

## CHAPTER 12

### DISPOSITION OF ASSETS

#### **§1201. Disposition of assets not requiring shareholder approval**

Approval of the shareholders of a corporation is not required, unless the articles of incorporation otherwise provide, to: [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**1. Usual and regular course of business.** Sell, lease, exchange or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**2. Grants of security, etc.** 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; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**3. Transfers to subsidiaries.** Transfer any or all of the corporation's assets to one or more corporations or other entities, all of the shares or interests of which are owned by the corporation; or [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**4. Distribute assets to shareholders.** Distribute assets pro rata to the holders of one or more classes or series of the corporation's shares. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

#### SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF).

#### **§1202. Shareholder approval of certain dispositions**

**1. No significant continuing business activity.** A sale, lease, exchange or other disposition of assets, other than a disposition described in section 1201, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. If a corporation retains a business activity that represented at least 25% of total assets at the end of the most recently completed fiscal year, and 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 has retained a significant continuing business activity.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**2. Resolution authorizing disposition.** A disposition that requires approval of the shareholders under subsection 1 must be initiated by a resolution by the corporation's 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:

A. The board of directors makes a determination that because of conflicts of interest or other special circumstances the board of directors should not make such a recommendation; or [PL 2011, c. 274, §57 (NEW).]

B. Section 827 applies. [PL 2011, c. 274, §57 (NEW).]

If paragraph A or B applies, the board of directors shall transmit to the shareholders the basis for so proceeding.

[PL 2011, c. 274, §57 (RPR).]

**3. Conditioning submission of disposition.** The corporation's board of directors may condition its submission of a disposition to the shareholders under subsection 2 on any basis.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**4. Meeting notice.** If a disposition is required to be approved by the shareholders under subsection 1 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 must state that the purpose or one of the purposes of the meeting is to consider the disposition. The notice must contain a description of the disposition, including the terms and conditions of the disposition, and the consideration to be received by the corporation.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**5. Majority approval of disposition.** Unless the articles of incorporation or the corporation's board of directors, acting pursuant to subsection 3, requires a greater vote, approval of a disposition requires the approval of the shareholders by a majority of all the votes entitled to be cast on the plan by the shareholders and, if any class or series is entitled to vote as a separate voting group on the disposition, the approval of each separate voting group by a majority of all the votes entitled to be cast on the disposition by that voting group. The articles of incorporation may provide that a disposition may be approved by a lesser vote of each voting group entitled to vote on the disposition, but in no case may a disposition be approved by less than a majority of the votes cast by that voting group at a meeting at which there exists, for each such voting group, a quorum consisting of at least a majority of the votes entitled to be cast on the disposition by each voting group entitled to vote on the disposition.

[PL 2003, c. 344, Pt. B, §105 (AMD).]

**6. Disposition abandoned.** After a disposition has been approved by the shareholders under subsection 2 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.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**7. Disposition by dissolution.** A disposition of assets in the course of dissolution under chapter 14 is not governed by this section.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**8. Consolidated subsidiary; assets.** The assets of a direct or indirect consolidated subsidiary are deemed the assets of the parent corporation for the purposes of this section.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**9. Consent of shareholders.** A disposition that requires approval of the corporation's shareholders under subsection 1 may be authorized by written consent of the shareholders entitled to vote as provided in section 704. If the disposition is approved by written consent of all shareholders, whether or not entitled to vote, a resolution of the corporation's board of directors approving, proposing, submitting, recommending or otherwise respecting the disposition is not necessary, and the shareholders of the corporation are not entitled to notice of or to dissent from the disposition.

[PL 2003, c. 344, Pt. B, §105 (AMD).]

#### SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2003, c. 344, §B105 (AMD). PL 2011, c. 274, §57 (AMD).

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