

## A BILL FOR AN ACT

To amend 12 PNC to include a new chapter 10 to establish a new corporations law; and for related purposes.

**THE PEOPLE OF PALAU REPRESENTED IN THE OLBIL ERA KELULAU DO ENACT AS FOLLOWS:**

**Table of Contents:**

Section 1.	Short Title.....	1
Section 2.	Amendment .....	1
<b>Chapter 10- Registered Corporations</b>	.....	<b>1</b>
<b>Subchapter1-GeneralProvisions</b>	.....	<b>1</b>
§1001.	Definitions.....	1
§1002	Filing documents .....	4
§1003	Forms .....	5
§1004	Filing, service, and copying fees .....	5
§1005	Effective time and date of documents.....	6
§1006	Correcting filed documents .....	7
§1007	Filing duty of registrar .....	7
§1008	Appeal from registrar’s refusal to file document .....	8
§1009	Evidentiary effect of copy of file document .....	9
§1010	Certificate of existence .....	9
§1011	Penalty for signing false document .....	9
§1012	Notice .....	9
<b>Subchapter2- Registrar</b>	.....	<b>11</b>
§1021	Registrar office created; duties .....	11
§1022	Same; Powers .....	11
<b>Subchapter3 -Incorporation</b>	.....	<b>12</b>
§1031	Number of shareholders .....	12
§1032	Incorporators .....	12
§1033	Articles of incorporation .....	12
§1034	Incorporation .....	14
§1035	Liability for pre-incorporation transactions.....	14
§1036	Organization of registered corporation .....	14
§1037	Bylaws .....	15
§1038	Emergency bylaws .....	15
<b>Subchapter4-Purposes and Powers</b>	.....	<b>16</b>
§1041	Registered corporation purposes .....	16
§1042	Registered corporation general powers .....	17
§1043	Emergency powers .....	18
§1044	Ultra vires .....	19
<b>Subchapter 5 - Name</b>	.....	<b>19</b>
§1051	Corporate name .....	19
§1052	Reserved name .....	21
<b>Subchapter6 - Office and Agent</b>	.....	<b>21</b>
§1061	Registered office and registered agent .....	21
§1062	Change of registered office or registered agent .....	21
§1063	Resignation of registered agent .....	22
§1064	Service on registered corporation .....	22
<b>Subchapter7- Shares</b>	.....	<b>23</b>

§1071	Authorized shares .....	23
§1072	Terms of class or series determined by board of directors ... ..	24
§1073	Issued and outstanding shares .....	25
§1074	Fractional shares .....	25
§1075	Subscription for shares before incorporation .....	26
§1076	Issuance of shares .....	26
§1077	Liability of shareholders .....	28
§1078	Share dividends .....	28
§1079	Share options .....	28
§1080	Form and content of certificates .....	29
§1081	Shares without certificates .....	29
§1082	Restriction on transfer of shares and other securities.....	30
§1083	Expense of issue .....	31
§1084	Shareholders' preemptive rights .....	31
§1085	Registered corporation's acquisition of its own shares .....	32
§1086	Distributions to shareholders .....	32
<b>Subchapter8- Shareholders</b> .....		<b>34</b>
§1092	Special meeting .....	34
§1093	Court-ordered meeting .....	35
§1094	Action without meeting .....	36
§1095	Notice of meeting .....	37
§1096	Waiver of notice .....	38
§1097	Record date .....	38
§1098	Conduct of the meeting .....	39
§1099	Shareholders' list for meeting .....	39
§1100	Voting entitlement of shares .....	40
§1101	Proxies .....	40
§1102	Shares held by nominees .....	40
§1103	Registered corporation's acceptance of votes .....	42
§1104	Quorum and voting requirements for voting groups .....	43
§1105	Action by single and multiple voting groups .....	44
§1106	Greater quorum or voting requirements .....	44
§1107	Voting for directors; cumulative voting .....	45
§1108	Voting trusts .....	45
§1109	Voting agreements .....	46
§1110	Shareholders agreements .....	46
§1111	Subchapter definitions .....	49
§1112	Standing .....	49
§1113	Demand .....	49
§1114	Stay of proceedings .....	50
§1115	Dismissal .....	50
§1116	Discontinuance of settlement .....	51
§1117	Payment of Expenses .....	51
<b>Directorsand Officers</b> .....		<b>52</b>
§1121	Requirement for and duties of board of directors .....	52
§1122	Qualifications of directors.....	52
§1123	Number and election of directors .....	52
§1124	Election of directors by certain classes of shareholders .....	52
§1125	Terms of directors generally .....	52
§1126	Staggered terms for directors .....	53
§1127	Resignation of directors .....	53
§1128	Removal of directors by shareholders .....	53
§1129	Removal of directors by judicial proceedings.....	54
§1130	Vacancy on board .....	54
§1131	Compensation of directors .....	55
§1132	Meetings .....	55
§1133	Action without meeting .....	55
§1134	Notice of meeting .....	56
§1135	Waiver of notice .....	56
§1136	Quorum and voting .....	56
§1137	Committees .....	57

