

# The Indiana Business Corporation Law: Tool For Flexibility, Simplicity and Uniformity

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## I. INTRODUCTION

The Indiana Business Corporation Law (IBCL)<sup>1</sup> is designed to propel Indiana into the forefront of states with modern laws governing corporations. Enacted by the 1986 General Assembly, the IBCL is a comprehensive revision of the for-profit corporation law with "state-of-the-art" provisions.

Growing concern among the business and legal communities that the Indiana General Corporation Act (IGCA),<sup>2</sup> predecessor to the IBCL, had become archaic and was not flexible enough to serve the needs of modern business organizations effectively led to enactment of the IBCL. Not only had the IGCA become outmoded, but the various piecemeal attempts to update it over the years instead created provisions that became ambiguous and lacked continuity. Thus, when the Legislature established a study commission<sup>3</sup> to draft and propose a new corporation

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<sup>1</sup>Act of Mar. 5, 1986, Pub. L. No. 149-1986, 1986 Ind. Acts 1377 (codified at IND. CODE §§ 23-1-17 to -54 (Supp. 1986)).

<sup>2</sup>IND. CODE §§ 23-1-1 to -12 (1982).

<sup>3</sup>Act of Apr. 16, 1985, Pub. L. No. 362-1985, 1985 Ind. Acts 2490. Public Law 362 established the General Corporation Law Study Commission, chaired by the Secretary of State and composed of three legal practitioners, three members of the business community, and four state legislators (two from each house and party). The legislative directive was that "[t]he commission shall study the advisability of recommending changes in, including a complete revision of, the general corporation law of this state. Among its considerations, the commission shall examine model or uniform corporation laws." *Id.* § 5, at 2491.

At the commission's organizational meeting in May, 1985, it was determined that the revision should be based on the 1983 version of the Model Business Corporation Act. The commission's goal, also established at that initial meeting, was the creation of a completely rewritten corporation act which would be modern in its concepts, flexible in its application, and simple enough to be used by small, closely-held corporations. Flexibility was singled out as the most important aspect because of the need for the new act to accommodate complex transactions and yet be simple and streamlined enough to make operation under the act feasible for small corporations, which account for the vast majority of all corporations formed in Indiana. The final goal of the commission was to create

statute, the primary goal was the creation of a law that would provide flexibility, simplicity, and uniformity.

This Article will not attempt to analyze every important new provision of the IBCL but will instead focus on a limited number of the statute's more significant aspects. The practitioner is cautioned to review the new act in its entirety in order to represent corporate clients most effectively.

## II. APPLICABILITY OF THE INDIANA BUSINESS CORPORATION LAW

The IBCL will apply automatically to all for-profit corporations that operate in Indiana effective August 1, 1987.<sup>4</sup> This includes corporations formed not only under the IBCL but also those corporations formed under the IGCA<sup>5</sup> or any other prior, for-profit corporation law in Indiana.<sup>6</sup> The IBCL repeals all prior for-profit corporation laws,<sup>7</sup> thus simplifying filing procedures, providing uniformity in application of the law, and eliminating confusion as to which act governs a particular corporation.

The IBCL also applies to all corporations transacting business within the state that are organized under the laws of another jurisdiction<sup>8</sup> and to certain domestic corporations engaging in a business that is subject to regulation and organized under another statute of this state to the extent that the IBCL does not conflict with the other statute.<sup>9</sup> Not-for-profit corporations are not governed by the IBCL.<sup>10</sup>

Existing domestic corporations may elect to be governed by the provisions of the IBCL prior to its August 1, 1987, effective date.<sup>11</sup> Once such an election is made, all of the provisions of the IBCL apply

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an act that, as much as possible, would conform to similar acts in other states. This desire for uniformity was the main consideration for using the Model Business Corporation Act as the starting point.

The commission met weekly throughout the summer and autumn of 1985 and also conducted five regional hearings across the state in order to obtain recommendations from Indiana attorneys and corporations. The commission's final product was introduced into the Legislature through the House of Representatives in the form of House Bill 1257.

<sup>4</sup>IND. CODE ANN. § 23-1-17-3(a) (West Supp. 1986).

<sup>5</sup>IND. CODE §§ 23-1-1 to -12 (1982).

<sup>6</sup>IND. CODE ANN. § 23-1-17-3(a) (West Supp. 1986).

<sup>7</sup>*Id.*

<sup>8</sup>*Id.* § 23-1-17-4.

<sup>9</sup>*Id.* This section provides that "[a] corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under this article unless provisions for incorporation of corporations engaging in that business exist under that statute." For example, banks and insurance companies are incorporated under IND. CODE §§ 28-1-4 and 27-1-6 (1982) and thus may not incorporate under the IBCL although they must file with the Secretary of State to form a corporation. The provisions of the IBCL will govern these corporations, however, as long as there is no contrary provision under title 28 or title 27.

<sup>10</sup>See IND. CODE ANN. §§ 23-1-17-3(a), 23-1-20-5 (West Supp. 1986).

<sup>11</sup>*Id.* § 23-1-17-3(b). To so elect, a corporation's board of directors must adopt a



to the corporation with the exception of those provisions dealing with filing fees,<sup>12</sup> annual reports,<sup>13</sup> and incorporation.<sup>14</sup>

A foreign corporation does not have the option of electing to be governed by the IBCL prior to August 1, 1987.<sup>15</sup> However, a foreign corporation that transacts with a domestic corporation that has elected early must comply with those provisions of the IBCL that relate to the specific transaction.<sup>16</sup> The intent of this non-code provision is to alleviate possible confusion in determining which law would govern the actions of a foreign corporation in a transaction such as a merger with an electing, domestic corporation.

### III. ARTICLES OF INCORPORATION

#### A. Filing Requirements

Patterned on the Model Business Corporation Act,<sup>17</sup> the IBCL establishes streamlined filing requirements which will also promote uni-

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resolution electing to have IND. CODE §§ 23-1-18 through -54 apply to the corporation. The resolution must be filed with the Secretary of State and must:

- a. Recite the board's resolution;
- b. Set forth an effective date *after* the date of filing but no later than 90 days after the date of filing;
- c. Be signed by any officer or the chairman of the board;
- d. Be accompanied by the \$26 filing fee; and
- e. Be presented along with one conformed copy.

IND. CODE ANN. §§ 23-1-17-3(b), 23-1-18-1 (West Supp. 1986).

After July 31, 1987, the provisions of the IBCL apply to all for-profit corporations; thus the election to be governed by the IBCL will no longer be necessary.

