§ 2.02. ARTICLES OF INCORPORATION
(a) The articles of incorporation must set forth:
(1) a corporate name for the corporation that satisfies the requirements of section 4.01;
(2) the number of shares the corporation is authorized to issue;
(3) the street address of the corporation’s initial registered office and the name of its initial registered agent at that office; 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;
   (v) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;
(3) any provision that under this Act 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 (A) the amount of a financial benefit received by a director to which he is not entitled; (B) an intentional infliction of harm on the corporation or the shareholders; (C) a violation of section 8.33; or (D) an intentional violation of criminal law; and
(5) a provision permitting or making obligatory indemnification of a director for liability (as defined in section 8.50(5)) to any person for any action taken, or any failure to take any action, as a director, except liability for (A) receipt of a financial benefit to which he is not entitled, (B) an intentional infliction of harm on the corporation or its shareholders, (C) a violation of section 8.33, or (D) an intentional violation of criminal law.
(c) The articles of incorporation need not set forth any of the corporate powers enumerated in this Act.
(d) Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with section 1.20(k).

§ 6.01. 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 class or series of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class or series and must describe, prior to the issuance of shares of a class or series, 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 or more classes or series of shares that together have unlimited voting rights, and
(2) one or more classes or series of shares (which may be the same class or classes 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 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 Act;
(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 1.20(k).
(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) is not exhaustive.

§ 6.02. 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 or more classes or into one or more series within a class,
(2) reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes, or
(3) reclassify any unissued shares of any series of any class into one or more classes or into one or more series within a class.
(b) If the board of directors acts pursuant to subsection (a), it must determine the terms, including the preferences, rights and limitations, to the same extent permitted under section 6.01, 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 must deliver to the secretary of state for filing articles of amendment setting forth the terms determined under subsection (a).

§ 6.21. 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, contracts for services to be performed, or other securities of the corporation.
(c) Before the corporation issues shares, the board of directors must 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 contract for future services or benefits or 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 note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be cancelled 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 at least a majority of the votes entitled to be cast on the matter exists, if:
(i) the shares, other securities, or rights are 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 20 percent 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 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 if consummation of one transaction is made
contingent on consummation of one or more of the other transactions.

§ 6.30. 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 import) 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 articles of incorporation that are issued within six months from the effective
date of incorporation;
(iv) shares sold otherwise than for money.
(4) 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.
(5) 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.
(6) Shares subject to preemptive rights that are not acquired by shareholders may be issued to
any person for a period of one 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 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.

§ 6.40. 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).
(b) If the board of directors does not fix the record date for determining shareholders entitled to a
distribution (other than one involving a purchase, redemption, or other acquisition of the corporation’s
shares), it 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) 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), the effect of a distribution under subsection (c) 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 money or other property is transferred or debt
 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 120 days after the date of authorization or (ii) the date the payment is made if it occurs more
than 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) 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 the 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 chapter 14.

§ 7.02 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 the holders of at least 10 percent of all the votes entitled to be cast on an issue proposed
to be considered at the proposed special meeting sign, date, and deliver to the corporation one 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 25 percent 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 prior to 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 7.03 or 7.07, the record date for determining shareholders
entitled to demand a special meeting is the date the first shareholder signs the demand.
(c) Special shareholders’ 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 stated or fixed in accordance with the bylaws, 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
7.05(c) may be conducted at a special shareholders’ meeting.”

§ 7.04. ACTION WITHOUT MEETING
(a) Action required or permitted by this Act 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 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 inclusion in the minutes or filing with the corporate records.

(b) If not otherwise fixed under section 7.03 or 7.07, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (a). No written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest date appearing on a consent delivered to the corporation in the manner required by this section, written consents signed by all shareholders entitled to vote on the action are received by the corporation. A written consent may be revoked by a writing to that effect received by the corporation prior to receipt by the corporation of unrevoked written consents sufficient in number to take corporate action.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(d) If this Act requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the proposed action at least 10 days before the action is taken. The notice must contain or be accompanied by the same material that, under this Act, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

§ 7.21. VOTING ENTITLEMENT OF SHARES
(a) Except as provided in subsections (b) and (d) or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders’ meeting. Only shares are entitled to vote.