§1138	Standards of conduct for directors .....	57
§1139	Standards of liability for directors .....	59
§1140	Directors liability for unlawful distributions.....	62
§1141	Required officers .....	62
§1142	Duties of officers .....	63
§1143	Standards of conduct for officers .....	63
§1144	Resignation and removal of officers .....	64
§1145	Contract rights of officers .....	64
<b>Subchapter11- Idemnification</b>	.....	64
§1151	Subchapter Definitions .....	64
§1152	Permissible indemnification .....	66
§1153	Mandatory indemnification .....	67
§1154	Advance for expenses .....	67
§1155	Court-ordered indemnification and advance for expenses. ....	68
§1156	Determination shall be made .....	69
§1157	Officers .....	70
§1158	Insurance .....	71
§1159	Variation by corporate action; application of subchapter .....	71
§1160	Exclusivity of subchapter .....	72
<b>Subchapter 12- Directors’ Conflict Interest Transactions</b>	.....	72
§1161	Subchapter definitions .....	72
§1162	Judicial action .....	74
§1163	Directors’ action .....	74
§1164	Shareholders’ action .....	74
<b>Subchapter 13- (Reserved)</b>		
<b>Subchapter 14- Amendment of Articles of Incorporation and Bylaws</b>	.....	77
§1181	Authority to amend .....	77
§1182	Amendment before issuance of shares .....	77
§1183	Amendment by board of directors and shareholders .....	77
§1184	Voting on amendments by voting groups .....	78
§1185	Amendment by board of directors .....	79
§1186	Articles of amendment .....	80
§1187	Restated articles of incorporation. ....	81
§1188	Amendment pursuant to reorganization .....	82
§1189	Effect of amendment .....	82
§1190	Amendment by board of directors or shareholders .....	82
§1192	Bylaws increasing quorum or voting requirement for shareholders.....	83
<b>Subchapter 15- Merger and Share Exchange</b>	.....	84
§1201	Definitions .....	84
§1202	Merger .....	84
§1203	Share exchange .....	86
§1204	Action on plan .....	88
§1205	Merger between parent and subsidiary or between subsidiaries .....	90
§1206	Articles of merger or share exchange .....	90
§1207	Effect of merger or share exchange .....	91
§1208	Abandonment of merger or share exchange .....	93
<b>Subchapter16-Sale of Assets .</b>	.....	94
§1211	Sale of assets in regular course of business and mortgage of assets .....	94
§1212	Sale of assets other than in regular course of business .....	94
<b>Subchapter17-Dissenters; Rights</b>	.....	96
§1221	Definitions .....	96
§1222	Rights to dissent.. ...	96
§1223	Dissent by nominees and beneficial owners .....	98

