

CHAPTER 8-AMENDMENTS AND CHANGES

801. RIGHT TO AMEND CERTIFICATE OF INCORPORATION

(a) A corporation may amend its certificate of incorporation, from time to time, in any and as many respects as may be desired, if such amendment contains only such provisions as might be lawfully contained in an original certificate of incorporation filed at the time of making such amendment.

(b) In particular, and without limitation upon such general power of amendment, a corporation may amend its certificate of incorporation, from time to time, so as:

- (1) To change its corporate name.
- (2) To enlarge, limit or otherwise change its corporate purposes.
- (3) To specify or change the location of the office of the corporation.
- (4) To specify or change the post office address to which the Nation Clerk shall mail a copy of any process against the corporation served upon him.
- (5) To make, revoke or change the designation of a registered agent, or to specify or change the address of its registered agent.
- (6) To extend the duration of the corporation or, if the corporation ceased to exist because of the expiration of the duration specified in its certificate of incorporation, to revive its existence.
- (7) To increase or decrease the aggregate number of shares, or shares of any class or series, with or without par value, which the corporation shall have authority to issue.
- (8) To remove from authorized shares any class of shares, or any shares of any class, whether issued or unissued.
- (9) To increase the par value of any authorized shares of any class with par value, whether issued or unissued.
- (10) To reduce the par value of any authorized shares of any class with par value, whether issued or unissued.
- (11) To change any authorized shares, with or without par value, whether issued or unissued, into a different number of shares of the same class or into the same or a different number of shares of any one or more classes or any series thereof, either with or without par value.

- (12) To fix, change or abolish the designation of any authorized class or any series thereof or any of the relative rights, preferences and limitations of any shares of any authorized class or any series thereof, whether issued or unissued, including any provisions in respect of any undeclared dividends, whether or not cumulative or accrued, or the redemption of any shares, or any sinking fund for the redemption or purchase of any shares, or any preemptive right to acquire shares or other securities.
- (13) As to the shares of any preferred class, then or theretofore authorized, which may be issued in series, to grant authority to the board or to change or revoke the authority of the board to establish and designate series and to fix the number of shares and the relative rights, preferences and limitation as between series.
- (14) To strike out, change or add any provision, not inconsistent with this chapter of any other statute, relating to the business of the corporation, its affairs, its rights or powers, or the right or powers of its shareholders, directors or officers, including any provision which under this chapter is required or permitted to be set forth in the by-laws, except that a certificate of amendment may not be filed wherein the duration of the corporation shall be reduced.

(c) A corporation created by special act may accomplish any or all amendments permitted in this chapter, in the manner and subject to the conditions provided in this chapter.

802. REDUCTION OF STATED CAPITAL BY AMENDMENT

(a) A corporation may reduce its stated capital by an amendment of its certificate of incorporation under section 801 (Right to amend certificate of incorporation) which:

- (1) Reduces the par value of any issued shares with par value.
- (2) Changes issued shares under subparagraph (b)(11) of section 801 that results in a reduction of stated capital.
- (3) Removes from authorized shares, shares that have been issued, reacquired and cancelled by the corporation.

(b) This section shall not prevent a corporation from reducing its stated capital in any other manner permitted by this chapter.

803. AUTHORIZATION OF AMENDMENT OR CHANGE

(a) Amendment or change of the certificate of incorporation may be authorized by vote of the board, followed by vote of the holders of a majority of all outstanding shares entitled to vote thereon at a meeting of shareholders.

(b) Alternatively, any one or more of the following changes may be authorized by or pursuant to authorization of the board:

(1) To specify or change the location of the corporation's office.

(2) To specify or change the post office address to which the Nation Clerk shall mail a copy of any process against the corporation served upon him.

(3) To make, revoke or change the designation of a registered agent, or to specify or change the address of its registered agent.

(c) This section shall not alter the vote required under any other section for the authorization of an amendment referred to therein, nor alter the authority of the board to authorized amendments under any other section.

(d) Amendment or change of the certificate of incorporation of a corporation which has no shareholders of record, no subscribers for shares whose subscriptions have been accepted and no directors may be authorized by the sole incorporator or a majority of the incorporators.

