



Weekly Information Sheet 04

# CORPORATE FORMATION Continued

## Corporate Formation

### • The Organizational Meeting – Generally

**Organizational Meeting Required:** After the corporate existence has begun, an organization meeting of the incorporator or incorporators must be held [BCL §403 (a)].

**Purpose of the Meeting:** The purpose of the meeting is for the adoption of by-laws, the election of directors to hold office until the first annual meeting of shareholders, the issuance of shares, and for the transaction of such other business as may come before the meeting.

**Time and Notice for the Meeting:** The meeting may be held at the call of any incorporator, who shall give at least five days' notice thereof by mail to each other incorporator, which notice shall set forth the time and place of the meeting. Notice need not be given to any incorporator who attends the meeting or submits a signed waiver.

**Quorum and Proxies:** A majority of incorporators shall constitute a quorum and the act of the majority present at a meeting at which a quorum is present shall be the act of the incorporators. An incorporator may act in person or by proxy.

**Alternative to Meeting:** Any action permitted to be taken at the organization meeting may be taken without a meeting if each incorporator agrees.

### • The Organizational Meeting – Issuance of Shares

Every corporation shall have power to create and issue the number of shares stated in its certificate of incorporation. The Certificate of Incorporation establishes the authorized shares.

**Defined:** Black's law dictionary defines a "Share" to be:

***"One of the definite number of equal parts into which the capital stock of a corporation is divided, and which represents and equity, ownership interest in the corporation".***

- ***Shares Must be Represented by Signed Certificates;***
- ***Certificates Are Only Evidence of Share Ownership;***
- ***Every Share Entitles Owner to One Vote;***
- ***Certificate of Incorporation Controls Stock Issuance (How Many Shares are issued)***

# Corporate Formation - Continued

## •The Organizational Meeting – Issuance of Shares Continued

### • **Time and Manner of Issuance:**

- The initial stock issuance generally takes place at the organizational meeting;
- Such shares are “issued” by the board of directors, when, by board resolution, actually sell the stock to subscribing shareholders;
- This sale takes place in accordance with subscriptions, which are made between promoters and prospective shareholders, and such stock purchases are recorded by the secretary so as to confirm the share’s voting rights.

### • **Payment for Shares shall consist of money, property, labor or services;**

- This payment by shareholders for the stock issued is how the corporation raises capital to operate the business for profit.

### • **Treasury Stock is shares which have been authorized but not sold to a shareholder;**

### • **Voting rights: Each share purchased entitles shareholder to cast one vote;**

- Such vote applies to the election of members of the board of directors, as well as to certain corporate governance matters as set forth in the certificate.

**Function of the Board:** Policy decisions of a corporation are made by a board or directors.

• **Corporate Governance:** This corporate “governance” is a “republican” form, whereby shareholders elect members of the board of directors, to represent them;

• **Size of the Board:** The size of the board of directors (how many members it contains) is generally contained in the certificate of incorporation, or in the by-laws;

• **Board Meetings:** Corporate action of the board of directors shall be taken at a meeting of the board;

• **Meeting Notice:** Notice of meetings of the board shall be made in accordance with the bylaws;

• **Majority Vote Required:** All decisions of the board, shall be accomplished by a majority vote;

• **Written Resolutions Recorded:** All actions of the board shall generally take the form of written resolutions;

• **Length of Terms:** The length of the term of the members is contained in the certificate or the bylaws;

## •The Organizational Meeting – Election of the First Board

**Election of the First Board of Directors:** The corporation’s first board of directors is generally established by an election, overseen by the incorporators, held at the initial organizational meeting. Subsequent elections are held at the corporation’s annual meeting.

# Corporate Formation - Continued

## •The Organizational Meeting – Appointment of Officers

**Functions of the Board and Officers:** Where policy decisions of a corporation are made by a board or directors, such policy decisions are then implemented by appointed officers of the corporation, who act as the managers of the corporation.

- **Officers of the Corporation:** The corporation's officers perform the duties and responsibilities assigned to them by the board of directors for the management of the corporation;
- **Appointed by Board Resolution:** The certificate of incorporate may, but generally does not, provide for election of officers by the shareholders. Accordingly, officers are generally appointed by resolution of the board of directors, and include the following:
  - **Chief Executive Officer;**
  - **President;**
  - **Vice President(s);**
  - **Chief Financial Officer;**
  - **Treasurer; and**
  - **Secretary.**
- **Term of Office of Officers:** Unless otherwise provided in the certificate of incorporation or the bylaws, all officers shall be appointed to hold office until the meeting of the board following the next annual meeting of shareholders.

**First Appointment and Removal of Officers:** The first appointment of the initial officers of the corporation is often done at the organizational meeting, and any officer appointed by the board may be removed by the board with or without cause.

## •The Organizational Meeting – Adoption of Bylaws

**What are Bylaws:**

- Whereas the Certificate of Incorporation is like the Constitution of a Corporation, its Bylaws are like its Statutes.
- Bylaws are the rules and regulations enacted by a corporation to govern its affairs, and that of its shareholders, directors, and officers.
- Bylaws are adopted by the board of directors, when authorized by the certificate of incorporation, and by the shareholders when not so permitted.
- The Bylaws are subordinate to the general law of the state, the business corporation law, and the certificate of incorporation, and any provision of a Bylaw that conflicts with such superior authority invalid.
- Bylaws that are valid are binding on all shareholders, directors, officers and employees of the corporation, regardless of whether they know of the existence of those bylaws or were among the majority that consented to their adoption.

**When are Bylaws Adopted:** The initial Bylaws of a corporation are adopted by its incorporator or incorporators at the organization meeting.

Thereafter, Bylaws may be adopted, amended or repealed, pursuant to resolution, by a majority vote of the directors (if so permitted by the certificate of incorporation).

**What is Contained Within Bylaws:** The Bylaws may contain any provision relating to the business of the corporation, the conduct of its affairs, its rights or powers, or the rights or powers of its shareholders, directors, officers, or employees, not inconsistent with the business corporation law or any other statute, or the certificate of incorporation.