

TITLE 30
CORPORATIONS

CHAPTER 29
GENERAL BUSINESS CORPORATIONS

PART 1
GENERAL PROVISIONS

30-29-101. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Business Corporation Act."

[30-29-101, added 2015, ch. 243, sec. 56, p. 902.]

30-29-120. REQUIREMENTS FOR DOCUMENTS -- EXTRINSIC FACTS. (a) A document delivered to the secretary of state for filing pursuant to this chapter must be typewritten or printed, or, if electronically transmitted, it must be in a format that can be retrieved or reproduced in typewritten or printed form.

(b) Notwithstanding the provisions of section [30-21-209\(b\)](#), Idaho Code, and except as otherwise permitted by subsection (e) of this section, the document must be signed:

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

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

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

(c) The person executing the document shall sign it and state beneath or opposite the person's signature the person's name and the capacity in which the document is signed. The document may, but need not, contain a corporate seal, attestation, acknowledgment, or verification.

(d) Whenever a provision of this chapter, or section [30-22-107](#), Idaho Code, permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

(1) The manner in which the facts will operate upon the terms of the plan or filed document must be set forth in the plan or filed document.

(2) The facts may include:

(i) Any of the following that are available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;

(ii) A determination or action by any person or body, including the corporation or any other party, to a plan or filed document; or

(iii) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

(3) As used in this subsection:

(i) "Filed document" means a document filed by the secretary of state under any provision of this chapter or chapter 21 or 22, [title 30](#), Idaho Code, except section [30-21-213](#), Idaho Code, or part 5, [chapter 21, title 30](#), Idaho Code; and

- (ii) "Plan" means a plan of domestication, conversion, merger or share exchange.
- (4) The following provisions of a plan or filed document may not be made dependent upon facts outside the plan or filed document:
 - (i) The name and address of any person required in a filed document;
 - (ii) The registered office, if any, of any entity required in a filed document;
 - (iii) The registered agent of any entity required in a filed document;
 - (iv) The number of authorized shares and designation of each class or series of shares;
 - (v) The effective date of a filed document; and
 - (vi) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

(5) If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is neither ascertainable by reference to a source described in subsection (d) (2) (i) of this section or a document that is a matter of public record, nor have the affected shareholders received notice of the fact from the corporation, then the corporation shall file with the secretary of state articles of amendment to the filed document setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this paragraph are deemed to be authorized by the authorization of the original filed document to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

(e) The annual report delivered to the secretary of state for filing under section [30-21-213](#), Idaho Code, shall be executed by one (1) of the persons identified in subsection (a) of this section or by another person who is authorized by the board of directors to execute the report.

[30-29-120, added 2015, ch. 243, sec. 56, p. 902; am. 2019, ch. 90, sec. 1, p. 225.]

30-29-123. EFFECTIVE DATE OF FILED DOCUMENT. (a) If a filed document does not specify the time zone or place at which a date or time or both is to be determined, the date or time or both at which it becomes effective shall be those prevailing at the place of filing in this state.

(b) Unless otherwise provided in sections [30-29-145](#) through [30-29-152](#), Idaho Code, any document filed pursuant to this chapter may have a delayed effective date and, when accepted for filing, is effective as provided in section [30-21-203](#), Idaho Code, and this section.

[30-29-123, added 2019, ch. 90, sec. 2, p. 226.]

30-29-140. CHAPTER DEFINITIONS. In this chapter, unless otherwise specified:

(1) "Articles of incorporation" means the articles of incorporation described in section [30-29-202](#), Idaho Code, all amendments to the articles of incorporation, and any other documents permitted or required to be delivered for filing by a domestic business corporation with the secretary

of state under any provision of this chapter that modify, amend, supplement, restate, or replace the articles of incorporation. After an amendment of the articles of incorporation or any other document filed under this chapter that restates the articles of incorporation in their entirety, the articles of incorporation shall not include any prior documents. When used with respect to a foreign corporation or a domestic or foreign nonprofit corporation, the "articles of incorporation" of such an entity means the document of such entity that is equivalent to the articles of incorporation of a domestic business corporation.

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

(3) "Beneficial shareholder" means a person who owns the beneficial interest in shares, that may be a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

(4) "Conspicuous" means so written, displayed, or presented 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.

(5) "Corporation," "domestic corporation," "business corporation," or "domestic business corporation" means a corporation for profit that is not a foreign corporation, incorporated under this chapter.

(6) "Distribution" means a direct or indirect transfer of cash or other property, except a 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 payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; a distribution of liquidation; or otherwise.

(7) "Document" means any tangible medium on which information is inscribed, and includes handwritten, typed, printed, or similar instruments, and copies of such instruments; or an electronic record.

(8) "Effective date," when referring to a record filed by the secretary of state, means the time and date determined in accordance with section [30-21-203](#) or [30-29-123](#) (b), Idaho Code.

(9) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(10) "Electronic record" means information that is stored in an electronic or other nontangible medium and is retrievable in paper form through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with section [30-29-141](#) (j), Idaho Code.

(11) "Electronic transmission" or "electronically transmitted" means any form or process of communication not directly involving the physical transfer of paper, or another tangible medium, that is suitable for the retention, retrieval and reproduction of information by the recipient and is retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with section [30-29-141](#) (j), Idaho Code.

(12) "Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign nonprofit corporation.

(13) "Eligible interests" means interests in eligible entities.

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

(15) "Expenses" means reasonable expenses of any kind that are incurred in connection with a matter.

(16) "Foreign corporation" or "foreign business" means a corporation incorporated under a law other than the law of this state which would be a business corporation if incorporated under the law of this state.

(17) "Foreign nonprofit corporation" means a corporation incorporated under a law other than the law of this state, which would be a nonprofit corporation if incorporated under the law of this state.

(18) "Foreign registration statement" means the foreign registration statement described in section [30-21-503](#), Idaho Code.

(19) "Includes" and "including" denote a partial definition or a nonexclusive list.

(20) "Individual" means a natural person.

(21) "Interest holder liability" means:

(i) Personal liability for a debt, obligation, or other liability of a domestic corporation or other entity that is imposed on a person:

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

(B) By the articles of incorporation of the domestic corporation or the organic rules of the other entity that make one (1) or more specified shareholders, members or interest holders, or categories of shareholders or interest holders, liable in their capacity as shareholders or interest holders for all or specified liabilities of the corporation or other entity; or

(ii) An obligation of a shareholder or interest holder under the articles of incorporation of a domestic corporation or the organic rules of another entity or to contribute to the corporation or other entity.

For purposes of the foregoing, except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law or organic rules of another entity, interest holder liability arises under paragraph (i) of this subsection when the corporation or other entity incurs the liability.

(22) "Means" denotes an exhaustive definition.

(23) "Membership" [Reserved.]

(24) "Record date" means the date fixed for determining the identity of the corporation's shareholders and their shareholdings for purposes of this chapter. Unless another time is specified when the record date is fixed, the determination shall be made as of the close of business at the principal office of the corporation on the date so fixed.

(25) "Record shareholder" means the person in whose name shares are registered in the records of the corporation or the person identified as the beneficial owner of shares in a beneficial ownership certificate pursuant to section [30-29-723](#), Idaho Code, on file with the corporation to the extent of the rights granted by such certificate.

(26) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under section [30-29-840](#)(c), Idaho Code, to maintain the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(27) "Share exchange" means an interest exchange as defined in section [30-22-102](#)(10), Idaho Code.

(28) "Shareholder" means a record shareholder.

(29) "Shares" means the units into which the proprietary interests in a domestic or foreign corporation are divided.

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

(31) "Treasury shares" means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not, either by reason of the acquisition or thereafter, been canceled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be "issued" shares, but not "outstanding" shares.

(32) "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, a series of a limited liability company or of another type of entity, an estate, a trust, a state, the United States, or a foreign government. The term includes a general partnership, limited liability company, limited partnership, business trust, joint stock association and unincorporated nonprofit association.

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

(34) "Unrestricted voting trust beneficial owner" means, with respect to any shareholder rights, a voting trust beneficial owner whose entitlement to exercise the shareholder right in question is not inconsistent with the voting trust agreement.

(35) "Voting group" means all shares of one (1) or more classes or series that under the articles of incorporation or this chapter 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 chapter to vote generally on the matter are for that purpose a single voting group.

(36) "Voting power" means the current power to vote in the election of directors.

(37) "Voting trust beneficial owner" means an owner of a beneficial interest in shares of the corporation held in a voting trust established pursuant to section [30-29-730](#) (a), Idaho Code.

(38) "Writing" or "written" means any information in the form of a document.

[30-29-140, added 2015, ch. 243, sec. 56, p. 903; am. 2019, ch. 90, sec. 3, p. 226.]

30-29-141. NOTICES AND OTHER COMMUNICATIONS. (a) Notice under this chapter must be in writing unless oral notice is reasonable in the circumstances. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication under this chapter must be in English.

(b) A notice or other communication may be given by any method of delivery, except that electronic transmissions must be in accordance with this section. If the methods of delivery are impracticable, notice or other communication may be given by means of a broad non-exclusionary distribution to the public that may include a newspaper of general circulation in the area where published, radio, television, or other methods of distribution that the corporation has previously identified to its shareholders.

(c) Notice or other communication to a domestic corporation or to a foreign corporation registered to do business in this state may be delivered to the corporation's registered agent at its registered office or to the secretary at the corporation's 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 foreign registration statement.

(d) A notice or other communications may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection (j) of this section.

(e) Any consent under subsection (d) of this section may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. Any such consent is deemed revoked if the corporation is unable to deliver two (2) consecutive electronic transmissions given by the corporation in accordance with such consent, and such inability becomes known to the secretary or an assistant secretary or to the transfer agent, or other person responsible for the giving of notice or other communications; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(f) Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

(1) It enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmission; and

(2) It is in a form capable of being processed by that system.

(g) Receipt of an electronic acknowledgment from an information processing system described in subsection (f) (1) of this section establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

(h) An electronic transmission is received under this section even if no person is aware of its receipt.

(i) A notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

(1) If in a physical form, the earliest of when it is actually received, or when it is left at:

(i) A shareholder's address shown on the corporation's record of shareholders maintained by the corporation under section [30-29-1601](#) (d), Idaho Code;

(ii) A director's residence or usual place of business; or

(iii) The corporation's principal office;

(2) If mailed postage prepaid and correctly addressed to a shareholder, upon deposit in the United States mail;

(3) If mailed by United States mail postage prepaid and correctly addressed to a recipient other than a shareholder, the earliest of when it is actually received, or:

(i) If sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee; or

(ii) Five (5) days after it is deposited in the United States mail;

(4) If an electronic transmission, when it is received as provided in subsection (f) of this section; and

(5) If oral, when communicated.

(j) A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if the electronic transmission is otherwise retrievable in perceivable

form, and the sender and the recipient have consented in writing to the use of such form of electronic transmission.

(k) If this chapter prescribes requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications, not inconsistent with this section or other provisions of this chapter, those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

(1) In the event that any provisions of this chapter are deemed to modify, limit, or supersede the federal electronic signatures in global and national commerce act, 15 U.S.C. 7001 et seq., the provisions of this chapter shall control to the maximum extent permitted by section 102(a)(2) of that federal act.

[30-29-141, added 2015, ch. 243, sec. 56, p. 905; am. 2019, ch. 90, sec. 4, p. 229.]

30-29-142. NUMBER OF SHAREHOLDERS. (a) For purposes of this chapter, the following identified as a shareholder in a corporation's current record of shareholders constitutes one (1) shareholder:

- (1) Three (3) or fewer co-owners;
- (2) A corporation, partnership, trust, estate, or other entity; or
- (3) The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(b) For purposes of this chapter, shareholdings registered in substantially similar names constitute one (1) shareholder if it is reasonable to believe that the names represent the same person.

[30-29-142, added 2019, ch. 90, sec. 5, p. 231.]

30-29-143. QUALIFIED DIRECTOR. (a) A "qualified director" is a director who, at the time action is to be taken under:

- (1) Section [30-29-202](#)(b)(6), Idaho Code, is not a director to whom the limitation or elimination of the duty of an officer to offer potential business opportunities to the corporation would apply or who has a material relationship with any other person to whom the limitation or elimination would apply;
- (2) Section [30-29-744](#), Idaho Code, does not have a material interest in the outcome of the proceeding or a material relationship with a person who has such an interest;
- (3) Section [30-29-853](#) or [30-29-855](#), Idaho Code, is not a party to the proceeding, 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 section [30-29-870](#), Idaho Code, which transaction or disclaimer is challenged in the proceeding, and does not have a material relationship with a director described in this subsection;
- (4) Section [30-29-862](#), Idaho Code, is not a director as to whom the transaction is a director's conflicting interest transaction or who has a material relationship with another director as to whom the transaction is a director's conflicting interest transaction; or
- (5) Section [30-29-870](#), Idaho Code, is not a director who pursues or takes advantage of the business opportunity, directly or indirectly

through or on behalf of another person or has a material relationship with a director or officer who pursues or takes advantage of the business opportunity, directly or indirectly through or on behalf of another person.

(b) For purposes of this section:

(1) "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; and

(2) "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:

(1) 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 who has a material relationship with that director, acting alone or participating with others;

(2) 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

(3) With respect to action to be taken under section [30-29-744](#), Idaho Code, status as a named defendant, as a director against whom action is demanded, or as a director who approved the conduct being challenged.

[30-29-143, added 2019, ch. 90, sec. 6, p. 232.]

30-29-144. HOUSEHOLDING. (a) A corporation has delivered written notice or any other report or statement under this chapter, the articles of incorporation, or the bylaws to all shareholders who share a common address if:

(1) The corporation delivers one (1) copy of the notice, report, or statement to the common address;

(2) The corporation addresses the notice, report, or statement to those shareholders either as a group or to each of those shareholders individually or to the shareholders in a form to which each of those shareholders has consented; and

(3) Each of those shareholders consents to delivery of a single copy of such notice, report, or statement to the shareholders' common address.

(b) Any such consent described in subsections (a)(2) or (a)(3) of this section shall be revocable by any of such shareholders who deliver written notice of revocation to the corporation. If such written notice of revocation is delivered, the corporation shall begin providing individual notices, reports, or other statements to the revoking shareholder no later than thirty (30) days after delivery of the written notice of revocation.

(c) Any shareholder who fails to object by written notice to the corporation, within sixty (60) days of written notice by the corporation of its intention to deliver single copies of notices, reports, or statements to shareholders who share a common address as permitted by subsection (a) of this section shall be deemed to have consented to receiving such single copy at the common address; provided that the notice of intention explains that consent may be revoked and the method for revoking.

[30-29-144, added 2019, ch. 90, sec. 7, p. 233.]

30-29-145. DEFINITIONS. For purposes of sections [30-29-145](#) through [30-29-152](#), Idaho Code:

(1) "Corporate action" means any action taken by or on behalf of the corporation, including any action taken by the incorporator, the board of directors, a committee of the board of directors, an officer or agent of the corporation, or the shareholders.

(2) "Date of the defective corporate action" means the date, or the approximate date if the exact date is unknown, the defective corporate action was purported to have been taken.

(3) "Defective corporate action" means any corporate action purportedly taken that is, and at the time such corporate action was purportedly taken, would have been within the power of the corporation, but is void or voidable due to a failure of authorization, and is an overissue.

(4) "Failure of authorization" means the failure to authorize, approve or otherwise effect a corporate action in compliance with the provisions of this chapter, the articles of incorporation or bylaws, a corporate resolution, or any plan or agreement to which the corporation is a party, if and to the extent such failure would render such corporate action void or voidable.

(5) "Overissue" means the purported issuance of shares of a class or series in excess of the number of shares of a class or series the corporation has the power to issue under section [30-29-601](#), Idaho Code, at the time of such issuance; or shares of any class or series that is not then authorized for issuance by the articles of incorporation.

(6) "Putative shares" means the shares of any class or series, including shares issued upon exercise of rights, options, warrants, or other securities convertible into shares of the corporation or interests with respect to such shares that were created or issued as a result of a defective corporate action that, but for any failure of authorization, would constitute valid shares or cannot be determined by the board of directors to be valid shares.

(7) "Valid shares" means the shares of any class or series that have been duly authorized and validly issued in accordance with this chapter, including as a result of ratification or validation under sections [30-29-145](#) through [30-29-152](#), Idaho Code.

(8) "Validation effective time" with respect to any defective corporate action ratified under sections [30-29-145](#) through [30-29-152](#), Idaho Code, means the later of:

(a) The time at which the ratification of the defective corporate action is approved by the shareholders, or if approval of shareholders is not required, the time at which the notice required by section [30-29-149](#), Idaho Code, becomes effective in accordance with section [30-29-141](#), Idaho Code; and

(b) The time at which any articles of validation filed in accordance with section [30-29-151](#), Idaho Code, become effective.

The validation effective time shall not be affected by the filing or pendency of a judicial proceeding under section [30-29-152](#), Idaho Code, or otherwise, unless otherwise ordered by the court.

[30-29-145, added 2019, ch. 90, sec. 8, p. 233.]

30-29-146. DEFECTIVE CORPORATE ACTIONS. (a) A defective corporate action shall not be void or voidable if ratified in accordance with section

[30-29-147](#), Idaho Code, or validated in accordance with section [30-29-152](#), Idaho Code.

(b) Ratification under section [30-29-147](#), Idaho Code, or validation under section [30-29-152](#), Idaho Code, shall not be deemed to be the exclusive means of ratifying or validating any defective corporate action, and the absence or failure of ratification in accordance with sections [30-29-145](#) through [30-29-152](#), Idaho Code, shall not, of itself, affect the validity or effectiveness of any corporate action properly ratified under common law or otherwise, nor shall it create a presumption that any such corporate action is or was a defective corporate action or void or voidable.

(c) In the case of an overissue, putative shares shall be valid shares effective as of the date originally issued or purportedly issued upon:

- (1) The effectiveness under sections [30-29-145](#) through [30-29-152](#), Idaho Code, and under part 10 of this chapter or an amendment to the articles of incorporation authorizing, designating, or creating such shares; or
- (2) The effectiveness of any other corporate action under sections [30-29-145](#) through [30-29-152](#), Idaho Code, ratifying the authorization, designation, or creation of such shares.

[30-29-146, added 2019, ch. 90, sec. 9, p. 234.]

30-29-147. RATIFICATION OF DEFECTIVE CORPORATE ACTIONS. (a) To ratify a defective corporate action under this section, other than the ratification of an election of the initial board of directors under subsection (b) of this section, the board of directors shall take action ratifying the action in accordance with section [30-29-148](#), Idaho Code, stating:

- (1) The defective corporate action to be ratified and, if the defective corporate action involved the issuance of putative shares, the number and type of putative shares purportedly issued;
- (2) The date of the defective corporate action;
- (3) The nature of the failure of authorization with respect to the defective corporate action to be ratified; and
- (4) That the board of directors approves the ratification of the defective corporate action.

(b) In the event that a defective corporate action to be ratified relates to the election of the initial board of directors of the corporation under section [30-29-205](#)(a)(2), Idaho Code, a majority of the persons who, at the time of the ratification, are exercising the powers of directors, may take an action stating:

- (1) The name of the person or persons who first took action in the name of the corporation as the initial board of directors of the corporation;
- (2) The earlier of the date on which such persons first took such action or were purported to have been elected as the initial board of directors; and
- (3) That the ratification of the election of such person or persons as the initial board of directors is approved.

(c) If any provision of this chapter, the articles of incorporation or bylaws, any corporate resolution or any plan or agreement to which the corporation is a party in effect at the time action under subsection (a) of this section is taken, requires shareholder approval or would have required shareholder approval at the date of the occurrence of the defective corporate action, the ratification of the defective corporate action approved in the action taken by the directors under subsection (a) of this section shall

be submitted to the shareholders for approval in accordance with section [30-29-148](#), Idaho Code.

(d) Unless otherwise provided in the action taken by the board of directors under subsection (a) of this section, after the action by the board of directors has been taken and, if required, approved by the shareholders, the board of directors may abandon the ratification at any time before the validation effective time without further action of the shareholders.

[30-29-147, added 2019, ch. 90, sec. 10, p. 234.]

30-29-148. ACTION ON RATIFICATION. (a) The quorum and voting requirements applicable to a ratifying action by the board of directors under section [30-29-147](#)(a), Idaho Code, shall be the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time such ratifying action is taken.

(b) If the ratification of the defective corporate action requires approval by the shareholders under section [30-29-147](#)(c), Idaho Code, and if the approval is to be given at a meeting, the corporation shall notify each holder of valid and putative shares, regardless of whether entitled to vote, as of the record date for notice of the meeting and as of the date of the occurrence of defective corporate action, provided that notice shall not be required to be given to holders of valid or putative shares whose identities or addresses for notice cannot be determined from the records of the corporation. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider ratification of a defective corporate action and must be accompanied by either a copy of the action taken by the board of directors in accordance with section [30-29-147](#)(a), Idaho Code, or the information required by paragraphs (1) through (4) of subsection (a) of section [30-29-147](#), Idaho Code, and a statement that any claim that the ratification of such defective corporate action and any putative shares issued as a result of such defective corporate action should not be effective, or should be effective only on certain conditions, shall be brought within 120 days from the applicable validation effective time.

(c) Except as provided in subsection (d) of this section with respect to the voting requirements to ratify the election of a director, the quorum and voting requirements applicable to the approval by the shareholders required by section [30-29-147](#)(c), Idaho Code, shall be the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time of such shareholder approval.

(d) The approval by shareholders to ratify the election of a director requires that the votes cast within the voting group favoring such ratification exceed the votes cast opposing such ratification of the election at a meeting at which a quorum is present.

(e) Putative shares on the record date for determining the shareholders entitled to vote on any matter submitted to shareholders under section [30-29-147](#)(c), Idaho Code, and without giving effect to any ratification of putative shares that becomes effective as a result of such vote, shall neither be entitled to vote nor counted for quorum purposes in any vote to approve the ratification of any defective corporate action.

(f) If the approval under this section of putative shares would result in an overissue, in addition to the approval required by section [30-29-147](#), Idaho Code, approval of an amendment to the articles of incorporation under part 10 of this chapter to increase the number of shares of an authorized

class or series, or to authorize the creation of a class or series of shares so there would be no overissue, shall also be required.

[30-29-148, added 2019, ch. 90, sec. 11, p. 235.]