804. CLASS VOTING ON AMENDMENT

(a) Notwithstanding any provision in the certificate of incorporation, the holders of shares of a class or series shall be entitled to vote and to vote as a class upon the authorization of an amendment and, in addition to the authorization of the amendment by vote of the holders of a majority of all outstanding shares entitled to vote thereon, the amendment shall be authorized by vote of the holders of a majority of all outstanding shares of the class or series when a proposed amendment would:

(1) Exclude or limit their right to vote on any matter, except as such right may be limited by voting rights given to new shares then being authorized of any existing or new class or series.

(2) Change their shares under subparagraphs (b)(10), (11) or (12) of section 801 (Right to amend certificate of incorporation) or provide that their shares may be converted into shares of any other class or into shares of any other series of the same class, or alter the terms or conditions upon which their shares are convertible or change the shares issuable upon conversion of their shares, if such action would adversely affect such holders, or

- (3) Subordinate their rights, by authorizing shares having preferences which would be in any respect superior to their rights.

(b) If any proposed amendment referred to in paragraph (a) would adversely affect or subordinate the rights of the holders of shares of only one or more series of any class, but not the entire class, then only the holders of each series whose rights would be adversely affected or subordinated shall be considered a separate class for the purposes of this section.

805. CERTIFICATE OF AMENDMENT; CONTENTS

(a) To accomplish any amendment, a certificate of amendment, entitled "Certificate of amendment of the certificate of incorporation of (name of corporation) under section 805 of the Business Corporation Code", shall be signed, verified and delivered to the Nation Clerk. It shall set forth:

- (1) The name of the corporation and, if it has been changed, the name under which it was formed.
- (2) The date its certificate of incorporation was filed by the Nation Clerk.
- (3) Each amendment effected thereby, setting forth the subject matter of each provision of the certificate of incorporation which is to be amended or eliminated and the full text of the provision or provisions, if any, which are to be substituted or added.
- (4) If an amendment provides for a change of shares, the number, par value and class of issued shares changed, the number, par value and class of issued shares resulting from such change, the number, par value and class of unissued shares changed, the number, par value and class of unissued shares resulting from such change and the terms of each such change. If an amendment makes two or more such changes, a like statement shall be included in respect to each change.
- (5) If any amendment reduces stated capital, then a statement of the manner in which the same is effected and the amounts from which and to which stated capital is reduced.
- (6) The manner in which the amendment of the certificate of incorporation was authorized.

(b) Any number of amendments or changes may be included in one certificate under this section. Such certificate may also include any amendments or changes permitted by other sections and in that case the certificate shall set forth any additional statement required by any other section specifying the contents of a certificate to effect such amendment or change.

(c) In case of a change of shares, the shares resulting from such change, shall upon the filing of the certificate of amendment, be deemed substituted for the shares changed, in accordance with the stated terms of change.

805-A. CERTIFICATE OF CHANGE; CONTENTS

(a) Any one or more of the changes authorized by subdivision (b) of section 803 (Authorization of amendment or change) may be accomplished by filing a certificate of change which shall be entitled "Certificate of change of (name of corporation) under section 805-A of the Business Corporation Code" and shall be signed, verified and delivered to the Nation Clerk. It shall set forth:

- (1) The name of the corporation, and if it has been changed, the name under which it was formed.
- (2) The date its certificate of incorporation was filed by the Nation Clerk.
- (3) Each change effected thereby.
- (4) The manner in which the change was authorized.

(b) A certificate of change which changes only the post office address to which the Nation Clerk shall mail a copy of any process against a corporation served upon him or the address of the registered agent, provided such address being changed is the address of a person, partnership or other corporation whose address, as agent, is the address to be changed or who has been designated as registered agent for such corporation, may be signed, verified and delivered to the Nation Clerk by such agent. The certificate of change shall set forth the statements required under subparagraphs (a)(1), (2) and (3) of this section; that a notice of the proposed change was mailed to the corporation by the party signing the certificate not less than thirty days prior to the date of delivery to the Secretary and that such corporation has not objected thereto; and that the party signing the certificate is the agent of such corporation to whose address the Nation Clerk is required to mail copies of process or the registered agent, if such be the case. A certificate signed, verified and delivered under this paragraph shall not be deemed to effect a change of location of the office of the corporation in whose behalf such certificate is filed.

