to the jurisdiction of the courts of Wyoming, and if such conditions are not met, the secretary of state may refuse to issue a certificate of transfer.

(c) The secretary of state, upon compliance by the applicant and the secretary with subsections (a) and (b) of this section and receipt of payment of the special toll charge prescribed by subsection (e) of this section shall immediately transmit a notice of issuance of a certificate of transfer to the proper officer of the jurisdiction to which the corporation is transferred.

(d) Upon issuance of a certificate of transfer, the corporation shall be continued as if it had been incorporated

under the laws of the other jurisdiction and becomes a corporation under the laws of the other jurisdiction upon issuance by such jurisdiction of a certificate of registration.

(e) Every corporation organized, domesticated or continued under the laws of this state in order to receive a certificate of transfer pursuant to subsection (c) of this section shall pay to the secretary of state, in addition to all other statutory taxes and fees, a special toll charge of sixty dollars (\$60.00).

(f) Repealed By Laws 2009, Ch. 115, § 3.

(g) A resolution to transfer the corporation to another jurisdiction shall be adopted by the board of directors, and shall thereafter be submitted to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the resolution, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination. The board of directors may condition its submission of the resolution to the shareholders on any basis. If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the resolution for transfer is to be submitted for approval. The notice shall contain or be accompanied by a copy or summary of the resolution and of the articles of incorporation of the corporation as they will be in effect in the new jurisdiction immediately after the transfer. Unless the articles of incorporation or the board of directors requires a greater vote or a greater number of votes to be present, approval of the resolution requires the affirmative vote of a majority of the shareholders at a meeting at which a quorum, consisting of a majority of the votes entitled to be cast, is present, and, if any class or series of shares is entitled to vote as a separate group on the resolution, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the resolution by that voting group exists. Separate voting by voting groups is required to the extent the same would be required for a proposed amendment to the articles of incorporation.

(h) The corporation may represent to the proper officer of the jurisdiction to which the corporation is transferred that

the laws of the state of Wyoming permit such transfer, and may describe the permission extended by this section as authorizing the domestication, continuance or other transfer of domicile as may be required by the laws of the foreign jurisdiction in order for the corporation to be accepted in that jurisdiction, provided that the corporation may not misrepresent the requirements or effects of the provisions of this section.

ARTICLE 18 - DOMESTICATION AND CONTINUANCE OF FOREIGN CORPORATIONS; TRANSFER OF DOMESTIC CORPORATIONS

**17-16-1801. Domestication of foreign corporations.**

Any corporation incorporated under the laws of any of the several states of the United States for any purpose except acting as an insurer as defined in W.S. 26-1-102(a)(xvi), or acting as a financial institution as described by W.S. 13-1-101(a)(ix) may become a domestic corporation of this state by delivering or causing to be delivered to the secretary of state articles of domestication. Upon filing the articles of domestication, the secretary of state shall issue to the foreign corporation a certificate of domestication which shall continue the corporation as if it had been incorporated under this act. The articles of domestication, upon being filed by the secretary of state, constitute the articles of the domesticated foreign corporation and it shall thereafter have all the powers and privileges and be subjected to all the duties and limitations granted and imposed upon domestic corporations under the provisions of the Wyoming Business Corporation Act. A corporation does not become a resident for the purpose of W.S. 16-6-101 through 16-6-118 solely because it becomes a domestic corporation under this section.

**17-16-1802. Application for certificate of domestication; articles of domestication.**

(a) A foreign corporation, in order to procure a certificate of domestication shall file articles of domestication with the secretary of state, which articles shall include and set forth:

(i) A certified copy of its original articles of incorporation and all amendments thereto or its equivalent basic corporate charter or other authorization, and a certificate of good standing not more than thirty (30) days old;

(ii) The name of the corporation and the jurisdiction under the laws of which it is incorporated;

(iii) The date of incorporation and the period of duration of the corporation;

(iv) The address of the principal office of the corporation and the jurisdiction under the laws of which it is incorporated;

(v) The address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent in this state at that address;

(vi) The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state;

(vii) The names and addresses of the directors and officers of the corporation;

(viii) A statement of the aggregate number of shares or other ownership units which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value and series, if any, within a class;

(ix) A statement of the aggregate number of issued shares or other ownership units itemized by classes, par value of shares, shares without par value and series, if any, within a class;

(x) A statement that the corporation accepts the constitution of this state in compliance with the requirement of article 10, section 5 of the Wyoming constitution;

(xi) Any additional information as may be necessary or appropriate to enable the secretary of state to determine whether the corporation is entitled to a certificate of domestication evidencing its authority to transact business in this state, and to determine and assess the fees and license taxes under the laws of this state.