30-29-149. NOTICE REQUIREMENTS. (a) Unless shareholder approval is required under section [30-29-147](#)(c), Idaho Code, prompt notice of an action taken under section [30-29-147](#), Idaho Code, shall be given to each holder of valid and putative shares, regardless of whether entitled to vote, as of the date of such action by the board of directors and the date of the defective corporate action ratified, provided that notice shall not be required to be given to holders of valid and putative shares whose identities or addresses for notice cannot be determined from the records of the corporation.

(b) The notice must contain either a copy of the action taken by the board of directors in accordance with subsection (a) or (b) of section [30-29-147](#), Idaho Code, or the information required by paragraphs (1) through (4) of subsection (a) of section [30-29-147](#), Idaho Code, or paragraphs (1) through (3) of subsection (b) of section [30-29-147](#), Idaho Code, as applicable; and a statement that any claim that the ratification of the defective corporate action and any putative shares issued as a result of such defective corporate action should not be effective, or should be effective only on certain conditions, shall be brought within 120 days from the applicable validation effective time.

(c) No notice under this section is required with respect to any action required to be submitted to shareholders for approval under section [30-29-147](#)(c), Idaho Code, if notice is given in accordance with section [30-29-148](#)(b), Idaho Code.

(d) A notice required by this section may be given in any manner permitted by section [30-29-141](#), Idaho Code, and, for any corporation subject to the reporting requirements of section 13 or 15(d) of the securities exchange act of 1934, may be given by means of a filing or furnishing of such notice with the United States securities and exchange commission.

[30-29-149, added 2019, ch. 90, sec. 12, p. 236.]

30-29-150. EFFECT OF RATIFICATION. From and after the validation effective time, and without regard to the one hundred twenty (120) day period during which a claim may be brought under section [30-29-152](#), Idaho Code:

(a) Each defective corporate action ratified in accordance with section [30-29-147](#), Idaho Code, shall not be void or voidable as a result of the failure of authorization identified in the action taken under subsection (a) or (b) of section [30-29-147](#), Idaho Code, and shall be deemed a valid corporate action effective as of the date of the defective corporate action;

(b) The issuance of each putative share or fraction of a putative share purportedly issued pursuant to a defective corporate action identified in the action taken under section [30-29-147](#), Idaho Code, shall not be void or voidable, and each such putative share or fraction of a putative share shall be deemed to be an identical share or fraction of a valid share as of the time it was purportedly issued; and

(c) Any corporate action taken subsequent to the defective corporate action ratified in accordance with sections [30-29-145](#) through [30-29-152](#), Idaho Code, in reliance on such defective corporate action having been validly effected and any subsequent defective corporate action resulting

directly or indirectly from such original defective corporate action shall be valid as of the time taken.

[30-29-150, added 2019, ch. 90, sec. 13, p. 236.]

30-29-151. FILINGS. (a) If the defective corporate action ratified under sections [30-29-145](#) through [30-29-152](#), Idaho Code, would have required under any other section of this chapter a filing in accordance with this chapter, then, regardless of whether a filing was previously made in respect of such defective corporate action and in lieu of a filing otherwise required by this chapter, the corporation shall file articles of validation in accordance with this section, and such articles of validation shall serve to amend or substitute for any other filing with respect to such defective corporate action required by this chapter.

(b) The articles of validation must set forth:

- (1) The defective corporate action that is the subject of the articles of validation including, in the case of any defective corporate action involving the issuance of putative shares, the number and type of putative shares issued, and the date or dates upon which such putative shares were purported to have been issued;
- (2) The date of the defective corporate action;
- (3) The nature of the failure of authorization in respect of the defective corporate action;
- (4) A statement that the defective corporate action was ratified in accordance with section [30-29-147](#), Idaho Code, including the date on which the board of directors ratified such defective corporate action and the date, if any, on which the shareholders approved the ratification of such defective corporate action; and
- (5) The information required by subsection (c) of this section.

(c) The articles of validation must also contain the following information:

- (1) If a filing was previously made in respect of the defective corporate action and no changes to such filing are required to give effect to the ratification of such defective corporate action in accordance with section [30-29-147](#), Idaho Code, the articles of validation must set forth the name, title, and filing date of the filing previously made and any articles of correction to that filing and a statement that a copy of the filing previously made, together with any articles of correction to that filing, is attached as an exhibit to the articles of validation;
- (2) If a filing was previously made in respect of the defective corporate action and such filing requires any change to give effect to the ratification of such defective corporate action in accordance with section [30-29-147](#), Idaho Code, the articles of validation must set forth the name, title, and filing date of the filing previously made and any articles of correction to that filing; a statement that a filing containing all of the information required to be included under the applicable section or sections of this chapter to give effect to such defective corporate action is attached as an exhibit to the articles of validation; and the date and time that such filing is deemed to have become effective; or
- (3) If a filing was not previously made in respect of the defective corporate action and the defective corporate action ratified under section [30-29-147](#), Idaho Code, would have required a filing under any other section of this chapter, the articles of validation must set forth a state-

ment that a filing containing all of the information required to be included under the applicable section or sections of this chapter to give effect to such defective corporate action is attached as an exhibit to the articles of validation; and the date and time that such filing is deemed to have become effective.

[30-29-151, added 2019, ch. 90, sec. 14, p. 237.]

30-29-152. JUDICIAL PROCEEDINGS REGARDING VALIDITY OF CORPORATE ACTIONS. (a) Upon application by the corporation, any successor entity to the corporation, a director of the corporation, any shareholder, beneficial shareholder or unrestricted voting trust beneficial owner of the corporation, including any such shareholder, beneficial shareholder or unrestricted voting trust beneficial owner as of the date of the defective corporate action ratified under section [30-29-147](#), Idaho Code, or any other person claiming to be substantially and adversely affected by a ratification under section [30-29-147](#), Idaho Code, the Idaho district court of the county where a corporation's principal office is located, or, if none in this state, Ada county, may:

- (1) Determine the validity and effectiveness of any corporate action or defective corporate action;
- (2) Determine the validity and effectiveness of any ratification under section [30-29-147](#), Idaho Code;
- (3) Determine the validity of any putative shares; and
- (4) Modify or waive any of the procedures specified in section [30-29-147](#), Idaho Code, or [30-29-148](#), Idaho Code, to ratify a defective corporate action.

(b) In connection with an action under this section, the court may make such findings or orders, and take into account any factors or considerations regarding such matters as it deems proper under the circumstances.

(c) Service of process of the application under subsection (a) of this section on the corporation may be made in any manner provided by statute of this state or by rule of the applicable court for service on the corporation, and no other party need be joined in order for the court to adjudicate the matter. In an action filed by the corporation, the court may require notice of the action be provided to other persons specified by the court and permit such other persons to intervene in the action.

(d) Notwithstanding any other provision of this section or otherwise under applicable law, any action asserting that the ratification of any defective corporate action and any putative shares issued as a result of such defective corporate action should not be effective, or should be effective only on certain conditions, shall be brought within one hundred twenty (120) days of the validation effective time.

[30-29-152, added 2019, ch. 90, sec. 15, p. 238.]

PART 2 INCORPORATION

30-29-201. 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.

[30-29-201, added 2015, ch. 243, sec. 57, p. 905.]

30-29-202. ARTICLES OF INCORPORATION. (a) The articles of incorporation must set forth:

(1) A corporate name for the corporation that satisfies the requirements of sections [30-21-301](#) and [30-21-302](#) (a), Idaho Code;

(2) The number of shares the corporation is authorized to issue;

(3) The information required by section [30-21-404](#) (a), Idaho Code; and

(4) The name and address of each incorporator.

(b) The articles of incorporation may set forth:

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

(2) Provisions not inconsistent with law regarding:

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

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

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

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

(v) The imposition of interest holder liability on shareholders;

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

(4) 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:

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

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

(iii) A violation of section [30-29-832](#), Idaho Code; or

(iv) An intentional violation of criminal law;

(5) A provision permitting or making obligatory indemnification of a director for liability, as defined in section [30-29-850](#) (3), Idaho Code, to any person for any action taken, or any failure to take any action, as a director, except liability for:

(i) Receipt of a financial benefit to which the director is not entitled;

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

(iii) A violation of section [30-29-832](#), Idaho Code; or

(iv) An intentional violation of criminal law; and

(6) A provision limiting or eliminating any duty of a director or any other person to offer the corporation the right to have or participate in any, or one (1) or more classes or categories of, business opportunities, before the pursuit or taking of the opportunity by the director or other person; provided that any application of such a provision to an officer or a related person of that officer also requires approval of that application by the board of directors, subsequent to the effective date of the provision, by action of qualified directors taken in compliance with the same procedures as are set forth in section [30-29-862](#), Idaho Code; and may be limited by the authorizing action of the board.

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

(d) Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with section [30-29-120](#) (d), Idaho Code.

(e) As used in this section, "related person" has the meaning specified in section [30-29-860](#), Idaho Code.

[30-29-202, added 2015, ch. 243, sec. 57, p. 905; am. 2019, ch. 90, sec. 16, p. 239.]

30-29-203. INCORPORATION. (a) Unless a delayed effective date is specified, the corporate existence begins 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.

[30-29-203, added 2015, ch. 243, sec. 57, p. 906; am. 2019, ch. 90, sec. 17, p. 240.]

30-29-204. LIABILITY FOR PREINCORPORATION TRANSACTIONS. All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

[30-29-204, added 2015, ch. 243, sec. 57, p. 906; am. 2019, ch. 90, sec. 18, p. 240.]

30-29-205. ORGANIZATION OF CORPORATION. (a) After incorporation:

(1) 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; or

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

(i) To elect initial directors and complete the organization of the corporation; or

(ii) To elect a board of directors, who shall complete the organization of the corporation.

(b) Action required or permitted by this chapter 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 in or out of this state.

[30-29-205, added 2015, ch. 243, sec. 57, p. 907; am. 2019, ch. 90, sec. 19, p. 240.]

30-29-206. 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 that is not inconsistent with law or the articles of incorporation.

(c) The bylaws may contain one (1) or both of the following provisions:

(1) A requirement that if the corporation solicits proxies or consents with respect to an election of directors, the corporation include in its proxy statement and any form of its proxy or consent, to the extent and subject to such procedures or conditions as are provided in the bylaws, one (1) or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors; and

(2) A requirement that the corporation reimburse the expenses incurred by a shareholder in soliciting proxies or consents in connection with an election of directors, to the extent and subject to such procedures and conditions as are provided in the bylaws, provided that no bylaw so adopted shall apply to elections for which any record date precedes its adoption.

(d) Notwithstanding section [30-29-1020](#) (b) (2), Idaho Code, the shareholders in amending, repealing, or adopting a bylaw described in subsection (c) of this section may not limit the authority of the board of directors to amend or repeal any condition or procedure set forth in or to add any procedure or condition to such a bylaw to provide for a reasonable, practical, and orderly process.

[30-29-206, added 2015, ch. 243, sec. 57, p. 907; am. 2019, ch. 90, sec. 20, p. 240.]

30-29-207. EMERGENCY BYLAWS. (a) Unless the articles of incorporation provide otherwise, the board of directors 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:

- (1) Procedures for calling a meeting of the board of directors;
- (2) Quorum requirements for the meeting; and
- (3) Designation of additional or substitute directors.

(b) All provisions of the regular bylaws not inconsistent 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:

- (1) Binds the corporation; and
- (2) May not be used to impose liability on a director, officer, employee or agent of the corporation.

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

[30-29-207, added 2015, ch. 243, sec. 57, p. 907; am. 2019, ch. 90, sec. 21, p. 241.]

30-29-208. FORUM SELECTION PROVISIONS. (a) The articles of incorporation or the bylaws may require that any or all internal corporate claims shall be brought exclusively in any specified court or courts of this state and, if so specified, in any additional courts in this state or in any other jurisdictions with which the corporation has a reasonable relationship.

(b) A provision of the articles of incorporation or bylaws adopted under subsection (a) of this section shall not have the effect of conferring

jurisdiction on any court or over any person or claim, and shall not apply if none of the courts specified by such provision has the requisite personal and subject matter jurisdiction. If the court or courts of this state specified in a provision adopted under subsection (a) of this section do not have the requisite personal and subject matter jurisdiction and another court of this state does have such jurisdiction, then the internal corporate claim may be brought in such other court of this state, notwithstanding that such other court of this state is not specified in such provision, and in any other court specified in such provision that has the requisite jurisdiction.

(c) No provision of the articles of incorporation or the bylaws may prohibit bringing an internal corporate claim in the courts of this state or require such claims to be determined by arbitration.

(d) As used in this section, "internal corporate claim" means any claim that is based upon a violation of a duty under the laws of this state by a current or former director, officer, or shareholder in such capacity; any derivative action or proceeding brought on behalf of the corporation; any action asserting a claim arising pursuant to any provision of this chapter or the articles of incorporation or bylaws; or any action asserting a claim governed by the internal affairs doctrine that is not included in this section.

[30-29-208, added 2019, ch. 90, sec. 22, p. 241.]

PART 3 PURPOSES AND POWERS

30-29-301. PURPOSES. (a) Every corporation incorporated under this chapter 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 chapter only if permitted by, and subject to all limitations of, the other statute.

[30-29-301, added 2015, ch. 243, sec. 58, p. 907; am. 2019, ch. 90, sec. 23, p. 242.]

30-29-302. GENERAL POWERS. 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 power:

- (a) To sue and be sued, complain and defend in its corporate name;
- (b) To 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;
- (c) To 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;
- (d) To 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;
- (e) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (f) To 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;

(g) To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other securities and 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;

(h) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(i) To be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity;

(j) To conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state;

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

(l) To 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;

(m) To make donations for the public welfare or for charitable, scientific, or educational purposes;

(n) To transact any lawful business that will aid governmental policy; and

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

[30-29-302, added 2015, ch. 243, sec. 58, p. 908; am. 2019, ch. 90, sec. 24, p. 242.]

30-29-303. 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:

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

(2) 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:

(1) 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; and

(2) 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:

(1) Binds the corporation; and

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

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

[30-29-303, added 2015, ch. 243, sec. 58, p. 908; am. 2019, ch. 90, sec. 25, p. 243.]

30-29-304. LACK OF POWER TO ACT. (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:

(1) In a proceeding by a shareholder against the corporation to enjoin the act;

(2) In a proceeding by 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

(3) In a proceeding by the attorney general under section [30-29-1430](#), Idaho Code.

(c) In a shareholder's proceeding under subsection (b) (1) 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.

[30-29-304, added 2015, ch. 243, sec. 58, p. 909; am. 2019, ch. 90, sec. 26, p. 243.]

PART 6 SHARES AND DISTRIBUTIONS

30-29-601. AUTHORIZED SHARES. (a) The articles of incorporation must set forth any classes of shares and series of shares within a class, and the number 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 must prescribe a distinguishing designation for each class or series and before the issuance of shares of a class or series, describe the terms, including the 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 must 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 must authorize:

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

(2) One (1) or more classes or series of shares, which may be the same class, classes, or series 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:

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

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

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

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

(iii) At prices and in amounts specified or determined in accordance with a formula;

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

(4) 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 in accordance with section [30-29-120](#) (d), Idaho Code.

(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.

[30-29-601, added 2015, ch. 243, sec. 61, p. 909; am. 2019, ch. 90, sec. 27, p. 244.]

30-29-602. 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:

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

(2) 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

(3) 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 section [30-29-601](#), Idaho Code, of:

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

(2) 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 setting forth the terms determined under subsection (a) of this section.

[30-29-602, added 2015, ch. 243, sec. 61, p. 910; am. 2019, ch. 90, sec. 28, p. 244.]

30-29-603. 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 canceled.

(b) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (c) of this section and to section [30-29-640](#), Idaho Code.

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

[30-29-603, added 2015, ch. 243, sec. 61, p. 911; am. 2019, ch. 90, sec. 29, p. 245.]

30-29-604. FRACTIONAL SHARES. (a) A corporation may issue fractions of a share or, in lieu of doing so, may:

- (1) Pay in cash the value of fractions of a share;
- (2) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share; or
- (3) Arrange for disposition of fractional shares by the holders of such shares.

(b) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by section [30-29-625](#)(b), Idaho Code.

(c) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the rights to vote, to receive dividends, and to receive distributions upon dissolution. 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, including that:

- (1) The scrip will become void if not exchanged for full shares before a specified date; and
- (2) The shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripolders.

[30-29-604, added 2015, ch. 243, sec. 61, p. 911; am. 2019, ch. 90, sec. 30, p. 245.]

30-29-620. 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 must 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, provided that such consideration meets the requirements of section [30-29-621](#)(b), Idaho Code.

(d) If a subscriber defaults in payment of cash 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 for more than twenty (20) days after the corporation delivers a written demand for payment to the subscriber.

(e) A subscription for stock of a corporation, whether made before or after the formation of a corporation, shall not be enforceable against the subscriber or the corporation, unless in writing and signed by the party to be bound.

[30-29-620, added 2015, ch. 243, sec. 61, p. 911; am. 2019, ch. 90, sec. 31, p. 246.]

30-29-621. 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, 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 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 benefits are received, or the note is paid. If the note is not paid, the shares escrowed or restricted and the distributions credited may be canceled in whole or part.

(f) (1) 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 consisting of a majority, or such greater number as the articles of incorporation may prescribe, of the votes entitled to be cast on the matter exists, if:

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

(ii) 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.

(2) In this subsection:

(i) 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, or other securities convertible into or rights exercisable for shares, shall be the greater of:

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

(B) 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.

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

[30-29-621, added 2015, ch. 243, sec. 61, p. 912; am. 2019, ch. 90, sec. 32, p. 246.]

30-29-622. LIABILITY OF SHAREHOLDERS. (a) A purchaser from a corporation of the corporation's 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 or specified in the subscription agreement.

(b) A shareholder of a corporation is not personally liable for any liabilities of the corporation, including liabilities arising from acts of the corporation, except to the extent provided in a provision of the articles of incorporation permitted by section [30-29-202](#) (b) (2) (v), Idaho Code, and that a shareholder may become personally liable by reason of the shareholder's own acts or conduct.

[30-29-622, added 2015, ch. 243, sec. 61, p. 912; am. 2019, ch. 90, sec. 33, p. 247.]

30-29-623. 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 of shares. 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:

- (1) The articles of incorporation so authorize;
- (2) A majority of the votes entitled to be cast by the class or series to be issued approve the issue; or
- (3) There are no outstanding shares of the class or series to be issued.

(c) The board of directors may fix the record date for determining shareholders entitled to a share dividend, which date may not be retroactive.

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

[30-29-623, added 2015, ch. 243, sec. 61, p. 913; am. 2019, ch. 90, sec. 34, p. 247.]

30-29-624. SHARE RIGHTS, OPTIONS, WARRANTS, AND AWARDS. (a) A corporation may issue rights, options, or warrants for the purchase of shares or other securities of the corporation. The board of directors shall determine:

- (1) The terms and conditions upon which the rights, options, or warrants are issued; and
- (2) The terms, including the consideration for which the shares or other securities are to be issued. The authorization by the board of directors for the corporation to issue such 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 may include restrictions or conditions that:

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

(2) Invalidate or void such rights, options, or warrants held by any such person or persons or any such transferee or transferees.

(c) The board of directors may authorize one (1) or more officers to:

(1) Designate the recipients of rights, options, warrants, or other equity compensation awards that involve the issuance of shares; and

(2) Determine, within an amount and subject to any other limitations established by the board of directors and, if applicable, the shareholders, the number of such rights, options, warrants, or other equity compensation awards and the terms of such rights, options, warrants, or awards to be received by the recipients, provided that an officer may not use such authority to designate himself or herself or any other persons as the board of directors may specify as a recipient of such rights, options, warrants, or other equity compensation awards.

[30-29-624, added 2015, ch. 243, sec. 61, p. 913; am. 2019, ch. 90, sec. 35, p. 248.]

30-29-625. FORM AND CONTENT OF CERTIFICATES. (a) Shares may but need not be represented by certificates. Unless this chapter or another statute expressly provides otherwise, the rights and obligations of shareholders are identical regardless of whether their shares are represented by certificates.

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

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

(2) The name of the person to whom issued; and

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

(c) If the corporation is authorized to issue different classes of shares or series of shares within a class, the front or back of each certificate must summarize the rights, preferences, and limitations applicable to each class and series; any variations in rights, preferences, and limitations among the holders of the same class or series; and the authority of the board of directors to determine terms of future classes or series. 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) Each share certificate must be signed by two (2) officers designated in the bylaws or by the board of directors.

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

[30-29-625, added 2015, ch. 243, sec. 61, p. 913; am. 2019, ch. 90, sec. 36, p. 248.]

30-29-626. SHARES WITHOUT CERTIFICATES. (a) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corpo-

ration may authorize the issuance 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 issuance or transfer of shares without certificates, the corporation shall deliver to the shareholder a written statement of the information required on certificates by section [30-29-625](#) (b) and (c), Idaho Code, and, if applicable, section [30-29-627](#), Idaho Code.

[30-29-626, added 2015, ch. 243, sec. 61, p. 914; am. 2019, ch. 90, sec. 37, p. 249.]

30-29-627. RESTRICTION ON TRANSFER OF SHARES. (a) The articles of incorporation, the 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 section [30-29-626](#) (b), Idaho Code. 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:

- (1) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;
- (2) To preserve exemptions under federal or state securities law; or
- (3) For any other reasonable purpose.

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

- (1) Obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;
- (2) Obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;
- (3) Require the corporation, the holders of any class or series of its shares, or other persons to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or
- (4) 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.

[30-29-627, added 2015, ch. 243, sec. 61, p. 914; am. 2019, ch. 90, sec. 38, p. 249.]

30-29-630. 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 effect, means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(1) 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.

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

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

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

(ii) 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;

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

(iv) Shares sold otherwise than for cash.

(4) Holders of shares of any class or series without voting power but with preferential rights to distributions have no preemptive rights with respect to shares of any class or series.

(5) Holders of shares of any class or series with voting power but without preferential rights to distributions have no preemptive rights with respect to shares of any class or series with preferential rights to distributions unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire the shares without preferential rights.

(6) 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.

[30-29-630, added 2015, ch. 243, sec. 61, p. 915; am. 2019, ch. 90, sec. 40, p. 250.]

