

## BUSINESS CORPORATION ACT (EXCERPT)

Act 284 of 1972

### CHAPTER 3

#### CAPITAL STRUCTURE AND CORPORATE FINANCE

##### **450.1301 Issuance and classes of shares; rights, preferences, and limitations.**

Sec. 301. (1) A corporation may issue the number of shares authorized in its articles of incorporation. The shares may be all of 1 class or may be designated and issued in 1 or more classes. Each class shall consist of shares having the designations and relative voting, distribution, dividend, liquidation, and other rights, preferences, and limitations, consistent with this act, as stated in the articles of incorporation. The articles of incorporation may deny, limit, or otherwise prescribe the voting rights and may limit or otherwise prescribe the distribution, dividend, or liquidation rights of shares of any class.

(2) If the shares are designated and issued in more than 1 class, the shares of each class shall be designated to distinguish them from the shares of any other classes.

(3) Subject to the designations, relative rights, preferences, and limitations applicable to separate series within a class of shares under section 302, each share shall be equal to every other share of the same class.

(4) Any of the voting, distribution, liquidation, or other rights, preferences, or limitations of a class or series may be made dependent upon facts or events ascertainable outside of the articles of incorporation or the resolution of the board adopted under section 302(3), if the manner in which the facts or events operate on the rights, preferences, or limitations is set forth in the articles of incorporation or board resolution.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2018, Act 85, Eff. June 24, 2018.

##### **450.1301a Amendment deleting reference to par value.**

Sec. 301a. The board by resolution may adopt and file an amendment of the articles of incorporation deleting any reference to par value.

**History:** Add. 1989, Act 121, Eff. Oct. 1, 1989.

##### **450.1302 Class of shares; division and issuance in series; rights and preferences; certificate; resolution eliminating class or series of shares; subsequent resolution.**

Sec. 302. (1) If provided for in the articles of incorporation or a board resolution adopted under subsection (3), a class of shares may be designated and issued in 1 or more series. The shares of each series shall be designated to distinguish them from the shares of any other series and classes.

(2) Any series of any class and the variations in the relative rights and preferences among different series may be established in the articles of incorporation.

(3) If the articles of incorporation authorize the board, to the extent that the articles of incorporation have not established classes or series of shares and established variations in the relative rights and preferences among those classes or series, the board by resolution may designate shares as 1 or more classes or may designate a class into 1 or more series, and, within the limitations set forth in the articles of incorporation, may establish the relative rights and preferences of the shares of those classes or series. If the board adopts a resolution described in this subsection, the corporation shall file a certificate that contains the resolution of the board with the administrator. When filed, the certificate described in this subsection is considered an amendment to the articles of incorporation.

(4) Unless otherwise provided in the articles of incorporation, the board by resolution may eliminate a class or series of shares or amend or alter the relative rights and preferences or designations of a class or series, if there are no outstanding shares of the class or series, no outstanding shares or bonds convertible into shares of the class or series, or other rights, options, or warrants issued by the corporation that could require issuing shares of the class or series. If the board adopts a resolution described in this subsection, the corporation shall file a certificate that contains the resolution of the board with the administrator. When filed, the certificate described in this subsection is considered an amendment to the articles of incorporation and has the effect of eliminating from the articles of incorporation, or amending or altering, as applicable, all matters included in the articles of incorporation concerning the affected class or series of stock.

(5) The filing of a certificate described in subsection (3) or (4) or the filing of restated articles of incorporation does not prohibit the board of directors from subsequently adopting a resolution authorized under this section.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2018, Act 85, Eff. June 24, 2018.

#### **450.1303 Convertible shares and bonds; increase in shares to satisfy conversion privileges.**

Sec. 303. (1) If the articles of incorporation provide, subject to restrictions in section 304, a corporation may issue shares convertible at the option of the holder or the corporation or upon the happening of a specified event into shares of any class, into shares of any series of any class, or into bonds. Shares may be converted into bonds only if the corporation could at the time of conversion have purchased, redeemed, or otherwise acquired the shares by issuing the bonds under the restrictions of section 345. Authorized shares, issued or unissued, may be made convertible as provided in this subsection within the period and upon terms and conditions authorized in the articles of incorporation.

(2) Unless otherwise provided in the articles of incorporation, and subject to the restrictions of section 304, a corporation may issue its bonds convertible at the option of the holder into other bonds or into shares of the corporation within the period and upon terms and conditions as fixed by the board.