<sup>12</sup>IND. CODE ANN. § 23-1-18-3 (West Supp. 1986). Prior to August 1, 1987, the filing fees prescribed by IND. CODE § 23-3-2 apply to all corporations, regardless of whether a corporation has "opted-in" or elected to be governed by the IBCL prior to its August, 1987, effective date. See IND. CODE ANN. § 23-1-17-3(c) (West Supp. 1986).

<sup>13</sup>IND. CODE ANN. § 23-1-53-3 (West Supp. 1986). Prior to August 1, 1987, all corporations must continue to file annual reports pursuant to IND. CODE § 23-1-8-1. See IND. CODE ANN. § 23-1-17-3(c) (West Supp. 1986). The first annual report required by the IBCL will be due on April 1, 1988, since the IBCL changes the filing date for all annual reports from a July 30 filing deadline to a filing period ranging from January 1 to April 1. The old annual report filing requirements will remain effective for 1987. House Bill 1756, pending before the 1987 Indiana General Assembly, would amend the IBCL to create a quarterly filing system based upon a corporation's date of incorporation/admission. This would eliminate the strictly fiscal/calendar year filing system in which all for-profit corporations file annual reports during the same period.

<sup>14</sup>IND. CODE ANN. § 23-1-21 (West Supp. 1986). No incorporation provisions are effective under the IBCL until August 1, 1987. Until that date, a corporation must be formed pursuant to IND. CODE § 23-1-3 (1982). See IND. CODE ANN. § 23-1-17-3(c) (West Supp. 1986). However, once formed, a corporation may immediately file an election pursuant to IND. CODE § 23-1-17-3(b) to come under the provisions of the IBCL.

<sup>15</sup>IND. CODE ANN. § 23-1-17-4 (West Supp. 1986).

<sup>16</sup>Pub. L. No.149-1986, § 67, 1986 Ind. Acts 1531.

<sup>17</sup>MODEL BUSINESS CORP. ACT (1983).

formity as other states adopt the Model Act. Under the IBCL, there are four items required for articles of incorporation.<sup>18</sup> Thus, on and after August 1, 1987, for-profit corporations will be required to set forth only the following information:

1. the corporate name;
2. the number of shares the corporation is authorized to issue;
3. the street address of the corporation's registered office and name of the registered agent; and
4. the name and address of each incorporator.<sup>19</sup>

Other information may be included but is not required.

Unless a delayed effective date is specified, pursuant to Indiana Code section 23-1-18-4(b), the corporate existence begins with the filing of articles of incorporation.<sup>20</sup> The brevity of the new filing requirements should facilitate preparation and filing of incorporation documents, particularly for small corporations.

### *B. Corporate Name*

In the area of corporate name, the IBCL varies from the prior law in two significant respects: name availability and permissible words of incorporation. While the IBCL retains the "distinguishable" standard of name availability adopted two years ago,<sup>21</sup> it departs from the IGCA in the requirements for obtaining consent to use an indistinguishable name.<sup>22</sup> Under the IBCL, a corporation must use a name that is distinguishable upon the records of the Secretary of State from the names of all other corporations whether domestic, foreign, for-profit, or not-

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<sup>18</sup>IND. CODE ANN. § 23-1-21-2(a) (West Supp. 1986). Compare the abbreviated requirements of this new section with the more extensive requirements of IND. CODE § 23-1-3-2 (1982).

<sup>19</sup>IND. CODE ANN. § 23-1-21-2(a) (West Supp. 1986).

<sup>20</sup>*Id.* § 23-1-21-3(a). No delayed effective date for articles of incorporation was permitted under the IGCA.

<sup>21</sup>Act of Mar. 7, 1984, Pub. L. No. 130-1984, 1984 Ind. Acts 1125 (codified at IND. CODE §§ 23-1-2, 23-1-7, 23-1-11, 23-2-1, 23-3-4, 23-7-1.1). The "distinguishable" standard is met if a proposed name is in any way different from an existing name, as long as the variation is not a minor one such as a change in tense or punctuation. This standard, unlike its predecessor, the "confusingly similar" standard, does not carry with it the burden of determining whether a proposed name might be confused with an existing name. That determination is left for the private parties and courts to settle if one feels that a corporation's rights to a specific name have been infringed.

<sup>22</sup>IND. CODE ANN. § 23-1-23-1(c) (West Supp. 1986).

for-profit.<sup>23</sup> This rule also applies to reserved and registered names.<sup>24</sup> Under the IGCA, it was permissible to incorporate an identical or otherwise indistinguishable name as long as the prior existing corporation provided consent.<sup>25</sup> Under the IBCL, the prior existing corporation may continue to provide consent, but must also agree to dissolve or change its corporate name.<sup>26</sup>

The second and more significant change regarding corporate names is the expansion of the permissible words of incorporation. Under the IGCA, only the words "Corporation," "Incorporated," or an abbreviation of one of the two were sufficient as words of incorporation.<sup>27</sup> The IBCL adds the words "Company" and "Limited" and their abbreviations to the list of permissible words of incorporation.<sup>28</sup> This provision is consistent with the words of incorporation adopted by most states.<sup>29</sup>

Under the IBCL, the use of any one of these four words or their abbreviations may indicate corporate status, although the use of "Company" and "Limited" is not restricted to corporations. "Limited" has traditionally been used in Indiana to denote a limited partnership. Therefore, the presence of "Company" or "Limited" in a name does not necessarily indicate that the owner of the name is a corporation. A

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<sup>23</sup>*Id.* § 23-1-23-1(b).

<sup>24</sup>*Id.* Registered name is a term added by the IBCL which permits an existing foreign corporation to register its corporate name, if the name is distinguishable, for renewable one-year periods prior to the transaction of business in Indiana. Name reservation, on the other hand, existed for both domestic and foreign corporations under the IGCA and continues under the IBCL. The reservation period is 120 days. *Id.* § 23-1-23-2(a).

<sup>25</sup>IND. CODE § 23-1-2-4(b) (1982).

<sup>26</sup>IND. CODE ANN. § 23-1-23-1(c) (West Supp. 1986).

<sup>27</sup>IND. CODE § 23-1-2-4 (1982).

<sup>28</sup>IND. CODE ANN. § 23-1-23-1(a)(1) (West Supp. 1986).

