Part 3. Subsequent Acquisition of Shares by Shareholders and Corporation.

§ 55-6-30. 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 or subsection (d) of this section 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, 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 (i) shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates; (ii) shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates; (iii) shares authorized in articles of incorporation that are issued within six months from the effective date of incorporation; (iv) shares issued for considerations, other than money, deemed by the board of directors in good faith to be advantageous to the corporation's business.

(4) Holders of a share of any class have no preemptive rights with respect to shares of any other class.

(5) Reserved for future codification purposes.

(6) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person during a period of one year 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. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

(c) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

(d) Notwithstanding the foregoing provision of this section, shareholders of a corporation incorporated before July 1, 1990, other than a public corporation, shall have a preemptive right to acquire the unissued shares of the corporation, to the extent provided in (and subject to the limitations of) subdivisions (b) (1)-(6) and subsection (c) of this section, except to the extent the articles of incorporation expressly provide otherwise. (1955, c. 1371, s. 1; 1969, c. 751, ss. 29-32; 1979, c. 508, s. 2; 1989, c. 265, s. 1; 1993, c. 552, s. 8.)