Ohio Revised Code

Section 1701.32 Surplus.

Effective: November 22, 1986
Legislation: House Bill 902 - 116th General Assembly

(A) The surplus of a corporation is the excess of its assets over its liabilities plus stated capital, if any. The earned surplus of a corporation is the net balance of its net profits, income, gains, and losses from the date of incorporation, except as otherwise provided in this section, or from the latest date on which a deficit in earned surplus was eliminated by application of capital surplus or otherwise, after deducting distributions to shareholders and transfers to stated capital and capital surplus to the extent that such distributions and transfers are made out of earned surplus. Surplus other than earned surplus is capital surplus.

Determinations under this section may be based upon financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances, and may make use of the equity method of accounting.

(B) Capital surplus shall be classified according to its derivation and so shown on the books of the corporation, and each balance sheet shall show separately any capital surplus arising from unrealized appreciation of assets, other capital surplus, and earned surplus.

(C) If a corporation accepts a voluntary contribution of property other than its own issued shares, the directors may order all or a part of the fair value of such property to the corporation, as determined by the directors, to be entered on its books, and thereby create or add to capital surplus.

(D) In addition to any determination permitted under division (A) of this section, if the directors of a corporation determine that tangible or intangible assets of the corporation have a fair value to it in excess of the amount at which they are carried on its books, they may order all or a part of such excess so determined to be entered on its books, and thereby create or add to capital surplus.

(E) In addition to any determination permitted under division (A) of this section, the directors of a corporation that owns shares in another domestic or foreign corporation may, if they believe in good faith that the books of the issuing corporation are kept according to generally accepted accounting principles, order such shares to be carried on the books of the corporation owning them at the value shown on the books of the issuing corporation, and thereby create or add to the capital surplus of the corporation owning such shares. When shares are carried on such basis, the balance sheets of the corporation owning them shall contain a statement to that effect.

(F) The directors may order transfers from any surplus however created to stated capital of shares with or without par value, and from earned surplus to capital surplus.

(G) Pursuant to a resolution adopted by the affirmative vote of the holders of two-thirds of the shares of each class, regardless of limitations or restrictions in the articles on the voting rights of the shares of any such class or, if the articles so provide or permit, a greater or lesser proportion, but not less than a majority, of the shares of any class, a corporation may apply all or any part of capital surplus to the reduction or writing off of any deficit in earned surplus, or to the creation of a reserve for any proper purpose, and thereby make available for dividends or distributions, without notice to the shareholders as to the source of such dividends or distributions, any earned surplus remaining, or thereafter arising, but in case such action is taken, a record of it shall be made on the books of the corporation and shall appear on each balance sheet of the corporation for a period of not less than five years thereafter.

(H)(1) In the case of a merger of one or more domestic or foreign corporations into a domestic surviving corporation, the directors of the surviving corporation may order entered on its books all or part of the earned surplus of the other constituent corporations, diminished by any deficit in earned surplus of any constituent corporation, and thereby create, add to, or diminish the earned surplus of the surviving corporation.

(2) In the case of a consolidation of a domestic corporation with one or more domestic or foreign corporations into a new domestic corporation, the directors of the new corporation may order entered on its books all or part of the earned surplus of each of the constituent corporations, diminished by any deficit in earned surplus of any constituent corporation, and thereby create earned surplus of the new corporation.

(3) In the case of a combination, the directors of the acquiring corporation may order entered on its books all or part of the earned surplus of the transferor corporations, diminished by any deficit in

earned surplus of any such corporation, and thereby create, add to, or diminish the earned surplus of the acquiring corporation.

(4) In the case of a dissolution of a domestic or foreign subsidiary corporation, all shares of which are owned by a domestic corporation, the directors of the parent corporation may order entered on its books all or part of the earned surplus of the subsidiary and thereby create or add to the earned surplus of the parent.

(5) The action of the directors of a corporation in creating or adding to earned surplus, as provided in this division, must be taken, if at all, not later than ninety days after the end of the fiscal year of such corporation in which the merger, consolidation, combination, or dissolution becomes effective.