<sup>29</sup>As of the introduction of the IBCL into the 1986 General Assembly, only three states required the words "Corporation" and "Incorporation" as the exclusive words of incorporation. Those states were: Alabama, Indiana, and New Jersey. Thirty-six states allowed "Corporation," "Incorporated," "Company," "Limited," or a more permissive list of words of incorporation. Those state were: Alaska, Arizona, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming. Maine, Utah and Wyoming permit any name to be incorporated. Maryland recognizes "Chartered" and Mississippi permits "Unlimited" in addition to the standard four words. Hawaii, Louisiana, New Hampshire, New York, South Carolina, and Wisconsin allowed "Corporation," "Incorporated" or "Limited," but not "Company" while Arkansas, Florida, Ohio, Tennessee, and Texas permitted "Corporation," "Incorporated," or "Company" but not "Limited." Telephone survey by Susan L. Wampler, Corporate Counsel, Office of the Indiana Secretary of State, August 14, 1985.



check should be made with the Corporations Division of the Secretary of State's Office to determine whether a corporate filing has been made.

### C. Purposes and Powers

The articles of incorporation are no longer required to contain a statement regarding the purposes of the corporation, although such a clause may be added.<sup>30</sup> If the articles of incorporation do not limit the purposes, powers, or duration of the corporation, the corporation's purposes and powers will be as broad as allowable under the Act<sup>31</sup> and its duration will be perpetual.<sup>32</sup>

Three significant expansions of a corporation's permissible powers have been added by the IBCL. A corporation now has the power to lend money and credit to its officers, directors, employees, and agents<sup>33</sup> whereas such loans were prohibited under the IGCA.<sup>34</sup>

Another new provision defines certain emergency powers which are available to all corporations under the IBCL.<sup>35</sup> This section allows corporations to continue operations during an emergency by modifying lines of succession and relocating the principal office without adhering to otherwise required procedures.<sup>36</sup> An emergency is defined as occurring "if an extraordinary event prevents a quorum of the corporation's directors from assembling in time to deal with the business for which the meeting has been or is to be called."<sup>37</sup>

A third new section contains a provision that gives directors the power to adopt procedures for regulating change of control transactions and provides directors with the authority to react to changing hostile takeover tactics.<sup>38</sup>

### D. Stock Shares

The establishment of significantly more flexible provisions relating to shares of stock and the creation of a capital structure are key developments initiated by enactment of the IBCL. The statute abandons the traditional concept of "common stock" in favor of "authorized shares," thus allowing the corporation to develop a capital structure appropriate for its specific needs.<sup>39</sup> The IBCL requires only that at all

<sup>30</sup>IND. CODE ANN. § 23-1-21-2(a), -2(b)(2)(A) (West Supp. 1986).

<sup>31</sup>*Id.* § 23-1-22-1.

<sup>32</sup>*Id.* § 23-1-22-2.

<sup>33</sup>*Id.* § 23-1-22-2(11).

<sup>34</sup>IND. CODE § 23-1-2-18 (1982).

<sup>35</sup>IND. CODE ANN. § 23-1-22-3 (West Supp. 1986).

<sup>36</sup>*Id.* § 23-1-22-3(a).

<sup>37</sup>*Id.* § 23-1-22-3(d).

<sup>38</sup>*Id.* § 23-1-22-4. See also *infra* note 116 regarding the questioned constitutionality of the IBCL's provisions regarding takeovers.

<sup>39</sup>IND. CODE ANN. § 23-1-25 (West Supp. 1986).

times there be at least one class of stock with full voting rights and one class, which may be the same class, with full rights upon dissolution.<sup>40</sup> Any number of other special classes are allowed, including traditional preferred stock.<sup>41</sup>

1. *Insolvency and Balance Sheet Tests for Distributions.*—The concepts of “par value,” “stated capital,” “capital surplus,” and “earned surplus” are eliminated under the IBCL, but corporations currently using or wishing to use these concepts in the future may continue to do so. The IBCL replaces these prior terms with a clear, two-fold standard for determining when a distribution is lawful: an equity insolvency test and a balance sheet test.<sup>42</sup> The equity insolvency test considers the corporation’s ability to pay its current obligations as they become due.<sup>43</sup> In addition, the balance sheet test requires that the corporation’s assets exceed the sum of its liabilities and preferential amounts due upon liquidation.<sup>44</sup> Because these tests are routinely used by businessmen and accountants, the board of directors through its collective business judgment will be permitted under the IBCL to use and rely on these more familiar standards in determining the effect to the corporation of a distribution to shareholders.

2. *Treasury Shares.*—Following the modern trend, the IBCL eliminates treasury shares unless a corporation elects to have them.<sup>45</sup> The IGCA defined treasury shares as shares that have been issued and subsequently re-acquired by the corporation but have not been cancelled or restored to the status of authorized but unissued shares.<sup>46</sup> They were by statute issued but not outstanding. The IBCL eliminates the concept of treasury shares and permits a corporation to acquire its own shares and either hold them as authorized but unissued shares or cancel them and reduce the total authorized shares of the corporation.<sup>47</sup>

3. *Consideration.*—The rules governing consideration for the issuance of shares are also more flexible under the IBCL. The board of directors, unless the articles of incorporation reserve this authority to the shareholders, may authorize the issuance of shares for any tangible or intangible property including promissory notes, uncertified checks, and contracts for future services,<sup>48</sup> none of which were recognized as valid

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<sup>40</sup>*Id.* § 23-1-25-1(b).

<sup>41</sup>*Id.* § 23-1-25-1(c).

<sup>42</sup>*Id.* § 23-1-28.

<sup>43</sup>*Id.* § 23-1-28-3(1).

<sup>44</sup>*Id.* § 23-1-28-3(2).

<sup>45</sup>*Id.* § 23-1-27-2.

<sup>46</sup>IND. CODE § 23-1-1-1(h) (1982); *see also* IND. CODE ANN. § 23-1-2-6 (West Supp. 1986).

<sup>47</sup>IND. CODE ANN. § 23-1-27-2 (West Supp. 1986).

<sup>48</sup>*Id.* § 23-1-26-2.

consideration under the IGCA. Additionally, there is no requirement that there be an initial paid-in capital amount of one thousand dollars (\$1,000) as required by the IGCA.<sup>49</sup>

4. *Dividends and Stock Splits.*—Because the concept of par value has been eliminated, the IBCL disposes of the distinction between share dividends and splits and treats all pro rata issuances to the corporation's shareholders without consideration as dividends.<sup>50</sup>

5. *Uncertified and Fractional Shares.*—The IGCA had made no provisions for uncertificated securities or for dealing with fractional shares of stock which often result from mergers, stock splits, and dividends. With the increase in frequency of these complex corporate transactions and the modern trend toward a paperless society, explicit authorization of these types of securities has become essential.