30-29-631. CORPORATION'S ACQUISITION OF ITS OWN SHARES. (a) A corporation may acquire its own shares. Unless a resolution of the board of directors or the corporation's articles of incorporation provide otherwise, 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, effective upon amendment of the articles of incorporation pursuant to section [30-29-1005](#)(f), Idaho Code.

(c) A corporation has authority to use, hold, acquire, cancel and dispose of treasury shares.

(d) Unless the board of directors adopts an amendment to the corporation's articles of incorporation to reduce the number of authorized shares, treasury shares of the corporation that are canceled shall be treated as authorized but unissued shares.

[30-29-631, added 2015, ch. 243, sec. 61, p. 915; am. 2019, ch. 90, sec. 41, p. 251.]

30-29-640. 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) The board of directors may fix the record date for determining shareholders entitled to a distribution, which date may not be retroactive. If the board of directors does not fix a record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares, the record date is the date the board of directors authorizes the distribution.

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

- (1) The corporation would not be able to pay its debts as they become due in the usual course of business; or
- (2) 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:

- (1) In the case of distribution by purchase, redemption or other acquisition of the corporation's shares, as of the earlier of:
 - (i) The date cash or other property is transferred or debt to a shareholder is incurred by the corporation; or
 - (ii) The date the shareholder ceases to be a shareholder with respect to the acquired shares;
- (2) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and
- (3) In all other cases, as of:
 - (i) The date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization; or
 - (ii) 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 such 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 part 14 of this chapter.

[30-29-640, added 2015, ch. 243, sec. 61, p. 916; am. 2019, ch. 90, sec. 42, p. 251.]

PART 7 SHAREHOLDERS

30-29-701. ANNUAL MEETING. (a) Unless directors are elected by written consent in lieu of an annual meeting as permitted by section [30-29-704](#), Idaho Code, a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws at which directors shall be elected.

(b) Annual 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 so stated or fixed, annual meetings shall be held at the corporation's principal office.

(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.

[30-29-701, added 2015, ch. 243, sec. 62, p. 917; am. 2019, ch. 90, sec. 43, p. 252.]

30-29-702. SPECIAL MEETING. (a) A corporation shall hold a special meeting of shareholders:

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

(2) If shareholders holding at least twenty percent (20%) 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 thirty-three and one-third percent (33 1/3%) 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 before the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

(b) If not otherwise fixed under section [30-29-703](#) or [30-29-707](#), Idaho Code, the record date for determining shareholders entitled to demand a special meeting shall be the first date on which a signed shareholder demand is delivered to the corporation. No written demand for a special meeting shall be effective unless, within sixty (60) days of the earliest date on which

such a demand delivered to the corporation as required by this section was signed, written demands signed by shareholders holding at least the percentage of votes specified in or fixed in accordance with subsection (a) (2) of this section have been delivered to the corporation.

(c) Special meetings of shareholders 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 so stated or fixed, 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 section [30-29-705](#) (c), Idaho Code, may be conducted at a special meeting of shareholders.

[30-29-702, added 2015, ch. 243, sec. 62, p. 917; am. 2019, ch. 90, sec. 44, p. 252.]

30-29-703. COURT-ORDERED MEETING. (a) The Idaho district court of the county where a corporation's principal office is located, or, if none in this state, Ada county, may summarily order a meeting to be held:

(1) On application of any shareholder of the corporation if an annual meeting was not held or action by written consent in lieu of an annual meeting 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

(2) On application of one (1) or more shareholders who signed a demand for a special meeting valid under section [30-29-702](#), Idaho Code, if:

(i) Notice of the special meeting was not given within thirty (30) days after the first day on which the requisite number of such demands have been delivered to the corporation; or

(ii) 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 or dates 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 shares 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.

(c) For purposes of subsection (a) (1) of this section, "shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

[30-29-703, added 2015, ch. 243, sec. 62, p. 917; am. 2019, ch. 90, sec. 45, p. 253.]

30-29-704. ACTION WITHOUT MEETING. (a) Action required or permitted by this chapter 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 must be evidenced by one (1) or more written consents bearing the date of signature and describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to the corporation for filing by the corporation with the minutes or corporate records.

(b) The articles of incorporation may provide that any action required or permitted by this chapter 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; provided, however, that if a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors pursuant to section [30-29-728](#), Idaho Code, directors may not be elected by less than unanimous written consent. A written consent must bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for filing by the corporation with the minutes or corporate records.

(c) If not otherwise fixed under section [30-29-707](#), Idaho Code, and if prior action by the board of directors is not required respecting the action to be taken without a meeting, the record date for determining the 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 section [30-29-707](#), Idaho Code, and if prior action by the board of directors 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 of directors 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 the corporate action have been 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 have been delivered to the corporation.

(e) If this chapter requires that notice of a 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 such later date that tabulation of consents is completed pursuant to an authorization under subsection (d) of this section. The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this chapter, would have been required to be sent to nonvoting shareholders in a notice of a 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 such later date that tabulation of consents is completed pursuant to an authorization under subsection (d) of this section. The notice

must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this chapter, 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 such notice within the required time period.

[30-29-704, added 2015, ch. 243, sec. 62, p. 918; am. 2019, ch. 90, sec. 46, p. 253.]

30-29-705. NOTICE OF MEETING. (a) A corporation shall notify shareholders of the date, time and place of each annual and special shareholders' meeting no fewer than ten (10) nor more than sixty (60) days before the meeting date. If the board of directors has authorized participation by means of remote communication pursuant to section [30-29-709](#), Idaho Code, for holders of any class or series of shares, the notice to the holders of such class or series of shares must describe the means of remote communication to be used. The notice must include the record date for determining the shareholders entitled to vote at the meeting if such date is different from the record date for determining shareholders entitled to notice of the meeting. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting as of the record date for determining the shareholders entitled to notice of the meeting.

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

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

(d) If not otherwise fixed under section [30-29-703](#) or [30-29-707](#), Idaho Code, 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, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section [30-29-707](#), Idaho Code, however, notice of the adjourned meeting shall be given under this section to shareholders entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

[30-29-705, added 2015, ch. 243, sec. 62, p. 918; am. 2019, ch. 90, sec. 47, p. 255.]

30-29-706. WAIVER OF NOTICE. (a) A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to

the corporation for filing by the corporation with the minutes or corporate records.

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

(1) 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

(2) 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.

[30-29-706, added 2015, ch. 243, sec. 62, p. 918; am. 2019, ch. 90, sec. 48, p. 255.]

30-29-707. RECORD DATE FOR MEETING. (a) The bylaws may fix or provide the manner of fixing the record date or dates for one (1) or more voting groups 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 may fix 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 and may not be retroactive.

(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 or dates, 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 or dates continue in effect or it may fix a new record date or dates.

(e) The record date or dates for a shareholders' meeting fixed by or in the manner provided in the bylaws or by the board of directors shall be the record date or dates for determining shareholders entitled both to notice of and to vote at the shareholders' meeting, unless in the case of a record date or dates fixed by the board of directors and to the extent not prohibited by the bylaws, the board, at the time it fixes the record date for shareholders entitled to notice of the meeting, fixes a later record date on or before the date of the meeting to determine the shareholders entitled to vote at the meeting.

[30-29-707, added 2015, ch. 243, sec. 62, p. 919; am. 2019, ch. 90, sec. 49, p. 256.]

30-29-708. CONDUCT OF 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 of directors.

(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 to such ballots, proxies, or votes may be accepted.

[30-29-708, added 2015, ch. 243, sec. 62, p. 919; am. 2019, ch. 90, sec. 50, p. 256.]

30-29-709. REMOTE PARTICIPATION IN SHAREHOLDERS' MEETINGS. (a) Shareholders of any class or series of shares may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes such participation for such class or series. Participation as a shareholder by means of remote communication shall be subject to such guidelines and procedures as the board of directors adopts, and shall be in conformity with subsection (b) of this section.

(b) Shareholders participating in a shareholders' meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures:

- (1) To verify that each person participating remotely as a shareholder is a shareholder; and
- (2) To provide such shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate, and to read or hear the proceedings of the meeting, substantially concurrent with such proceedings.

[30-29-709, added 2019, ch. 90, sec. 51, p. 257.]

30-29-720. SHAREHOLDERS' LIST FOR MEETING. (a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. If the board of directors fixes a different record date under section [30-29-707](#)(e) to determine the shareholders entitled to vote at the meeting, a corporation also shall prepare an alphabetical list of the names of all its shareholders who are entitled to vote at the meeting. A list must be arranged by voting group, and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder. Nothing contained in this subsection shall require the corporation to include on such list the electronic mail address or other electronic contact information of a shareholder.

(b) The shareholders' list for notice 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 shareholders' list for voting shall be similarly available for inspection promptly after the record date for voting. A shareholder or the shareholder's agent or attorney is entitled on written demand to inspect and, subject to the requirements of section [30-29-1602](#)(c), Idaho Code, to copy a 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 list of shareholders entitled to vote available at the meeting, and any shareholder or the shareholder's

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 or the shareholder's agent or attorney to inspect a shareholders' list before or at the meeting, or copy a list as permitted by subsection (b) of this section, the Idaho district court of the county where a corporation's principal office is located, or, if none in this state, Ada county, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense 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.

[30-29-720, added 2015, ch. 243, sec. 62, p. 919; am. 2019, ch. 90, sec. 52, p. 257.]

30-29-721. 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 or series, is entitled to one (1) vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(b) Shares of a corporation are not entitled to vote if they are owned by or otherwise belong to the corporation directly or indirectly through an entity of which a majority of the voting power is held directly or indirectly by the corporation or which is otherwise controlled by the corporation.

(c) Shares held by the corporation in a fiduciary capacity for the benefit of any person are entitled to vote unless they are held for the benefit of, or otherwise belong to, the corporation directly or indirectly through an entity of which a majority of the voting power is held directly or indirectly by the corporation or which is otherwise controlled by the corporation.

(d) Redeemable shares are not entitled to vote after delivery of written notice of redemption is effective 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.

(e) For purposes of this section, "voting power" means the current power to vote in the election of directors of a corporation or to elect, select, or appoint governors of another entity.

(f) A corporation is not entitled to vote treasury shares.

[30-29-721, added 2015, ch. 243, sec. 62, p. 920; am. 2019, ch. 90, sec. 53, p. 258.]

30-29-722. PROXIES. (a) A shareholder may vote the shareholder's shares in person or by proxy.

(b) A shareholder or the shareholder's 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 must contain or be accompanied by information from which the recipient can determine the date of the transmission and that the transmission was authorized by the sender or the sender's agent or attorney-in-fact.

(c) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the in-

spector of election or the officer or agent of the corporation authorized to count votes. An appointment is valid for the term provided in the appointment form and if no term is provided, is valid for eleven (11) months unless the appointment is irrevocable under subsection (d) of this section.

(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:

- (1) A pledgee;
- (2) A person who purchased or agreed to purchase the shares;
- (3) A creditor of the corporation who extended it credit under terms requiring the appointment;
- (4) An employee of the corporation whose employment contract requires the appointment; or
- (5) A party to a voting agreement created under section [30-29-731](#), Idaho Code.

(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 inspector of election or other officer or agent authorized to tabulate votes before the proxy exercises 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) Unless it otherwise provides, an appointment made irrevocable under subsection (d) of this section continues in effect after a transfer of the shares and a transferee takes subject to the appointment, except that a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when acquiring 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 section [30-29-724](#), Idaho Code, 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.

[30-29-722, added 2015, ch. 243, sec. 62, p. 920; am. 2019, ch. 90, sec. 54, p. 258.]

30-29-723. SHARES HELD BY INTERMEDIARIES AND NOMINEES. (a) A corporation's board of directors may establish a procedure under which a person on whose behalf shares are registered in the name of an intermediary or nominee may elect to be treated by the corporation as the record shareholder by filing with the corporation a beneficial ownership certificate. The terms, conditions, and limitations of this treatment shall be specified in the procedure. To the extent such person is treated under such procedure as having rights or privileges that the record shareholder otherwise would have, the record shareholder shall not have those rights or privileges.

(b) The procedure must specify:

- (1) The types of intermediaries or nominees to which it applies;
- (2) The rights or privileges that the corporation recognizes in a person with respect to whom a beneficial ownership certificate is filed;
- (3) The manner in which the procedure is selected that must include that the beneficial ownership certificate be signed or assented to by or

on behalf of the record shareholder and the person on whose behalf the shares are held;

(4) The information that must be provided when the procedure is selected;

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

(6) Requirements for notice to the corporation with respect to the arrangement; and

(7) The form and contents of the beneficial ownership certificate.

(c) The procedure may specify any other aspects of the rights and duties created by the filing of a beneficial ownership certificate.

[30-29-723, added 2015, ch. 243, sec. 62, p. 921; am. 2019, ch. 90, sec. 55, p. 259.]

30-29-724. ACCEPTANCE OF VOTES AND OTHER INSTRUMENTS. (a) If the name signed on a vote, ballot, consent, waiver, shareholder demand, or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the vote, ballot, consent, waiver, shareholder demand, or proxy appointment and give it effect as the act of the shareholder.

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

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

(2) The name 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, ballot, consent, waiver, shareholder demand, or proxy appointment;

(3) The name 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, ballot, consent, waiver, shareholder demand, or proxy appointment;

(4) The name 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, ballot, consent, waiver, shareholder demand, or proxy appointment; or

(5) Two (2) or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one (1) of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(c) The corporation is entitled to reject a vote, ballot, consent, waiver, shareholder demand, or proxy appointment if the person authorized to accept or reject such instrument, 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) Neither the corporation or any person authorized by it, nor an inspector of election appointed under section [30-29-729](#), Idaho Code, that

accepts or rejects a vote, ballot, consent, waiver, shareholder demand, or proxy appointment in good faith and in accordance with the standards of this section or section [30-29-722](#)(b), Idaho Code, is 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, ballot, consent, waiver, shareholder demand, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

(f) If an inspector of election has been appointed under section [30-29-729](#), Idaho Code, the inspector of election also has the authority to request information and make determinations under subsections (a), (b), and (c) of this section. Any determination made by the inspector of election under those subsections is controlling.

[30-29-724, added 2015, ch. 243, sec. 62, p. 921; am. 2019, ch. 90, sec. 56, p. 260.]

30-29-725. 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 provide otherwise, shares representing 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. If the provisions of this chapter require a particular quorum for a specified action, the articles of incorporation may not provide for a lower quorum.

(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 must be fixed 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 require a greater number of affirmative votes.

(d) An amendment of the articles of incorporation adding, changing or deleting a quorum or voting requirement for a voting group greater than specified in subsection (a) or (c) of this section is governed by section [30-29-727](#), Idaho Code.

(e) The election of directors is governed by section [30-29-728](#), Idaho Code.

(f) If a provision of this chapter provides for voting of classes or series as separate voting groups, the rules provided in section [30-29-1004](#)(c), Idaho Code, for amendments of the articles of incorporation shall apply to that provision.

[30-29-725, added 2015, ch. 243, sec. 62, p. 922; am. 2019, ch. 90, sec. 57, p. 261.]

30-29-726. ACTION BY SINGLE AND MULTIPLE VOTING GROUPS. (a) If the articles of incorporation or this chapter 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 section [30-29-725](#), Idaho Code.

(b) If the articles of incorporation or this chapter 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 section [30-29-725](#), Idaho Code. Action may be taken by different voting groups on a matter at different times.

[30-29-726, added 2015, ch. 243, sec. 62, p. 922; am. 2019, ch. 90, sec. 58, p. 261.]

30-29-727. MODIFYING QUORUM OR VOTING REQUIREMENTS. 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.

[30-29-727, added 2015, ch. 243, sec. 62, p. 922; am. 2019, ch. 90, sec. 59, p. 262.]

30-29-728. 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:

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

(2) A shareholder who has the right to cumulate the shareholder's 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 votes during the meeting, and 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.

[30-29-728, added 2015, ch. 243, sec. 62, p. 923; am. 2019, ch. 90, sec. 60, p. 262.]

30-29-729. INSPECTORS OF ELECTION. (a) A corporation that has a class of equity securities registered pursuant to section 12 of the securities exchange act of 1934 shall, and any other corporation may, appoint one (1) or more inspectors to act at a meeting of shareholders in connection with determining voting results. Each inspector shall verify in writing that the inspector will faithfully execute the duties of inspector with strict impartiality and according to the best of the inspector's ability. An inspector may be an officer or employee of the corporation. The inspectors may appoint or retain other persons to assist the inspectors in the performance of the

duties of inspector under subsection (b) of this section, and may rely on information provided by such persons and other persons, including those appointed to tabulate votes, unless the inspectors believe reliance is unwarranted.

(b) The inspectors shall:

- (1) Ascertain the number of shares outstanding and the voting power of each;
- (2) Determine the shares represented at a meeting;
- (3) Determine the validity of proxy appointments and ballots;
- (4) Count the votes; and
- (5) Make a written report of the results.

(c) In performing their duties, the inspectors may examine:

- (1) The proxy appointment forms and any other information provided in accordance with section [30-29-722](#) (b), Idaho Code;
- (2) Any envelope or related writing submitted with those appointment forms;
- (3) Any ballots;
- (4) Any evidence or other information specified in section [30-29-724](#), Idaho Code; and
- (5) The relevant books and records of the corporation relating to its shareholders and their entitlement to vote, including any securities position list provided by a depository clearing agency.

(d) The inspectors may also consider other information that they believe is relevant and reliable for the purpose of performing any of the duties assigned to them pursuant to subsection (b) of this section including for the purpose of evaluating inconsistent, incomplete, or erroneous information and reconciling information submitted on behalf of banks, brokers, their nominees, or similar persons that indicates more votes being cast than a proxy authorized by the record shareholder is entitled to cast. If the inspectors consider other information allowed by this subsection, they shall in their report under subsection (b) of this section specify the information considered by them, including the purpose or purposes for which the information was considered, the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained, and the basis for the inspectors' belief that such information is relevant and reliable.

(e) Determinations of law by the inspectors of election are subject to de novo review by a court in a proceeding under section [30-29-749](#), Idaho Code, or other judicial proceeding.

[30-29-729, added 2015, ch. 243, sec. 62, p. 923; am. 2019, ch. 90, sec. 61, p. 262.]

30-29-730. 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 names and addresses of all voting trust beneficial owners, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation at its 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.

(c) Limits, if any, on the duration of a voting trust shall be as set forth in the voting trust. A voting trust that became effective when this chapter provided a ten (10) year limit on its duration remains governed by the provisions of this section concerning duration then in effect, unless the voting trust is amended to provide otherwise by unanimous agreement of the parties to the voting trust.

[30-29-730, added 2015, ch. 243, sec. 62, p. 923; am. 2019, ch. 90, sec. 62, p. 263.]

30-29-731. 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 section [30-29-730](#), Idaho Code.

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

[30-29-731, added 2015, ch. 243, sec. 62, p. 923; am. 2019, ch. 90, sec. 63, p. 264.]

30-29-732. 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 chapter in that it:

- (1) Eliminates the board of directors or restricts the discretion or powers of the board of directors;
- (2) Governs the authorization or making of distributions, regardless of whether they are in proportion to ownership of shares, subject to the limitations in section [30-29-640](#), Idaho Code;
- (3) Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;
- (4) 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;
- (5) 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;
- (6) 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;
- (7) 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
- (8) 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:

- (1) As set forth:

- (i) In the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or
- (ii) In a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation; and

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

(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 section [30-29-626\(b\)](#), Idaho Code. 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 before the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection shall 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) 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.

(h) Limits, if any, on the duration of an agreement authorized by this section must be set forth in the agreement. An agreement that became effective when this chapter provided for a limit of ten (10) years on duration of shareholder agreements, unless the agreement provided otherwise, remains governed by the provisions of this section concerning duration then in effect.

[30-29-732, added 2015, ch. 243, sec. 62, p. 924; am. 2019, ch. 90, sec. 64, p. 264.]

30-29-740. PART DEFINITIONS. As used in sections [30-29-741](#) through [30-29-747](#), Idaho Code:

(1) "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in section [30-29-747](#), Idaho Code, in the right of a foreign corporation.

(2) "Shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

[30-29-740, added 2015, ch. 243, sec. 62, p. 925; am. 2019, ch. 90, sec. 65, p. 266.]

30-29-741. STANDING. A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(a) 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 (1) who was a shareholder at that time; and

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

[30-29-741, added 2015, ch. 243, sec. 62, p. 925; am. 2019, ch. 90, sec. 66, p. 266.]

30-29-742. DEMAND. No shareholder may commence a derivative proceeding until:

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

(b) Ninety (90) days have expired from the date delivery of 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.

[30-29-742, added 2015, ch. 243, sec. 62, p. 925; am. 2019, ch. 90, sec. 67, p. 266.]

30-29-743. 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.

[30-29-743, added 2015, ch. 243, sec. 62, p. 925.]

30-29-744. 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:

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

(2) 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:

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

(2) 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 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, 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.

[30-29-744, added 2015, ch. 243, sec. 62, p. 926; am. 2019, ch. 90, sec. 68, p. 266.]

30-29-745. 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 or series of shareholders, the court shall direct that notice be given to the shareholders affected.

[30-29-745, added 2015, ch. 243, sec. 62, p. 926; am. 2019, ch. 90, sec. 69, p. 267.]

30-29-746. PAYMENT OF EXPENSES. On termination of the derivative proceeding the court may:

(a) Order the corporation to pay the plaintiff's expenses incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

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

(c) Order a party to pay an opposing party's expenses 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 or was interposed for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

[30-29-746, added 2015, ch. 243, sec. 62, p. 926; am. 2019, ch. 90, sec. 70, p. 267.]

30-29-747. APPLICABILITY TO FOREIGN CORPORATIONS. In any derivative proceeding in the right of a foreign corporation, the matters covered by sections [30-29-740](#) through [30-29-746](#), Idaho Code, shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for sections [30-29-743](#), [30-29-745](#) and [30-29-746](#), Idaho Code.

[30-29-747, added 2015, ch. 243, sec. 62, p. 927.]

30-29-748. SHAREHOLDER ACTION TO APPOINT A CUSTODIAN OR RECEIVER. (a) The Idaho district court of the county where a corporation's principal office is located, or, if none in this state, Ada county, 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:

(1) 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

(2) 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:

(1) 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;

(2) 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

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

(c) The court may appoint an individual, or domestic or foreign corporation registered to do 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:

(1) 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

(2) A receiver 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 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.