(3) If there is shareholder approval for the issue of bonds or shares convertible into shares of the corporation, the approval may provide that the board is authorized by amendment of the articles of incorporation to increase the authorized shares of any class or series to the number that will be sufficient, when added to the previously authorized but unissued shares of the class or series, to satisfy the conversion privileges of any bonds or shares convertible into shares of the class or series.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

#### **450.1304 Convertible shares and bonds; conditions to issuance; disposition of convertible bonds or shares.**

Sec. 304. (1) Bonds or shares convertible into shares of a corporation shall not be issued unless 1 of the following conditions is satisfied:

(a) A sufficient number of authorized but unissued shares of the appropriate class or series are reserved by the board to be issued only in satisfaction of the conversion privileges of the convertible bonds or shares when issued.

(b) The aggregate conversion privileges of the convertible bonds or shares when issued do not exceed the aggregate of any shares reserved under subdivision (a) and any additional shares which may be authorized by the board under subsection (3) of section 303.

(2) Bonds which have been converted shall be canceled. Shares which have been converted shall be restored to the status of authorized but unissued shares, unless otherwise provided in the articles of incorporation.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

#### **450.1304a Redeemable shares.**

Sec. 304a. The articles of incorporation may provide for 1 or more classes or series of shares which are redeemable, in whole or in part, at the option of the shareholder, the corporation, or upon the happening of a specified event. Subject to restrictions imposed by section 345, the shares may be redeemable in cash, bonds, securities, or other property at prices, within the periods, and under conditions as are stated in the articles.

**History:** Add. 1989, Act 121, Eff. Oct. 1, 1989.

#### **450.1305 Subscription for shares.**

Sec. 305. (1) A subscription for shares made before or after organization of a corporation is not enforceable unless in writing and signed by the subscriber.

(2) A subscription for shares of a corporation to be organized is irrevocable and may be accepted by the corporation for a period of 6 months, unless otherwise provided by the subscription agreement or unless all the subscribers consent to its revocation.

(3) A contract with a corporation to purchase its shares to be issued is a subscription agreement and not an executory contract to purchase shares, unless otherwise provided in the contract.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

#### **450.1306 Subscription for shares; payment; call; security interest.**

Sec. 306. (1) Unless otherwise provided in the subscription agreement:

(a) A subscription for shares made before or after organization of a corporation shall be paid in full at the time, or in installments and at the times, as shall be determined by the board.

(b) A call made by the board for payment on subscriptions shall be ratable as to all shares of the same class or as to all shares of the same series.

(c) A corporation may retain a security interest in any shares as security for performance by the subscriber

of his or her obligations under a subscription agreement and subject to the power of sale or rescission upon default provided in section 307.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

#### **450.1307 Subscription agreement; default in payment; rights and duties of corporation.**

Sec. 307. (1) In case of default in payment of an installment or call or other amount due under a subscription agreement, including an amount which may become due as a result of a default in performance of any provision of a subscription agreement, the corporation has the following rights and duties:

(a) It may collect the amount due in the same manner as any other debt owing to it. At any time before full satisfaction of the claim or a judgment, it may proceed as provided in subdivision (b).

(b) It may sell the shares in any reasonable manner. Notice of the time and place of a public sale or of the time after which a private sale may be had, together with a statement of the amount due upon each share, shall be given in writing to the subscriber personally or by registered or certified mail at least 20 days before any time stated in the notice. Any excess of net proceeds realized over the amount due plus interest shall be paid to the subscriber. If the sale is made in good faith, in a reasonable manner and upon notice, the corporation may recover the difference between the amount due plus interest and the net proceeds of the sale. A good faith purchaser for value acquires title to the sold shares free of any right of the subscriber even though the corporation fails to comply with 1 or more of the requirements of this subdivision.

(c) It may rescind the subscription, with the effect provided in section 308, and may recover damages for breach of contract. Unless special circumstances show proximate damages of a different amount, the measure of damages shall be the difference between the market price at the time and place of tender of the shares and the unpaid contract price. Liquidated damages may be provided for in the subscription agreement. The subscriber may have restitution of the amount by which the sum of his or her payments exceeds the corporation's damages for breach of contract, whether fixed by agreement or judgment.

(2) The rights and duties set forth in this section shall be interpreted as cumulative so far as is consistent with entitling the corporation to a full and single recovery of the amount due or its damages. The subscription agreement may limit the rights and remedies of the corporation set forth in this section, and may add to them so far as is consistent with this subsection.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

#### **450.1308 Cancellation of shares upon rescission of subscription.**

Sec. 308. Rescission by a corporation of a subscription under which a part of the shares subscribed for have been issued and in which the corporation retains a security interest, as provided in subdivision (c) of section 306, effects the cancellation of such shares.