The IBCL allows shares of stock to be issued without certificates, acknowledging the increased use of electronic and computerized devices for maintaining share records.<sup>51</sup> To protect shareholders, the corporation has the burden of sending shareholders a written statement of the information required to appear on certificates if the corporation does not issue certificates.<sup>52</sup>

In another significant change, the IBCL permits the issuance of fractional shares of stock and specifically sets out guidelines for the control of fractional shares, including the substitution of scrip for fractional shares.<sup>53</sup>

### *E. Registered Agent and Office*

Every corporation must continuously maintain a registered office in Indiana and a registered agent at that office.<sup>54</sup> The new terminology is a departure from the prior principal office/resident agent requirement,<sup>55</sup> and though the concept is basically the same, there are a number of changes.

A registered office need only be an address designated by the corporation. No other connection to the corporation must exist as arguably was required for the principal office under prior law.<sup>56</sup> However, the IBCL does require a street address; a post office box will no longer

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<sup>49</sup>IND. CODE § 23-1-3-2(8) (1982).

<sup>50</sup>IND. CODE ANN. § 23-1-26-4 (West Supp. 1986).

<sup>51</sup>*Id.* § 23-1-26-7.

<sup>52</sup>*Id.* § 23-1-26-7(b).

<sup>53</sup>*Id.* § 23-1-25-4.

<sup>54</sup>*Id.* § 23-1-24-1.

<sup>55</sup>IND. CODE § 23-1-2-5 (1982).

<sup>56</sup>*Id.*



suffice.<sup>57</sup> The registered agent continues to serve the function of agent for service of process and other legal notices.<sup>58</sup>

Unlike the IGCA, the IBCL requires the business address of the registered agent to be identical to the address listed for the corporation's registered office.<sup>59</sup> A registered agent must be either an individual, a domestic for-profit or not-for-profit corporation, or a foreign for-profit or not-for-profit corporation registered in Indiana.<sup>60</sup> Therefore, if a law firm is to be the registered agent, either it must be a professional corporation or an individual within the firm must be willing to serve as the registered agent.

Once a corporation is subject to the provisions of the IBCL, its existing resident agent and resident agent's address will be considered the registered agent and office as required by the statute.<sup>61</sup> This provision relieves the corporation of the burden of changing the agent and office to conform to the definitions of the IBCL until the filing of its first annual report. Thus the records of the Secretary of State will contain only one address for each corporation until April 1, 1988, when the first annual report is filed under the IBCL. The annual report must also contain a listing of the corporation's principal office, whether inside or outside of Indiana, which the statute defines as the place where the principal executive offices are located.<sup>62</sup>

The procedures for changing a registered agent or office are more comprehensive than under the prior law. Under the IBCL, a new agent's written consent must be submitted with the statement of change of registered agent.<sup>63</sup> A registered agent may resign by filing two copies of a signed resignation statement with the Secretary of State.<sup>64</sup> The resignation becomes effective on the thirty-first day after the day on which it was filed.<sup>65</sup>

A corporation's registered agent is the proper party for service of process on a corporation.<sup>66</sup> If the registered agent is unavailable,<sup>67</sup> service

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<sup>57</sup>IND. CODE ANN. § 23-1-24-2(a)(2) (West Supp. 1986).

<sup>58</sup>*Id.* § 23-1-24-4.

<sup>59</sup>*Id.* § 23-1-24-1(2)(A).

<sup>60</sup>*Id.* § 23-1-24-1(2).

<sup>61</sup>Pub. L. No. 149-1986, § 66(c), 1986 Ind. Acts 1531.

<sup>62</sup>IND. CODE ANN. § 23-1-20-19 (West Supp. 1986).

<sup>63</sup>*Id.* § 23-1-24-2(a)(5).

<sup>64</sup>*Id.* § 23-1-24-3(a).

<sup>65</sup>*Id.* § 23-1-24-3(c).

<sup>66</sup>*Id.* § 23-1-24-4(a); IND. R. TR. P. 4.6(a)(1).

<sup>67</sup>IND. CODE ANN. § 23-1-24-4(b) (West Supp. 1986). The registered agent is not available if the corporation has failed to appoint a new one or if with reasonable diligence the agent cannot be located. *Id.*

may be made on the secretary or other executive officer at the corporation's principal office.<sup>68</sup>

### F. Subsequent Documents

1. *General Filing Requirements and Certifications.*—The General Corporation Law Study Commission found that from a procedural standpoint, there was a need to simplify the execution of many corporate transactions, including the mechanics of filing documents with the Secretary of State.<sup>69</sup> Too many transactions were delayed or complicated by failure to comply with technical requirements of the IGCA. Thus, the IBCL contains a uniform, simplified filing procedure in a centralized location in the Act to clarify the technical requirements of document filing.<sup>70</sup>

This provision of the IBCL eliminates the verification language<sup>71</sup> required by the IGCA,<sup>72</sup> and adds a section permitting a delayed effective date of up to ninety days after the date of filing for any document.<sup>73</sup> If no delayed effective date is specified, the document is effective when filed rather than when approved.<sup>74</sup> The IBCL also clarifies and expands the list of persons who may execute corporate documents.<sup>75</sup>

In the area of certifications, the IBCL abandons the concept of good standing in favor of a certificate of existence or authorization.<sup>76</sup>

<sup>68</sup>*Id.* The possibility of service on an executive officer other than the secretary was added so that this provision would track the language used in Indiana Trial Rule 4.6(a)(1).

<sup>69</sup>The IGCA required documents to comply with various out-dated, technical and often complicated procedures. For example, the IGCA required articles of incorporation to be presented in duplicate with both copies originally signed even though the copy is returned to the filing party and only the original is retained by the Secretary of State. IND. CODE § 23-1-3-2 (1982). The IBCL eliminates this technicality by requiring a filed document to be accompanied by one exact or conformed copy which need not be signed. The new requirement eliminates a possible filing delay when the signed incorporator or officer is not available to sign the copy. IND. CODE ANN. § 23-1-18-2 (West Supp. 1986).

<sup>70</sup>IND. CODE ANN. § 23-1-18 (West Supp. 1986). In addition, this section also eliminates the requirement of individual certificates issued in connection with various transactions in favor of more efficient ways to evidence the completion of a filing. This outmoded concept of issuing an individually prepared certificate for each of the thousands of transactions completed annually is replaced by a fee receipt or acknowledgement of receipt if no fee is required. *Id.*

<sup>71</sup>*Id.* § 23-1-18-1(g)(3).