806. PROVISIONS AS TO CERTAIN PROCEEDINGS

(a) The Nation Clerk shall not file a certificate of amendment reviving the existence of a corporation unless the consent of the Oneida Indian Nation to the revival is delivered to the Nation Clerk. If the name of the corporation being revived is not available under section 301 (Corporate name; general) for use by a corporation then being formed under this chapter, the certificate of amendment shall change the name to one which is available for such use.

(b) The following provisions shall apply to amendments and changes under this chapter, except under section 808 (Reorganization under act of congress):

- (1) The stated capital in respect of any shares without par value resulting from a change of issued shares shall be the amount of stated capital in respect of the shares changed or, if

such stated capital is reduced by the amendment, the reduced amount stated in the certificate of amendment. No corporation shall change issued shares into both shares with par value and shares without par value unless the stated capital in respect of the shares so changed or, if such stated capital is reduced by the amendment, the reduced amount of stated capital stated in the certificate of amendment, exceeds the par value of the shares with par value resulting from such change; and the amount of such excess shall be the stated capital in respect of the shares without par value resulting from such change.

- (2) No corporation shall increase the aggregate par value of its issued shares with par value, unless, after giving effect to such increase, the stated capital is at least equal to the amount required by subparagraph (a)(12) of section 102 (Definitions).
- (3) No reduction of stated capital shall be made by amendment unless after such reduction the stated capital exceeds the aggregate preferential amount payable upon involuntary liquidation upon all issued shares having preferential rights in assets plus the par value of all other issued shares with par value.
- (4) Any changes that may be made in the relative rights, preferences and limitations of the authorized shares of any class by any certificate of amendment which does not eliminate such shares from authorized shares or change them into shares of another class, shall not for the purpose of any statute or rule of law effect an issue of a new class of shares.
- (5) No amendment or change shall affect any existing cause of action in favor of or against the corporation, or any pending suit which it shall be a party, or the existing rights of persons other than shareholders; and in the event the corporate name shall be changed, no suit brought by or against the corporation under its former name shall abate for that reason.
- (6) A holder of any adversely affected shares who does not vote for or consent in writing to the taking of such action shall, subject to complying with the provisions of section 623 (Procedure to enforce shareholder's right to receive payment for shares), have the right to dissent and to receive payment for such shares, if the certificate of amendment (A) alters or abolishes any preferential right of such shares having preferences; (B) creates, alters or abolishes any provision or right in respect of the redemption of such shares or any sinking fund for the redemption or purchase of such shares; (C) alters or abolishes any preemptive right of such holder to acquire shares or other securities; or (D) excludes or limits the right of such holder to vote on any matter, except as such right may be limited by the voting rights given to new shares then being authorized of any existing or new class.

807. RESTATED CERTIFICATE OF INCORPORATION

(a) A corporation, when authorized by the board, may restate in a single certificate the text of its certificate of incorporation without making any amendment or change thereby, except that it may include any one or more of the amendments or changes which may be authorized by the board without a vote of shareholders under this chapter. Alternatively, a corporation may restate in a single certificate the text of its certificate of incorporation as amended thereby to effect any one or more of the amendments or changes authorized by this chapter, when authorized by the required vote of the holders of shares entitled to vote thereon.

(b) A restated certificate of incorporation, entitled "Restated certificate of incorporation of (name of corporation) under section 807 of the Business Corporation Code", shall be signed, verified and delivered to the Nation Clerk. It shall set forth:

- (1) The name of the corporation and, if it has been changed, the name under which it was formed.
- (2) The date its certificate of incorporation was filed by the Nation Clerk.
- (3) If the restated certificate restates the text of the certificate of incorporation without making any amendment or change, then a statement that the text of the certificate of incorporation is thereby restated without amendment or changed to read as therein set forth in full.
- (4) If the restated certificate restates the text of the certificate of incorporation as amended or changed thereby, then a statement that the certificate of incorporation is amended or changed to effect one or more of the amendments or changes authorized by this chapter, specifying each such amendment or change and that the text of the certificate of incorporation is thereby restated as amended or changed to read as therein set forth in full.
- (5) If an amendment, effected by the restated certificate, provides for a change of issued shares, the number and kind of shares changed, the number and kind of shares resulting from such change and the terms of change. If any amendment makes two or more such changes, a like statement shall be included in respect to each such change.
- (6) If the restated certificate contains an amendment which effects a reduction of stated capital, then a statement of the manner in which the same is effected and the amounts from which and to which stated capital is reduced.
- (7) The manner in which the restatement of the certificate of incorporation was authorized.