#### **17-16-1810. Continuance of foreign corporations.**

(a) Subject to subsection (b) of this section, any corporation incorporated for any purpose except acting as an insurer as defined in W.S. 26-1-102(a)(xvi), or acting as a

financial institution as described by W.S. 13-1-101(a) (ix) under the laws of any jurisdiction other than this state may, if the jurisdiction will acknowledge the corporation's termination of domicile in the foreign jurisdiction, apply to the secretary of state for registration under this act, thus continuing the foreign corporation in Wyoming as if it had been incorporated in this state. The secretary of state may issue a certificate of registration upon receipt of an application supported by articles of continuance as provided by this act together with the statements, information and documents set out in subsection (c) of this section. The certificate of registration may then be issued subject to any limitations and conditions and may contain any provisions as may appear proper to the secretary of state.

(b) The secretary of state shall cause notice of issuance of a certificate of registration to be given forthwith to the proper officer of the jurisdiction in which the corporation was previously incorporated.

(c) The articles of continuance filed by a foreign corporation with the secretary of state shall contain:

(i) A certified copy of its original articles of incorporation and all amendments thereto or its equivalent basic corporate charter or other authorization;

(ii) The name of the corporation and the jurisdiction under the laws of which it is incorporated;

(iii) The date of incorporation and the period of duration of the corporation;

(iv) The address of the principal office of the corporation;

(v) The address of the proposed registered office of the corporation in this state and the name of its proposed registered agent in this state at the address;

(vi) The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state;

(vii) The names and respective business addresses of the directors and officers of the corporation;

(viii) A statement of the aggregate number of shares or other ownership units which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value and series, if any, within a class;

(ix) A statement of the aggregate number of issued shares or other ownership units itemized by classes, par value of shares, shares without par value and series, if any, within a class;

(x) Such additional information concerning capital structure or financial status as the secretary of state deems necessary to establish fees;

(xi) A statement that the corporation accepts the constitution of this state in compliance with the requirements of article 10, section 5 of the Wyoming constitution;

(xii) Any additional information necessary or appropriate to enable the secretary of state to determine whether the corporation is entitled to a certificate of registration evidencing its authority to transact business in the state and to determine and to assess any fees and taxes under the laws of this state;

(xiii) Any additional information permitted in articles of incorporation under W.S. 17-16-202.

(d) The application shall be executed by the corporation by its president or other officer, director, trustee, manager or person performing functions equivalent to those of a president and who is authorized to execute the application on behalf of the corporation and shall be verified by the officer signing the application.

(e) The provisions of the articles of continuance may, without expressly so stating, vary from the provisions of the corporation's articles of incorporation or equivalent basic corporate charter or other authorization, if the variation is one which a corporation incorporated under the Wyoming Business Corporation Act could effect by way of amendment to its articles of incorporation. Upon issuance of a certificate of continuance by the secretary of state, the articles of continuance shall be deemed to be the articles of incorporation of the continued corporation. The corporation may elect to incorporate by reference in the articles of continuance its basic corporate charter or other authorization which had been adopted by the

corporation in the foreign jurisdiction, in order to permit the same to continue to act as the articles of incorporation of the corporation, provided, however, that such basic corporate charter or other authorization shall be deemed amended to the extent necessary to make the same conform to the laws of Wyoming and to the provisions of the articles of continuance.

(f) Except for the purpose of W.S. 16-6-101 through 16-6-118, the existence of any corporation heretofore or hereafter issued a certificate of continuation under this act shall be deemed to have commenced on the date the corporation commenced its existence in the jurisdiction in which the corporation was first formed, incorporated or otherwise came into being. The laws of Wyoming shall apply to a corporation continuing under this act to the same extent as if the corporation had been incorporated under the laws of Wyoming from and after the issuance of a certificate of continuation under this act by the secretary of state to the corporation. When a foreign corporation is continued as a corporation under this act, such continuance shall not affect the corporation's ownership of its property or liability for any existing obligations, causes of action, claims, pending or threatened prosecutions or civil or administrative actions, convictions, rulings, orders, judgments, or any other characteristics or aspects of the corporation and its existence.

(g) A share of stock of a foreign corporation issued before the corporation's continuance in Wyoming is deemed to have been issued in compliance with the Wyoming Business Corporation Act and the provisions of the articles of continuance, irrespective of whether the share is fully paid and nonassessable, and irrespective of any designation, rights, privileges, restrictions or conditions set out on or referred to in the certificate representing the share, and irrespective of whether the certificate is in registered or bearer form. Continuance under this act does not deprive a stockholder of any right or privilege that he claims under, or relieve the stockholder of any liability in respect of, an issued share.

