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In re Laser Lens, Inc.

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.

Official Comment

Section 6.21 specifically validates contracts for future services, promissory notes, or "any tangible or intangible property or benefit to the corporation," as consideration for the present issue of shares. The term "benefit" should be broadly construed to include, for example, a reduction of a liability, a release of a claim, or benefits obtained by a corporation. In the realities of commercial life, there is sometimes a need for the issuance of shares for contract rights or such intangible property or benefits. And, as a matter of business economics, contracts for future services, promissory notes, and intangible property or benefits often have value that is as real as the value of tangible property or past services. Thus, only business judgment should determine what kind of property should be obtained for shares, and a determination by the directors to accept a specific kind of valuable
property for shares should be accepted and not circumscribed by artificial or arbitrary rules.

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6.22 LIABILITY OF SHAREHOLDERS

(a) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued.

(b) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.

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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, and 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:

(A) shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;

(B) shares sold otherwise than for money.

(4) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person 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.

Official Comment

Section 6.30(b) provides a standard model for preemptive rights if the corporation desires to exercise the "opt in" alternative of section 6.30(a). The simple phrase, "the corporation elects to have preemptive rights," or words of similar import, results in the rest of subsection (b) becoming applicable to the corporation. But a corporation may qualify or limit any of the rules set forth in subsection (b) by express provisions in the articles of incorporation if the rules are felt to be undesirable or inappropriate for the specific corporation. The purposes of this standard model for preemptive rights are (1) to simplify drafting articles of incorporation and (2) to provide a simple checklist of business considerations for the benefit of attorneys who are considering the inclusion of preemptive rights in articles of incorporation. The model provision dealing with preemptive rights in section 6.30(b) is primarily designed to protect voting power within the corporation from dilution. On the other hand, preemptive rights also may serve in part the function of protecting the equity participation of shareholders. This combination of functions creates no problem in a
corporation that has authorized only a single class of shares.

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7.22 PROXIES

(a) A shareholder may vote his shares in person or by proxy.

(b) A shareholder may appoint a proxy to vote or otherwise act for him by signing an appointment form, either personally or by his attorney-in-fact.

(c) An appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

  (1) a pledgee;

  (2) a person who purchased or agreed to purchase the shares;

  (3) a creditor of the corporation who extended it credit under terms requiring the appointment;

  (4) an employee of the corporation whose employment contract requires the appointment.

(d) An appointment made irrevocable under subsection (c) is revoked when the interest with which it is coupled is extinguished.

7.30 VOTING TRUSTS

(a) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(b) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than 10 years after its effective date unless extended under subsection (c).

(c) All or some of the parties to a voting trust may at any time extend it for additional terms of not more than 10 years each by signing a written consent to the extension except that an extension agreement may not be entered into any more frequently than quarterly. An extension is valid for 10 years from the date the first shareholder signs the extension agreement. The voting trustee must deliver copies of the extension agreement and the list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

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10.70 SALE OF CORPORATE ASSETS

Proposals for the sale of corporate assets, including realty, capital equipment, copyrights, patents, and operating assets, shall be initiated and voted upon at a regular meeting of the board of directors. No such proposal shall be accepted or otherwise acted upon unless it shall first have received theapproval of a majority of the directors present and voting.