<sup>72</sup>*See, e.g.,* IND. CODE §§ 23-1-3-2, 23-1-4-5, 23-1-5-2(f), and 23-1-7-1 (1982).

<sup>73</sup>IND. CODE ANN. § 23-1-18-4(b) (West Supp. 1986).

<sup>74</sup>*Id.* § 23-1-18-4(a).

<sup>75</sup>*Id.* § 23-1-18-1(f). This section retains the power of any officer to sign a document and adds the chairman of the board of directors. It also clarifies that an incorporator may sign if the directors have not been selected or the corporation has not been formed, and permits execution by the fiduciary if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary. *Id.*

<sup>76</sup>*Id.* § 23-1-18-9.

2. *Articles of Correction.*—Articles of correction is a new filing permitted by the IBCL which allows the cure of deficiencies or incorrect statements in a formerly filed document.<sup>77</sup> A corrective filing has the effect of remedying the error as of the date the original document was filed except for persons who relied on the inaccurate document and who are adversely affected by the correction.<sup>78</sup>

This new corrective filing procedure provides a much needed mechanism to correct technical errors. Under the prior act, a corporation was required to file articles of amendment, even though that procedure was inappropriate, because there was no better means of correcting errors in a previously filed document.

3. *Articles of Amendment and Restated Articles.*—Certain “house-keeping” amendments to the articles of incorporation may now be accomplished under the IBCL without shareholder approval.<sup>79</sup> One such permissible amendment is changing the corporate name by substituting the word “Corporation,” “Incorporated,” “Company,” “Limited,” or an abbreviation for a similar word or abbreviation.<sup>80</sup>

Additionally, the IBCL specifically provides for restated articles of incorporation when a corporation has made amendments to its articles and wants to combine all currently effective provisions into one document.<sup>81</sup> Additional amendments may be made in the restated articles with or without shareholder approval, depending upon the subject matter being amended.<sup>82</sup> If the restatement is filed without amendments, no shareholders’ vote is required.<sup>83</sup> No provision for restated articles existed under the IGCA.

#### IV. DIRECTORS AND OFFICERS

##### A. *Indemnification, Standard of Conduct, and Liability*

Liability of directors, officers, employees, and agents has become a critical issue in modern corporation law, necessitating a detailed and specific chapter on indemnification. Addressing the concern, the IBCL revitalizes Indiana’s indemnification statute to include comprehensive definitions, criteria for advancing and/or reimbursing expenses, including defense fees, and provisions for the maintenance of liability insurance, as well as sections regarding the power to indemnify, a mechanism for

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<sup>77</sup>*Id.* § 23-1-18-5.

<sup>78</sup>*Id.* § 23-1-18-5(c).

<sup>79</sup>*Id.* § 23-1-38.

<sup>80</sup>*Id.* § 23-1-38-2(5).

<sup>81</sup>*Id.* § 23-1-38-7.

<sup>82</sup>*Id.* § 23-1-38-7(d).

<sup>83</sup>*Id.*



handling claims for indemnification, mandatory indemnification, and indemnification by judicial order.<sup>84</sup> These changes are directed at providing maximum protection for those persons who serve corporations while preserving the rights of persons to enforce legitimate claims.

The IBCL outlines a detailed standard of conduct for directors in the execution of their duties.<sup>85</sup> This standard basically is three-fold and requires that a director discharge his duties in good faith, with the care that an ordinarily prudent person in a like position would exercise in similar circumstances, and in a manner the director reasonably believes to be in the best interests of the corporation.<sup>86</sup> The IBCL also provides a mechanism for handling conflict of interest transactions in which a director has either a direct or indirect interest in the transaction.<sup>87</sup>

The most notable change is the relaxation of the legal standard of care required of directors from simple negligence to a standard of "willful misconduct or recklessness."<sup>88</sup> This change was made to alleviate the critical problem of obtaining adequate and affordable directors' liability insurance coverage.

It is important to note that the state revenue code has also been amended to impose liability in certain cases upon corporate officers and directors in the distribution of assets upon dissolution of a corporation.<sup>89</sup> Officers and directors are personally liable for "any acts or omissions that result in the disposition of corporate assets in violation of the interests of the state."<sup>90</sup> Additionally, personal liability extends to all taxes, penalties, interest, and fees associated with collection of the corporation's liability to the Department of Revenue<sup>91</sup> including a penalty of thirty percent of the unpaid tax.<sup>92</sup> These provisions become effective along with the IBCL on August 1, 1987.<sup>93</sup>

### *B. Management of the Corporation*

Wide latitude in the management of corporate affairs is granted under the IBCL. A corporation with fifty or fewer shareholders may dispense with a board of directors by specifying in the articles of incorporation who will perform the board's duties.<sup>94</sup> This provision

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<sup>84</sup>*Id.* § 23-1-37.

<sup>85</sup>*Id.* § 23-1-35.

<sup>86</sup>*Id.* § 23-1-35-1(a).

<sup>87</sup>*Id.* § 23-1-35-2.

<sup>88</sup>*Id.* § 23-1-35-1(e)(2).

<sup>89</sup>*Id.* § 6-8.1-10-8. See *infra* text accompanying notes 117-29.

<sup>90</sup>IND. CODE ANN. § 6-8.1-10-8(c) (West Supp. 1986).

<sup>91</sup>*Id.* § 6-8.1-10-8(d).

<sup>92</sup>*Id.* § 6-8.1-10-8(e).

<sup>93</sup>*Id.* § 6-8.1-10-8.

<sup>94</sup>*Id.* § 23-1-33-1(c).

reflects the practice of many small corporations in which the shareholders actually conduct the operation of the corporation.

A corporation no longer must have a president, secretary, and treasurer<sup>95</sup> but must have one officer responsible for preparing minutes of shareholders' and directors' meetings and maintaining and authenticating the records of the corporation.<sup>96</sup>

Under the IBCL, the board of directors may take action without a meeting if the action is taken by all members of the board and is evidenced by written consent.<sup>97</sup> Such an action is effective when the last director signs or on the date specified in the action itself.<sup>98</sup>

## V. MERGERS AND SHARE EXCHANGES

The IBCL updates, clarifies, and streamlines Indiana's merger and share exchange procedures to provide an expedited means of accomplishing these transactions, while retaining the same basic procedural structure.

### A. Consolidation

The most notable distinction between the new act and the IGCA is that the IBCL no longer recognizes statutory "consolidation," which is similar to a merger except that all corporate participants disappear into a newly formed corporation created by the consolidation, as opposed to an existing corporate entity.<sup>99</sup> A similar effect, however, may be obtained under the IBCL by creating a new corporation immediately prior to the merger.