**History:** 1972, Act 284, Eff. Jan. 1, 1973.

#### **450.1311, 450.1313 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.**

**Compiler's note:** The repealed sections pertained to consideration for issuance of shares.

#### **450.1314 Reservation of powers to shareholders; consideration for authorized issuance of shares; determination of adequacy; shares fully paid and nonassessable; rights and privileges of subscriber.**

Sec. 314. (1) The powers granted in this section to the board may be reserved to the shareholders by the articles of incorporation.

(2) The board may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including but not limited to cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(3) A determination by the board that the consideration received or to be received for shares to be issued is adequate is conclusive insofar as the nature and amount of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(4) When the corporation receives the consideration for which the board authorized the issuance of shares, the shares issued are fully paid and nonassessable and the subscriber has all the rights and privileges of a holder of the shares.

**History:** Add. 1989, Act 121, Eff. Oct. 1, 1989.

#### **450.1315 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.**

**Compiler's note:** The repealed section pertained to payment of consideration for issuance of shares.

#### **450.1317 Liability of purchaser, holder, subscriber, assignee, transferee, pledgee, or shareholder.**

Sec. 317. (1) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were to be issued.

(2) A person holding stock in a fiduciary or representative capacity is not personally liable to the corporation as the holder of or subscriber for shares of a corporation but the estate and funds in his or her hands are liable to the corporation.

(3) A person becoming an assignee, transferee, or pledgee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration has not been paid is not liable to the corporation or its creditors for any unpaid portion of the consideration, but the original holder or subscriber and any assignee or transferee before an assignment or transfer to a person taking in good faith and without knowledge or notice remains liable.

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

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

#### **450.1321 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.**

**Compiler's note:** The repealed section pertained to rights or options to purchase shares.

#### **450.1327 Expenses of organization and reorganization; expenses of sale or underwriting of shares.**

Sec. 327. The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by the corporation out of the consideration received by it in payment for its shares without thereby rendering the shares not fully paid or assessable.

**History:** 1972, Act 284, Eff. Jan. 1, 1973.

#### **450.1331 Share certificates.**

Sec. 331. Except as provided in section 336, the shares of a corporation shall be represented by certificates which shall be signed by the chairperson of the board, vice-chairperson of the board, president or a vice-president and which also may be signed by another officer of the corporation. The certificate may be sealed with the seal of the corporation or a facsimile of the seal. The signatures of the officers may be facsimiles. If an officer who has signed or whose facsimile signature has been placed upon a certificate ceases to be an officer before the certificate is issued, it may be issued by the corporation with the same effect as if he or she were the officer at the date of issue.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1994, Act 318, Imd. Eff. Oct. 6, 1994.

#### **450.1332 Share certificates; contents.**

Sec. 332. (1) A certificate representing shares shall state upon its face all of the following:

(a) That the corporation is formed under the laws of this state.

(b) The name of the person to whom issued.

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

(2) A certificate representing shares issued by a corporation which is authorized to issue shares of more than 1 class shall set forth on its face or back or state on its face or back that the corporation will furnish to a shareholder upon request and without charge a full statement of the designation, relative rights, preferences, and limitations of the shares of each class authorized to be issued, and if the corporation is authorized to issue any class of shares in series, the designation, relative rights, preferences, and limitations of each series so far as the same have been prescribed and the authority of the board to designate and prescribe the relative rights, preferences, and limitations of other series.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

#### **450.1334 Share certificates; loss or destruction; bond.**

Sec. 334. A corporation may issue a new certificate for shares or fractional shares in place of a certificate theretofore issued by it, alleged to have been lost or destroyed, and the board may require the owner of the lost or destroyed certificate, or his legal representative, to give the corporation a bond sufficient to indemnify the corporation against any claim that may be made against it on account of the alleged lost or destroyed

certificate or the issuance of such a new certificate.

**History:** 1972, Act 284, Eff. Jan. 1, 1973.

#### **450.1335 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.**

**Compiler's note:** The repealed section pertained to shares or securities listed on national securities exchange.

#### **450.1336 Issuance or transfer of shares without certificates; statement.**

Sec. 336. (1) Unless the articles of incorporation or bylaws provide otherwise, the board 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 the certificates are surrendered to a corporation.

