

CHAPTER 27. STATUTORY CLOSE CORPORATIONS**GENERAL**

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GENERAL**§ 27.1. General checklist for incorporating statutory close corporations.
[Reserved]****Source**

The provisions of this § 27.1 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

§ 27.2. Applicability of statutory close corporation provisions.

(a) Section 1103 of the BCL (relating to definitions) provides for two types of close corporations:

(1) Statutory close corporations, which are business corporations which have done one of the following:

(i) Incorporated on Form DSCB:15-1306/2102/2303/2702/2903/3101/7702A (Articles of Incorporation-For Profit) with a statutory close corporation election indicated, or on the corresponding form under prior law.

(ii) Elected to become statutory close corporations by filing Form DSCB:15-2305 (Articles of Amendment-Election of Statutory Close Corporation Status-Domestic Business Corporation), or the corresponding form under prior law. See section 2301(a) of the BCL (relating to application and effect of chapter).

(2) Closely-held corporations, which are one of the following:

(i) Statutory close corporations.

(ii) Business corporations which have not more than 30 shareholders, with shares that are held jointly or in common or in trust by two or more persons, as fiduciaries or otherwise, or that are held by spouses, being deemed held by one shareholder for this purpose.

(b) Closely-held corporation status is automatic, and no filing in the Department shall be made with respect to the acquisition or termination of that status.

(c) Section 2301(a) of the BCL provides that a business corporation may not be simultaneously a statutory close corporation and a management corporation. A statutory close corporation may be one or more of the following: a nonstock corporation, a registered corporation, a professional corporation and an insurance corporation.

Source

The provisions of this § 27.2 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

§ 27.3. Additional contents of articles of statutory close corporations.

(a) Section 2304 of the BCL (relating to additional contents of articles of statutory close corporations) provides that in addition to the provisions otherwise required by the BCL, the articles of a statutory close corporation shall provide that neither the corporation nor a shareholder may make an offering of its shares of any class that would constitute a public offering within the meaning of the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) and that the articles of a statutory close corporation may set forth:

(1) The maximum number of persons who are entitled to be record holders or beneficial owners of its shares.

(2) The qualifications of shareholders, either by specifying classes of persons who shall be entitled to be holders of record of shares of any class or by specifying classes of persons who are not entitled to be holders of shares of a class, or both.

(b) Except as otherwise provided, for purposes of determining the number of holders of record or beneficial owners of the shares of a statutory close corporation, shares that are held jointly or in common or in a trust, by two or more persons, as fiduciaries or otherwise, or which are held by spouses, shall be treated as held by one shareholder.

Source

The provisions of this § 27.3 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

Cross References

This section cited in 19 Pa. Code § 27.5 (relating to voluntary termination of statutory close corporation status); and 19 Pa. Code § 27.6 (relating to filings with respect to breach and cure of qualifying conditions).

§ 27.4. Election of existing corporation to become a statutory close corporation.

Section 2305 of the BCL (relating to election of an existing business corporation to become a statutory close corporation) provides that a business corporation

may become a statutory close corporation by filing Form DSCB: 15-2305 (Articles of Amendment-Election of Statutory Close Corporation Status-Domestic Business Corporation).

Source

The provisions of this § 27.4 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

§ 27.5. Voluntary termination of statutory close corporation status.

Section 2307 of the BCL (relating to voluntary termination of statutory close corporation status by amendment of articles) provides that a statutory close corporation may voluntarily terminate its status by filing Form DSCB:15-1915 (Articles of Amendment-Domestic Business Corporation) which delete from its articles:

- (1) The caption stating that it is a statutory close corporation.
- (2) The provisions contemplated by § 27.3 (relating to additional contents of articles of statutory close corporations).

Source

The provisions of this § 27.5 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

Cross References

This section cited in 19 Pa. Code § 27.6 (relating to filings with respect to breach and cure of qualifying conditions).

§ 27.6. Filings with respect to breach and cure of qualifying conditions.

(a) Section 2309(a) of the BCL (relating to involuntary termination of statutory close corporation status; proceeding to prevent loss of status) provides that if an event occurs as a result of which the provision included in the articles of a statutory close corporation under § 27.3 (relating to additional contents of articles of statutory close corporations) to qualify it as a statutory close corporation has been breached, the status of the business corporation as a statutory close corporation shall terminate unless:

- (1) Within 30 days after the occurrence of the event or within 30 days after the event has been discovered, whichever is later, the corporation:
 - (i) Files in the Department Form DSCB: 15-2309A (Statement of Breach of Qualifying Condition-Statutory Close Corporation-Domestic Business Corporation).
 - (ii) Furnishes a copy of the statement to each shareholder.
- (2) The corporation concurrently with the filing of the statement takes steps that are necessary to correct the situation that threatens its status as a statutory close corporation.

(b) Section 2309(c) of the BCL provides that when the situation that threatened the status of the corporation as a statutory close corporation has been remedied and if the corporation has not amended its articles in accordance with

§ 27.5 (relating to voluntary termination of statutory close corporation status), the corporation shall file in the Department Form DSCB: 15-2309B (Statement of Cure of Breach of Qualifying Condition-Statutory Close Corporation-Domestic Business Corporation), and that upon the filing of the certificate, the status of the corporation as a statutory close corporation, theretofore if terminated by reason of subsection (a), shall be restored.

Source

The provisions of this § 27.6 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

§ 27.7. Preemptive rights.

Section 2321(b) of the BCL (relating to shares) provides that unless otherwise provided in a bylaw adopted by the shareholders, the holders of a class of voting shares of a statutory close corporation shall have a preemptive right to subscribe for or purchase voting shares, or option rights or securities having conversion or option rights with respect to voting shares, issued or sold by the corporation for consideration, except an issue of voting shares, or of option rights or securities having conversion or option rights with respect to the voting shares, under a plan to which Chapter 15, Subchapter D of the BCL (relating to dissenters rights) is applicable.

Source

The provisions of this § 27.7 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

Cross References

This section cited in 19 Pa. Code § 23.10 (relating to preemptive rights).

FORMS

§ 27.101. Official forms.

The following official forms have been promulgated under this chapter and appear in Appendix A:

Form DSCB:15-2305 (Articles of Amendment-Election of Statutory Close Corporation Status-Domestic Business Corporation).

Form DSCB:15-2309A (Statement of Breach of Qualifying Condition-Statutory Close Corporation-Domestic Business Corporation).

Form DSCB:15-2309B (Statement of Cure of Breach of Qualifying Condition-Statutory Close Corporation-Domestic Business Corporation).

Source

The provisions of this § 27.101 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

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