(h) As used in this section, the term "corporation" shall include any incorporated organization, foundation, trust, association, or similar entity which appears to the secretary of state to possess characteristics sufficiently similar to those of a corporation organized under the Wyoming Business Corporation Act.

(j) This act applies to all corporations continued in Wyoming on the effective date of this act. The repeal of any statute or part thereof by this act shall have such effect as is provided in W.S. 17-16-1703.

### CHAPTER 3 - PRACTICE OF PROFESSIONS BY CORPORATIONS

#### **17-3-101. Practice of profession through licensed stockholder or employee authorized.**

A corporation organized under the Wyoming Business Corporation Act or the Wyoming Statutory Close Corporation Supplement, whose capital stock is owned exclusively by a person or persons licensed to practice a profession by the state of Wyoming or by an agency, office or instrumentality authorized by the laws of Wyoming to license individuals for the practice of such profession, may, by and through the person or persons of such licensed stockholder or stockholders, or licensed employees, practice and offer professional services in such profession.

#### **17-3-102. Licensed stockholder or employee subject to certain requirements.**

No corporation may offer professional services or practice a profession except by and through the person or persons of its licensed stockholder or stockholders, or licensed employees, each of whom shall retain his professional license in good standing, and shall remain as fully liable and responsible for his professional activities, and subject to all rules, regulations, standards and requirements pertaining thereto, as though practicing individually rather than in a corporation.

#### **17-3-103. Words or initials to be contained in corporate name.**

The corporate name of every professional corporation shall contain either the words "A Professional Corporation" or the capital initials "P.C.". These words or initials shall be the last word of the name of the professional corporation.

#### **17-3-104. Language to be contained in articles of incorporation; location.**

The articles of incorporation of a professional practice corporation incorporated after the date of this act shall contain the following language: "All shareholders of the

corporation are, and will continually be, licensed in the profession for which the corporation is formed, and no professional service will be offered by the corporation except by or under the supervision of licensed stockholders or licensed employees." This language shall be inserted in the articles immediately after the provisions pertaining to the aggregate number of shares which the corporation is authorized to issue.

## CHAPTER 17 - CLOSE CORPORATION SUPPLEMENT

### ARTICLE 1 - PROVISIONS

#### **17-17-101. Short title.**

This chapter shall be known and may be cited as the "Wyoming Statutory Close Corporation Supplement."

#### **17-17-102. Application of Wyoming Business Corporation Act and the provisions of W.S. 17-3-101 through 17-3-104.**

(a) The Wyoming Business Corporation Act applies to statutory close corporations to the extent not inconsistent with the provisions of this chapter.

(b) This chapter applies to a professional corporation organized under W.S. 17-3-101 through 17-3-104 whose articles of incorporation contain the statement required by W.S. 17-17-103(a), except insofar as W.S. 17-3-101 through 17-3-104 contain inconsistent provisions.

(c) This chapter does not repeal or modify any statute or rule of law that is or would apply to a corporation that is organized under the Wyoming Business Corporation Act and the provisions of W.S. 17-3-101 through 17-3-104 and that does not elect to become a statutory close corporation under W.S. 17-17-103.

#### **17-17-103. Definition and election of statutory close corporation status.**

(a) A statutory close corporation is a corporation whose articles of incorporation contain a statement that the corporation is a statutory close corporation.

(b) A corporation having thirty-five (35) or fewer shareholders may become a statutory close corporation by amending its articles of incorporation to include the statement required by subsection (a) of this section. For corporations formed prior to January 1, 1990, the amendment shall be approved by all of the holders of the votes of each class or series of shares of the corporation, whether or not otherwise entitled to vote on amendments. For corporations formed on or after January 1, 1990, the amendment must be approved by the holders of at least two-thirds (2/3) of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the amendment is adopted, a shareholder who voted against the amendment is entitled to assert dissenters' rights under W.S. 17-16-1301 through 17-16-1331.

**17-17-110. Notice of statutory close corporations status on issued shares.**

(a) The following statement must appear conspicuously on each share certificate issued by a statutory close corporation:

The rights of shareholders in a statutory close corporation may differ materially from the rights of shareholders in other corporations. Copies of the articles of incorporation and bylaws, shareholders' agreements, and other documents, any of which may restrict transfers and affect voting and other rights, may be obtained by a shareholder on written request to the corporation.

(b) Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the shareholders a written notice containing the information required by subsection (a) of this section.