(c) A restated certificate need not include statements as to the incorporator or incorporators, the original subscribers for shares or the first directors.

(d) Any amendment or change under this section shall be subject to any other section, not inconsistent with this section, which would be applicable if a separate certificate were filed to effect such amendment or change.

(e) Notwithstanding that the corporation would be required by any statute to secure from any Nation official, department, board, agency or other body, any consent or approval to the filing of its certificate of incorporation or a certificate of amendment, such consent or approval shall not be required with respect to the restated certificate if such certificate makes no amendment and if any previously required consent of approval had been secured.

(f) Upon filing by the Secretary, the original certificate of incorporation shall be superseded and the restated certificate of incorporation, including any amendments and changes made thereby, shall be the certificate of incorporation of the corporation.

808. REORGANIZATION

(a) Whenever a plan of reorganization of a corporation has been confirmed by a decree or order of a court in proceedings under any applicable law relating to reorganization of corporations, the corporation shall have authority, without action of its shareholders or board, to put into effect and carry out the plan and decree and orders of the court relative thereto, and take any proceeding and any action for which provision is made in any statute governing the corporation or for which provision is or might be made in its certificate of incorporation or by-laws and which is provided for in such plan or directed by any such decree or order.

(b) Such authority may be exercised, and such proceedings and actions may be taken, as may be directed by any such decree or order, by the trustee or trustees of such corporation appointed in the reorganization proceedings, or if none is acting, by any person or persons designated or appointed for the purpose by any such decree or order, with like effect as if exercised and taken by unanimous action of the board and shareholders of the corporation.

(c) Any certificate, required or permitted by law to be filed or recorded to accomplish any corporate purpose, shall be signed, and verified or acknowledged, under any such decree or order, by such trustee or trustees or the person or persons referred to in paragraph (b), and shall certify that provision for such certificate is contained in the plan of reorganization or in a decree or order of the court relative thereto, and that the plan has been confirmed, as provided in an applicable law, specified in the certificate, with the title and venue of the proceeding and the date when the decree or order confirming the plan was made, and such certificate shall be delivered to the Nation Clerk.

(d) A shareholder of any such corporation shall have no right to receive payment for his shares and only such rights, if any, as are provided in the plan of reorganization.

(e) Notwithstanding section 504 (Consideration and payment for shares), such corporation may, after the confirmation of such plan, issue its shares, bonds and other securities for the consideration

specified in the plan of reorganization and may issue warrants or other optional rights for the purchase of shares upon such terms and conditions as may be set forth in such plan.

(f) If after the filing of any such certificate by the Nation Clerk, the decree or order of confirmation of the plan or reorganization is reversed or vacated or such plan is modified, such other or further certificates shall be executed and delivered to the Nation Clerk as may be required to conform to the plan of reorganization as finally confirmed or to the decree or order as finally made.

(g) Except as otherwise provided in this section, no certificates filed by the Nation Clerk hereunder shall confer on any corporation any powers other than those permitted to be conferred on a corporation formed under this chapter.

(h) If, in any proceeding under any applicable law relating to reorganization of corporations, a decree or order provides for the formation of a new domestic corporation or for the authorization of a new foreign corporation to do business within the territorial jurisdiction of the Nation under a name the same as or similar to that of the corporation being reorganized, the certificate of incorporation of the new domestic corporation or the application of the new foreign corporation shall set forth that it is being delivered pursuant to such decree or order and be endorsed with the consent of the Nation court. After such certificate of incorporation or application has been filed, the corporation being reorganized shall not continue the use of its name except in connection with the reorganization proceeding and as may be necessary to adjust and wind up its affairs, and thirty days after such filing, the reorganized domestic corporation shall be automatically dissolved or the authority of the reorganized foreign corporation to transact business within the territorial jurisdiction of the Nation shall cease. To the extent that the adjustment and winding up of the affairs of such dissolved corporation is not accomplished as a part of the proceeding or prescribed by the decree or order of such court, it shall proceed in accordance with the provisions of chapter 10 (Non-judicial dissolution).