### B. Merger

A significant change from the IGCA is the elimination of the thirty-day reapproval process,<sup>100</sup> which was designed to give directors of a merging corporation an opportunity to re-evaluate the merits of the merger. Under this section, once a plan of merger or share exchange was approved by the shareholders, the plan had to be reapproved by

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<sup>95</sup>Pub. L. No. 149-1986, § 65, 1986 Ind. Acts 1530 (repealing IND. CODE § 23-1-2-13). The IGCA also permitted one person to hold all positions if the bylaws so provided, but required that there be a president, secretary, and treasurer. IND. CODE § 23-1-2-13(a) (1982).

<sup>96</sup>IND. CODE ANN. § 23-1-36 (West Supp. 1986).

<sup>97</sup>*Id.* § 23-1-34-2(a).

<sup>98</sup>*Id.* § 23-1-34-2(b).

<sup>99</sup>*Id.* § 23-1-5-3.

<sup>100</sup>Pub. L. No. 149-1986, § 65, 1986 Ind. Acts 1530 (repealing IND. CODE § 23-1-5-2(f)).

the board of directors.<sup>101</sup> The provision did not apply if the shareholders' vote was unanimous.<sup>102</sup> In contrast, the IBCL does not require subsequent reapproval,<sup>103</sup> thus eliminating a burdensome process which often discouraged foreign corporations from merging with Indiana domestic corporations because of the uncertainty of the transaction even after initial approval.

Another departure from the prior law is the requirement that each shareholder of the surviving and merging corporations, whether or not entitled to vote, receive notice from the corporation of the proposed shareholders' meeting.<sup>104</sup> The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and must contain a copy or summary of the plan.<sup>105</sup> The IGCA required that notice of the meeting be sent only to those shareholders entitled to vote.<sup>106</sup> Additionally, the IBCL provides that in certain cases, shareholder approval by the surviving corporation is not necessary.<sup>107</sup>

Subsidiary or short-form mergers are available to more corporations under the IBCL than under the prior law. The IGCA permitted any corporation owning at least ninety-five percent (95%) of the outstanding shares of each class of stock of another corporation to merge such corporation into itself without shareholder approval from either corporation.<sup>108</sup> The IBCL broadens this provision to include parent corporations owning at least ninety percent (90%) of the outstanding shares of stock of a subsidiary.<sup>109</sup>

Unlike the IGCA, the new Act specifically provides for an abandonment of either a plan of merger or share exchange at the discretion of the board of directors without shareholder approval.<sup>110</sup> However, the statute specifically requires the abandonment to occur prior to the filing of the articles of merger or share exchange with the Secretary of State.<sup>111</sup>

### C. Share Exchange

The IBCL combines mergers and share exchanges into one chapter<sup>112</sup>

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<sup>101</sup>IND. CODE § 23-1-5-2(f) (1982).

<sup>102</sup>*Id.*

<sup>103</sup>IND. CODE ANN. § 23-1-40 (West Supp. 1986).

<sup>104</sup>*Id.* § 23-1-40-3(d).

<sup>105</sup>*Id.*

<sup>106</sup>IND. CODE § 23-1-5-2(a) (1982).

<sup>107</sup>IND. CODE ANN. § 23-1-40-3(g) (West Supp. 1986).

<sup>108</sup>IND. CODE § 23-1-5-8 (1982).

<sup>109</sup>IND. CODE ANN. § 23-1-40-4 (West Supp. 1986).

<sup>110</sup>*Id.* § 23-1-40-3(i).

<sup>111</sup>*Id.*

<sup>112</sup>*Id.* § 23-1-40.



because the two types of transactions are treated similarly. The provisions specifically applying to share exchanges closely follow the procedures originally enacted by the legislature in 1985 when share exchanges were first authorized.<sup>113</sup> However, many of the IBCL's streamlining provisions relating to mergers also apply to share exchanges as noted above.

#### D. Takeover Provisions

It is outside the scope of this Article to review the business combinations<sup>114</sup> and control share acquisition<sup>115</sup> provisions of the IBCL. Such a discussion is better suited for later treatment after resolution of *Dynamics Corp. of America v. CTS Corp.*,<sup>116</sup> in which the control share acquisition provision has been challenged on supremacy and commerce clause grounds.

### VI. DISSOLUTIONS

#### A. Voluntary Dissolution

The provisions for voluntary dissolution of an Indiana corporation are greatly simplified under the IBCL. Most notably, the old requirement of clearances from the Department of Revenue and Employment Security Division,<sup>117</sup> which frequently delayed the dissolution process by two or more months, has been abolished.<sup>118</sup> In its place, the IBCL adopts a notice procedure in which a copy of treasury form 966 or a similar notice must be sent within thirty days following adoption of a plan of liquidation to the Department of Revenue and Employment Security Division.<sup>119</sup> The requirement that the Attorney General's Unclaimed Property Section be notified within ten days of the resolution to dissolve was not changed under the IBCL.<sup>120</sup>

The IBCL establishes a procedure whereby a corporation can settle claims shortly after dissolution.<sup>121</sup> Undisputed known claims can be

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<sup>113</sup>Act of Apr. 14, 1985, Pub. L. No. 231-1985, 1985 Ind. Acts 1582 (codified at IND. CODE §§ 23-1-5 and 23-3-2).

<sup>114</sup>IND. CODE ANN. § 23-1-43 (West Supp. 1986).

<sup>115</sup>*Id.* § 23-1-42.

<sup>116</sup>794 F.2d 250 (7th Cir. 1986) (IND. CODE § 23-1-42 void as violative of Williams Act and commerce clause). See Galanti, *Developments in Business Association Law*, 20 IND. L. REV. 19, 29-54 (1987).

<sup>117</sup>IND. CODE § 23-1-7-1 (1982).

<sup>118</sup>Pub. L. No. 149-1986, § 65, Ind. Acts 1530.

<sup>119</sup>IND. CODE ANN. § 23-1-45 (West Supp. 1986). It should be noted that IND. CODE § 23-1-45-2(f) contains a typographical error. In that section, IND. CODE § 6-8.1-10-8 is incorrectly cited as IND. CODE § 6-1.1-10-8.

<sup>120</sup>IND. CODE § 32-9-1-14 (1982).