(c) The notice required by this section satisfies all requirements of this chapter and of W.S. 17-16-627 that notice of share transfer restrictions be given.

(d) A person claiming an interest in shares of a statutory close corporation which has complied with the notice requirement of this section is bound by the documents referred to in the notice. A person claiming an interest in shares of a statutory close corporation which has not complied with the notice requirement of this section is bound by any documents of which he, or a person through whom he claims, has knowledge or notice.

(e) A corporation shall provide to any shareholder upon his written request and without charge copies of provisions that restrict transfer or affect voting or other rights of shareholders appearing in articles of incorporation, bylaws, or shareholders' or voting trust agreements filed with the corporation.

**17-17-111. Share transfer prohibition.**

(a) An interest in shares of a statutory close corporation may not be voluntarily or involuntarily transferred, by operation of law or otherwise, except to the extent permitted by the articles of incorporation or under W.S. 17-17-112 or pursuant to a buy-sell agreement entered into by all the shareholders.

(b) Except to the extent the articles of incorporation provide otherwise, this section does not apply to a transfer:

(i) To the corporation or to any other holder of the same class or series of shares;

(ii) To members of the shareholder's immediate family, or to a trust, all of whose beneficiaries are members of the shareholder's immediate family, which immediate family consists of his spouse, parents, lineal descendants, including adopted children and stepchildren, and the spouse of any lineal descendant, and brothers and sisters;

(iii) That has been approved in writing by all of the holders of the corporation's shares having general voting rights;

(iv) To a personal representative upon the death of a shareholder or to a trustee or receiver as the result of a bankruptcy, insolvency, dissolution or similar proceeding brought by or against a shareholder;

(v) By merger, consolidation or share exchange under W.S. 17-16-1101 through 17-16-1114, or an exchange of existing shares for other shares of a different class or series in the corporation;

(vi) By a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by the pledgor; or

(vii) Made after termination of the corporation's status as a statutory close corporation.

**17-17-112. Share transfer after first refusal by corporation.**

(a) A person desiring to transfer shares of a statutory close corporation subject to the transfer prohibition of W.S. 17-17-111 must first offer them to the corporation by obtaining an offer to purchase the shares for cash from a third person who is eligible to purchase the shares under subsection (b) of this section. The offer by the third person must be in writing and state the offeror's name and address, the number and class, or series, of shares offered, the offering price per share, and the other terms of the offer.

(b) A third person is eligible to purchase the shares if:

(i) He is eligible to become a qualified shareholder under any federal or state tax statute the corporation has adopted and he agrees in writing not to terminate his qualification without the approval of the remaining shareholders; and

(ii) His purchase of the shares will not impose a personal holding company tax or similar federal or state penalty tax on the corporation.

(c) The person desiring to transfer shares shall deliver the offer to the corporation, and by doing so offers to sell the shares to the corporation on the terms of the offer. Within twenty (20) days after the corporation receives the offer, the corporation shall call a special shareholders' meeting, to be held not more than forty (40) days after the call, to decide whether the corporation should purchase all, but not less than all, of the offered shares. The offer must be approved by the affirmative vote of the holders of a majority of votes entitled to be cast at the meeting, excluding votes in respect of the shares covered by the offer.

(d) The corporation must deliver to the offering shareholder written notice of acceptance within seventy-five (75) days after receiving the offer or the offer is rejected. If the corporation makes a counteroffer, the shareholder must deliver to the corporation written notice of acceptance within fifteen (15) days after receiving the counteroffer or the counteroffer is rejected. If the corporation accepts the

original offer or the shareholder accepts the corporation's counteroffer, the shareholder shall deliver to the corporation duly endorsed certificates for the shares, or instruct the corporation in writing to transfer the shares if uncertificated, within twenty (20) days after the effective date of the notice of acceptance. The corporation may specifically enforce the shareholder's delivery or instruction obligation under this subsection.

(e) A corporation accepting an offer to purchase shares under this section may allocate some or all of the shares to one (1) or more of its shareholders or to other persons if all the shareholders voting in favor of the purchase approve the allocation. If the corporation has more than one (1) class or series of shares, however, the remaining holders of the class or series of shares being purchased are entitled to a first option to purchase the shares not purchased by the corporation in proportion to their shareholdings or in some other proportion agreed to by all the shareholders participating in the purchase.

(f) If an offer to purchase shares under this section is rejected, the offering shareholder, for a period of one hundred twenty (120) days after the corporation received his offer, is entitled to transfer to the third person offeror all, but not less than all, of the offered shares in accordance with the terms of his offer to the corporation.

