

CHAPTER 356

AN ACT concerning corporate by-laws and amending N.J.S.14A:2-9.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. N.J.S.14A:2-9 is amended to read as follows:

By-laws; making and altering.

14A:2-9 (1) The initial by-laws of a corporation shall be adopted by the board at its organization meeting. Thereafter, the board shall have the power to make, alter and repeal by-laws unless such power is reserved to the shareholders in the certificate of incorporation, but by-laws made by the board may be altered or repealed, and new by-laws made, by the shareholders. The shareholders may prescribe in the by-laws that any by-law made by them shall not be altered or repealed by the board.

(2) The initial by-laws of a corporation adopted by the board at its organization meeting shall be deemed to have been adopted by the shareholders for purposes of this act.

(3) Any provision which this act requires or permits to be set forth in the by-laws may be set forth in the certificate of incorporation with equal force and effect.

(4) The by-laws may contain any provision, not inconsistent with law or the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or power or the rights or power of its shareholders, directors, officers or employees.

(5) (a) Without limiting subsection (4) of this section, the by-laws may provide that the federal and State courts in New Jersey shall be the sole and exclusive forum for:

(i) any derivative action or proceeding brought on behalf of the corporation;

(ii) any action by one or more shareholders asserting a claim of a breach of fiduciary duty owed by a director or officer, or former director or officer, to the corporation or its shareholders, or a breach of the certificate of incorporation or by-laws;

(iii) any action brought by one or more shareholders asserting a claim against the corporation or its directors or officers, or former directors or officers, arising under the certificate of incorporation or the "New Jersey Business Corporation Act," N.J.S.14A:1-1 et seq.;

(iv) any other State law claim, including a class action asserting a breach of a duty to disclose, or a similar claim, brought by one or more shareholders against the corporation, its directors or officers, or its former directors or officers; or

(v) any other claim brought by one or more shareholders which is governed by the internal affairs or an analogous doctrine.

(b) The by-laws may provide that one or more shareholders who file an action in breach of a forum selection requirement of the by-laws shall be liable for all reasonable costs incurred in enforcing the requirement, including, without limitation, reasonable attorney's fees of the defendants. If the by-laws contain an exclusive forum provision, the directors and officers, and former directors and officers, shall be deemed to have consented to the personal jurisdiction of that forum. If the provision is not contained in the original by-laws but is adopted by an amendment, the provisions and the personal jurisdiction over directors and officers, and former directors and officers, shall apply only to actions brought by one or more shareholders after the date of the amendment of the by-laws and which assert claims arising after the date of the amendment.

2. This act shall take effect immediately.

Approved January 16, 2018.