

# MAINE STATE LEGISLATURE

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*Corporations' Designation of par value of shares  
Corporations' Conflicts with other state laws*

13 A M.R.S.A. § 1202-1-G STATE OF MAINE

13 A M.R.S.A. § 1204 Inter-Departmental Memorandum Date February 14, 1977

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Dept. Secretary of State

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Subject New California Corporation

This responds to your request for an opinion regarding a communication from CT Corporation System concerning the application of the State of Maine's laws regulating out-of-State corporations (hereinafter referred to as foreign corporations) to corporations chartered under the State of California's Corporation Code.

By virtue of 13-A M.R.S.A. § 1202-1-G, a foreign corporation seeking to qualify to do business in Maine must designate the value of its authorized shares as par or no-par. However, § 205 of the California Corporation Code, Division I, added by Stats. 1975, c. 682, p. , § 7 (eff. January 1, 1977), exempts corporations chartered under its provisions from designating the par or no-par value of its shares, unless a particular Federal or state statute to which such corporation is subject so requires.

The issue framed by the above factual situation may be stated the following:

Does 13-A M.R.S.A. § 1202-1-G require a corporation chartered under the laws of California to designate a par or no-par value for its shares?

SUMMARY OF CONCLUSIONS

Section 1202-1-G of Title 13-A of the Maine Revised Statutes Annotated requires foreign corporations to designate the par or no-par value of its shares. Such a requirement facilitates the equal treatment under law of domestic and foreign corporations, insures the fullest protection of creditors domesticated or doing business in Maine, and comports with well-established principles of comity.

REASONING

13-A M.R.S.A. § 1204 sets forth the policy of the State of Maine that domestic and foreign corporations shall receive equal favor under the law:

"A foreign corporation authorized to do business in this State shall. . . have the same, but no greater, powers, rights, and privileges as a domestic corporation organized under or otherwise pursuant to this Act. . . ."

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Because domestic corporations are required by 13-A M.R.S.A. § 501-1 to specifically designate the par or no-par value of shares which they are authorized to issue, the principle of parity of treatment requires that foreign corporations seeking to do business in Maine comply with the same procedure.

The uniqueness of the new California Corporation Code suggests, and a search of the record confirms, that the courts of Maine have not had occasion to discuss the application or construction of 13-A M.R.S.A. § 1202-1-G. Commentators have observed, however, that the requirement that a corporation declare the par or no-par value of its shares has traditionally served to notify creditors of the security of their investment. See, Israels, Problems of Par and No Par Shares, 47 Columbia L. Rev. 1279, 1285 (1947). While the operative significance of such statements of legal capital (or stated capital) as an index of solvency has eroded substantially in recent years, it is at least conceivable that certain creditors domesticated or doing business in Maine may utilize a foreign corporation's statement of legal capital in assessing the potential risks of their investment. The fullest protection of such creditors is insured by a policy which requires foreign corporations doing business in Maine to notify creditors of its capital structure by complying with the mandate of 13-A M.R.S.A. § 1202-1-G.

No encroachment upon traditional notions of comity is effected by such a policy. Section 205 of the California Corporation Code, which authorizes the board of directors of a corporation chartered under California law to designate a par value for its shares for purposes of complying with other state laws to which it is subject, clearly encompasses a provision such as 13-A M.R.S.A. § 1202-1-G. A board resolution designating all of the shares of such corporation as \$1 par shares would satisfy the Maine statute, since, by virtue of 13-A M.R.S.A. § 513-2, the State of Maine permits domestic corporations to be formed with no-par shares, with the legal capital equal to a residual amount of the entire consideration actually received for the issuance of such shares.

The analysis presented above is limited in scope to a situation, as is currently the case, in which the State of Maine does not tax foreign corporations at a rate based upon the amount of legal capital of such corporation.

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