**17-17-113. Attempted share transfer in breach of prohibition.**

(a) An attempt to transfer shares in a statutory close corporation in violation of a prohibition against transfer binding on the transferee is ineffective.

(b) An attempt to transfer shares in a statutory close corporation in violation of a prohibition against transfer that is not binding on the transferee, either because the notice required by W.S. 17-17-110 was not given or because the prohibition is held unenforceable by a court, gives the corporation an option to purchase the shares from the transferee for the same price and on the same terms that he purchased them. To exercise its option, the corporation must give the transferee written notice within thirty (30) days after they are presented for registration in the transferee's name. The corporation may specifically enforce the transferee's sale obligation upon exercise of its purchase option.

**17-17-114. Compulsory purchase of shares after death of shareholder.**

(a) This section, and W.S. 17-17-115 through 17-17-117, apply to a statutory close corporation only if so provided in its articles of incorporation. If these sections apply, the personal representative of the estate or the surviving joint tenant of a deceased shareholder may require the corporation to purchase or cause to be purchased all, but not less than all, of the decedent's shares or jointly owned shares or to be dissolved.

(b) The provisions of W.S. 17-17-115 through 17-17-117 may be modified only if the modification is set forth or referred to in the articles of incorporation.

(c) An amendment to the articles of incorporation to provide for application of W.S. 17-17-115 through 17-17-117, or to modify or delete the provisions of these sections, must be approved by the holders of at least two-thirds (2/3) of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the corporation has no shareholders when the amendment is proposed, it must be approved by at least two-thirds (2/3) of the subscribers for shares, if any, or, if none, by all of the incorporators.

(d) A shareholder who votes against an amendment to modify or delete the provisions of W.S. 17-17-115 through 17-17-117 is entitled to dissenters' rights under W.S. 17-16-1301 through 17-16-1331 if the amendment upon adoption terminates or substantially alters his existing rights under these sections to have his shares purchased.

(e) A shareholder may waive his and his estate's rights under W.S. 17-17-115 through 17-17-117 by a signed writing.

(f) W.S. 17-17-115 through 17-17-117 do not prohibit any other agreement providing for the purchase of shares upon a shareholder's death, nor do they prevent a shareholder from enforcing any remedy he has independent of these sections.

**17-17-115. Exercise of compulsory purchase right.**

(a) A person entitled and desiring to exercise the compulsory purchase right described in W.S. 17-17-114 must deliver a written notice to the corporation, within one hundred

twenty (120) days after the death of the shareholder, describing the number and class or series of shares beneficially owned by the decedent and requesting that the corporation offer to purchase the shares.

(b) Within twenty (20) days after the effective date of the notice, the corporation shall call a special shareholders' meeting, to be held not more than forty (40) days after the call, to decide whether the corporation should offer to purchase the shares. A purchase offer must be approved by the affirmative vote of the holders of a majority of votes entitled to be cast at the meeting, excluding votes in respect of the shares covered by the notice.

(c) The corporation must deliver a purchase offer to the person requesting it within seventy-five (75) days after the effective date of the request notice. A purchase offer must be accompanied by the corporation's balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the effective date of the request notice, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any. The person must accept the purchase offer in writing within fifteen (15) days after receiving it or the offer is rejected.

(d) A corporation agreeing to purchase shares under this section may allocate some or all of the shares to one (1) or more of its shareholders or to other persons if all the shareholders voting in favor of the purchase offer approve the allocation. If the corporation has more than one (1) class or series of shares, however, the remaining holders of the class or series of shares being purchased are entitled to a first option to purchase the shares not purchased by the corporation in proportion to their shareholdings or in some other proportion agreed to by all the shareholders participating in the purchase.

(e) If price and other terms of a compulsory purchase of shares are fixed or are to be determined by the articles of incorporation, bylaws, or a written agreement, the price and terms so fixed or determined govern the compulsory purchase unless the purchaser defaults, in which event the buyer is entitled to commence a proceeding for dissolution under W.S. 17-17-116.

**17-17-116. Court action to compel purchase.**

(a) If an offer to purchase shares made under W.S. 17-17-115 is rejected, or if no offer is made, the person exercising the compulsory purchase right may commence a proceeding against the corporation to compel the purchase in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located. The corporation at its expense shall notify in writing all of its shareholders, and any other person the court directs, of the commencement of the proceeding. The jurisdiction of the court in which the proceeding is commenced under this subsection is plenary and exclusive.

(b) The court shall determine the fair value of the shares subject to compulsory purchase in accordance with the standards set forth in W.S. 17-17-142 together with terms for the purchase. Upon making these determinations the court shall order the corporation to purchase or cause the purchase of the shares or empower the person exercising the compulsory purchase right to have the corporation dissolved.