(g) As used in this section, "shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

[30-29-748, added 2019, ch. 90, sec. 71, p. 268.]

30-29-749. JUDICIAL DETERMINATION OF CORPORATE OFFICES AND REVIEW OF ELECTIONS AND SHAREHOLDER VOTES. (a) Upon application of or in a proceeding commenced by a person specified in subsection (b) of this section, the Idaho district court of the county where a corporation's principal office is located, or, if none in this state, Ada county, may determine:

- (1) The result or validity of the election, appointment, removal, or resignation of a director or officer of the corporation;
- (2) The right of an individual to hold the office of director or officer of the corporation;
- (3) The result or validity of any vote by the shareholders of the corporation;
- (4) The right of a director to membership on a committee of the board of directors; and
- (5) The right of a person to nominate, or an individual to be nominated, as a candidate for election or appointment as a director of the corporation and any right under a bylaw adopted pursuant to section [30-29-206\(c\)](#), Idaho Code, or any comparable right under any provision of the articles of incorporation, contract, or applicable law.

(b) An application or proceeding pursuant to subsection (a) of this section may be filed or commenced by any of the following persons:

- (1) The corporation;
- (2) Any record shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the corporation;
- (3) A director of the corporation, an individual claiming the office of director, or a director whose membership on a committee of the board of directors is contested, in each case who is seeking a determination of his or her right to such office or membership;
- (4) An officer of the corporation or an individual claiming to be an officer of the corporation, in each case who is seeking a determination of his or her right to such office; and
- (5) A person claiming a right covered by subsection (a) (5) of this section and who is seeking a determination of such right.

(c) In connection with any application or proceeding under subsection (a) of this section, the following shall be named as defendants, unless such person made the application or commenced the proceeding:

- (1) The corporation;
- (2) Any individual whose right to office or membership on a committee of the board of directors is contested;
- (3) Any individual claiming the office or membership at issue; and
- (4) Any person claiming a right covered by subsection (a) (5) that is at issue.

(d) In connection with any application or proceeding under subsection (a) of this section, service of process may be made upon each of the persons specified in subsection (c) of this section either by:

- (1) Service of process on the corporation addressed to such person in any manner provided by statute of this state or by rule of the applicable court for service on the corporation; or

(2) Service of process on the person in any manner provided by statute of this state or by rule of the applicable court.

(e) When service of process is made upon a person other than the corporation by service upon the corporation pursuant to subsection (d) (1) of this section, the plaintiff and the corporation or its registered agent shall promptly provide written notice of such service, together with copies of all process and the application or complaint, to the person at the person's last known residence or business address, or as permitted by statute of this state or by rule of the applicable court.

(f) In connection with any application or proceeding under subsection (a) of this section, the court shall dispose of the application or proceeding on an expedited basis and also may:

(1) Order such additional or further notice as the court deems proper under the circumstances;

(2) Order that additional persons be joined as parties to the proceeding if the court determines that such joinder is necessary for a just adjudication of matters before the court;

(3) Order an election or meeting be held in accordance with the provisions of section [30-29-703](#) (b) or otherwise;

(4) Appoint a master to conduct an election or meeting;

(5) Enter temporary, preliminary, or permanent injunctive relief;

(6) Resolve, solely for the purpose of this proceeding, any legal or factual issues necessary for the resolution of any of the matters specified in subsection (a) of this section, including the right and power of persons claiming to own shares to vote at any meeting of the shareholders; and

(7) Order such other relief as the court determines is equitable, just, and proper.

(g) It is not necessary to make shareholders a party to a proceeding or application pursuant to this section unless the shareholder is a required defendant under subsection (c) (4) of this section, relief is sought against the shareholder individually, or the court orders joinder pursuant to subsection (f) (2) of this section.

(h) Nothing in this section limits, restricts, or abolishes the subject matter jurisdiction or powers of the court as existed before the enactment of this section, and an application or proceeding pursuant to this section is not the exclusive remedy or proceeding available with respect to the matters specified in subsection (a) of this section.

[30-29-749, added 2019, ch. 90, sec. 72, p. 268.]

PART 8 DIRECTORS AND OFFICERS

30-29-801. REQUIREMENT FOR AND DUTIES OF BOARD OF DIRECTORS. (a) Except as may be provided in an agreement authorized under section [30-29-732](#), Idaho Code, each corporation shall have a board of directors.

(b) Except as may be provided in an agreement authorized under section [30-29-732](#), Idaho Code, and subject to any limitation in the articles of incorporation permitted by section [30-29-202](#) (b), Idaho Code, all corporate powers shall be exercised by or under the authority of the board of directors, and the business and affairs of the corporation shall be managed by or under the direction, and subject to the oversight of the board of directors.

[30-29-801, added 2015, ch. 243, sec. 63, p. 927; am. 2019, ch. 90, sec. 73, p. 270.]

30-29-802. QUALIFICATIONS OF DIRECTORS. (a) The articles of incorporation or bylaws may prescribe qualifications for directors or for nominees for directors. Qualifications must be reasonable as applied to the corporation and be lawful.

(b) A requirement that is based on a past, prospective, or current action, or expression of opinion, by a nominee or director that could limit the ability of a nominee or director to discharge his or her duties as a director is not a permissible qualification under this section. Notwithstanding the foregoing, qualifications may include not being or having been subject to specified criminal, civil, or regulatory sanctions or not having been removed as a director by judicial action or for cause.

(c) 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.

(d) A qualification for nomination for director prescribed before a person's nomination shall apply to such person at the time of nomination. A qualification for nomination for director prescribed after a person's nomination shall not apply to such person with respect to such nomination.

(e) A qualification for director prescribed before a director has been elected or appointed may apply only at the time an individual becomes a director or may apply during a director's term. A qualification prescribed after a director has been elected or appointed shall not apply to that director before the end of that director's term.

[30-29-802, added 2015, ch. 243, sec. 63, p. 927; am. 2019, ch. 90, sec. 74, p. 270.]

30-29-803. 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 bylaws.

(c) Directors are elected at the first annual shareholders' meeting and at each annual shareholders' meeting thereafter unless elected by written consent in lieu of an annual meeting as permitted by section [30-29-704](#), Idaho Code, or unless their terms are staggered under section [30-29-806](#), Idaho Code.

[30-29-803, added 2015, ch. 243, sec. 63, p. 927; am. 2019, ch. 90, sec. 75, p. 271.]

30-29-804. ELECTION OF DIRECTORS BY CERTAIN CLASSES OR SERIES OF SHARES. If the articles of incorporation or action by the board of directors pursuant to section [30-29-602](#), Idaho Code, authorizes dividing the shares into classes or series, the articles of incorporation may also authorize the election of all or a specified number of directors by the holders of one (1) or more authorized classes or series of shares. A class or series, or multiple classes or series, of shares entitled to elect one (1) or more directors is a separate voting group for purposes of the election of directors.

[30-29-804, added 2015, ch. 243, sec. 63, p. 927; am. 2019, ch. 90, sec. 76, p. 271.]

30-29-805. 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 section [30-29-806](#), Idaho Code, at the applicable second or third annual shareholders' meeting following their election except to the extent provided in section [30-29-1022](#), Idaho Code, if a bylaw electing to be governed by that section is in effect or if 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) Except to the extent otherwise provided in the articles of incorporation or under section [30-29-1022](#), Idaho Code, if a bylaw electing to be governed by that section is in effect, despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualifies or there is a decrease in the number of directors.

[30-29-805, added 2015, ch. 243, sec. 63, p. 927; am. 2019, ch. 90, sec. 77, p. 271.]

30-29-806. 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 elected for a term of two (2) years or three (3) years, as the case may be, to succeed those whose terms expire.

[30-29-806, added 2015, ch. 243, sec. 63, p. 928; am. 2019, ch. 90, sec. 78, p. 272.]

30-29-807. RESIGNATION OF DIRECTORS. (a) A director may resign at any time by delivering a written notice of resignation to the board of directors, its chair, or the secretary.

(b) A resignation is effective as provided in section [30-29-141](#)(i), Idaho Code, unless the resignation provides for a delayed effectiveness, including effectiveness determined upon a future 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.

[30-29-807, added 2015, ch. 243, sec. 63, p. 928; am. 2019, ch. 90, sec. 79, p. 272.]

30-29-808. 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) A director may be removed if the number of votes cast to remove exceeds the number of votes cast not to remove the director, except to the extent the articles of incorporation or bylaws require a greater number; provided that if cumulative voting is authorized, a director may not be removed if, in the case of a meeting, the number of votes sufficient to elect the director under cumulative voting is voted against removal and, if action is taken by less than unanimous written consent, voting shareholders entitled to the number of votes sufficient to elect the director under cumulative voting do not consent to the removal.

(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 must state that removal of the director is a purpose of the meeting.

[30-29-808, added 2015, ch. 243, sec. 63, p. 928; am. 2019, ch. 90, sec. 80, p. 272.]

30-29-809. REMOVAL OF DIRECTORS BY JUDICIAL PROCEEDING. (a) The Idaho district court of the county where a corporation's principal office is located, or, if none in this state, Ada county, may remove a director from office or may order other relief, including barring the director from reelection for a period prescribed by the court, in a proceeding commenced by or in the right of the corporation if the court finds that:

(1) 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

(2) Considering the director's course of conduct and the inadequacy of other available remedies, removal, or other such relief 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 sections [30-29-740](#) through [30-29-747](#), Idaho Code, except section [30-29-741](#) (a), Idaho Code.

[30-29-809, added 2015, ch. 243, sec. 63, p. 928; am. 2019, ch. 90, sec. 81, p. 273.]

30-29-810. VACANCY ON BOARD OF DIRECTORS. (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:

(1) The shareholders may fill the vacancy;

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

(3) If the directors remaining in office are fewer than a quorum, 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

remaining directors elected by that voting group, even if fewer than a quorum, are entitled to fill the vacancy if it is filled by the directors.

(c) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under section [30-29-807](#)(b), Idaho Code, or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

[30-29-810, added 2015, ch. 243, sec. 63, p. 929; am. 2019, ch. 90, sec. 82, p. 273.]

30-29-811. COMPENSATION OF DIRECTORS. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

[30-29-811, added 2015, ch. 243, sec. 63, p. 929.]

30-29-820. MEETINGS. (a) The board of directors may hold regular or special meetings in or out of this state.

(b) Unless restricted by the articles of incorporation or bylaws, any or all directors may participate in any meeting of the board of directors through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

[30-29-820, added 2015, ch. 243, sec. 63, p. 929; am. 2019, ch. 90, sec. 83, p. 273.]

30-29-821. ACTION WITHOUT MEETING. (a) Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by this chapter to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.

(b) Action taken under this section is the act of the board of directors when one (1) or more consents signed by all the directors are delivered to the corporation. The consent may specify a later time as the time at which the action taken is to be effective. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation before delivery to the corporation of unrevoked written consents signed by all the directors.

(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.

[30-29-821, added 2015, ch. 243, sec. 63, p. 929; am. 2019, ch. 90, sec. 84, p. 274.]

30-29-822. 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 pre-

ceded 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.

[30-29-822, added 2015, ch. 243, sec. 63, p. 929; am. 2019, ch. 90, sec. 85, p. 274.]

30-29-823. WAIVER OF NOTICE. (a) A director may waive any notice required by this chapter, the articles of incorporation, or the bylaws before or after the date and time stated in the notice. Except as provided by subsection (b) of this section, the waiver must be in writing, signed by the director entitled to the notice, and delivered to the corporation for filing by the corporation 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 arrival, objects to holding the meeting or transacting business at the meeting and does not after objecting vote for or assent to action taken at the meeting.

[30-29-823, added 2015, ch. 243, sec. 63, p. 930; am. 2019, ch. 90, sec. 86, p. 274.]

30-29-824. QUORUM AND VOTING. (a) Unless the articles of incorporation or bylaws provide for a greater or fewer number or unless otherwise expressly provided in this chapter, a quorum of a board of directors consists of a majority of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) The quorum of the board of directors specified in or fixed in accordance with the articles of incorporation or bylaws may not consist of fewer than one-third (1/3) of the specified or fixed number of directors.

(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 or unless otherwise expressly provided in this chapter.

(d) A director who is present at a meeting of the board of directors or a committee when corporate action is taken is deemed to have assented to the action taken unless:

(1) The director objects at the beginning of the meeting, or promptly upon arrival, to holding it or transacting business at the meeting;

(2) The dissent or abstention from the action taken is entered in the minutes of the meeting; or

(3) The director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

[30-29-824, added 2015, ch. 243, sec. 63, p. 930; am. 2019, ch. 90, sec. 87, p. 274.]

30-29-825. BOARD COMMITTEES. (a) Unless this chapter, the articles of incorporation, or the bylaws provide otherwise, a board of directors may establish one (1) or more board committees composed exclusively of one (1) or more directors to perform functions of the board of directors.

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

- (1) A majority of all the directors in office when the action is taken; or
- (2) The number of directors required by the articles of incorporation or bylaws to take action under section [30-29-824](#), Idaho Code, unless, in either case, this chapter or the articles of incorporation provide otherwise.

(c) Sections [30-29-820](#) through [30-29-824](#), Idaho Code, apply to board committees and their members.

(d) A board committee may exercise the powers of the board of directors under section [30-29-801](#), Idaho Code, to the extent specified by the board of directors or in the articles of incorporation or bylaws, except that a board committee may not:

- (1) Authorize or approve distributions, except according to a formula or method, or within limits, prescribed by the board of directors;
- (2) Approve or propose to shareholders action that this chapter requires be approved by shareholders;
- (3) Fill vacancies on the board of directors or, subject to subsection (e) of this section, on any board committees; or
- (4) Adopt, amend, or repeal bylaws.

(e) The board of directors may appoint one (1) or more directors as alternate members of any board committee to replace any absent or disqualified member during the member's absence or disqualification. If the articles of incorporation, the bylaws, or the resolution creating the board committee so provide, the member or members present at any board committee meeting and not disqualified from voting may, by unanimous action, appoint another director to act in place of an absent or disqualified member during that member's absence or disqualification.

[30-29-825, added 2015, ch. 243, sec. 63, p. 930; am. 2019, ch. 90, sec. 88, p. 275.]

30-29-826. SUBMISSION OF MATTERS FOR SHAREHOLDER VOTE. A corporation may agree to submit a matter to a vote of its shareholders even if, after approving the matter, the board of directors determines it no longer recommends the matter.

[30-29-826, added 2019, ch. 90, sec. 89, p. 276.]

30-29-830. STANDARDS OF CONDUCT FOR DIRECTORS. (a) Each member of the board of directors, when discharging the duties of a director, shall act:

- (1) In good faith; and
- (2) In a manner the director reasonably believes to be in the best interests of the corporation.

(b) The members of the board of directors or a board committee, 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 board 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, ex-

cept 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 board 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 subsection (f) (1) or (3) 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 board 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 subsection (d) or (e) of this section, on:

(1) 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;

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

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

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

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

[30-29-830, added 2015, ch. 243, sec. 63, p. 931; am. 2019, ch. 90, sec. 90, p. 276.]

30-29-831. 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, as a director, unless the party asserting liability in a proceeding establishes that:

(1) No defense interposed by the director based on any provision in the articles of incorporation authorized by section [30-29-202](#) (b) (4) or (6), Idaho Code; the protection afforded by section [30-29-861](#), Idaho Code, for action taken in compliance with section [30-29-862](#) or [30-29-863](#), Idaho Code; or the protection afforded by section [30-29-870](#), Idaho Code, precludes liability; and

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

(i) Action not in good faith; or

(ii) A decision:

(A) That the director did not reasonably believe to be in the best interests of the corporation; or

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

(iii) A 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:

- (A) 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
 - (B) 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 the best interests of the corporation; or
 - (iv) 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 for such inquiry; or
 - (v) 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:
- (1) For money damages, shall also have the burden of establishing that:
 - (i) Harm to the corporation or its shareholders has been suffered; and
 - (ii) The harm suffered was proximately caused by the director's challenged conduct; or
 - (2) For other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or
 - (3) For other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.
- (c) Nothing contained in this section shall:
- (1) In any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under section [30-29-861](#)(b)(3), Idaho Code, alter the burden of proving the fact or lack of fairness otherwise applicable;
 - (2) Alter the fact or lack of liability of a director under another section of this chapter, such as the provisions governing the consequences of an unlawful distribution under section [30-29-832](#), Idaho Code, or a transactional interest under section [30-29-861](#), Idaho Code; or
 - (3) Affect any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States.

[30-29-831, added 2015, ch. 243, sec. 63, p. 931; am. 2019, ch. 90, sec. 91, p. 277.]

30-29-832. DIRECTORS' 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 section [30-29-640](#)(a) or [30-29-1409](#)(a), Idaho Code, is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating section [30-29-640](#)(a) or [30-29-1409](#)(a), Idaho Code, if the party asserting liability

establishes that when taking the action the director did not comply with section [30-29-830](#), Idaho Code.

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

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

(2) 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 section [30-29-640](#)(a) or [30-29-1409](#)(a), Idaho Code.

(c) A proceeding to enforce:

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

(i) On which the effect of the distribution was measured under section [30-29-640](#)(e) or (g), Idaho Code; or

(ii) As of which the violation of section [30-29-640](#)(a), Idaho Code, occurred as the consequence of disregard of a restriction in the articles of incorporation; or

(iii) On which the distribution of assets to shareholders under section [30-29-1409](#)(a), Idaho Code, was made; or

(2) 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.

[(30-29-832) 30-29-833, added 2015, ch. 243, sec. 63, p. 933; am. and redesiɡ. 2019, ch. 90, sec. 92, p. 278.]

30-29-840. OFFICERS. (a) A corporation has the offices 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 an officer responsibility for maintaining and authenticating the records of the corporation required to be kept under section [30-29-1601](#)(a), Idaho Code.

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

[30-29-840, added 2015, ch. 243, sec. 63, p. 933; am. 2019, ch. 90, sec. 93, p. 279.]

30-29-841. 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.

[30-29-841, added 2015, ch. 243, sec. 63, p. 933; am. 2019, ch. 90, sec. 94, p. 279.]

30-29-842. STANDARDS OF CONDUCT FOR OFFICERS. (a) An officer, when performing in such capacity, has the duty to act:

- (1) In good faith;
- (2) With the care that a person in a like position would reasonably exercise under similar circumstances; and
- (3) In a manner the officer reasonably believes to be in the best interests of the corporation.

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

- (1) To inform the superior officer to whom, or the board of directors or the board committee 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 such superior officer, board, or committee; and
- (2) To inform his or her superior officer, or another appropriate person within the corporation, or the board of directors, or a board committee, 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 or her duties, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on:

- (1) 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
- (2) 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 competent in the matters presented or by legal counsel, public accountants or other persons retained by the corporation as to matters involving skill or expertise the officer reasonably believes are matters:
 - (i) Within the particular person's professional or expert competence; or
 - (ii) As to which the particular person merits confidence.

(d) An officer 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, as an officer, if the duties of the office are performed in compliance with this section. Whether an officer who does not comply with this section shall have liability will depend in such instance on applicable law, including those principles of section [30-29-831](#), Idaho Code, that have relevance.

[30-29-842, added 2015, ch. 243, sec. 63, p. 933; am. 2019, ch. 90, sec. 95, p. 279.]

30-29-843. RESIGNATION AND REMOVAL OF OFFICERS. (a) An officer may resign at any time by delivering written notice to the board of directors or its chair, or to the appointing officer or the secretary. A resignation is effective as provided in section [30-29-141](#)(i), Idaho Code, unless the notice provides for a delayed effectiveness, including effectiveness determined upon a future event or events. If effectiveness of a resignation is stated to be delayed and the board of directors or the appointing officer accepts the delay, the board of directors or the appointing officer may fill the pending vacancy before the delayed effectiveness, but the new officer may not take office until the vacancy occurs.

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

- (1) The board of directors;
- (2) The appointing officer, unless the bylaws or the board of directors provide otherwise; or
- (3) 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.

[30-29-843, added 2015, ch. 243, sec. 63, p. 934; am. 2019, ch. 90, sec. 96, p. 280.]

30-29-844. CONTRACT RIGHTS OF OFFICERS. (a) The election or 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.

[30-29-844, added 2015, ch. 243, sec. 63, p. 934; am. 2019, ch. 90, sec. 97, p. 280.]

30-29-850. DEFINITIONS. For purposes of this section and sections [30-29-851](#) through [30-29-859](#), Idaho Code:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger.

(2) "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.

(3) "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.

(4) "Official capacity" means:

(a) When used with respect to a director, the office of director in a corporation; and

(b) When used with respect to an officer, as contemplated in section [30-29-856](#), Idaho Code, the office in a corporation held by the officer.

"Official capacity" does not include service for any other domestic or foreign corporation or any joint venture, trust, employee benefit plan or other entity.

(5) "Party" means an individual who was, is or is threatened to be made a defendant or respondent in a proceeding.

(6) "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative and whether formal or informal.

[30-29-850, added 2015, ch. 243, sec. 63, p. 934; am. 2019, ch. 90, sec. 98, p. 281.]

30-29-851. 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:

- (1) (i) The director conducted himself or herself in good faith; and
 - (ii) The director reasonably believed:
 - (A) In the case of conduct in an official capacity, that his or her conduct was in the best interests of the corporation; and
 - (B) In all other cases, that his or her conduct was at least not opposed to the best interests of the corporation; and
 - (iii) In the case of any criminal proceeding, the director had no reasonable cause to believe his or her conduct was unlawful; or
- (2) 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 section [30-29-202](#) (b) (5), Idaho Code.

(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 the beneficiaries of, the plan is conduct that satisfies the requirement of subsection (a) (1) (ii) (B) of this section.

(c) The termination of a proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

(d) Unless ordered by a court under section [30-29-854](#) (a) (3), Idaho Code, a corporation may not indemnify a director:

- (1) In connection with a proceeding by or in the right of the corporation, except for expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection (a) of this section; or
- (2) In connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis of receiving a financial benefit to which he or she was not entitled, regardless of whether it involved action in the director's official capacity.

[30-29-851, added 2015, ch. 243, sec. 63, p. 935; am. 2019, ch. 90, sec. 99, p. 281.]