<sup>121</sup>IND. CODE ANN. § 23-1-45-6, -7 (West Supp. 1986).

resolved by providing notice of dissolution to claimants and by paying the acknowledged amount due.<sup>122</sup> Disputed known claims require notification of the dispute from the claimant.<sup>123</sup> Unknown claims may be settled by publication which initiates the running of a two-year statute of limitations after which claimants are barred from pursuing claims.<sup>124</sup>

Under the IGCA, shareholders could initiate voluntary dissolution,<sup>125</sup> whereas the IBCL does not permit such action.<sup>126</sup> Another departure from prior law is the requirement under the IBCL that all shareholders, whether or not entitled to vote, receive notice.<sup>127</sup> The IGCA required that notice be sent only to those entitled to vote.<sup>128</sup>

The IBCL also creates a new concept whereby a dissolved corporation has a limited existence following the filing of articles of dissolution under which it may continue for the sole purpose of winding up its corporate affairs.<sup>129</sup>

Additionally, the IBCL establishes a procedure by which a corporation may revoke its dissolution by filing articles of revocation of dissolution with the Secretary of State within 120 days of the effective date of the dissolution.<sup>130</sup> The IGCA permitted revocation of dissolution only prior to the issuance of a certificate of dissolution by the Secretary of State.<sup>131</sup>

### B. Short Form Dissolution

The requirements for short form dissolution, where the incorporators may dissolve a corporation without shareholder approval, have been modified to permit more corporations to follow this abbreviated process.<sup>132</sup> The IGCA imposed a one-year filing limit relating back to the date the articles of incorporation were filed, and permitted filing only if the corporation had not begun business *and* had not yet issued shares.<sup>133</sup> The IBCL abolishes the time constraint and permits filing if the business has not begun *or* if shares have not been issued.<sup>134</sup>

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<sup>122</sup>*Id.* § 23-1-45-6(b).

<sup>123</sup>*Id.* § 23-1-45-6(c).

<sup>124</sup>*Id.* § 23-1-45-7.

<sup>125</sup>IND. CODE § 23-1-7-1(b)(1) (1982).

<sup>126</sup>IND. CODE ANN. § 23-1-45 (West Supp. 1986).

<sup>127</sup>*Id.* § 23-1-45-2(d).

<sup>128</sup>IND. CODE § 23-1-7-1(b)(1) (1982).

<sup>129</sup>IND. CODE ANN. § 23-1-45-5 (West Supp. 1986). *See supra* text accompanying note 89 regarding officers' and directors' liability upon dissolution.

<sup>130</sup>IND. CODE ANN. § 23-1-45-4 (West Supp. 1986).

<sup>131</sup>IND. CODE § 23-1-7-2 (1982).

<sup>132</sup>IND. CODE ANN. § 23-1-45-1 (West Supp. 1986).

<sup>133</sup>IND. CODE § 23-1-7-1(a) (1982).

<sup>134</sup>IND. CODE ANN. § 23-1-45-1 (West Supp. 1986).

### C. Administrative Dissolution

The Secretary of State has the power under the IBCL to seek administrative dissolution if: a corporation fails to pay within sixty days after the due date any penalties imposed by the IBCL or any other law; a corporation fails to file its annual report within sixty days after its due date; a corporation fails to appoint or notify the office of a change in the registered agent or registered office for more than sixty days; or a corporation's limited period of existence has expired.<sup>135</sup> Under the prior law, the Secretary of State could initiate administrative dissolution proceedings only if the corporation failed to file its annual report for two or more consecutive years<sup>136</sup> or if two years had elapsed since the termination of the corporation's period of existence.<sup>137</sup>

Where grounds for administrative dissolution exist, the Secretary of State must give the offending corporation notice of the grounds.<sup>138</sup> If the grounds are neither corrected nor disproved within sixty days after receipt of the notice, the Secretary of State shall administratively dissolve the corporation by issuing a certificate of dissolution setting forth the grounds for dissolution and the effective date, and serve a copy on the corporation.<sup>139</sup> A corporation that has been administratively dissolved continues to exist, but only for the purposes necessary to wind up and liquidate its operations<sup>140</sup> like the limited purposes of a voluntarily dissolved corporation.<sup>141</sup>

In another departure from the prior law, a corporation has only two years from the date of an administrative dissolution to seek reinstatement.<sup>142</sup> The IGCA imposed no time constraint.<sup>143</sup> When the reinstatement is effective, it relates back to the effective date of the administrative dissolution, and business is resumed as if the dissolution had never occurred.<sup>144</sup>

### D. Judicial Dissolution

The IBCL provides for judicial dissolution by the Attorney General

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<sup>135</sup>*Id.* § 23-1-46-1.

<sup>136</sup>IND. CODE § 23-1-10-1 (1982).

<sup>137</sup>*Id.* § 23-1-7-3.

<sup>138</sup>IND. CODE ANN. § 23-1-46-2(a) (West Supp. 1986).

<sup>139</sup>*Id.* § 23-1-46-2(b).

<sup>140</sup>*Id.* § 23-1-46-2(c).

<sup>141</sup>*Id.* § 23-1-45-5. See *supra* text accompanying note 129.

<sup>142</sup>IND. CODE ANN. § 23-1-46-3 (West Supp. 1986). House Bill 1756, pending before the 1987 Indiana General Assembly, would permit administratively dissolved corporations meeting all other requirements to reinstate at any time, thereby eliminating the IBCL's two-year limitation.

<sup>143</sup>*Id.* § 23-3-4-1.6.

<sup>144</sup>*Id.* § 23-1-46-3(c).



in the event of fraud or abuse of authority; by a shareholder in the event of a deadlock; by a creditor in the event the creditor's claim has been reduced to judgment and the corporation is insolvent; or by the corporation under circumstances in which it chooses to have its voluntary dissolution continued under court supervision.<sup>145</sup> When the board of directors is deadlocked, a shareholder action for judicial dissolution no longer must show irreparable injury to succeed.<sup>146</sup>

## VII. FOREIGN CORPORATIONS

Relaxation of the registration requirements for a foreign corporation transacting business in Indiana is another major advantage of the new Act. On the application for admission, the "Indiana shares" formula<sup>147</sup> has been eliminated<sup>148</sup> along with the requirement that foreign corporations disclose statements of business transacted and tangible property in Indiana.<sup>149</sup>

Another significant change from the IGCA is the IBCL's creation of specific criteria for determining what does not constitute "transacting business" within the state of Indiana.<sup>150</sup> A non-exhaustive laundry list is set forth to provide guidance in the determination of whether a corporation's activities require registration. The list includes maintaining, defending, or settling any proceeding, holding meetings that concern internal corporate affairs, maintaining bank accounts, maintaining offices dealing with the corporation's own securities, selling through independent contractors, soliciting or obtaining orders that must be accepted outside of Indiana to become contracts, as well as any transaction in interstate commerce or that is an isolated transaction that may be completed in thirty days.<sup>151</sup> The IGCA left the determination of whether an act was "transacting business in Indiana" to the judiciary.