(c) After the purchase order is entered, the corporation may petition the court to modify the terms of purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other purchaser to complete the purchase justify a modification.

(d) If the corporation or other purchaser does not make a payment required by the court's order within thirty (30) days of its due date, the seller may petition the court to dissolve the corporation and, absent a showing of good cause for not making the payment, the court shall do so.

(e) A person making a payment to prevent or cure a default by the corporation or other purchaser is entitled to recover the payment from the defaulter.

#### **17-17-117. Court costs and other expenses.**

(a) The court in a proceeding commenced under W.S. 17-17-116 shall determine the total costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court and of counsel and experts employed by the parties. Except as provided in subsection (b) of this section, the court shall assess these costs equally against the corporation and the party exercising the compulsory purchase right.

(b) The court may assess all or a portion of the total costs of the proceeding:

(i) Against the person exercising the compulsory purchase right if the court finds that the fair value of the shares does not substantially exceed the corporation's last purchase offer made before commencement of the proceeding and that the person's failure to accept the offer was arbitrary, or otherwise not in good faith; or

(ii) Against the corporation if the court finds that the fair value of the shares substantially exceeds the corporation's last sale offer made before commencement of the proceeding and that the offer was arbitrary, or otherwise not made in good faith.

### **17-17-120. Shareholder agreements.**

(a) All the shareholders of a statutory close corporation may agree in writing to regulate the exercise of the corporate powers and the management of the business and affairs of the corporation or the relationship among the shareholders of the corporation.

(b) An agreement authorized by this section is effective although:

(i) It eliminates a board of directors;

(ii) It restricts the discretion or powers of the board or authorizes director proxies or weighted voting rights;

(iii) Its effect is to treat the corporation as a partnership; or

(iv) It creates a relationship among the shareholders or between the shareholders and the corporation that would otherwise be appropriate only among partners.

(c) If the corporation has a board of directors, an agreement authorized by this section restricting the discretion or powers of the board relieves directors of liability imposed by law, and imposes that liability on each person in whom the board's discretion or power is vested, to the extent that the discretion or powers of the board of directors are governed by the agreement.

(d) A provision eliminating a board of directors in an agreement authorized by this section is not effective unless the articles of incorporation contain a statement to that effect as required by W.S. 17-17-121.

(e) A provision entitling one (1) or more shareholders to dissolve the corporation under W.S. 17-17-133 is effective only if a statement of this right is contained in the articles of incorporation.

(f) To amend an agreement authorized by this section, all the shareholders must approve the amendment in writing unless the agreement provides otherwise.

(g) Subscribers for shares may act as shareholders with respect to an agreement authorized by this section if shares are not issued when the agreement was made.

(h) This section does not prohibit any other agreement between or among shareholders in a statutory close corporation.

**17-17-121. Elimination of board of directors.**

(a) A statutory close corporation may operate without a board of directors if its articles of incorporation contain a statement to that effect.

(b) An amendment to articles of incorporation eliminating a board of directors must be approved by all the shareholders of the corporation, whether or not otherwise entitled to vote on amendments, or if no shares have been issued, by all the subscribers for shares, if any, or if none, by all the incorporators.

(c) While a corporation is operating without a board of directors as authorized by subsection (a) of this section:

(i) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, the shareholders;

(ii) Unless the articles of incorporation provide otherwise:

(A) Action requiring director approval or both director and shareholder approval is authorized if approved by the shareholders; and

(B) Action requiring a majority or greater percentage vote of the board of directors is authorized if approved by the majority or greater percentage of the votes of shareholders entitled to vote on the action.

(iii) A shareholder is not liable for his act or omission, although a director would be, unless the shareholder was entitled to vote on the action;

(iv) A requirement by a state or the United States that a document delivered for filing contain a statement that specified action has been taken by the board of directors is satisfied by a statement that the corporation is a statutory close corporation without a board of directors and that the action was approved by the shareholders; and

(v) The shareholders by resolution may appoint one (1) or more shareholders to sign documents as "designated directors."

(d) An amendment to articles of incorporation deleting the statement eliminating a board of directors must be approved by the holders of at least two-thirds (2/3) of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. The amendment must also specify the number, names and addresses of the corporation's directors or describe who will perform the duties of a board under W.S. 17-16-801.

#### **17-17-122. Bylaws.**

(a) A statutory close corporation need not adopt bylaws if provisions required by law to be contained in bylaws are contained in either the articles of incorporation or a shareholder agreement authorized by W.S. 17-17-120.