30-29-852. 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 or she was a director of the corporation against expenses incurred by the director in connection with the proceeding.

[30-29-852, added 2015, ch. 243, sec. 63, p. 936; am. 2019, ch. 90, sec. 100, p. 282.]

30-29-853. ADVANCE FOR EXPENSES. (a) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse expenses incurred in connection with the proceeding by an individual who is a party to

the proceeding because that individual is a director if the director delivers to the corporation a signed written undertaking of the director to repay any funds advanced if the director is not entitled to mandatory indemnification under section [30-29-852](#), Idaho Code; and it is ultimately determined under section [30-29-854](#) or [30-29-855](#), Idaho Code, that the director is not entitled to indemnification.

(b) The undertaking required by subsection (a) of this section must 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:

(1) By the board of directors:

(i) 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 purposes constitute a quorum, or by a majority of the members of a committee consisting solely of two (2) or more qualified directors appointed by such a vote; or

(ii) If there are fewer than two (2) qualified directors, by the vote necessary for action by the board of directors in accordance with section [30-29-824](#)(c), Idaho Code, in which authorization directors who are qualified directors may participate; or

(2) 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.

[30-29-853, added 2015, ch. 243, sec. 63, p. 936; am. 2019, ch. 90, sec. 101, p. 282.]

30-29-854. COURT-ORDERED INDEMNIFICATION AND ADVANCE FOR EXPENSES. (a) A director who is a party to a proceeding because he or she 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:

(1) Order indemnification if the court determines that the director is entitled to mandatory indemnification under section [30-29-852](#), Idaho Code;

(2) 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 section [30-29-858](#)(a), Idaho Code; or

(3) Order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable:

(i) To indemnify the director; or

(ii) To advance expenses to the director, even if under this paragraph he or she has not met the relevant standard of conduct set forth in section [30-29-851](#)(a), Idaho Code, failed to comply with section [30-29-853](#), Idaho Code, or was adjudged liable in a proceeding referred to in section [30-29-851](#)(d) (1) or (2), Idaho Code, but if the director was adjudged so liable, 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 subsection (a) (1) of this section or to indemnification or

advance for expenses under subsection (a) (2) 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 subsection (a) (3) of this section, it may also order the corporation to pay the director's expenses to obtain court-ordered indemnification or advance for expenses.

[30-29-854, added 2015, ch. 243, sec. 63, p. 936; am. 2019, ch. 90, sec. 102, p. 283.]

30-29-855. DETERMINATION AND AUTHORIZATION OF INDEMNIFICATION. (a) A corporation may not indemnify a director under section [30-29-851](#), Idaho Code, unless authorized for a specific proceeding after a determination has been made that indemnification is permissible because the director has met the relevant standard of conduct set forth in section [30-29-851](#), Idaho Code.

(b) The determination shall be made:

(1) If there are two (2) or more qualified directors, by the board of 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;

(2) By special legal counsel:

(i) Selected in the manner prescribed in paragraph (1) of this subsection; or

(ii) 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

(3) 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 or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled to select special legal counsel under subsection (b) (2) (ii) of this section.

[30-29-855, added 2015, ch. 243, sec. 63, p. 937; am. 2019, ch. 90, sec. 103, p. 284.]

30-29-856. INDEMNIFICATION OF OFFICERS. (a) A corporation may indemnify and advance expenses under sections [30-29-850](#) through [30-29-859](#), Idaho Code, to an officer who is a party to a proceeding because he or she is an officer:

(1) To the same extent as a director; and

(2) If he or she is an officer but not a director, to such further extent as may be provided by the articles of incorporation or the bylaws, or by a resolution adopted or a contract approved by the board of directors, or shareholders except for:

(i) 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

(ii) Liability arising out of conduct that constitutes:

- (A) Receipt by the officer of a financial benefit to which he or she is not entitled;
- (B) An intentional infliction of harm on the corporation or the shareholders; or
- (C) An intentional violation of criminal law.

(b) The provisions of subsection (a) (2) of this section shall apply to an officer who is also a director if he or she is made a party to the proceeding based on an act or omission solely as an officer.

(c) An officer who is not a director is entitled to mandatory indemnification under section [30-29-852](#), Idaho Code, and may apply to a court under section [30-29-854](#), Idaho Code, 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 sections.

[30-29-856, added 2015, ch. 243, sec. 63, p. 937; am. 2019, ch. 90, sec. 104, p. 284.]

30-29-857. 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, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director or officer, regardless of whether the corporation would have power to indemnify or advance expenses to the individual against the same liability under sections [30-29-850](#) through [30-29-859](#), Idaho Code.

[30-29-857, added 2015, ch. 243, sec. 63, p. 938; am. 2019, ch. 90, sec. 105, p. 285.]

30-29-858. VARIATION BY CORPORATE ACTION -- APPLICATION OF INDEMNIFICATION PROVISIONS. (a) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by the 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 section [30-29-851](#), Idaho Code, or advance funds to pay for or reimburse expenses in accordance with section [30-29-853](#)(c), Idaho Code. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in section [30-29-853](#)(c), Idaho Code, and in section [30-29-855](#)(c), Idaho Code. Any such 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 section [30-29-853](#), Idaho Code, to the fullest extent permitted by law, unless the provision expressly provides otherwise.

(b) A right of indemnification or to advances for expenses created by sections [30-29-850](#) through [30-29-859](#), Idaho Code, or under subsection (a) of this section and in effect at the time of an act or omission shall not be eliminated or impaired with respect to such act or omission by an amendment of the articles of incorporation or bylaws or a resolution of the board of directors or shareholders, adopted after the occurrence of such act or omission, unless, in the case of a right created under subsection (a) of this section, the provision creating such right and in effect at the time of such act or omis-

sion explicitly authorizes such elimination or impairment after such act or omission has occurred.

(c) 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 expressly 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 section [30-22-206](#)(a)(4), Idaho Code.

(d) Subject to the provisions of subsection (b) of this section, a corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to sections [30-29-850](#) through [30-29-859](#), Idaho Code.

(e) Sections [30-29-850](#) through [30-29-859](#), Idaho Code, do not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with his appearance as a witness in a proceeding at a time when he is not a party.

(f) Sections [30-29-850](#) through [30-29-859](#), Idaho Code, do not limit a corporation's power to indemnify, advance expenses to or provide or maintain insurance on behalf of an employee or agent.

[30-29-858, added 2015, ch. 243, sec. 63, p. 938; am. 2019, ch. 90, sec. 106, p. 285.]

30-29-859. EXCLUSIVITY. A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by sections [30-29-850](#) through [30-29-859](#), Idaho Code.

[30-29-859, added 2015, ch. 243, sec. 63, p. 939.]

30-29-860. DEFINITIONS. As used in sections [30-29-860](#) through [30-29-863](#), Idaho Code:

(1) "Control" or "controlled by" means 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 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.

(2) "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, where at the relevant time the director is a party, had knowledge and a material financial interest known to the director, or knew that a related person was a party or had a material financial interest.

(3) "Fair to the corporation" means, for purposes of section [30-29-861](#)(b)(3), Idaho Code, that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was fair in terms of the director's dealings with the corporation, and comparable to what might have been obtainable in an arm's length transaction, given the consideration paid or received by the corporation.

(4) "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.

(5) "Related person" means:

(a) The individual's spouse;

(b) A child, stepchild, grandchild, parent, stepparent, grandparent, sibling, stepsibling, half-sibling, aunt, uncle, niece, or nephew, or spouse of any such person, of the individual or of the individual's spouse;

(c) A natural living person living in the same house as the individual;

(d) An entity, other than the corporation or an entity controlled by the corporation, controlled by the individual or any person specified in this subsection;

(e) A domestic or foreign business or nonprofit corporation, other than the corporation or an entity controlled by the corporation, of which the individual is a director; an unincorporated entity of which the individual is a general partner or a member of the governing body; or an individual, trust, or estate for whom, or of which, the individual 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 individual.

(6) "Relevant time" means the time at which directors' action respecting the transaction is taken in compliance with section [30-29-862](#), Idaho Code; or if the transaction is not brought before the board of directors, or a committee, for action under section [30-29-862](#), Idaho Code, at the time the corporation, or an entity controlled by the corporation, becomes legally obligated to consummate the transaction.

(7) "Required disclosure" means disclosure of the existence and nature of the director's conflicting interest and 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.

[30-29-860, added 2019, ch. 90, sec. 108, p. 286.]

30-29-861. 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 sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, on the grounds 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 sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, on the grounds that the director has an interest respecting the transaction, if:

(1) Directors' action respecting the transaction was taken in compliance with section [30-29-862](#), Idaho Code, at any time;

(2) Shareholders' action respecting the transaction was taken in compliance with section [30-29-863](#), Idaho Code, at any time; or

(3) The transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation.

[30-29-861, added 2015, ch. 243, sec. 63, p. 940; am. 2019, ch. 90, sec. 109, p. 287.]

30-29-862. DIRECTORS' ACTION. (a) Directors' action respecting a director's conflicting interest transaction is effective for purposes of section [30-29-861](#) (b) (1), Idaho Code, 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:

(1) The qualified directors have deliberated and voted outside the presence of and without the participation by any other director; and

(2) Where the action has been taken by a board committee, all members of the committee were qualified directors, and either the committee was composed of all the qualified directors on the board of directors, or the members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board of directors.

(b) Notwithstanding the provisions of subsection (a) of this section, when a transaction is a director's conflicting interest transaction, only because a related person described in section [30-29-860](#) (3) (e) or (f), Idaho Code, 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:

(1) All information required to be disclosed that is not so violative;

(2) The existence and nature of the director's conflicting interest; and

(3) 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 board 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 or bylaws or a provision of law, independent action to satisfy those authorization requirements shall be taken by the board of directors or a board committee, in which action directors who are not qualified directors may participate.

[30-29-862, added 2015, ch. 243, sec. 63, p. 940; am. 2019, ch. 90, sec. 110, p. 287.]

30-29-863. SHAREHOLDERS' ACTION. (a) Shareholders' action respecting a director's conflicting interest transaction is effective for purposes of section [30-29-861](#) (b) (2), Idaho Code, if a majority of the votes cast by the holders of all qualified shares are in favor of the transaction after:

(1) Notice to shareholders describing action to be taken respecting the transaction;

(2) Provision to the corporation of the information referred to in subsection (b) of this section; and

(3) Communication to the shareholders entitled to vote on the transaction of the information that is the subject of required disclosure, to the extent the information is not known by them. In the case of shareholders' action at a meeting, the shareholders entitled to vote shall be determined as of the record date for notice of the meeting.

(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) As used in this section:

(1) "Holder" means and "held by" refers to shares held by a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner; and

(2) "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 either a director who has a conflicting interest respecting the transaction or a related person of the director, not including a person described in section [30-29-860](#) (4) (f), Idaho Code.

(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 take such action respecting the transaction and the director, and may give such 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 or the bylaws or a provision of law, independent action to satisfy those authorization requirements shall be taken by the shareholders, in which action shares that are not qualified shares may participate.

[30-29-863, added 2015, ch. 243, sec. 63, p. 941; am. 2019, ch. 90, sec. 111, p. 289.]

30-29-870. BUSINESS OPPORTUNITIES. (a) If a director or officer pursues or takes advantage of a business opportunity directly, or indirectly through or on behalf of another person, that action may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, officer, or other person, 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:

(1) Before the director, officer, or other person becomes legally obligated respecting the opportunity, the director or officer brings it to the attention of the corporation and either:

(i) Action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the same procedures as are set forth in the provisions of section [30-29-862](#), Idaho Code; or

(ii) Shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in the provisions of section [30-29-863](#), Idaho Code, in either case as if the decision being made concerned a director's conflicting interest transaction, except that, rather than making the required disclosure as defined in section [30-29-860](#), Idaho Code, the director or officer shall have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity known to the director or officer; or

(2) The duty to offer the corporation the business opportunity has been limited or eliminated pursuant to a provision of the articles of incorporation adopted, and where required, made effective by action of qualified directors, in accordance with the provisions of section [30-29-202](#) (b) (6), Idaho Code.

(b) In any proceeding seeking equitable relief or other remedies based upon an alleged improper pursuit or taking advantage of a business opportunity by a director or officer, directly, or indirectly through or on behalf of another person, the fact that the director or officer did not employ the procedure described in paragraph (i) or (ii) of subsection (a) (1) of this section before pursuing or taking advantage of the opportunity shall not create an implication that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director or officer breached a duty to the corporation in the circumstances.

[30-29-870, added 2019, ch. 90, sec. 112, p. 290.]

PART 9

DOMESTICATION AND CONVERSION

30-29-901. DEFINITIONS. (a) As used in this part:

(1) "Domesticated corporation" means a domesticated entity that is a corporation.

(2) "Domesticating corporation" means a domesticating entity that is a corporation.

(b) The following definitions in [chapter 22, title 30](#), Idaho Code, shall apply to this part:

(1) "Conversion" is as defined in section [30-22-102](#) (a) (4), Idaho Code.

(2) "Converted entity" is as defined in section [30-22-102](#) (a) (5), Idaho Code.

(3) "Converting entity" is as defined in section [30-22-102](#) (a) (6), Idaho Code.

(4) "Domesticated entity" is as defined in section [30-22-102](#) (a) (7), Idaho Code.

(5) "Domesticating entity" is as defined in section [30-22-102](#) (a) (8), Idaho Code.

(6) "Domestication" is as defined in section [30-22-102](#) (a) (9), Idaho Code.

(7) "Protected agreement" is as defined in section [30-22-102](#) (a) (19), Idaho Code.

[30-29-901, added 2019, ch. 90, sec. 113, p. 291.]

30-29-921. ACTION ON A PLAN OF DOMESTICATION. In the case of a domestication of a domestic corporation into a foreign jurisdiction, the plan of domestication shall be adopted in the following manner, notwithstanding the provisions of section [30-22-503](#) (a), Idaho Code:

(a) The plan of domestication shall first be adopted by the board of directors.

(b) The plan of domestication shall then be approved by the shareholders. In submitting the plan of domestication to the shareholders for approval, the board of directors shall recommend that the shareholders approve the plan, unless either the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation; or section [30-29-826](#), Idaho Code, applies. In either case, the board shall inform the shareholders of the basis for its so proceeding.

(c) The board of directors may set conditions for approval of the plan of domestication by the shareholders or the effectiveness of the plan of domestication.

(d) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan of domestication is to be submitted for approval. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan of domestication and must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the articles of incorporation and the bylaws as they will be in effect immediately after the domestication.

(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 quorum, approval of the plan of domestication requires the approval of the shareholders at a meeting at which a quorum exists consisting of a majority of the votes entitled to be cast on the plan, and, except as provided in subsection (f) of this section, the approval of each class or series of shares voting as a separate voting group at a meeting at which a quorum of the voting group exists consisting of a majority of the votes entitled to be cast on the plan by that voting group.

(f) The articles of incorporation may expressly limit or eliminate the separate voting rights provided in subsection (e) of this section as to any class or series of shares, except when the articles of incorporation of the foreign corporation resulting from the domestication include what would be in effect an amendment that would entitle the class or series to vote as a separate group under section [30-29-1004](#), Idaho Code, if it were a proposed amendment of the articles of incorporation of the domestic domesticating corporation.

(g) If as a result of a domestication one (1) or more shareholders of a domestic corporation would become subject to interest holder liability, approval of the plan of domestication shall require the signing in connection with the domestication, by each such shareholder, of a separate writ-

ten consent to become subject to such interest holder liability, unless in the case of a shareholder that already has interest holder liability with respect to the domesticating corporation, the terms and conditions of the interest holder liability with respect to the domesticated corporation are substantially identical to those of the existing interest holder liability other than for changes that eliminate or reduce such interest holder liability.

[30-29-921, added 2019, ch. 90, sec. 113, p. 291.]

30-29-922. ARTICLES OF DOMESTICATION -- EFFECTIVENESS. Notwithstanding the provisions of section [30-22-505](#)(b)(4), Idaho Code, a statement of domestication of a domesticating corporation shall include a statement that the plan of domestication was approved in accordance with this section.

[30-29-922, added 2019, ch. 90, sec. 113, p. 292.]

30-29-924. EFFECT OF DOMESTICATION. (a) When a domestication becomes effective, the domesticated corporation is deemed to have been incorporated on the date the domesticating corporation was originally incorporated.

(b) When a domestication of a domestic corporation into a foreign jurisdiction becomes effective, the domesticated corporation is deemed to agree that it will promptly pay the amount, if any, to which shareholders who exercise appraisal rights in connection with the domestication are entitled under part 13 of this chapter.

(c) Notwithstanding the provisions of section [30-22-506](#)(c) and (d), Idaho Code, except as otherwise provided in the organic law or organic rules of a domesticating foreign corporation, the interest holder liability of a shareholder in a foreign corporation that is domesticated into this state who had interest holder liability in respect of such domesticating corporation before the domestication becomes effective shall be as follows:

(1) The domestication does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the domestication becomes effective.

(2) The provisions of the organic law of the domesticating corporation shall continue to apply to the collection or discharge of any interest holder liabilities preserved by paragraph (1) of this subsection, as if the domestication had not occurred.

(3) The shareholder shall have such rights of contribution from other persons as are provided by the organic law of the domesticating corporation with respect to any interest holder liabilities preserved by paragraph (1) of this subsection, as if the domestication had not occurred.

(4) The shareholder shall not, by reason of such prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that are incurred after the domestication becomes effective.

(d) Notwithstanding the provisions of section [30-22-506](#)(c) and (d), Idaho Code, a shareholder who becomes subject to interest holder liability in respect of the domesticated corporation as a result of the domestication shall have such interest holder liability only in respect of interest holder liabilities that arise after the domestication becomes effective.

[30-29-924, added 2019, ch. 90, sec. 113, p. 292.]

30-29-932. ACTION ON A PLAN OF CONVERSION. In the case of a conversion of a domestic corporation to a domestic or foreign eligible entity, the plan of conversion shall be adopted in the following manner, notwithstanding the provisions of section [30-22-403](#)(a), Idaho Code:

(a) The plan of conversion shall first be adopted by the board of directors.

(b) The plan of conversion shall then be approved by the shareholders. In submitting the plan of conversion to the shareholders for their approval, the board of directors must recommend that the shareholders approve the plan, unless either the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation; or section [30-29-826](#), Idaho Code, applies. In either case, the board of directors shall inform the shareholders of the basis for its so proceeding.

(c) The board of directors may set conditions for approval of the plan of conversion by the shareholders or the effectiveness of the plan of conversion.

(d) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan of conversion is to be submitted for approval. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan of conversion and must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the organic rules of the converted entity which are to be in writing as they will be in effect immediately after the conversion.

(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 quorum, approval of the plan of conversion requires the approval of the shareholders at a meeting at which a quorum exists consisting of a majority of the votes entitled to be cast on the plan, and the approval of each class or series of shares voting as a separate voting group at a meeting at which a quorum of the voting group exists consisting of a majority of the votes entitled to be cast on the plan by that voting group.

(f) If as a result of the conversion one (1) or more shareholders of the converting domestic corporation would become subject to interest holder liability, approval of the plan of conversion shall require the signing in connection with the transaction, by each such shareholder, of a separate written consent to become subject to such interest holder liability.

[30-29-932, added 2019, ch. 90, sec. 113, p. 293.]

30-29-933. ARTICLES OF CONVERSION -- EFFECTIVENESS. Notwithstanding the provisions of section [30-22-405](#)(b)(4), Idaho Code, a statement of conversion of a domestic converting corporation shall include a statement that the plan of conversion was approved in accordance with this section.

[30-29-933, added 2019, ch. 90, sec. 113, p. 293.]

30-29-935. EFFECT OF CONVERSION. (a) When a conversion becomes effective, the converted entity is deemed to have been incorporated or otherwise organized on the date that the converting entity was originally incorporated or organized.

(b) When a conversion of a domestic corporation to a foreign eligible entity becomes effective, the converted entity is deemed to agree that it will promptly pay the amount, if any, to which shareholders who exercise appraisal rights in connection with the conversion are entitled under part 13 of this chapter.

(c) Notwithstanding the provisions of section [30-22-406](#)(c) and (d), Idaho Code, and except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law or organic rules of a foreign corporation or a domestic or foreign eligible entity, a shareholder or eligible interest holder who becomes subject to interest holder liability in respect of a domestic corporation or eligible entity as a result of the conversion shall have such interest holder liability only in respect of interest holder liabilities that arise after the conversion becomes effective.

(d) Except as otherwise provided in the organic law or the organic rules of the eligible entity, the interest holder liability of an interest holder in a converting eligible entity that converts to a domestic corporation who had interest holder liability in respect of such converting eligible entity before the conversion becomes effective shall be as follows:

(1) The conversion does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the conversion became effective.

(2) The provisions of the organic law of the eligible entity shall continue to apply to the collection or discharge of any interest holder liabilities preserved by paragraph (1) of this subsection, as if the conversion had not occurred.

(3) The eligible interest holder shall have such rights of contribution from other persons as are provided by the organic law of the eligible entity with respect to any interest holder liabilities preserved by paragraph (1) of this subsection, as if the conversion had not occurred.

(4) The eligible interest holder shall not, by reason of such prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the conversion becomes effective.

[30-29-935, added 2019, ch. 90, sec. 113, p. 294.]

PART 10

AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

30-29-1001. 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.

[30-29-1001, added 2015, ch. 243, sec. 65, p. 942; am. 2019, ch. 90, sec. 114, p. 294.]

30-29-1002. 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.

[30-29-1002, added 2015, ch. 243, sec. 65, p. 942.]

30-29-1003. AMENDMENT BY BOARD OF DIRECTORS AND SHAREHOLDERS. If a corporation has issued shares, an amendment to the articles of incorporation shall be adopted in the following manner:

(a) The proposed amendment shall first be adopted by the board of directors.

(b) Except as provided in sections [30-29-1005](#), [30-29-1007](#) and [30-29-1008](#), Idaho Code, the amendment shall then be approved by the shareholders. In submitting the proposed amendment to the shareholders for approval the board of directors shall recommend that the shareholders approve the amendment, 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, or unless section [30-29-826](#), Idaho Code, applies. In either case, the board must inform the shareholders of the basis for its so proceeding.

(c) The board of directors may set conditions for the approval of the amendment by the shareholders or the effectiveness of the amendment.