(b) Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(c) Subsection (b) does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(d) Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders 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.

§ 7.25. 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 or this Act provide otherwise, 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.

(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 set 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 or this Act require a greater number of affirmative votes.

(d) An amendment of articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (a) or (c) is governed by section 7.27.

(e) The election of directors is governed by section 7.28.

§ 7.26. ACTION BY SINGLE AND MULTIPLE VOTING GROUPS
(a) If the articles of incorporation or this Act 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 7.25.

(b) If the articles of incorporation or this act provide for voting by two 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 7.25. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

§ 7.27. GREATER QUORUM OR VOTING REQUIREMENTS
(a) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is provided for by this Act.
(b) An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement must 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.

§ 7.28. 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 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 his votes gives notice to the corporation not less than 48 hours before the time set for the meeting of his intent to cumulate his votes during the meeting, and if one 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.

§ 7.42. DEMAND
No shareholder may commence a derivative proceeding until:
   (1) a written demand has been made upon the corporation to take suitable action; and
   (2) 90 days have expired from the date 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 90-day period.

§ 7.43. 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.

§ 7.44. DISMISSAL
(a) A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the groups specified in subsections (b) or (f) 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 (f), the determination in subsection (a) shall be made by:
   (1) a majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum; or
   (2) a majority vote of a committee consisting of two or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors constituted a quorum.
(c) None of the following shall by itself cause a director to be considered not independent for purposes of this section:
(1) the nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded;

(2) the naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded; or

(3) the approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

(d) 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) have not been met.

(e) If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation shall have the burden of proving that the requirements of subsection (a) have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff shall have the burden of proving that the requirements of subsection (a) have not been met.

(f) The court may appoint a panel of one or more independent persons upon motion by the corporation 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) have not been met.

§ 8.30. 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 committee of the board, 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 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 (e)(1) or subsection (e)(3) to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board’s functions that are delegable under applicable law.

(d) In discharging board or 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 (e).

(e) A director is entitled to rely, in accordance with subsection (c) or (d), on:

(1) one 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 committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

§ 8.33. 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 6.40(a) or 14.09(a) is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating section 6.40(a) or 14.09(a) if the party asserting liability establishes that when taking the action the director did not comply with section 8.30.

(b) A director held liable under subsection (a) for an unlawful distribution is entitled to:
(1) contribution from every other director who could be held liable under subsection (a) 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 6.40(a) or 14.09(a).

(c) A proceeding to enforce:

(1) the liability of a director under subsection (a) is barred unless it is commenced within two years after the date (i) on which the effect of the distribution was measured under section 6.40(e) or (g), (ii) as of which the violation of section 6.40(a) 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 14.09(a) was made; or

(2) contribution or recoupment under subsection (b) is barred unless it is commenced within one year after the liability of the claimant has been finally adjudicated under subsection (a).

§ 8.57. 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, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by him in that capacity or arising from his status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to him against the same liability under this subchapter.

§ 10.04. VOTING ON AMENDMENTS BY VOTING GROUPS

(a) If a corporation has more than one class of shares outstanding, 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 Act) 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 or to dissolution 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 or to dissolution 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 or more of the ways described in subsection (a), 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 or more classes or series of shares to vote as separate voting groups under this section would affect those two 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 must vote together as a single voting group on the proposed amendment, unless otherwise provided in the articles of incorporation or required by the board of directors.

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

RIGHT TO APPRAISAL AND PAYMENT FOR SHARES

§ 13.01. DEFINITIONS
In this chapter:

(1) “Affiliate” means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive thereof. For purposes of section 13.02(b)(4), a person is deemed to be an affiliate of its senior executives.

(2) “Beneficial shareholder” means a person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner’s behalf.

(3) “Corporation” means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in sections 13.22-13.31, includes the surviving entity in a merger.

(4) “Fair value” means the value of the corporation’s shares determined:
   (i) immediately before the effectuation of the corporate action to which the shareholder objects;
   (ii) using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and
   (iii) without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles pursuant to section 13.02(a)(5).