(b) If a corporation does not have bylaws when its statutory close corporation status terminates under W.S. 17-17-131, the corporation shall immediately adopt bylaws under W.S. 17-16-206.

#### **17-17-123. Annual meeting.**

(a) The annual meeting date for a statutory close corporation is the last business day of the third month following the close of the business year unless its articles of

incorporation, bylaws, or a shareholder agreement authorized by W.S. 17-17-120 fixes a different date.

(b) A statutory close corporation need not hold an annual meeting unless one (1) or more shareholders deliver written notice to the corporation requesting a meeting at least thirty (30) days before the meeting date determined under subsection (a) of this section.

**17-17-124. Execution of documents in more than one capacity.**

Notwithstanding any law to the contrary, an individual who holds more than one (1) office in a statutory close corporation may execute, acknowledge or verify in more than one (1) capacity any document required to be executed, acknowledged or verified by the holders of two (2) or more offices.

**17-17-125. Limited liability.**

The failure of a statutory close corporation to observe the usual corporate formalities or requirements relating to the exercise of its corporate powers or management of its business and affairs is not a ground for imposing personal liability on the shareholders for liabilities of the corporation.

**17-17-130. Merger, consolidation, share exchange and sale of assets.**

(a) A plan of merger, consolidation or share exchange that:

(i) If effected would terminate statutory close corporation status must be approved by the holders of at least two-thirds (2/3) of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the plan;

(ii) If effected would create the surviving or new corporation as a statutory close corporation must be approved by the holders of at least two-thirds (2/3) of the votes of each class or series of shares of the surviving corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the plan.

(b) A sale, lease, exchange, mortgage, encumbrance or other disposition of all or substantially all of the property, with or without the good will, of a statutory close corporation, if not made in the usual and regular course of business, must be approved by the holders of at least two-thirds (2/3) of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the transaction.

**17-17-131. Termination of statutory close corporation status.**

(a) A statutory close corporation may terminate its statutory close corporation status by amending its articles of incorporation to delete the statement that it is a statutory close corporation. If the statutory close corporation has elected to operate without a board of directors under W.S. 17-17-121, the amendment must either comply with W.S. 17-16-801 or delete the statement dispensing with the board of directors from its articles of incorporation.

(b) An amendment terminating statutory close corporation status must be approved by the holders of at least two-thirds (2/3) of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on amendments.

(c) If an amendment to terminate statutory close corporation status is adopted, each shareholder who voted against the amendment is entitled to assert dissenters' rights under W.S. 17-16-1301 through 17-16-1331.

**17-17-132. Effect of termination of statutory close corporation status.**

(a) A corporation that terminates its status as a statutory close corporation is thereafter subject to all provisions of the Wyoming Business Corporation Act and, if incorporated under W.S. 17-3-101 through 17-3-104, to all provisions of those statutes.

(b) Termination of statutory close corporation status does not affect any right of a shareholder or of the corporation under an agreement or the articles of incorporation unless this chapter, the Wyoming Business Corporation Act, or another law of this state invalidates the right.

**17-17-133. Shareholder option to dissolve corporation.**

(a) The articles of incorporation of a statutory close corporation may authorize one (1) or more shareholders, or the holders of a specified number or percentage of shares of any class or series, to dissolve the corporation at will or upon the occurrence of a specified event or contingency. The shareholder or shareholders exercising this authority must give written notice of the intent to dissolve to all the other shareholders. Sixty (60) days after the effective date of the notice, the corporation shall begin to wind up and liquidate its business and affairs and file articles of dissolution under W.S. 17-16-1403 through 17-16-1407.

(b) Unless the articles of incorporation provide otherwise, an amendment to the articles of incorporation to add, change or delete the authority to dissolve described in subsection (a) of this section must be approved by the holders of all the outstanding shares, whether or not otherwise entitled to vote on amendments, or if no shares have been issued, by all the subscribers for shares, if any, or if none, by all the incorporators.

**17-17-140. Court action to protect shareholders.**

(a) Subject to satisfying the conditions of subsections (c) and (d) of this section, a shareholder of a statutory close corporation may petition the district court for any of the relief described in W.S. 17-17-141 through 17-17-143 if:

(i) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent or unfairly prejudicial to the petitioner, whether in his capacity as shareholder, director or officer of the corporation;

(ii) The directors or those in control of the corporation are deadlocked in the management of the corporation's affairs, the shareholders are unable to break the deadlock, and the corporation is suffering or will suffer irreparable injury or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock; or

(iii) There exists one (1) or more grounds for judicial dissolution of the corporation under W.S. 17-16-1430.