(d) 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, regardless of whether entitled to vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the amendment. The notice must contain or be accompanied by a copy of the amendment.

(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 quorum, approval of the amendment requires the approval of the shareholders at a meeting at which a quorum consisting of a majority of the votes entitled to be cast on the amendment exists, and, if any class or series of shares is entitled to vote as a separate group on the amendment, except as provided in section [30-29-1004](#)(c), Idaho Code, the approval of each such separate voting group at a meeting at which a quorum of the voting group exists consisting of a majority of the votes entitled to be cast on the amendment by that voting group.

(f) If as a result of an amendment of the articles of incorporation one (1) or more shareholders of a domestic corporation would become subject to new interest holder liability, approval of the amendment requires the signing in connection with the amendment, by each such shareholder, of a separate written consent to become subject to such new interest holder liability, unless in the case of a shareholder that already has interest holder liability the terms and conditions of the new interest holder liability are substantially identical to those of the existing interest holder liability; or are substantially identical to those of the existing interest holder liability, other than changes that eliminate or reduce such interest holder liability.

(g) For purposes of subsection (f) of this section and section [30-29-1009](#), Idaho Code, "new interest holder liability" means interest holder liability of a person resulting from an amendment of the articles of incorporation if the person did not have interest holder liability before

the amendment becomes effective; or the person had interest holder liability before the amendment becomes effective, the terms and conditions of which are changed when the amendment becomes effective.

[30-29-1003, added 2015, ch. 243, sec. 65, p. 942; am. 2019, ch. 90, sec. 115, p. 294.]

30-29-1004. VOTING ON AMENDMENTS BY VOTING GROUPS. (a) 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 chapter, on a proposed amendment to the articles of incorporation if the amendment would:

- (1) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;
- (2) 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;
- (3) Change the rights, preferences or limitations of all or part of the shares of the class;
- (4) Change the shares of all or part of the class into a different number of shares of the same class;
- (5) Create a new class of shares having rights or preferences with respect to distributions that are prior or superior to the shares of the class;
- (6) 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 that are prior or superior to the shares of the class;
- (7) Limit or deny an existing preemptive right of all or part of the shares of the class; or
- (8) 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 the holders of 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 added as a condition by the board of directors pursuant to section [30-29-1003](#)(c), Idaho Code.

(d) A class or series of shares is entitled to the voting rights granted by this section even if the articles of incorporation provide that the shares are nonvoting shares.

[30-29-1004, added 2015, ch. 243, sec. 65, p. 943; am. 2019, ch. 90, sec. 116, p. 295.]

30-29-1005. AMENDMENT BY BOARD OF DIRECTORS. 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:

- (a) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;
- (b) To delete the names and addresses of the initial directors;
- (c) 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;
- (d) If the corporation has only one (1) class of shares outstanding:
 - (1) To change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or
 - (2) To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;
- (e) 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;
- (f) To reflect a reduction in authorized shares, as a result of the operation of section [30-29-631](#)(b), Idaho Code, when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares;
- (g) To delete a class of shares from the articles of incorporation, as a result of the operation of section [30-29-631](#)(b), Idaho Code, 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
- (h) To make any change expressly permitted by section [30-29-602](#)(a) or (b), Idaho Code, to be made without shareholder approval.

[30-29-1005, added 2015, ch. 243, sec. 65, p. 943; am. 2019, ch. 90, sec. 117, p. 296.]

30-29-1006. ARTICLES OF AMENDMENT. (a) After an amendment to the articles of incorporation has been adopted and approved in the manner required by this chapter and by the articles of incorporation, the corporation shall deliver to the secretary of state for filing articles of amendment, which must set forth:

- (1) The name of the corporation;
- (2) The text of each amendment adopted or the information required by section [30-29-120](#)(d)(5), Idaho Code;
- (3) 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 that may be made dependent upon facts objectively ascertainable outside the articles of amendment in accordance with section [30-29-120](#)(d)(5), Idaho Code;
- (4) The date of each amendment's adoption; and
- (5) If an amendment:
 - (i) Was adopted by the incorporators or board of directors without shareholder approval, a statement that the amendment was duly adopted by the incorporators or by the board of directors, as the case may be, and that shareholder approval was not required;
 - (ii) Required approval by the shareholders, a statement that the amendment was duly approved by the shareholders in the manner required by this chapter and by the articles of incorporation; or

(iii) Is being filed pursuant to section [30-29-120](#) (d) (5), Idaho Code, a statement to that effect.

(b) Articles of amendment shall take effect at the effective date determined in accordance with section [30-29-123](#), Idaho Code.

[30-29-1006, added 2015, ch. 243, sec. 65, p. 944; am. 2019, ch. 90, sec. 118, p. 297.]

30-29-1007. RESTATED ARTICLES OF INCORPORATION. (a) A corporation's board of directors may restate its articles of incorporation at any time, without shareholder approval, to consolidate all amendments into a single document.

(b) If the restated articles include one (1) or more new amendments that require shareholder approval, the amendments shall be adopted and approved as provided in section [30-29-1003](#), Idaho Code.

(c) A corporation that restates its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation, the text of the restated articles of incorporation, a statement that the restated articles consolidate all amendments into a single document, and, if a new amendment is included in the restated articles, the statements required under section [30-29-1006](#), Idaho Code, with respect to the new amendment.

(d) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to the articles of incorporation.

(e) The secretary of state may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the statements required by subsection (c) of this section.

[30-29-1007, added 2015, ch. 243, sec. 65, p. 944; am. 2019, ch. 90, sec. 119, p. 297.]

30-29-1008. AMENDMENT PURSUANT TO 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:

- (1) The name of the corporation;
- (2) The text of each amendment approved by the court;
- (3) The date of the court's order or decree approving the articles of amendment;
- (4) The title of the reorganization proceeding in which the order or decree was entered; and
- (5) 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.

[30-29-1008, added 2015, ch. 243, sec. 65, p. 945; am. 2019, ch. 90, sec. 120, p. 298.]

30-29-1009. EFFECT OF AMENDMENT. (a) An amendment to the 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 the shareholders. An amendment changing a corporation's name does not affect a proceeding brought by or against the corporation in its former name.

(b) A shareholder who becomes subject to new interest holder liability in respect of the corporation as a result of an amendment to the articles of incorporation shall have that new interest holder liability only in respect of interest holder liabilities that arise after the amendment becomes effective.

(c) Except as otherwise provided in the articles of incorporation of the corporation, the interest holder liability of a shareholder who had interest holder liability in respect of the corporation before the amendment becomes effective and has new interest holder liability after the amendment becomes effective shall be as follows:

(1) The amendment does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the amendment becomes effective.

(2) The provisions of the articles of incorporation of the corporation relating to interest holder liability as in effect immediately prior to the amendment shall continue to apply to the collection or discharge of any interest holder liabilities preserved by paragraph (1) of this subsection, as if the amendment had not occurred.

(3) The shareholder shall have such rights of contribution from other persons as are provided by the articles of incorporation relating to interest holder liability as in effect immediately prior to the amendment with respect to any interest holder liabilities preserved by paragraph (1) of this subsection, as if the amendment had not occurred.

(4) The shareholder shall not, by reason of such prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the amendment becomes effective.

[30-29-1009, added 2015, ch. 243, sec. 65, p. 945; am. 2019, ch. 90, sec. 121, p. 298.]

30-29-1020. AUTHORITY TO AMEND. (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:

(1) The articles of incorporation, section [30-29-1021](#), Idaho Code, or, if applicable, section [30-29-1022](#), Idaho Code, reserve that power exclusively to the shareholders in whole or part; or

(2) Except as provided in section [30-29-206](#)(d), Idaho Code, the shareholders in amending, repealing, or adopting a bylaw expressly provide that the board of directors may not amend, repeal, or adopt that bylaw.

(c) A shareholder of the corporation does not have a vested property right resulting from any provision in the bylaws.

[30-29-1020, added 2015, ch. 243, sec. 65, p. 945; am. 2019, ch. 90, sec. 122, p. 299.]

30-29-1021. 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:

(1) If originally adopted by the shareholders, only by the shareholders unless the bylaw otherwise provides; or

(2) 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 can 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 a 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.

[30-29-1021, added 2015, ch. 243, sec. 65, p. 945; am. 2019, ch. 90, sec. 123, p. 299.]

30-29-1022. 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 section [30-29-728](#)(a), Idaho Code, or provide for cumulative voting, a corporation may elect in its bylaws to be governed in the election of directors as follows:

(1) 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;

(2) 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:

(i) Ninety (90) days from the date on which the voting results are determined pursuant to part 7 of this chapter; or

(ii) 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 section [30-29-810](#), Idaho Code, applies. Subject to paragraph (3) 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

(3) 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:

- (1) If originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides; or
- (2) If adopted by the board of directors, or the shareholders.

[30-29-1022, added 2019, ch. 90, sec. 124, p. 300.]

PART 11 MERGERS AND SHARE EXCHANGES

30-29-1101. DEFINITIONS. As used in this part:

(a) "New interest holder liability" means interest holder liability of a person, resulting from a merger or share exchange, that is:

- (1) In respect of an entity that is different from the entity in which the person held shares or eligible interests immediately before the merger or share exchange became effective; or
- (2) In respect of the same entity as the one in which the person held shares or eligible interests immediately before the merger or share exchange became effective if:
 - (i) The person did not have interest holder liability immediately before the merger or share exchange became effective; or
 - (ii) The person had interest holder liability immediately before the merger or share exchange became effective, the terms and conditions of which were changed when the merger or share exchange became effective.

(b) "Party to a merger" means any domestic or foreign corporation or eligible entity that will merge under a plan of merger but does not include a survivor created by the merger.

(c) "Survivor" in a merger means the domestic or foreign corporation or eligible entity into which one (1) or more other corporations or eligible entities are merged.

(d) The following definitions outside this chapter shall apply to this part:

- (1) "Acquired entity" is as defined in section [30-22-102](#)(a)(1), Idaho Code.
- (2) "Acquiring entity" is as defined in section [30-22-102](#)(a)(2), Idaho Code.

[30-29-1101, added 2019, ch. 90, sec. 126, p. 301.]

30-29-1104. ACTION ON A PLAN OF MERGER OR SHARE EXCHANGE. In the case of a domestic corporation that is a party to a merger or the acquired entity in a share exchange, the plan of merger or share exchange shall be adopted in the following manner notwithstanding the provisions of sections [30-22-203](#)(a) and [30-22-303](#)(a), Idaho Code:

(a) The plan of merger or share exchange shall first be adopted by the board of directors.

(b) Except as provided in subsections (h), (j), and (l) of this section and in section [30-29-1105](#), Idaho Code, the plan of merger or share exchange

shall then be approved by the shareholders. In submitting the plan of merger or share exchange to the shareholders for approval, the board of directors shall recommend that the shareholders approve the plan or, in the case of an offer referred to in subsection (j) (2) of this section, that the shareholders tender their shares to the offeror in response to the offer, unless either the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, or section [30-29-826](#), Idaho Code, applies. In either case, the board shall inform the shareholders of the basis for its so proceeding.

(c) The board of directors may set conditions for the approval of the plan of merger or share exchange by the shareholders or the effectiveness of the plan of merger or share exchange.

(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, regardless of whether entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing foreign or domestic corporation or eligible entity, the notice must also include or be accompanied by a copy or summary of the articles of incorporation and bylaws of the organic rules of that corporation or eligible entity. If the corporation is to be merged with a domestic or foreign corporation or eligible entity and a new domestic or foreign corporation or eligible entity is to be created pursuant to the merger, the notice must include or be accompanied by a copy or a summary of the articles of incorporation and bylaws or the organic rules of the new corporation or eligible 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 quorum, approval of the plan of merger or share exchange requires the approval of the shareholders at a meeting at which a quorum exists consisting of a majority of the votes entitled to be cast on the plan, 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 is present at a meeting at which a quorum of the voting group consisting of a majority of the votes entitled to be cast on the merger or share exchange by that voting group.

(f) Subject to subsection (g) of this section, separate voting by voting groups is required:

(1) On a plan of merger, by each class or series of shares that:

(i) Are to be converted under the plan of merger into shares, other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property, or any combination of the foregoing; or

(ii) Are entitled to vote as a separate group on a provision in the plan that constitutes a proposed amendment to the articles of incorporation of a surviving corporation that requires action by separate voting groups under section [30-29-1004](#), Idaho Code;

(2) 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

(3) 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, respectively.

(g) The articles of incorporation may expressly limit or eliminate the separate voting rights provided in paragraph (i) of subsection (f)(1) and subsection (f)(2) of this section as to any class or series of shares, except when the plan of merger or share exchange includes what is or would be in effect an amendment subject to paragraph (i) of subsection (f)(1) of this section and paragraph (ii) of subsection (f)(1) of this section will not effect a substantive business combination.

(h) Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger is not required if:

(1) The corporation will survive the merger;

(2) Except for amendments permitted by section [30-29-1005](#), Idaho Code, its articles of incorporation will not be changed;

(3) 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, rights and limitations, immediately after the effective date of the merger; and

(4) The issuance in the merger of shares or other securities convertible into or rights exercisable for shares does not require a vote under section [30-29-621](#)(f), Idaho Code.

(i) If as a result of a merger or share exchange one (1) or more shareholders of a domestic corporation would become subject to new interest holder liability, approval of the plan of merger or share exchange requires the signing in connection with the transaction, by each such shareholder, of a separate written consent to become subject to such new interest holder liability unless in the case of a shareholder that already has interest holder liability with respect to such domestic corporation, the new interest holder liability is with respect to a domestic or foreign corporation, which may be a different or the same domestic corporation in which the person is a shareholder; and the terms and conditions of the new interest holder liability are substantially identical to those of the existing interest holder liability other than for changes that eliminate or reduce such interest holder liability.

(j) Unless the articles of incorporation otherwise provide, approval by the shareholders of a plan of merger or share exchange is not required if:

(1) The plan of merger or share exchange expressly permits or requires the merger or share exchange to be effected under this subsection and provides that, if the merger or share exchange is to be effected under this subsection, the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirement set forth in paragraph (6) of this subsection;

(2) Another party to the merger, the acquiring entity in the share exchange, or a parent of another party to the merger or the acquiring entity in the share exchange, makes an offer to purchase, on the terms provided in the plan of merger or share exchange, any and all of the outstanding shares of the corporation that, absent this subsection, would be entitled to vote on the plan of merger or share exchange, except that the offer may exclude shares of the corporation that are owned at the commencement of the offer by the corporation, the offeror, or any parent

of the offeror, or by any wholly owned subsidiary of any of the foregoing;

(3) The offer discloses that the plan of merger or share exchange provides that the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirement set forth in paragraph (6) of this subsection and that the shares of the corporation that are not tendered in response to the offer will be treated as set forth in paragraph (8) of this subsection;

(4) The offer remains open for at least ten (10) days;

(5) The offeror purchases all shares properly tendered in response to the offer and not properly withdrawn;

(6) The shares listed below are collectively entitled to cast at least the minimum number of votes on the merger or share exchange that, absent this subsection, would be required by this chapter and by the articles of incorporation for the approval of the merger or share exchange by the shareholders and by any other voting group entitled to vote on the merger or share exchange at a meeting at which all shares entitled to vote on the approval were present and voted:

(i) Shares purchased by the offeror in accordance with the offer;

(ii) Shares otherwise owned by the offeror or by any parent of the offeror or any wholly owned subsidiary of any of the foregoing; and

(iii) Shares subject to an agreement that they are to be transferred, contributed or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary of any of the foregoing in exchange for shares or eligible interests in such offeror, parent or subsidiary;

(7) The offeror or a wholly owned subsidiary of the offeror merges with or into, or effects a share exchange in which it acquires shares of, the corporation; and

(8) Each outstanding share of each class or series of shares of the corporation that the offeror is offering to purchase in accordance with the offer, and that is not purchased in accordance with the offer, is to be converted in the merger into, or into the right to receive, or is to be exchanged in the share exchange for, or for the right to receive, the same amount and kind of securities, eligible interests, obligations, rights, cash, or other property to be paid or exchanged in accordance with the offer for each share of that class or series of shares that is tendered in response to the offer, except that shares of the corporation that are owned by the corporation or that are described in paragraph (6) (ii) or (iii) of this subsection need not be converted into or exchanged for the consideration described in this paragraph.

(k) As used in subsection (j) of this section:

(1) "Offer" means the offer referred to in subsection (j) (2) of this section;

(2) "Offeror" means the person making the offer;

(3) "Parent" of an entity means a person that owns, directly or indirectly, through one (1) or more wholly owned subsidiaries, all of the outstanding shares of or eligible interests in that entity;

(4) Shares tendered in response to the offer shall be deemed to have been "purchased" in accordance with the offer at the earliest time as of which the offeror has irrevocably accepted those shares for payment; and either in the case of shares represented by certificates, the offeror, or the offeror's designated depository or other agent, has

physically received the certificates representing those shares or in the case of shares without certificates, those shares have been transferred into the account of the offeror or its designated depository or other agent, or an agent's message relating to those shares has been received by the offeror or its designated depository or other agent; and (5) "Wholly owned subsidiary" of a person means an entity of or in which that person owns, directly or indirectly, through one (1) or more wholly owned subsidiaries, all of the outstanding shares or eligible interests.

(1) Unless the articles of incorporation otherwise provide:

(1) Approval of a plan of share exchange by the shareholders of a domestic corporation is not required if the corporation is the acquiring entity in the share exchange; and

(2) Shares not to be exchanged under the plan of share exchange are not entitled to vote on the plan.

[30-29-1104, added 2015, ch. 243, sec. 66, p. 946; am. 2019, ch. 90, sec. 127, p. 301.]

30-29-1105. MERGER BETWEEN PARENT AND SUBSIDIARY OR BETWEEN SUBSIDIARIES. (a) A domestic or foreign parent entity that owns shares of a domestic corporation that carry at least ninety percent (90%) of the voting power of each class and series of the outstanding shares of the subsidiary that has voting power may merge the subsidiary into itself, if it is a domestic or foreign corporation or eligible entity, or into another domestic or foreign corporation or eligible entity in which the parent entity owns at least ninety percent (90%) of the voting power of each class and series of the outstanding shares or eligible interests which have voting power, or merge itself, if it is a domestic or foreign corporation or eligible entity, into such subsidiary, in either case without the approval of the board of directors or shareholders of the subsidiary unless the articles of incorporation or organic rules of the parent entity or the articles of incorporation of the subsidiary corporation otherwise provide. Section [30-29-1104\(k\)](#), Idaho Code, applies to a merger under this section. The articles of merger relating to a merger under this section do not need to be signed by the subsidiary.

(b) A parent entity shall, within ten (10) days after the effective date of a merger approved under subsection (a) of this section, 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 entity and a domestic subsidiary corporation shall be governed by the provisions of this part applicable to mergers generally.

[30-29-1105, added 2015, ch. 243, sec. 66, p. 947; am. 2019, ch. 90, sec. 128, p. 304.]

30-29-1107. EFFECT OF MERGER OR SHARE EXCHANGE. (a) Notwithstanding the provisions of sections [30-22-206\(c\)](#) and (d) and [30-22-306\(c\)](#) and (d), Idaho Code, and except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law governing or organic rules of a foreign corporation or a domestic or foreign eligible entity, the effect of a merger or share exchange on interest holder liability is as follows:

(1) A person who becomes subject to new interest holder liability in respect of an entity as a result of a merger or share exchange shall have

that new interest holder liability only in respect of interest holder liabilities that arise after the merger or share exchange becomes effective.

(2) If a person had interest holder liability with respect to a party to the merger or the acquired entity before the merger or share exchange becomes effective with respect to shares or eligible interests of such party or acquired entity that were exchanged in the merger or share exchange; were canceled in the merger; or the terms and conditions of which relating to interest holder liability were amended pursuant to the merger:

(i) The merger or share exchange does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the merger or share exchange becomes effective.

(ii) The provisions of the organic law governing any entity for which the person had that prior interest holder liability shall continue to apply to the collection or discharge of any interest holder liabilities preserved by subparagraph (i) of this paragraph, as if the merger or share exchange had not occurred.

(iii) The person shall have such rights of contribution from other persons as are provided by the organic law governing the entity for which the person had that prior interest holder liability with respect to any interest holder liabilities preserved by subparagraph (i) of this paragraph, as if the merger or share exchange had not occurred.

(iv) The person shall not, by reason of such prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the merger or share exchange becomes effective.

(3) If a person has interest holder liability both before and after a merger becomes effective with unchanged terms and conditions with respect to the entity that is the survivor by reason of owning the same shares or eligible interests before and after the merger becomes effective, the merger has no effect on such interest holder liability.

(4) A share exchange has no effect on interest holder liability related to shares or eligible interests of the acquired entity that were not exchanged in the share exchange.

(b) Upon a merger becoming effective, a foreign corporation, or a foreign eligible entity, that is the survivor of the merger is deemed to agree that it will promptly pay the amount, if any, to which shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights are entitled under part 13 of this chapter.

[30-29-1107, added 2019, ch. 90, sec. 129, p. 305.]

PART 12 DISPOSITION OF ASSETS

30-29-1201. DISPOSITION OF ASSETS NOT REQUIRING SHAREHOLDER APPROVAL. No approval of the shareholders is required, unless the articles of incorporation otherwise provide:

(a) To sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;

(b) 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, regardless of whether in the usual and regular course of business; or

(c) To transfer any or all of the corporation's assets to one (1) or more domestic or foreign corporations or other entities all of the shares or interests of which are owned by the corporation; or

(d) To distribute assets pro rata to the holders of one (1) or more classes or series of the corporation's shares.

[30-29-1201, added 2015, ch. 243, sec. 67, p. 947; am. 2019, ch. 90, sec. 130, p. 306.]

30-29-1202. SHAREHOLDER APPROVAL OF CERTAIN DISPOSITIONS. (a) A sale, lease, exchange or other disposition of assets, other than a disposition described in section [30-29-1201](#), Idaho Code, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. A corporation will conclusively be deemed to have retained a significant continuing business activity if it retains a business activity that represented, for the corporation and its subsidiaries on a consolidated basis, at least twenty-five percent (25%) of total assets at the end of the most recently completed fiscal year, and either twenty-five percent (25%) of income from continuing operations before taxes or twenty-five percent (25%) of revenues from continuing operations for the most recently completed fiscal year.