(5) “Interest” means interest from the effective date of the corporate action until the date of payment, at the rate of interest on judgments in this state on the effective date of the corporate action.

(6) “Preferred shares” means a class or series of shares whose holders have preference over any other class or series with respect to distributions.

(7) “Record shareholder” means the person in whose name shares are registered in the records of the corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with the corporation.

(8) “Senior executive” means the chief executive officer, chief operating officer, chief financial officer, and anyone in charge of a principal business unit or function.

(9) “Shareholder” means both a record shareholder and a beneficial shareholder.

§ 13.02. 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 11.04 and the shareholder is entitled to vote on the merger, except that appraisal rights shall not be available to any shareholder of the corporation 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 11.05;

(2) consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired if the shareholder is entitled to vote on the exchange, 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 exchanged;

(3) consummation of a disposition of assets pursuant to section 12.02 if the shareholder is entitled to vote on the disposition;

(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 amendment to the articles of incorporation, merger, share exchange or disposition of assets to the extent provided by the articles of incorporation, bylaws or a resolution of the board of directors;

(6) consummation of a domestication 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 corporation, as the shares held by the shareholder before the domestication;

(7) consummation of a conversion of the corporation to nonprofit status pursuant to subchapter 9C; or

(8) consummation of a conversion of the corporation to an unincorporated entity pursuant to subchapter 9E.
(b) Notwithstanding subsection (a), the availability of appraisal rights under subsections (a)(1), (2), (3), (4), (6) and (8) 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 which is:

(i) listed on the New York Stock Exchange or the American Stock Exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.; or

(ii) not so listed or designated, but has at least 2,000 shareholders and the outstanding shares of such class or series has a market value of at least $20 million (exclusive of the value of such shares held by its subsidiaries, senior executives, directors and beneficial shareholders owning more than 10 percent of such shares).

(2) The applicability of subsection (b)(1) shall be determined as of:

(i) the record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

(ii) the day before the effective date of such corporate action if there is no meeting of shareholders.

(3) Subsection (b)(1) shall not be applicable and appraisal rights shall be available pursuant to subsection (a) for the holders of any class or series of shares 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 subsection (b)(1) at the time the corporate action becomes effective.

(4) Subsection (b)(1) shall not be applicable and appraisal rights shall be available pursuant to subsection (a) for the holders of any class or series of shares where:

(i) any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange or otherwise, pursuant to the corporate action by a person, or by an affiliate of a person, who:

(A) is, or at any time in the one-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, the beneficial owner of 20 percent or more of the voting power of the corporation, excluding any shares acquired pursuant to an offer for all shares having voting power if such offer was made within one year prior to the corporate action requiring appraisal rights for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action; or

(B) directly or indirectly has, or at any time in the one-year period immediately preceding approval by the board of directors of the corporation of the corporate action requiring appraisal rights had, the power, contractually or otherwise, to cause the appointment or election of 25 percent or more of the directors to the board of directors of the corporation; or

(ii) any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange or otherwise, pursuant to such corporate action by a person, or by an affiliate of a person, who is, or at any time in the one-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, a senior executive or director of the corporation or a senior executive of any affiliate thereof, 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:

(A) employment, consulting, retirement or similar benefits established separately and not as part of or in contemplation of the corporate action; or

(B) 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 8.62; or

(C) in the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate.

(5) For the purposes of paragraph (4) only, the term “beneficial owner” means any 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, provided that a member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the recordholder of such securities if the member is precluded by the rules of such 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 or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby shall be deemed to have acquired beneficial ownership, as of the date of such agreement, of all voting shares of the corporation beneficially owned by any member of the group.

(c) Notwithstanding any other provision of section 13.02, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but 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 prior to 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 year of that date if such action would otherwise afford appraisal rights.

(d) A shareholder may not challenge a completed corporate action described in subsection (a), other than those subscribed in subsection (b)(3) and (4), unless such corporate action:
(1) was not effectuated in accordance with the applicable provisions of chapters 9, 10, 11 or 12 or the corporation’s articles of incorporation, bylaws or board of directors’ resolution authorizing the corporate action; or
(2) was procured as a result of fraud or material misrepresentation.