(b) A shareholder must commence a proceeding under subsection (a) of this section in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(c) If a shareholder has agreed in writing to pursue a nonjudicial remedy to resolve disputed matters, he may not commence a proceeding under this section with respect to the matters until he has exhausted the nonjudicial remedy.

(d) If a shareholder has dissenters' rights under this chapter or W.S. 17-16-1301 through 17-16-1331 with respect to proposed corporate action, he must commence a proceeding under this section before he is required to give notice of his intent to demand payment under W.S. 17-16-1321 or to demand payment under W.S. 17-16-1323 or the proceeding is barred.

(e) Except as provided in subsections (c) and (d) of this section, a shareholder's right to commence a proceeding under this section and the remedies available under W.S. 17-17-141 through 17-17-143 are in addition to any other right or remedy he may have.

#### **17-17-141. Ordinary relief.**

(a) If the court finds that one (1) or more of the grounds for relief described in W.S. 17-17-140(a) exist, it may order such relief as it deems appropriate including one (1) or more of the following types of relief:

(i) The performance, prohibition, alteration or setting aside of any action of the corporation or of its shareholders, directors, or officers or of any other party to the proceeding;

(ii) The cancellation or alteration of any provision in the corporation's articles of incorporation or bylaws;

(iii) The removal from office of any director or officer;

(iv) The appointment of any individual as a director or officer;

(v) An accounting with respect to any matter in dispute;

(vi) The appointment of a custodian to manage the business and affairs of the corporation;

(vii) The appointment of a provisional director who has all the rights, powers and duties of a duly elected director to serve for the term and under the conditions prescribed by the court;

(viii) The payment of dividends; or

(ix) The award of damages to any aggrieved party.

(b) If the court finds that a party to the proceeding acted arbitrarily, or otherwise not in good faith, it may award one (1) or more other parties their reasonable expenses, including counsel fees and the expenses of appraisers or other experts, incurred in the proceeding.

**17-17-142. Extraordinary relief; share purchase.**

(a) If the court finds that the ordinary relief described in W.S. 17-17-141(a) is or would be inadequate or inappropriate, it may order the corporation dissolved under W.S. 17-17-143 unless the corporation or one (1) or more of its shareholders purchases all the shares of the shareholder for their fair value and on terms determined under subsection (b) of this section.

(b) If the court orders a share purchase, it shall:

(i) Determine the fair value of the shares, considering among other relevant evidence the going concern value of the corporation, any agreement among some or all of the shareholders fixing the price or specifying a formula for determining share value for any purpose, the recommendations of appraisers, if any, appointed by the court, and any legal constraints on the corporation's ability to purchase the shares;

(ii) Specify the terms of the purchase, including if appropriate terms for installment payments, subordination of the purchase obligation to the rights of the corporation's other creditors, security for a deferred purchase price, and a covenant not to compete or other restriction on the seller;

(iii) Require the seller to deliver all his shares to the purchaser upon receipt of the purchase price or the first installment of the purchase price;

(iv) Provide that after the seller delivers his shares he has no further claim against the corporation, its directors, officers or shareholders, other than a claim to any unpaid balance of the purchase price and a claim under any agreement with the corporation or the remaining shareholders that is not terminated by the court; and

(v) Provide that if the purchase is not completed in accordance with the specified terms, the corporation is to be dissolved under W.S. 17-17-143.

(c) After the purchase order is entered, any party may petition the court to modify the terms of the purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other purchaser to complete the purchase justify a modification.

(d) If the corporation is dissolved because the share purchase was not completed in accordance with the court's order, the selling shareholder has the same rights and priorities in the corporation's assets as if the sale had not been ordered.

#### **17-17-143. Extraordinary relief; dissolution.**

(a) The court may dissolve the corporation if it finds:

(i) There are one (1) or more grounds for judicial dissolution under W.S. 17-16-1430; or

(ii) All other relief ordered by the court under W.S. 17-17-141 or 17-17-142 has failed to resolve the matters in dispute.

(b) In determining whether to dissolve the corporation, the court shall consider among other relevant evidence the financial condition of the corporation but may not refuse to dissolve solely because the corporation has accumulated earnings or current operating profits.

#### **17-17-150. Application to existing corporations.**

This chapter applies to all corporations electing statutory close corporation status under W.S. 17-17-103 after its effective date.

**17-17-151. Reservation of power to amend or repeal.**

The legislature has power to amend or repeal all or part of this chapter at any time and all corporations subject to this chapter are governed by the amendment or repeal.