(b) To obtain the approval of the shareholders under subsection (a) of this section, the board of directors shall first adopt a resolution authorizing the disposition. The disposition shall then be approved by the shareholders. In submitting the disposition to the shareholders for approval, the board of directors shall recommend that the shareholders approve the disposition, unless either the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation; or section [30-29-826](#), Idaho Code, applies. In either case, the board shall inform the shareholders of the basis for its so proceeding.

(c) The board of directors may set conditions for the approval by the shareholders of a disposition or the effectiveness of the disposition.

(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, regardless of whether 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 (1) of the purposes, of the meeting is to consider the disposition and must contain a description of the disposition, including the terms and conditions of the disposition 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 quorum, the approval of a disposition by the shareholders shall require the approval of the shareholders at a meeting at which a quorum exists consisting of a majority of the votes entitled to be cast on the disposition.

(f) After a disposition has been approved by the shareholders under this part, 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 part 14 of this chapter is not governed by this section.

(h) The assets of a direct or indirect consolidated subsidiary shall be deemed to be the assets of the parent corporation for the purposes of this section.

[30-29-1202, added 2015, ch. 243, sec. 67, p. 948; am. 2019, ch. 90, sec. 131, p. 306.]

PART 13 APPRAISAL RIGHTS

30-29-1301. DEFINITIONS. In this part:

(1) "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 of such person. For purposes of section [30-29-1302](#) (b) (4), Idaho Code, a person is deemed to be an affiliate of its senior executives.

(2) "Beneficial owner" means a 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 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 shares having voting power of the corporation beneficially owned by any member of the group.

(3) "Corporation" means the domestic corporation that is the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in sections [30-29-1322](#) through [30-29-1331](#), Idaho Code, includes the survivor of a merger.

(4) "Excluded shares" means shares acquired pursuant to an offer for all shares having voting power if the offer was made within one (1) year before the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action.

(5) "Fair value" means the value of the corporation's shares determined:

(a) Immediately before the effectiveness 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 of incorporation pursuant to section [30-29-1302](#) (a) (5), Idaho Code.

(6) "Interest" means interest from the date the corporate action becomes effective until the date of payment, at the rate of interest on judgments in this state on the effective date of the corporate action.

(7) "Interested person" means a person, or an affiliate of a person, who at any time during the one (1) year period immediately preceding approval by the board of directors of the corporate action:

- (a) Was the beneficial owner of twenty percent (20%) or more of the voting power of the corporation, other than as owner of excluded shares;
- (b) Had the power, contractually or otherwise, other than as owner of excluded shares, to cause the appointment or election of twenty-five percent (25%) or more of the directors to the board of directors of the corporation; or
- (c) Was a senior executive or director of the corporation or a senior executive of any affiliate of the corporation, and that senior executive or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:
 - (i) Employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action;
 - (ii) Employment, consulting, retirement, or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in section [30-29-862](#), Idaho Code; or
 - (iii) In the case of a director of the corporation who will, in the corporate action, become a director or governor of the acquiror or any of its affiliates, rights and benefits as a director or governor that are provided on the same basis as those afforded by the acquiror generally to other directors or governors of such entity or such affiliate.

(8) "Interested transaction" means a corporate action described in section [30-29-1302](#)(a), Idaho Code, other than a merger pursuant to section [30-29-1105](#), Idaho Code, involving an interested person in which any of the shares or assets of the corporation are being acquired or converted.

(9) "Preferred shares" means a class or series of shares whose holders have preference over any other class or series of shares with respect to distributions.

(10) "Senior executive" means the chief executive officer, chief operating officer, chief financial officer, and any individual in charge of a principal business unit or function.

(11) "Shareholder" means a record shareholder, a beneficial shareholder, and a voting trust beneficial owner.

[30-29-1301, added 2015, ch. 243, sec. 68, p. 949; am. 2019, ch. 90, sec. 132, p. 307.]

30-29-1302. RIGHT TO APPRAISAL. (a) A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares in the event of any of the following corporate actions:

- (1) Consummation of a merger to which the corporation is a party:
 - (i) If shareholder approval is required for the merger by section [30-29-1104](#), Idaho Code, or would be required but for the provisions of section [30-29-1104](#)(j), Idaho Code, except that appraisal rights shall not be available to any shareholder of the corpora-

tion with respect to shares of any class or series that remain outstanding after consummation of the merger; or

(ii) If the corporation is a subsidiary and the merger is governed by section [30-29-1105](#), Idaho Code;

(2) Consummation of a share exchange to which the corporation is a party the shares of which will be acquired, 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 acquired in the share exchange;

(3) Consummation of a disposition of assets pursuant to section [30-29-1202](#), Idaho Code, if the shareholder is entitled to vote on the disposition, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series if:

(i) Under the terms of the corporate action approved by the shareholders, there is to be distributed to shareholders in cash the corporation's net assets, in excess of a reasonable amount reserved to meet claims of the type described in sections [30-29-1406](#) and [30-29-1407](#), Idaho Code, within one (1) year after the shareholders' approval of the action and in accordance with their respective interests determined at the time of distribution; and

(ii) The disposition of assets is not an interested transaction;

(4) An amendment of the articles of incorporation with respect to a class or series of shares that 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;

(5) Any other merger, share exchange, disposition of assets, or amendment to the articles of incorporation, in each case to the extent provided by the articles of incorporation, bylaws or a resolution of the board of directors;

(6) Consummation of a domestication pursuant to part 9 of this chapter if the shareholder does not receive shares in the foreign corporation resulting from the 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 foreign corporation, as the shares held by the shareholder before the domestication;

(7) Consummation of a conversion of the corporation to a nonprofit corporation pursuant to [chapter 22, title 30](#), Idaho Code; or

(8) Consummation of a conversion of the corporation to an unincorporated entity pursuant to [chapter 22, title 30](#), Idaho Code.

(b) Notwithstanding subsection (a) of this section, the availability of appraisal rights under subsection (a) (1) and (2) of this section shall be limited in accordance with the following provisions:

(1) Appraisal rights shall not be available for the holders of shares of any class or series of shares that are:

(i) A covered security under section 18(b) (1) (A) or (B) of the securities act of 1933;

(ii) Traded in an organized market and have at least two thousand (2,000) shareholders and a market value of at least twenty million dollars (\$20,000,000), exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, and direc-

tors and by any beneficial shareholder and any voting trust beneficial owner owning more than ten percent (10%) of such shares; or
 (iii) Issued by an open end management investment company registered with the securities and exchange commission under the investment company act of 1940 and which may be redeemed at the option of the holder at net asset value.

(2) The applicability of paragraph (1) of this subsection shall be determined as of:

(i) The record date fixed to determine the shareholders entitled to receive notice of the meeting of shareholders to act upon the corporate action requiring appraisal rights or, in the case of an offer made pursuant to section [30-29-1104](#)(j), Idaho Code, the date of such offer; or

(ii) If there is no meeting of shareholders and no offer made pursuant to section [30-29-1104](#)(j), Idaho Code, the day before the consummation of the corporate action or effective date of the amendment of the articles of incorporation, as applicable.

(3) Paragraph (1) 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:

(i) 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 (1) of this subsection at the time the corporate action becomes effective; or

(ii) In the case of the consummation of a disposition of assets pursuant to section [30-29-1202](#), Idaho Code, unless the cash, shares, or proprietary interests received in the disposition are, under the terms of the corporate action approved by the shareholders, to be distributed to the shareholders, as part of a distribution to shareholders of the net assets of the corporation in excess of a reasonable amount to meet claims of the type described in sections [30-29-1406](#) and [30-29-1407](#), Idaho Code, within one (1) year after the shareholders' approval of the action, and in accordance with their respective interests determined at the time of the distribution.

(4) Paragraph (1) 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 where the corporate action is an interested transaction.

(c) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment to the articles of incorporation may limit or eliminate appraisal rights for any class or series of preferred shares, except that no such limitation or elimination shall be effective if the class or series does not have the right to vote separately as a voting group, alone or as part of a group, on the action or if the action is a conversion under [chapter 22, title 30](#), Idaho Code, or a merger having a similar effect as a conversion in which the converted entity is an eligible entity; and any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately before the effective date of such amendment or that the corporation is or may be required to issue or sell

thereafter pursuant to any conversion, exchange or other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within one (1) year after the effective date of such amendment if such action would otherwise afford appraisal rights.

[30-29-1302, added 2015, ch. 243, sec. 68, p. 949; am. 2019, ch. 90, sec. 133, p. 309.]

30-29-1303. ASSERTION OF RIGHTS BY NOMINEES AND BENEFICIAL SHAREHOLDERS. (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 or a voting trust beneficial owner only if the record shareholder objects with respect to all shares of a class or series owned by the beneficial shareholder or the voting trust beneficial owner and notifies the corporation in writing of the name and address of each beneficial shareholder or voting trust beneficial owner 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 and a voting trust beneficial owner may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:

(1) Submits to the corporation the record shareholder's written consent to the assertion of such rights no later than the date referred to in section [30-29-1322](#) (b) (2) (ii), Idaho Code; and

(2) Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder or the voting trust beneficial owner.

[30-29-1303, added 2015, ch. 243, sec. 68, p. 952; am. 2019, ch. 90, sec. 134, p. 312.]

30-29-1320. NOTICE OF APPRAISAL RIGHTS. (a) Where any corporate action specified in section [30-29-1302](#) (a), Idaho Code, is to be submitted to a vote at a shareholders' meeting, the meeting notice, or where no approval of such action is required pursuant to section [30-29-1104](#) (j), Idaho Code, the offer made pursuant to section [30-29-1104](#) (j), Idaho Code, must state that the corporation has concluded that appraisal rights are, are not, or may be available under this part. If the corporation concludes that appraisal rights are or may be available, a copy of this part must accompany the meeting notice or offer sent to those record shareholders entitled to exercise appraisal rights.

(b) In a merger pursuant to section [30-29-1105](#), Idaho Code, the parent entity shall notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice shall be sent within ten (10) days after the corporate action became effective and include the materials described in section [30-29-1322](#), Idaho Code.

(c) Where any corporate action specified in section [30-29-1302](#) (a), Idaho Code, is to be approved by written consent of the shareholders pursuant to section [30-29-704](#), Idaho Code:

(1) Written notice that appraisal rights are, are not, or may be available shall be sent 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, the notice must be accompanied by a copy of this chapter; and

(2) Written notice that appraisal rights are, are not, or may be available must be delivered together with the notice to nonconsenting and nonvoting shareholders required by section [30-29-704](#)(e) and (f), Idaho Code, may include the materials described in section [30-29-1322](#), Idaho Code, and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this chapter.

(d) Where corporate action described in section [30-29-1302](#)(a), Idaho Code, is proposed, or a merger pursuant to section [30-29-1105](#), Idaho Code, 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 must be accompanied by:

(1) Financial statements of the corporation that issued the shares that may be subject to appraisal, consisting of a balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the date of the notice, an income statement for that year, and a cash flow statement for that year; provided that, if such financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and

(2) The latest interim 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.

[30-29-1320, added 2015, ch. 243, sec. 68, p. 952; am. 2019, ch. 90, sec. 135, p. 313.]

30-29-1321. NOTICE OF INTENT TO DEMAND PAYMENT -- CONSEQUENCES OF VOTING OR CONSENTING. (a) If a corporate action specified in section [30-29-1302](#)(a), Idaho Code, 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:

(1) 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

(2) Shall not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed action.

(b) If a corporate action specified in section [30-29-1302](#)(a), Idaho Code, 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 sign a consent in favor of the proposed action with respect to that class or series of shares.

(c) If a corporate action specified in section [30-29-1302](#)(a), Idaho Code, does not require shareholder approval pursuant to section [30-29-1104](#)(j), Idaho Code, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares shall deliver to the corporation before the shares are purchased pursuant to the offer written notice of the shareholder's intent to demand payment if the proposed action

is effected; and shall not tender, or cause or permit to be tendered, any shares of such class or series in response to such offer.

(d) A shareholder who fails to satisfy the requirements of subsection (a), (b), or (c) of this section is not entitled to payment under this part.

[30-29-1321, added 2015, ch. 243, sec. 68, p. 952; am. 2019, ch. 90, sec. 136, p. 314.]

30-29-1322. APPRAISAL NOTICE AND FORM. (a) If a corporate action requiring appraisal rights under section [30-29-1302](#) (a), Idaho Code, becomes effective, the corporation shall deliver a written appraisal notice and form required by subsection (b) of this section to all shareholders who satisfy the requirements of section [30-29-1321](#) (a), (b), or (c), Idaho Code. In the case of a merger under section [30-29-1105](#), Idaho Code, the parent shall deliver an appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(b) The appraisal notice shall be delivered no earlier than the date the corporate action specified in section [30-29-1302](#) (a), Idaho Code, became effective, and no later than ten (10) days after such date and must:

(1) Supply a form that:

(i) Specifies the first date of any announcement to shareholders made before the date the corporate action became effective of the principal terms of the proposed corporate action;

(ii) If such announcement was made, requires the shareholder asserting appraisal rights to certify whether or not beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date; and

(iii) Requires the shareholder asserting appraisal rights to certify that such shareholder did not vote for or consent to the transaction as to the class or series of shares for which appraisal is sought;

(2) State:

(i) Where the form shall be sent and where certificates for certificated shares must be deposited and the date by which those certificates shall be deposited, which date may not be earlier than the date by which the corporation must receive the required form under subparagraph (ii) of this paragraph;

(ii) A date by which the corporation shall receive the form, which date may not be fewer than forty (40) days nor more than sixty (60) days after the date the appraisal notice in subsection (a) of this section is sent, 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;

(iii) The corporation's estimate of the fair value of the shares;

(iv) That, if requested in writing, the corporation will provide, to the shareholders so requesting, within ten (10) days after the date specified in subparagraph (ii) 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

(v) The date by which the notice to withdraw under section [30-29-1323](#), Idaho Code, shall be received, which date shall be within twenty (20) days after the date specified in subparagraph (ii) of this paragraph; and

(3) Be accompanied by a copy of this part.

[30-29-1322, added 2015, ch. 243, sec. 68, p. 953; am. 2019, ch. 90, sec. 137, p. 314.]

30-29-1323. PERFECTION OF RIGHTS -- RIGHT TO WITHDRAW. (a) A shareholder who receives notice pursuant to section [30-29-1322](#), Idaho Code, 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 the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to section [30-29-1322](#)(b)(2)(ii), Idaho Code. 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 section [30-29-1322](#)(b)(2)(ii), Idaho Code. If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under section [30-29-1325](#), Idaho Code. 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) A 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 section [30-29-1322](#)(b)(2)(v), Idaho Code. 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 that shareholder's share certificates where required, each by the date set forth in the notice described in section [30-29-1322](#)(b), Idaho Code, shall not be entitled to payment under this part.

[30-29-1323, added 2015, ch. 243, sec. 68, p. 953; am. 2019, ch. 90, sec. 138, p. 315.]

30-29-1324. PAYMENT. (a) Except as provided in section [30-29-1325](#), Idaho Code, within thirty (30) days after the form required by section [30-29-1322](#)(b)(2)(ii), Idaho Code, is due, the corporation shall pay in cash to those shareholders who complied with section [30-29-1323](#)(a), Idaho Code, the amount the corporation estimates to be the fair value of their shares, plus interest.

(b) The payment to each shareholder pursuant to subsection (a) of this section must be accompanied by:

(1) Financial statements of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the date of payment, an income statement for that year, a cash flow statement for that year, and the latest interim financial statements of such corporation, if any; provided however, that if such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information;

(2) 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 section [30-29-1322](#)(b)(2)(iii), Idaho Code; and

(3) A statement that shareholders described in subsection (a) of this section have the right to demand further payment under section [30-29-1326](#), Idaho Code, and that if any such shareholder does not do so within the time period specified in section [30-29-1326](#)(b), Idaho Code, such shareholder shall be deemed to have accepted the payment under subsection (a) of this section in full satisfaction of the corporation's obligations under this part.

[30-29-1324, added 2015, ch. 243, sec. 68, p. 954; am. 2019, ch. 90, sec. 139, p. 316.]

30-29-1325. AFTER ACQUIRED SHARES. (a) A corporation may elect to withhold payment required by section [30-29-1324](#), Idaho Code, 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 section [30-29-1322](#)(b)(1), Idaho Code.

(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 section [30-29-1322](#)(b)(2)(ii), Idaho Code, is due, notify all shareholders who are described in subsection (a) of this section:

(1) Of the information required by section [30-29-1324](#)(b)(1), Idaho Code;

(2) Of the corporation's estimate of fair value pursuant to section [30-29-1324](#)(b)(2), Idaho Code;

(3) That they may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under section [30-29-1326](#), Idaho Code;

(4) That those shareholders who wish to accept such offer shall so notify the corporation of their acceptance of the corporation's offer within thirty (30) days after receiving the offer; and

(5) That those shareholders who do not satisfy the requirements for demanding appraisal under section [30-29-1326](#), Idaho Code, 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)(4) of this section, the corporation shall pay in cash the amount it offered under subsection (b)(2) of this section plus interest to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

(d) Within forty (40) days after delivering the notice described in subsection (b) of this section, the corporation shall pay in cash the amount it offered to pay under subsection (b)(2) of this section plus interest to each shareholder described in subsection (b)(5) of this section.

[30-29-1325, added 2015, ch. 243, sec. 68, p. 954; am. 2019, ch. 90, sec. 140, p. 316.]

30-29-1326. PROCEDURE IF SHAREHOLDER DISSATISFIED WITH PAYMENT OR OFFER. (a) A shareholder paid pursuant to section [30-29-1324](#), Idaho Code, who is dissatisfied with the amount of the payment shall notify the corporation in writing of that shareholder's estimate of the fair value of the shares and demand payment of that estimate, less any payment under section [30-29-1324](#), Idaho Code, plus interest. A shareholder offered payment under section [30-29-1325](#), Idaho Code, who is dissatisfied with that offer shall re-

ject 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 section [30-29-1324](#) or [30-29-1325](#), Idaho Code, 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.

[30-29-1326, added 2015, ch. 243, sec. 68, p. 955; am. 2019, ch. 90, sec. 141, p. 317.]

30-29-1330. COURT ACTION. (a) If a shareholder makes demand for payment under section [30-29-1326](#), Idaho Code, that 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 in cash to each shareholder the amount the shareholder demanded pursuant to section [30-29-1326](#), Idaho Code, plus interest.

(b) The corporation shall commence the proceeding in the appropriate court of the county where the corporation's principal office is located, or, if none in this state, Ada county. If the corporation is a foreign corporation, it shall commence the proceeding in the county in this state where the principal office of the domestic corporation merged with the foreign corporation was located or, if the domestic corporation did not have its principal office in this state at the time of the transaction, in Ada county.

(c) The corporation shall make all shareholders, regardless of whether they are 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 a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them or in any amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(e) Each shareholder made a party to the proceeding is entitled to judgment:

- (1) For the amount, if any, by which the court finds the fair value of the shareholder's shares exceeds the amount paid by the corporation to the shareholder for such shares, plus interest; or
- (2) For the fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under section [30-29-1325](#), Idaho Code.

[30-29-1330, added 2015, ch. 243, sec. 68, p. 955; am. 2019, ch. 90, sec. 142, p. 317.]

30-29-1331. COURT COSTS AND EXPENSES. (a) The court in an appraisal proceeding commenced under section [30-29-1330](#), Idaho Code, shall determine all court costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the court costs against the corporation, except that the court may assess court costs against all or some of the shareholders demanding appraisal, in amounts that the court finds equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this part.

(b) The court in an appraisal proceeding may also assess the expenses of the respective parties, in amounts the court finds equitable:

(1) 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 section [30-29-1320](#), [30-29-1322](#), [30-29-1324](#) or [30-29-1325](#), Idaho Code; or

(2) Against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds that the party against whom expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this part.

(c) If the court in an appraisal proceeding finds that the expenses incurred by any shareholder were of substantial benefit to other shareholders similarly situated and that such expenses should not be assessed against the corporation, the court may direct that such 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 section [30-29-1324](#), [30-29-1325](#) or [30-29-1326](#), Idaho Code, 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.

[30-29-1331, added 2015, ch. 243, sec. 68, p. 956; am. 2019, ch. 90, sec. 143, p. 318.]

30-29-1340. OTHER REMEDIES LIMITED. (a) The legality of a proposed or completed corporate action described in section [30-29-1302](#)(a), Idaho Code, 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:

(1) Was not authorized and approved in accordance with the applicable provisions of:

(i) Part 9, 10, 11, or 12 of this chapter;

(ii) The articles of incorporation or bylaws; or

(iii) The resolution of the board of directors authorizing the corporate action;

(2) 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;

(3) Is an interested transaction, unless it has been recommended by the board of directors in the same manner as is provided in section [30-29-862](#), Idaho Code, and has been approved by the shareholders in the same manner as is provided in section [30-29-863](#), Idaho Code, as if the inter-

ested transaction were a director's conflicting interest transaction;
or

(4) Is approved by less than unanimous consent of the voting shareholders pursuant to section [30-29-704](#), Idaho Code, if:

(i) 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

(ii) 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.

[30-29-1340, added 2019, ch. 90, sec. 144, p. 319.]

PART 14 DISSOLUTION

30-29-1401. DISSOLUTION BY INCORPORATORS OR INITIAL DIRECTORS. 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:

- (a) The name of the corporation;
- (b) The date of its incorporation;
- (c) Either:
 - (1) That none of the corporation's shares has been issued; or
 - (2) That the corporation has not commenced business;
- (d) That no debt of the corporation remains unpaid;
- (e) That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and
- (f) That a majority of the incorporators or initial directors authorized the dissolution.

[30-29-1401, added 2015, ch. 243, sec. 69, p. 956; am. 2019, ch. 90, sec. 145, p. 319.]

30-29-1402. DISSOLUTION BY BOARD OF DIRECTORS AND SHAREHOLDERS. (a) The board of directors may propose dissolution for submission to the shareholders by first adopting a resolution authorizing the dissolution.

(b) For a proposal to dissolve to be adopted, the proposal to dissolve shall then be approved by the shareholders. In submitting the proposal to dissolve to the shareholders for approval, the board of directors shall recommend that the shareholders approve the dissolution, unless either the board of directors determines that because of conflicts of interest or other special circumstances it should make no recommendation or section [30-29-826](#), Idaho Code, applies. In either case, the board shall inform the shareholders of the basis for its so proceeding.