§ 14.30. GROUNDS FOR JUDICIAL DISSOLUTION
The [name or describe court or courts] 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 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; or
(4) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

§ 14.31. PROCEDURE FOR JUDICIAL DISSOLUTION
(a) Venue for a proceeding by the attorney general to dissolve a corporation lies in [name the county or counties]. Venue for a proceeding brought by any other party named in section 14.30 lies in the county where a corporation’s principal office (or, if none in this state, its registered office) is or was last located.
(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 pendente lite 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 10 days of the commencement of a proceeding under section 14.30(2) to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, the corporation must send 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 14.34 and accompanied by a copy of section 14.34.

§ 14.34. ELECTION TO PURCHASE IN LIEU OF DISSOLUTION

(a) In a proceeding under section 14.30(2) to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, the corporation may elect or, if it fails to elect, one 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 90 days after the filing of the petition under section 14.30(2) or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within 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 must file notice of their intention to join in the purchase no later than 30 days after the effective date 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 or more shareholders, the proceeding under section 14.30(2) may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his 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 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 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), the court, upon application of any party, shall stay the section 14.30(2) proceedings and determine the fair value of the petitioner’s shares as of the day before the date on which the petition under section 14.30(2) 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 costs, fees, and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them.

In allocating petitioner’s shares among holders of different classes of shares, the court should attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes 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 paragraphs (ii) or (iv) of section
(f) Upon entry of an order under subsections (c) or (e), the court shall dismiss the petition to dissolve the corporation under section 14.30, 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 to him by the order of the court which shall be enforceable in the same manner as any other judgment.

(g) The purchase ordered pursuant to subsection (e) shall be made within 10 days after the date the order becomes final unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to sections 14.02 and 14.03, which articles must then be adopted and filed within 50 days thereafter. Upon filing of such articles of dissolution, the corporation shall be dissolved in accordance with the provisions of sections 14.05 through 14.07, and the order entered pursuant to subsection (e) shall no longer be of any force or effect, except that the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of the last sentence of subsection (e) and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

(h) Any payment by the corporation pursuant to an order under subsections (c) or (e), other than an award of fees and expenses pursuant to subsection (e), is subject to the provisions of section 6.40.

§ 16.01. CORPORATE RECORDS

(a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) its articles or restated articles of incorporation, all amendments to them currently in effect, and any notices to shareholders referred to in section 1.20(k)(5) regarding facts on which a filed document is dependent;

(2) its bylaws or restated bylaws and all amendments to them currently in effect;

(3) resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;

(4) the minutes of all shareholders’ meetings, and records of all action taken by shareholders without a meeting, for the past three years;

(5) all written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under section 16.20;

(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 under section 16.21.

§ 16.02. INSPECTION OF RECORDS BY 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 16.01(e) if he gives the corporation written notice of his demand at least five business days before the date on which he 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) and gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy:

(1) excerpts from minutes of any meeting of the board of directors, records of any action of a
committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under section 16.02(a);
(2) accounting records of the corporation; and
(3) the record of shareholders.
(c) A shareholder may inspect and copy the records described in subsection (b) only if:
(1) his demand is made in good faith and for a proper purpose;
(2) he describes with reasonable particularity his purpose and the records he desires to inspect; and
(3) the records are directly connected with his purpose.
(d) The right of inspection granted by this section may not be abolished or limited by a corporation’s articles of incorporation or bylaws.
(e) This section does not affect:
(1) the right of a shareholder to inspect records under section 7.20 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant;
(2) the power of a court, independently of this Act, to compel the production of corporate records for examination.
(f) For purposes of this section, “shareholder” includes a beneficial owner whose shares are held in a voting trust or by a nominee on his behalf.