(2) Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates under section 332 and, if applicable, sections 472 and 488.

**History:** Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

#### **450.1338 Fractions of share or scrip.**

Sec. 338. (1) A corporation may issue fractions of shares and may do 1 of the following:

(a) Issue certificates for fractions of shares that entitle the holders to exercise voting rights and to receive dividends and distributions in proportion to their fractional holdings.

(b) Pay in cash the fair value of fractions of shares as of the time when those entitled to receive the fractions are determined.

(c) Issue scrip in registered or bearer form over the manual or facsimile signature of an officer of the corporation or of its agent, exchangeable as provided in the scrip for full shares. The scrip shall not entitle the holder to any right of a shareholder except as provided in the scrip. The scrip shall be issued subject to the condition that it becomes void if not exchanged for certificates representing full shares before a specified date. The scrip may be subject to the condition that the shares for which the scrip is exchangeable may be sold by the corporation and the proceeds of the sale distributed to the holders of the scrip, or subject to any other condition that the board may determine.

(2) A corporation may provide reasonable opportunity for persons entitled to fractions of a share or scrip to sell them or to purchase additional fractions of a share or scrip needed to acquire a full share.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

#### **450.1341 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.**

**Compiler's note:** The repealed section pertained to consideration for shares as capital or capital surplus.

#### **450.1341a Issuance of shares pro rata and without consideration; share dividend.**

Sec. 341a. (1) 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 1 or more classes or series. An issuance of shares under this subsection is a share dividend.

(2) Shares of 1 class or series may not be issued as a share dividend in respect of shares of another class or series unless the articles so authorize, a majority of the votes entitled to be cast by the class or series to be issued approve the issue, or there are no outstanding shares of the class or series to be issued.

**History:** Add. 1989, Act 121, Eff. Oct. 1, 1989.

#### **450.1342 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.**

**Compiler's note:** The repealed section pertained to earned surplus and transfer of surplus.

#### **450.1342a Rights, options, or warrants.**

Sec. 342a. (1) A corporation may issue rights, options, or warrants for the purchase of shares or other securities of the corporation. The board shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued.

(2) The terms and conditions of any right, option, or warrant issued under subsection (1), including those outstanding on the effective date of the amendatory act that added this subsection, may include, without limitation, restrictions or conditions that preclude or limit the exercise, transfer, or receipt of the right, option, or warrant by any person owning or offering to acquire a specified number or percentage of the outstanding common shares or other securities of a corporation, or any transferee or transferees of that person, or that invalidate or void the right, option, or warrant held by a person or his or her transferee.

**History:** Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.



#### **450.1343 Preemptive rights.**

Sec. 343. (1) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent provided in the articles of incorporation or by agreement between the corporation and 1 or more shareholders.

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

(a) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board 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 to issue them.

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

(c) There is no preemptive right with respect to any of the following:

(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 that are issued within 6 months from the effective date of incorporation.

(iv) Shares issued otherwise than for money.

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

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

(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of 1 year after being offered to shareholders at a consideration set by the board 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 1 year is subject to the shareholders' preemptive rights.

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

(4) The preemptive rights, whether created by statute or common law, of shareholders of a corporation formed before January 1, 1973, are not affected by subsections (1) and (2). A corporation may alter or abolish its shareholders' preemptive rights by an amendment of its articles.

**History:** Add. 1989, Act 121, Eff. Oct. 1, 1989.

#### **450.1344 Acquisition of own shares by corporation; shares as authorized but unissued; reducing number of authorized shares if reissuance prohibited; restriction on acquisition.**

Sec. 344. (1) Subject to restrictions imposed by this act or the articles of incorporation, a corporation may acquire its own shares and those shares constitute authorized but unissued shares, except as provided in subsection (4).

(2) If the articles of incorporation prohibit reissue of any shares acquired pursuant to subsection (1), the board, by resolution, shall adopt and file an amendment of the articles of incorporation reducing the number of authorized shares accordingly.

(3) A corporation shall not acquire its own shares by purchase, redemption, or otherwise unless after the acquisition there remain outstanding shares possessing, collectively, voting rights and unlimited rights to receive assets in dissolution.