The IBCL penalty provisions for corporations transacting business in the state without first registering are nearly identical to those of the

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<sup>145</sup>*Id.* § 23-1-47.

<sup>146</sup>*Id.* § 23-1-47-1(2)(A).

<sup>147</sup>*Id.* § 23-1-11-4; IND. CODE § 23-3-2-1(f) (1982). The "Indiana shares" formula was a burdensome mechanism to determine the percentage of business a foreign corporation transacted in Indiana. The percentage was multiplied by the corporation's total number of outstanding shares to determine its "Indiana shares" because the fee was based on the number of shares attributable to Indiana activity.

<sup>148</sup>Pub. L. No. 149-1986, § 65, 1986 Ind. Acts 1530 (repealing IND. CODE § 23-1-11-4).

<sup>149</sup>*Id.* (codified at IND. CODE § 23-1-11-4(g), (h) (West Supp. 1986)).

<sup>150</sup>IND. CODE ANN. § 23-1-49-1(b) (West Supp. 1986).

<sup>151</sup>*Id.*

IGCA.<sup>152</sup> A civil penalty of not more than ten thousand dollars, enforceable by the Attorney General, is retained by the IBCL.<sup>153</sup>

Many of the IBCL's other provisions regarding foreign corporations closely follow those pertaining to domestic corporations, including name availability,<sup>154</sup> maintenance of a registered agent and office,<sup>155</sup> and revocation of authority to transact business.<sup>156</sup>

### VIII. FEES

Until passage of the IBCL, Indiana's corporate fee structure had not been significantly adjusted since 1973.<sup>157</sup> Additionally, Indiana's fee structure has generally been based upon the number of shares authorized by the corporation,<sup>158</sup> a policy that tended to penalize publicly held corporations and deter them from continuing to operate in Indiana. The minimum fee for incorporating a corporation was \$36.00, while a corporation with two million authorized shares would pay \$14,016 to incorporate.<sup>159</sup> The IBCL erases this disparity with a standard \$90 fee for incorporation or admission regardless of the number of shares.<sup>160</sup> This provision eliminates the need for fee calculation by the corporation and the Secretary of State, and simultaneously abolishes the deterrent to conducting business in Indiana while establishing a standard fee that is not prohibitive for small corporations.

The fee to amend, dissolve, withdraw, or reinstate was raised from \$26<sup>161</sup> to \$30<sup>162</sup> while certifications were increased from \$6<sup>163</sup> to \$15<sup>164</sup> with a fee of \$1 per page for copying.<sup>165</sup> Mergers or share exchanges will cost \$90.<sup>166</sup> There will no longer be a fee for change of registered agent,<sup>167</sup> while annual report fees are unchanged at \$15.<sup>168</sup>

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<sup>152</sup>IND. CODE § 23-1-11-14 (1982).

<sup>153</sup>IND. CODE ANN. § 23-1-49-2(d) (West Supp. 1986).

<sup>154</sup>*Id.* §§ 23-1-23, 23-1-49-6.

<sup>155</sup>*Id.* §§ 23-1-24, 23-1-49-7.

<sup>156</sup>*Id.* §§ 23-1-46, -51.

<sup>157</sup>IND. CODE § 23-3-2-2 (1973).

<sup>158</sup>IND. CODE ANN. § 23-3-2-2 (West Supp. 1986).

<sup>159</sup>*Id.* at (a).

<sup>160</sup>*Id.* § 23-1-18-3(a).

<sup>161</sup>IND. CODE §§ 23-3-2-2(h), (k), (m) and 23-3-2-3 (1982).

<sup>162</sup>IND. CODE ANN. § 23-1-18-3(a) (West Supp. 1986).

<sup>163</sup>IND. CODE § 23-3-2-3 (1982).

<sup>164</sup>IND. CODE ANN. § 23-1-18-3(c)(2) (West Supp. 1986).

<sup>165</sup>*Id.* at (c)(1).

<sup>166</sup>*Id.* at (a)(12).

<sup>167</sup>IND. CODE ANN. § 23-3-2-2(j) (West Supp. 1986). The fee was \$4.

<sup>168</sup>*Id.* at (a)(23).

## IX. CONCLUSION

In keeping with the goals of flexibility, simplicity, and uniformity, the IBCL provides latitude for large and small corporations to develop corporate structures to accommodate the realities of their businesses.

Business procedures for corporations not caring to change their financial structure may remain substantially the same as under the IGCA. On the other hand, for corporations requiring specialized or creative means of conducting their corporate activities, the IBCL provides a mechanism for accomplishing these goals. In either case, adjustments may need to be made in the corporation's articles of incorporation and by-laws to retain provisions from the IGCA or to take advantage of certain new provisions of the IBCL. For example, a corporation with fifty or fewer shareholders that wants to eliminate its board of directors must make alternative provisions in order to benefit from this new section of the IBCL.<sup>169</sup> The practitioner is cautioned to review the goals of each corporate client in light of the changes in the law in order to determine which adjustments must be made.

Finally the practitioner is cautioned that this Article did not endeavor to review thoroughly each of the many new provisions of the 145-page statute,<sup>170</sup> but instead merely highlighted several of the most significant developments. For example, new provisions relating to shareholders,<sup>171</sup> shareholder meetings,<sup>172</sup> voting,<sup>173</sup> dissenters' rights,<sup>174</sup> amendment of by-laws,<sup>175</sup> and record-keeping<sup>176</sup> are not even touched upon here although they are significant aspects of the IBCL. Therefore, the practitioner is urged to review *all* provisions of the IBCL thoroughly to better assist corporate clients in utilizing the new Act's dramatic improvement in corporate flexibility.

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<sup>169</sup>*See id.* § 23-1-33 (West Supp. 1986).

<sup>170</sup>Act of Mar. 5, 1986, Pub. L. No. 149-1986, 1986 Ind. Acts 1377.

<sup>171</sup>IND. CODE ANN. § 23-1-28 (West Supp. 1986).

<sup>172</sup>*Id.* § 23-1-29.

<sup>173</sup>*Id.* § 23-1-30.

<sup>174</sup>*Id.* § 23-1-44.

<sup>175</sup>*Id.* § 23-1-39.

<sup>176</sup>*Id.* § 23-1-52.