§ 16.04. COURT-ORDERED INSPECTION
(a) If a corporation does not allow a shareholder who complies with section 16.02(a) to inspect and copy any records required by that subsection to be available for inspection, the [name or describe court] of the county where the corporation’s principal office (or, if none in this state, its registered office) is located 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 to inspect and copy any other record, the shareholder who complies with sections 16.02(b) and (c) may apply to the [name or describe court] in the county where the corporation’s principal office (or, if none in this state, its registered office) is located 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, it shall also order the corporation to pay the shareholder’s costs (including reasonable counsel fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.
Relevante bepalingen Bankruptcy Code

§ 101. Definitions

In this title—

(32) “insolvent” means—

(A) with reference to an entity other than a partnership and a municipality, financial condition such that the sum of such entity’s debts is greater than all of such entity’s property, at a fair valuation, exclusive of—

(i) property transferred, concealed, or removed with intent to hinder, delay, or defraud such entity’s creditors; and

(ii) property that may be exempted from property of the estate under section 522 of this title;

§ 510. Subordination

(a) A subordination agreement is enforceable in a case under this title to the same extent that such agreement is enforceable under applicable nonbankruptcy law.

(b) For the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 on account of such a claim, shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as common stock.

(c) Notwithstanding subsections (a) and (b) of this section, after notice and a hearing, the court may—

(1) under principles of equitable subordination, subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim or all or part of an allowed interest to all or part of another allowed interest; or

(2) order that any lien securing such a subordinated claim be transferred to the estate.

§ 544. Trustee as lien creditor and as successor to certain creditors and purchasers

(a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by—

(1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists;

(2) a creditor that extends credit to the debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists; or

(3) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists.

(b) Except as provided in paragraph (2), the trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502 (e) of this title.

(2) Paragraph (1) shall not apply to a transfer of a charitable contribution (as that term is defined in
section 548 (d)(3)) that is not covered under section 548 (a)(1)(B), by reason of section 548 (a)(2).
Any claim by any person to recover a transferred contribution described in the preceding sentence
under Federal or State law in a Federal or State court shall be preempted by the commencement of the

§ 548. Fraudulent transfers and obligations

(a)
(1) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation
incurred by the debtor, that was made or incurred on or within one year before the date of the filing of
the petition, if the debtor voluntarily or involuntarily—
(A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any
entity to which the debtor was or became, on or after the date that such transfer was made or such
obligation was incurred, indebted; or
(B)
(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and
(ii)
(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became
insolvent as a result of such transfer or obligation;
(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for
which any property remaining with the debtor was an unreasonably small capital; or
(III) intended to incur, or believed that the debtor would incur, debts that would be beyond the
debtor’s ability to pay as such debts matured.
(2) A transfer of a charitable contribution to a qualified religious or charitable entity or organization
shall not be considered to be a transfer covered under paragraph (1)(B) in any case in which—
(A) the amount of that contribution does not exceed 15 percent of the gross annual income of the
debtor for the year in which the transfer of the contribution is made; or
(B) the contribution made by a debtor exceeded the percentage amount of gross annual income
specified in subparagraph (A), if the transfer was consistent with the practices of the debtor in making
charitable contributions.
(b) The trustee of a partnership debtor may avoid any transfer of an interest of the debtor in property,
or any obligation incurred by the debtor, that was made or incurred on or within one year before the
date of the filing of the petition, to a general partner in the debtor, if the debtor was insolvent on the
date such transfer was made or such obligation was incurred, or became insolvent as a result of such
transfer or obligation.
(c) Except to the extent that a transfer or obligation voidable under this section is voidable under
section 544, 545, or 547 of this title, a transferee or obligee of such a transfer or obligation that takes
for value and in good faith has a lien on or may retain any interest transferred or may enforce any
obligation incurred, as the case may be, to the extent that such transferee or obligee gave value to the
debtor in exchange for such transfer or obligation.
(d)
(1) For the purposes of this section, a transfer is made when such transfer is so perfected that a bona
fide purchaser from the debtor against whom applicable law permits such transfer to be perfected
cannot acquire an interest in the property transferred that is superior to the interest in such property of
the transferee, but if such transfer is not so perfected before the commencement of the case, such
transfer is made immediately before the date of the filing of the petition.
(2) In this section—
(A) “value” means property, or satisfaction or securing of a present or antecedent debt of the debtor,
but does not include an unperformed promise to furnish support to the debtor or to a relative of the
debtor;
(B) a commodity broker, forward contract merchant, stockbroker, financial institution, or securities
clearing agency that receives a margin payment, as defined in section 101, 741, or 761 of this title, or
settlement payment, as defined in section 101 or 741 of this title, takes for value to the extent of such payment;
(C) a repo participant that receives a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, in connection with a repurchase agreement, takes for value to the extent of such payment; and
(D) a swap participant that receives a transfer in connection with a swap agreement takes for value to the extent of such transfer.
(3) In this section, the term “charitable contribution” means a charitable contribution, as that term is defined in section 170(c) of the Internal Revenue Code of 1986, if that contribution—
(A) is made by a natural person; and
(B) consists of—
(i) a financial instrument (as that term is defined in section 731(c)(2)(C) of the Internal Revenue Code of 1986); or
(ii) cash.
(4) In this section, the term “qualified religious or charitable entity or organization” means—
(A) an entity described in section 170(c)(1) of the Internal Revenue Code of 1986; or
(B) an entity or organization described in section 170(c)(2) of the Internal Revenue Code of 1986.
Relevante bepalingen Uniform Fraudulent Transfer Act