(c) The board of directors may set conditions for the approval of the proposal for dissolution by shareholders or the effectiveness of the dissolution.

(d) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the dissolution is to be sub-

mitted for approval. The notice must 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, a greater quorum, 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 exists consisting of a majority of the votes entitled to be cast on the proposal to dissolve.

[30-29-1402, added 2015, ch. 243, sec. 69, p. 957; am. 2019, ch. 90, sec. 146, p. 320.]

30-29-1403. 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:

- (1) The name of the corporation;
- (2) The date that dissolution was authorized; and
- (3) 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 chapter and by the articles of incorporation.

(b) The articles of dissolution shall take effect at the effective date determined in accordance with section [30-29-123](#), Idaho Code. A corporation is dissolved upon the effective date of its articles of dissolution.

(c) For purposes of sections [30-29-1401](#) through [30-29-1409](#), Idaho Code, "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.

[30-29-1403, added 2015, ch. 243, sec. 69, p. 957; am. 2019, ch. 90, sec. 147, p. 320.]

30-29-1404. REVOCATION OF DISSOLUTION. (a) A corporation may revoke its dissolution within one hundred twenty (120) days after its effective date.

(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:

- (1) The name of the corporation;
- (2) The effective date of the dissolution that was revoked;
- (3) The date that the revocation of dissolution was authorized;
- (4) If the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;
- (5) If the corporation's board of directors revoked a dissolution as authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
- (6) If shareholder action was required to revoke the dissolution, a statement that the revocation was duly approved by the shareholders in

the manner required by this chapter and by the articles of incorporation.

(d) The articles of revocation of dissolution shall take effect at the effective date determined in accordance with section [30-29-123](#), Idaho Code.

(e) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(f) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

[30-29-1404, added 2015, ch. 243, sec. 69, p. 957; am. 2019, ch. 90, sec. 148, p. 321.]

30-29-1405. EFFECT OF DISSOLUTION. (a) A corporation that has dissolved continues its corporate existence, but the dissolved corporation may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

- (1) Collecting its assets;
- (2) Disposing of its properties that will not be distributed in kind to its shareholders;
- (3) Discharging or making provision for discharging its liabilities;
- (4) Making distributions of its remaining assets among its shareholders according to their interests; and
- (5) Doing every other act necessary to wind up and liquidate its business and affairs.

(b) Dissolution of a corporation does not:

- (1) Transfer title to the corporation's property;
- (2) Prevent transfer of its shares or securities;
- (3) Subject its directors or officers to standards of conduct different from those prescribed in part 8 of this chapter;
- (4) 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;
- (5) Prevent commencement of a proceeding by or against the corporation in its corporate name;
- (6) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
- (7) Terminate the authority of the registered agent of the corporation.

(c) A distribution in liquidation under this section may only be made by a dissolved corporation. For purposes of determining the shareholders entitled to receive a distribution in liquidation, the board of directors may fix a record date for determining shareholders entitled to a distribution in liquidation, which date may not be retroactive. If the board of directors does not fix a record date for determining shareholders entitled to a distribution in liquidation, the record date is the date the board of directors authorizes the distribution in liquidation.

[30-29-1405, added 2015, ch. 243, sec. 69, p. 958; am. 2019, ch. 90, sec. 149, p. 321.]

30-29-1406. 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 must:

- (1) Describe information that must be included in a claim;
- (2) Provide a mailing address where a claim may be sent;
- (3) State the deadline, which may not be fewer than one hundred twenty (120) days after the written notice is effective, by which the dissolved corporation shall receive the claim; and
- (4) State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

- (1) 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
- (2) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety (90) days after the rejection notice is effective.

(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.

[30-29-1406, added 2015, ch. 243, sec. 69, p. 958; am. 2019, ch. 90, sec. 150, p. 322.]

30-29-1407. OTHER CLAIMS AGAINST DISSOLVED CORPORATION. (a) A dissolved corporation may publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

(b) The notice must:

- (1) Be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was located or, if none in this state, in Ada county, or be posted conspicuously for at least thirty (30) days on the dissolved corporation's website;
- (2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and
- (3) State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within two (2) years after the publication of the notice.

(c) If the dissolved corporation publishes a 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 notice:

- (1) A claimant who was not given written notice under section [30-29-1406](#), Idaho Code;
- (2) A claimant whose claim was timely sent to the dissolved corporation but not acted on by the corporation; and
- (3) 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 section [30-29-1406](#)(c), Idaho Code, or subsection (c) of this section may be enforced:

- (1) Against the dissolved corporation, to the extent of its undistributed assets; or

(2) Except as provided in section [30-29-1408](#)(d), Idaho Code, if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder 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.

[30-29-1407, added 2015, ch. 243, sec. 69, p. 959; am. 2019, ch. 90, sec. 151, p. 322.]

30-29-1408. COURT PROCEEDINGS. (a) A dissolved corporation that has published a notice under section [30-29-1407](#), Idaho Code, may file an application with the district court of the county where the dissolved corporation's principal office is located, or, if none in this state, Ada county, 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 section [30-29-1407](#)(c), Idaho Code.

(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 such 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.

[30-29-1408, added 2015, ch. 243, sec. 69, p. 959; am. 2019, ch. 90, sec. 152, p. 323.]

30-29-1409. DIRECTOR DUTIES. (a) Directors shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims and make distributions in liquidation of assets to shareholders after payment or provision for claims.

(b) Directors of a dissolved corporation that has disposed of claims under section [30-29-1406](#), [30-29-1407](#), or [30-29-1408](#), Idaho Code, shall not be liable for breach of subsection (a) of this section, with respect to claims against the dissolved corporation that are barred or satisfied under section [30-29-1406](#), [30-29-1407](#), or [30-29-1408](#), Idaho Code.

[30-29-1409, added 2015, ch. 243, sec. 69, p. 960; am. 2019, ch. 90, sec. 153, p. 324.]

30-29-1430. GROUNDS FOR JUDICIAL DISSOLUTION. (a) The Idaho district court designated in section [30-29-1431](#) (a), Idaho Code, may dissolve a corporation:

- (1) In a proceeding by the attorney general if it is established that:
 - (i) The corporation obtained its articles of incorporation through fraud; or
 - (ii) The corporation has continued to exceed or abuse the authority conferred upon it by law;
- (2) In a proceeding by a shareholder if 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 the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;
 - (ii) 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;
 - (iii) 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
 - (iv) The corporate assets are being misapplied or wasted;
- (3) In a proceeding by a creditor if it is established that:
 - (i) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or
 - (ii) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent;
- (4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision; or
- (5) 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) The provisions of subsection (a) (2) of this section shall not apply in the case of a corporation that, on the date of the filing of the proceeding, has a class or series of shares that is:

- (1) A covered security under section 18(b) (1) (A) or (B) of the securities act of 1933; or
- (2) Not a covered security, but is held by at least three hundred (300) shareholders and the shares outstanding have a market value of at least twenty million dollars (\$20,000,000), exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors, and beneficial shareholders and voting trust beneficial owners owning more than ten percent (10%) of such shares.

(c) As used in subsection (a) of this section, "shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner; and in subsection (b) of this section, "shareholder" means a record shareholder, a beneficial shareholder, and a voting trust beneficial owner.

[30-29-1430, added 2015, ch. 243, sec. 69, p. 960; am. 2019, ch. 90, sec. 154, p. 324.]

30-29-1431. PROCEDURE FOR JUDICIAL DISSOLUTION. (a) Venue for a proceeding by the attorney general to dissolve a corporation lies in Ada county. Venue for a proceeding brought by any other party named in section [30-29-1430](#) (a), Idaho Code, lies in the county where a corporation's principal office is or was located or, if none in this state, in Ada county.

(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 during the proceeding 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 to dissolve a corporation under section [30-29-1430](#) (a) (2), Idaho Code, the corporation shall deliver 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 section [30-29-1434](#), Idaho Code, and accompanied by a copy of section [30-29-1434](#), Idaho Code.

[30-29-1431, added 2015, ch. 243, sec. 69, p. 960; am. 2019, ch. 90, sec. 155, p. 325.]

30-29-1432. RECEIVERSHIP OR CUSTODIANSHIP. (a) Unless an election to purchase has been filed under section [30-29-1434](#), Idaho Code, 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 jurisdiction over the corporation and all of its property, wherever located.

(b) The court may appoint an individual or a domestic or foreign corporation or eligible entity as a receiver or custodian, which, if a foreign corporation or foreign eligible entity, must be registered to do business in this state. 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:

(1) The receiver:

(i) May dispose of all or any part of the assets of the corporation, wherever located, at a public or private sale; and

(ii) May sue and defend in the receiver's own name as receiver of the corporation in all courts of this state;

(2) The 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 affairs of the corporation in the best interests of its shareholders and creditors;

The receiver or custodian shall have such other powers and duties as the court may provide in the appointing order, which may be amended from time to time.

(d) The court during a receivership, may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver.

(e) The court from time to time during the receivership or custodianship may order compensation paid and expenses paid or reimbursed to the receiver or custodian and his counsel from the assets of the corporation or proceeds from the sale of the assets.

[30-29-1432, added 2015, ch. 243, sec. 69, p. 961; am. 2019, ch. 90, sec. 156, p. 325.]

30-29-1433. DECREE OF DISSOLUTION. (a) If after a hearing the court determines that one (1) or more grounds for judicial dissolution described in section [30-29-1430](#), Idaho Code, 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 for filing.

(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 section [30-29-1405](#), Idaho Code, and the notification of claimants in accordance with sections [30-29-1406](#) and [30-29-1407](#), Idaho Code.

[30-29-1433, added 2015, ch. 243, sec. 69, p. 961; am. 2019, ch. 90, sec. 157, p. 326.]

30-29-1434. ELECTION TO PURCHASE IN LIEU OF DISSOLUTION. (a) In a proceeding under section [30-29-1430](#)(a)(2), Idaho Code, to dissolve a corporation, 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 section [30-29-1430](#)(a)(2), Idaho Code, 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 shall file notice of their intention to join in the purchase no later than thirty (30) days after the effectiveness 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 participate in the 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 section [30-29-1430](#)(a)(2), Idaho Code, may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his or her 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 and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of the 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 proceedings under section [30-29-1430](#) (a) (2), Idaho Code, and determine the fair value of the petitioner's shares as of the day before the date on which the petition under section [30-29-1430](#) (a) (2), Idaho Code, 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 interests of equity, provision for security to assure payment of the purchase price and any additional expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating the petitioner's shares among holders of different classes or series of shares, the court should attempt to preserve the existing distribution of voting rights among holders of different classes or series insofar as practicable and may direct that holders of a specific class or classes or series 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 section [30-29-1430](#) (a) (2) (ii) or (iv), Idaho Code, it may award expenses to the petitioning shareholder.

(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 section [30-29-1430](#) (a) (2), Idaho Code, 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 by the order of the court that shall be enforceable in the same manner as any other judgment.

(g) The purchase ordered pursuant to subsection (e) of this section shall be made within ten (10) days after the date the order becomes final.

(h) Any payment by the corporation pursuant to an order under subsection (c) or (e) of this section, other than an award of expenses pursuant to subsection (e) of this section, is subject to the provisions of section [30-29-640](#), Idaho Code.

[30-29-1434, added 2015, ch. 243, sec. 69, p. 962; am. 2019, ch. 90, sec. 158, p. 326.]

30-29-1440. 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.

[30-29-1440, added 2015, ch. 243, sec. 69, p. 963.]

PART 16
RECORDS AND REPORTS

30-29-1601. CORPORATE RECORDS. (a) A corporation shall maintain the following records:

- (1) Its articles of incorporation as currently in effect;
- (2) Any notices to shareholders referred to in section [30-29-120](#)(d)(5), Idaho Code, specifying facts on which a filed document is dependent if those facts are not included in the articles of incorporation or otherwise available as specified in section [30-29-120](#)(d)(5), Idaho Code;
- (3) Its bylaws currently in effect;
- (4) All written communications within the past three (3) years to shareholders generally;
- (5) Minutes of all meetings of, and records of all actions taken without a meeting by, its shareholders, its board of directors, and board committees established under section [30-29-825](#), Idaho Code;
- (6) A list of the names and business addresses of its current directors and officers; and
- (7) Its most recent annual report delivered to the secretary of state pursuant to section [30-21-213](#), Idaho Code.

(b) A corporation shall maintain all annual financial statements prepared for the corporation for its last three (3) fiscal years, or such shorter period of existence, and any audit or other reports with respect to such financial statements.

(c) A corporation shall maintain accounting records in a form that permits preparation of its financial statements.

(d) A corporation shall maintain a record of its current shareholders in alphabetical order by class or series of shares showing the number and class or series of shares held by each shareholder. Nothing contained in this subsection shall require the corporation to include in such record the electronic mail address or other electronic contact information of a shareholder.

(e) A corporation shall maintain the records specified in this section in a manner so that they may be made available for inspection within a reasonable time.

[30-29-1601, added 2015, ch. 243, sec. 71, p. 963; am. 2017, ch. 58, sec. 12, p. 108; am. 2019, ch. 90, sec. 159, p. 328.]

30-29-1602. INSPECTION RIGHTS OF 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 section [30-29-1601](#)(a), Idaho Code, excluding minutes of meetings of, and records of actions taken without a meeting by, the corporation's board of directors and board committees established under section [30-29-825](#), Idaho Code, if the shareholder gives the corporation a signed 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 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 corpo-

ration a signed written notice of the shareholder's demand at least five (5) days before the date on which the shareholder wishes to inspect and copy:

- (1) The financial statements of the corporation maintained in accordance with section [30-29-1601](#)(b), Idaho Code;
- (2) Accounting records of the corporation;
- (3) Excerpts from minutes of any meeting of, or records of any actions taken without a meeting by the corporation's board of directors and board committees maintained in accordance with section [30-29-1601](#)(a), Idaho Code; and
- (4) The record of shareholders maintained in accordance with section [30-29-1601](#)(d), Idaho Code.

(c) A shareholder may inspect and copy the records described in subsection (b) of this section only if:

- (1) The shareholder's demand is made in good faith and for a proper purpose;
- (2) The shareholder's demand describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and
- (3) The records are directly connected with the shareholder's purpose.

(d) The corporation may impose reasonable restrictions on the confidentiality, use, or distribution of records described in subsection (b) of this section.

(e) For any meeting of shareholders for which the record date for determining shareholders entitled to vote at the meeting is different than the record date for notice of the meeting, any person who becomes a shareholder subsequent to the record date for notice of the meeting and is entitled to vote at the meeting is entitled to obtain from the corporation upon request the notice and any other information provided by the corporation to shareholders in connection with the meeting, unless the corporation has made such information generally available to shareholders by posting it on its website or by other generally recognized means. Failure of a corporation to provide such information does not affect the validity of action taken at the meeting.

(f) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(g) This section does not affect:

- (1) The right of a shareholder to inspect records under section [30-29-720](#), Idaho Code, or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or
- (2) The power of a court, independently of this chapter, to compel the production of corporate records for examination and to impose reasonable restrictions as provided in section [30-29-1604](#)(c), Idaho Code, provided that, in the case of production of records described in subsection (b) of this section at the request of a shareholder, the shareholder has met the requirements of subsection (c) of this section.

(h) For purposes of this section, "shareholder" means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

[30-29-1602, added 2015, ch. 243, sec. 71, p. 964; am. 2019, ch. 90, sec. 160, p. 329.]

30-29-1603. SCOPE OF INSPECTION RIGHT. (a) A shareholder may appoint an agent or attorney to exercise the shareholder's inspection and copying rights under section [30-29-1602](#), Idaho Code.

(b) The corporation may, if reasonable, satisfy the right of a shareholder to copy records under section [30-29-1602](#), Idaho Code, by furnishing to the shareholder copies by photocopy or other means chosen by the corporation, including furnishing copies through an electronic transmission.

(c) The corporation may comply at its expense with a shareholder's demand to inspect the record of shareholders under section [30-29-1602](#) (b) (4), Idaho Code, by providing the shareholder with a list of shareholders that was compiled no earlier than the date of the shareholder's demand.

(d) The corporation may impose a reasonable charge to cover the costs for providing copies of documents to the shareholder that may be based on an estimate of such costs.

[30-29-1603, added 2015, ch. 243, sec. 71, p. 965; am. 2019, ch. 90, sec. 161, p. 330.]

30-29-1604. COURT-ORDERED INSPECTION. (a) If a corporation does not allow a shareholder who complies with section [30-29-1602](#) (a), Idaho Code, to inspect and copy any records required by that section to be available for inspection, the Idaho district court of the county where the corporation's principal office is located or, if none in this state, Ada county, 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 who complies with section [30-29-1602](#) (b), Idaho Code, to inspect and copy the records required by that section, the shareholder who complies with section [30-29-1602](#) (c), Idaho Code, may apply to the Idaho district court of the county where the corporation's principal office is located or, if none in this state, Ada county, 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 under section [30-29-1602](#) (b), Idaho Code, it may impose reasonable restrictions on their confidentiality, use, or distribution by the demanding shareholder, and it shall also order the corporation to pay the shareholder's expenses incurred to obtain the order unless the corporation establishes that it refused inspection in good faith because the corporation had:

- (1) A reasonable basis for doubt about the right of the shareholder to inspect the records demanded; or
- (2) Required reasonable restrictions on the confidentiality, use, or distribution of the records demanded to which the demanding shareholder had been unwilling to agree.

[30-29-1604, added 2015, ch. 243, sec. 71, p. 965; am. 2019, ch. 90, sec. 162, p. 331.]

30-29-1605. INSPECTION RIGHTS OF 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 board 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 is located, or if none in this state, Ada county, 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 such inspection rights unless the corporation establishes that the director is not entitled to such 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 incurred in connection with the application.

[30-29-1605, added 2015, ch. 243, sec. 71, p. 965; am. 2019, ch. 90, sec. 163, p. 331.]

30-29-1620. FINANCIAL STATEMENTS FOR SHAREHOLDERS. (a) Upon the written request of a shareholder, a corporation shall deliver or make available to such requesting shareholder by posting on its website, or by other generally recognized means, annual financial statements for the most recent fiscal year of the corporation for which annual financial statements have been prepared for the corporation. If financial statements have been prepared for the corporation on the basis of generally accepted accounting principles for such specified period, the corporation shall deliver or make available such financial statements to the requesting shareholder. If the annual financial statements to be delivered or made available to the requesting shareholder are audited or otherwise reported upon by a public accountant, the report shall also be delivered or made available to the requesting shareholder.

(b) A corporation shall deliver, or make available and provide written notice of availability of, the financial statements required under subsection (a) of this section to the requesting shareholder within five (5) business days of delivery of such written request to the corporation.

(c) A corporation may fulfill its responsibilities under this section by delivering the specified financial statements, or otherwise making them available, in any manner permitted by the applicable rules and regulations of the United States securities and exchange commission.

(d) Notwithstanding the provisions of subsections (a), (b), and (c) of this section:

(1) As a condition to delivering, or making available, financial statements to a requesting shareholder, the corporation may require the requesting shareholder to agree to reasonable restrictions on the confidentiality, use, and distribution of such financial statements; and

(2) The corporation may, if it reasonably determines that the shareholder's request is not made in good faith or for a proper purpose, decline to deliver or make available such financial statements to that shareholder.

(e) If a corporation does not respond to a shareholder's request for annual financial statements pursuant to this section in accordance with subsection (b) of this section within five (5) business days of delivery of such request to the corporation:

(1) The requesting shareholder may apply to the Idaho district court of the county where the corporation's principal office is located or, if none in this state, Ada county, for an order requiring delivery of or access to the requested financial statements. The court shall dispose of an application under this subsection on an expedited basis.

(2) If the court orders delivery or access to the requested financial statements, it may impose reasonable restrictions on their confidentiality, use, or distribution.

(3) In such proceeding, if the corporation has declined to deliver or make available such financial statements because the shareholder had been unwilling to agree to restrictions proposed by the corporation on the confidentiality, use, and distribution of such financial statements, the corporation shall have the burden of demonstrating that the restrictions proposed by the corporation were reasonable.

(4) In such proceeding, if the corporation has declined to deliver or make available such financial statements pursuant to subsection (d) (2) of this section, the corporation shall have the burden of demonstrating that it had reasonably determined that the shareholder's request was not made in good faith or for a proper purpose.

(5) If the court orders delivery or access to the requested financial statements, it shall order the corporation to pay the shareholder's expenses incurred to obtain such order unless the corporation establishes that it had refused delivery or access to the requested financial statements because the shareholder had refused to agree to reasonable restrictions on the confidentiality, use, or distribution of the financial statements or that the corporation had reasonably determined that the shareholder's request was not made in good faith or for a proper purpose.

[30-29-1620, added 2019, ch. 90, sec. 167, p. 332.]

PART 17 TRANSITION PROVISIONS

30-29-1701. APPLICATION TO EXISTING DOMESTIC CORPORATIONS. This chapter applies to all 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.

[30-29-1701, added 2015, ch. 243, sec. 72, p. 967; am. 2019, ch. 90, sec. 168, p. 333.]

30-29-1702. APPLICATION TO EXISTING FOREIGN CORPORATIONS. A foreign corporation registered or authorized to do business in this state on the effective date of this chapter is subject to this chapter, is deemed to be registered to do business in this state, and is not required to file a foreign registration statement under this chapter.

[30-29-1702, added 2015, ch. 243, sec. 72, p. 967; am. 2019, ch. 90, sec. 169, p. 333.]

30-29-1703. SAVING PROVISIONS. (a) Except as to procedural provisions, this chapter does not affect a pending action, proceeding, or a right accrued before the effective date of this chapter, and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if this chapter had not become effective.

(b) If a penalty or punishment for violation of a statute or rule is reduced by this chapter, the penalty, if not already imposed, shall be imposed in accordance with this chapter.

[30-29-1703, added 2015, ch. 243, sec. 72, p. 967; am. 2019, ch. 90, sec. 170, p. 333.]

30-29-1704. SEVERABILITY. If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of the chapter are severable.

[30-29-1704, added 2015, ch. 243, sec. 72, p. 967; am. 2019, ch. 90, sec. 171, p. 334.]