

Not-For-Profit Corporation

§ 102. Definitions.

(a) As used in this chapter, unless the context otherwise requires, the term:

(1) "Bonds" includes secured and unsecured bonds, debentures, and notes.

(2) "By-laws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

(3) "Certificate of incorporation" includes (A) the original certificate of incorporation or any other instrument filed or issued under any statute to form a domestic or foreign corporation, as amended, supplemented or restated by certificates of amendment, merger or consolidation or other certificates or instruments filed or issued under any statute; or (B) a special act or charter creating a domestic or foreign corporation, as amended, supplemented or restated.

(3-a) "Charitable corporation" means any corporation formed, or for the purposes of this chapter, deemed to be formed, for charitable purposes.

(3-b) "Charitable purposes" of a corporation means one or more of the following purposes: charitable, educational, religious, scientific, literary, cultural or for the prevention of cruelty to children or animals.

(4) "Conducting of activities" of a corporation means the operations for the conduct of which such corporation is formed and may constitute "doing of business" or "transaction of business" as those terms are used in the statutes of this state.

(5) "Corporation" or "domestic corporation" means a corporation (1) formed under this chapter, or existing on its effective date and theretofore formed under any other general statute or by any special act of this state, exclusively for a purpose or purposes, not for pecuniary profit or financial gain, for which a corporation may be formed under this chapter, and (2) no part of the assets, income or profit of which is distributable to, or ensures to the benefit of, its members, directors or officers except to the extent permitted under this statute.

(6) "Director" means any member of the governing board of a corporation, whether designated as director, trustee, manager, governor, or by any other title. The term "board" means "board of directors" or any other body constituting a "governing board" as defined in this section.

(6-a) "Entire board" means the total number of directors entitled to vote which the corporation would have if there were no vacancies. If the by-laws of the corporation provide that the board shall consist of a fixed number of directors, then the "entire board" shall consist of that number of directors. If the by-laws of any corporation provide that the board may consist of a range between a minimum and maximum number of directors, then the "entire board" shall consist of the number of directors within such range that were elected as of the most recently held election of directors.

(7) "Foreign corporation" means a corporation formed under laws other than the statutes of this state, which, if formed under the statutes of this state, would be within the term "corporation or domestic corporation" as herein defined. "Authorized", when used with respect to a foreign corporation, means having authority under Article 13 (Foreign Corporations) to conduct activities of the corporation in this state.

(7-a) "Infant" or "minor" means any person who has not attained the age of eighteen years.

(8) "Insolvent" means being unable to pay debts as they become due in the usual course of the debtor's business.

(9) "Member" means one having membership rights in a corporation in accordance with the provisions of its certificate of incorporation or by-laws.

(9-a) "Non-charitable corporation" means any corporation formed under this chapter, other than a charitable corporation, including but not limited to one formed for any one or more of the following non-pecuniary purposes: civic, patriotic, political, social, fraternal, athletic, agricultural, horticultural, or animal husbandry, or for the purpose of operating a professional, commercial, industrial, trade or service association.

(10) "Not-for-profit corporation" means a corporation as defined in subparagraph (5).

(11) "Office of a corporation" means the office the location of which is stated in the certificate of incorporation of a domestic corporation, or in the application for authority of a foreign corporation or an amendment thereof. Such office need not be a place where activities are conducted by such corporation.

(12) "Process" means judicial process and all orders, demands, notices or other papers required or permitted by law to be personally served on a domestic or foreign corporation, for the purpose of acquiring jurisdiction of such corporation in any action or proceeding, civil or criminal, whether judicial, administrative, arbitative or otherwise, in this state or in the federal courts sitting in or for this state.

(15) "Governing board" means the body responsible for the management of a corporation or of an institutional fund.

(16) "Historic dollar value" means the aggregate fair value in dollars of (i) an endowment fund at the time it became an endowment fund, (ii) each subsequent donation to the fund at the time it is made, and (iii) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the corporation is conclusive.

(18) "Authorized person" means a person, whether or not a member, officer, or director, who is authorized to act on behalf of a corporation or foreign corporation.

(19) An "affiliate" of a corporation means any entity controlled by, in control of, or under common control with such corporation.

(20) "Independent auditor" means any certified public accountant performing the audit of the financial statements of a corporation required by subdivision one of section one hundred seventy-two-b of the executive law.

(21) "Independent director" means a director who: (i) is not, and has not been within the last three years, an employee of the corporation or an affiliate of the corporation, and does not have a relative who is, or has been within the last three years, a key employee of the corporation or an affiliate of the corporation; (ii) has not received, and does not have a relative who has received, in any of the last three fiscal years, more than ten thousand dollars in direct compensation from the corporation or an affiliate of the corporation (other than reimbursement for expenses reasonably incurred as a director or reasonable compensation for service as a director as permitted by paragraph (a) of section 202 (General and special powers)); and (iii) is not a current employee of or does not have a substantial financial interest in, and does not have a relative who is a current officer of or has a substantial financial interest in, any entity that has made payments to, or received payments from, the corporation or an affiliate of the corporation for property or services in an amount which, in any of the last three fiscal years, exceeds the lesser of twenty-five thousand dollars or two percent of such entity's consolidated gross revenues. For purposes of this subparagraph, "payment" does not include charitable contributions.

(22) "Relative" of an individual means his or her (i) spouse, ancestors, brothers and sisters (whether whole or half-blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses of brothers, sisters, children, grandchildren, and great-grandchildren; or (ii) domestic partner as defined in section twenty-nine hundred ninety-four-a of the public health law.

(23) "Related party" means (i) any director, officer or key employee of the corporation or any affiliate of the corporation; (ii) any relative of any director, officer or key employee of the corporation or any affiliate of the corporation; or (iii) any entity in which any individual described in clauses (i) and (ii) of this subparagraph has a thirty-five percent or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent.

(24) "Related party transaction" means any transaction, agreement or any other arrangement in which a related party has a financial interest and in which the corporation or any affiliate of the corporation is a participant.

(25) "Key employee" means any person who is in a position to exercise substantial influence over the affairs of the corporation, as referenced in 26 U.S.C. § 4958(f)(1)(A) and further specified in 26 CFR § 53.4958-3(c), (d) and (e), or succeeding provisions.