SECTION 1. DEFINITIONS.

As used in this [Act]:

(1) "Affiliate" means:

(i) a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities,

(A) as a fiduciary or agent without sole discretionary power to vote the securities; or

(B) solely to secure a debt, if the person has not exercised the power to vote;

(ii) a corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities,

(A) as a fiduciary or agent without sole power to vote the securities; or

(B) solely to secure a debt, if the person has not in fact exercised the power to vote;

(iii) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(iv) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but the term does not include:

(i) property to the extent it is encumbered by a valid lien;

(ii) property to the extent it is generally exempt under nonbankruptcy law; or

(iii) an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) "Creditor" means a person who has a claim.

(5) "Debt" means liability on a claim.

(6) "Debtor" means a person who is liable on a claim.

(7) "Insider" includes:
(i) if the debtor is an individual,

(A) a relative of the debtor or of a general partner of the debtor;
(B) a partnership in which the debtor is a general partner;
(C) a general partner in a partnership described in clause (B); or
(D) a corporation of which the debtor is a director, officer, or person in control;

(ii) if the debtor is a corporation,

(A) a director of the debtor;
(B) an officer of the debtor;
(C) a person in control of the debtor;
(D) a partnership in which the debtor is a general partner;
(E) a general partner in a partnership described in clause (D); or
(F) a relative of a general partner, director, officer, or person in control of the debtor;

(iii) if the debtor is a partnership,

(A) a general partner in the debtor;
(B) a relative of a general partner in, or a general partner of, or a person in control of the debtor;
(C) another partnership in which the debtor is a general partner;
(D) a general partner in a partnership described in clause (C); or
(E) a person in control of the debtor;

(iv) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(v) a managing agent of the debtor.

(8) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(9) "Person" means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) "Property" means anything that may be the subject of ownership.
"Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

"Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

"Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

SECTION 2. INSOLVENCY.

(a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets, at a fair valuation.

(b) A debtor who is generally not paying his [or her] debts as they become due is presumed to be insolvent.

(c) A partnership is insolvent under subsection (a) if the sum of the partnership's debts is greater than the aggregate of all of the partnership's assets, at a fair valuation, and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

(d) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this [Act].

(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

SECTION 4. TRANSFERS FRAUDULENT AS TO PRESENT AND FUTURE CREDITORS.

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that he [or she] would incur, debts beyond his [or her] ability to pay as they became due.

(b) In determining actual intent under subsection (a)(1), consideration may be given, among other factors, to whether:
(1) the transfer or obligation was to an insider;

(2) the debtor retained possession or control of the property transferred after the transfer;

(3) the transfer or obligation was disclosed or concealed;

(4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) the transfer was of substantially all the debtor's assets;

(6) the debtor absconded;

(7) the debtor removed or concealed assets;

(8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

SECTION 5. TRANSFERS FRAUDULENT AS TO PRESENT CREDITORS.

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.