(4) A corporation that acquires its own shares may grant a security interest in the shares as security for the payment of the purchase price of the shares. Any shares acquired by the corporation in which it has granted a security interest are not canceled and do not constitute authorized but unissued shares until the corporation pays the purchase price. If the corporation has granted a security interest in the shares, the shares shall not be voted directly or indirectly and shall not be counted in determining the total number of issued shares entitled to vote at any given time, except to the extent provided by the agreement creating the security interest in the event of default. Upon payment of the purchase price, the shares shall be canceled and constitute authorized but unissued shares. If the articles of incorporation prohibit reissue of canceled shares, then the amendment required by subsection (2) shall be filed.

**History:** Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

**450.1345 Distributions to shareholders; record date for determining entitlement; prohibited distribution; determination; measuring effect of distribution; indebtedness to shareholder; obligation to make future payments; enforceability of guaranty or other undertaking by third party; asserting right of rescission or other legal or equitable rights.**

Sec. 345. (1) A board may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (3).

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

(3) A distribution shall not be made if, after giving it effect, the corporation would not be able to pay its debts as the debts become due in the usual course of business, or 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.

(4) The board may base a determination that a distribution is not prohibited under subsection (3) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances, on a fair valuation, or on another method that is reasonable.

(5) The effect of a distribution under subsection (3) is measured at the following times:

(a) Except as provided in subsection (7), in the case of a distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of the date money or other property is transferred or debt incurred by the corporation, or the date the shareholder ceases to be a shareholder with respect to the acquired shares.

(b) In the case of any other distribution of indebtedness, as of the date the indebtedness is authorized if distribution occurs within 120 days after the date of authorization or the date the indebtedness is distributed if it occurs more than 120 days after the date of authorization.

(c) In all other cases, as of the date the distribution is authorized if the payment occurs within 120 days after the date of authorization or the date the payment is made if it occurs more than 120 days after the date of authorization.

(6) 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 as otherwise agreed.

(7) If the corporation acquires its shares in exchange for an obligation to make future payments, and distribution of the obligation would otherwise be prohibited under subsection (3) at the time it is made, the corporation may issue the obligation and the following apply:

(a) The portion of the obligation that could have been distributed without violating subsection (3) shall be treated as indebtedness as described in subsection (6).

(b) All of the following apply to the portion of the obligation that exceeds the amount treated as indebtedness under subdivision (a):

(i) At any time prior to the due date of the obligation, payments of principal and interest may be made as a distribution to the extent that a distribution may then be made under this section.

(ii) At any time on or after the due date, the obligation to pay principal and interest is deemed distributed and treated as indebtedness described in subsection (6) to the extent that a distribution may then be made under this section.

(iii) Unless otherwise provided in the agreement for the acquisition of the shares, the obligation is a liability or debt for purposes of determining whether distributions other than payments on the obligation may be made under this section, except for purposes of determining whether distributions may be made with respect to shares having preferential rights superior to those of the shares acquired in exchange for the obligation.

(8) The enforceability of a guaranty or other undertaking by a third party relating to a distribution shall not be affected by the prohibition of the distribution under subsection (3).

(9) If a claim is made to recover a distribution made contrary to subsection (3) or if a violation of subsection (3) is raised as a defense to a claim based upon a distribution, nothing in this section prevents the person receiving the distribution from asserting a right of rescission or other legal or equitable rights.

**History:** Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.  
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**450.1351-450.1367 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.**

**Compiler's note:** The repealed sections pertained to dividends, purchase, or redemption of shares.

**450.1368 Repealed. 1997, Act 118, Imd. Eff. Oct. 24, 1997.**

**Compiler's note:** The repealed section pertained to purchase by corporation of shares listed on national securities exchange from certain persons.

**450.1371-450.1381 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.**

**Compiler's note:** The repealed sections pertained to cancellation or retention of shares, and reduction of stated capital.

**450.1391 Inspection and voting rights of bondholders; facsimile signatures.**

Sec. 391. (1) A corporation, in its articles of incorporation, may confer upon the holders of bonds issued or to be issued by it, rights to inspect the corporate books and records and to vote in the election of directors and on any other matters on which shareholders of the corporation may vote to the extent, in the manner, and subject to the conditions prescribed in the articles. The articles may grant to the board the power to confer such voting or inspection rights under the terms of any bonds issued or to be issued by the corporation.

(2) The signatures of the officers upon a bond may be facsimiles.

**History:** 1972, Act 284, Eff. Jan. 1, 1973.

**450.1392 Chapter inapplicable to distributions in dissolution.**

Sec. 392. This chapter shall not apply to distributions in dissolution under chapter 8.

**History:** Add. 1989, Act 121, Eff. Oct. 1, 1989.