

Chapter 36—Management Structure

Concentrations of Voting Power

Shareholders can combine voting power to obtain or maintain control or to maximize the impact of cumulative voting.

Proxies—are shareholders' authorization to an agent to vote their shares. A proxy either may specify how the vote is to be cast or may authorize the agent to vote how he chooses. A proxy generally must be in writing and is typically limited to no more than 11 months. The proxy is revocable unless stated to be irrevocable and coupled with an interest, such as shares held as collateral. Solicitations of proxies by publicly held corporations is regulated by the Securities Exchange Act of 1934.

Voting trusts—are designed to concentrate corporate control in one or more persons by allowing shareholders to separate the voting rights of their shares from their ownership. In a voting trust, a shareholder confers on a trustee the right to vote or otherwise act by signing an agreement. Voting trusts are permitted in most states but are usually limited to 10 years' duration.

Fundamental Changes

The board has the power to amend or repeal the bylaws, unless the articles of incorporation reserve the power exclusively to the shareholders. The board initiates certain actions that exceed its power and require shareholder approval. For example, the board may initiate but must obtain shareholder approval to complete proceedings to amend the charter; to effect a merger, consolidation, compulsory share exchange, or the sale or lease of all or substantially all of the assets of the corporation other than in the usual and regular course of business and to dissolve the corporation.

C. Exercise of Directors' Functions

Board members cannot bind the corporation when acting individually; they must act as a board, and only through a meeting of the directors or through an authorized written consent signed by all of the directors, if such consent without a meeting is not contrary to the charter or bylaws. Meetings are at a regular time and place fixed in the bylaws or called at special times. Notice of meetings must be given.

Business judgment rule—this rule precludes the courts' imposing liability on the directors or officers for honest mistakes in judgment. Directors and officers are continuously called on to make decisions that require balancing benefits and risks to the corporation, and they may not always make the correct decision, in light of subsequent events. To benefit later from the business judgment rule, a director or officer must make an informed decision without any conflict of interest, have a rational basis for making it, and reasonably believe it is in the corporation's best interest. Where this standard of conduct has not been met, the director's action must be shown to be the proximate cause of damage to the corporation.