§13.20.	Notice of dissenters' rights .....	98
§1225	Notice of intent to demand payment .....	98
§1226	Dissenters' notice .....	99
§1227	Duty to demand payment .....	100
§1228	Share restrictions .....	100
§1229	Payment .....	100
§1230	Failure to take action .....	101
§1231	After-acquired shares .....	101
§1232	Procedure if shareholder dissatisfied with payment of offer.....	101
§1233	Court action .....	102
§1234	Court costs and counsel fees .....	103
<b>Subchapter 18-Dissolution</b>	.....	104
§1241	Dissolution by incorporators or initial directors .....	104
§1242	Dissolution by board of directors and shareholders .....	104
§1243	Articles of dissolution .....	105
§1244	Revocation of dissolution.....	105
§1245	Effect of dissolution .....	106
§1246	Known claims against dissolved registered corporation ....	107
§1247	Unknown claims against dissolved registered corporation ....	108
§1248	Court proceedings .....	109
§1249	Director duties .....	110
§1250	Grounds for administrative dissolution .....	110
§1251	Procedure for and effect of administrative dissolution .....	111
§1252	Reinstatement following administrative dissolution .....	111
§1253	Appeal from denial of reinstatement .....	112
§1254	Grounds for judicial dissolution .....	113
§1255	Procedure for judicial dissolution .....	113
§1256	Receivership or custodianship .....	114
§1257	Decree of Dissolution .....	115
§1258	(Reserved) .....	116
§1259	Deposit with National Treasury.....	116
<b>Subchapter 19- (Reserved)</b>	.....	116
§1271	Corporate records .....	116
§1272	Inspection of records by shareholders .....	117
§1273	Scope of inspection rights .....	118
§1274	Court-ordered inspection .....	119
§1275	Inspection of records by directors .....	119
§1276	Exception to notice requirement .....	120
§1277	Financial statements for shareholders .....	120
§1278	Annual report for registrar.....	120
§1279	Other reports to shareholders ....	123
<b>Subchapter 21- Transition Provisions</b>	.....	123
§1281	Severability .....	123
Section 3.	Authorization and Appropriation of Funds.....	123
Section 4	Effective date. ....	123

A BILL FOR AN ACT

To amend 12 PNC to include a new chapter 10 to establish a new corporations law; and for related purposes.

**THE PEOPLE OF PALAU REPRESENTED IN THE OLBIL ERA KELULAU DO ENACT AS FOLLOWS:**

1           **Section 1.    Short Title.** This Act shall be known and may be cited as the “Palau  
2 Registered Corporation Act of 2004.”

3           **Section 2.    Amendment.** 12 PNC is hereby amended to add a new Chapter 10, as  
4 follows:

**“Chapter 10**

**Registered Corporations**

**Subchapter 1**

**General Provisions**

§ 1001. Definitions.1.40. Act Definitions.1.40. Act Definitions.

In this chapter:

11           (a)    “Articles of incorporation” include amended and restated articles of incorporation  
12 and articles of merger.

13           (b)    “Authorized shares” means the shares of all classes a registered corporation is  
14 authorized to issue.

15           (c)    “Conspicuous” means so written that a reasonable person against whom the  
16 writing is to operate should have noticed it.

17           (d)    “Corporation” without a qualifying adjective generally includes the terms  
18 “registered corporation,” “domestic corporation,” and “foreign corporation.”(e)    “Deliver” or

19 “delivery” means any method of delivery used in conventional commercial practice, including  
20 delivery by hand, mail, commercial delivery, and electronic transmission.(f) “Distribution”

21 means a direct or indirect transfer of money or other property, except its own shares, or

---

1 incurrence of indebtedness by a registered corporation to or for the benefit of its shareholders in  
2 respect of any of its shares. A distribution may be in the form of a declaration or payment of a  
3 dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness;  
4 or otherwise.

5 (g) “Domestic corporation” means a corporation for profit incorporated under the  
6 laws of the Republic, but that is not a registered corporation under this chapter.

7 (h) “Electronic transmission” or “electronically transmitted” means any process of  
8 communication not directly involving the physical transfer of paper that is suitable for the  
9 retention, retrieval, and reproduction of information by the recipient.

10 (i) “Employee” includes an officer of a corporation but not a director. A director  
11 may accept duties that make him also an employee.

12 (j) “Entity” includes registered corporation, domestic corporation, and foreign  
13 corporation; not-for-profit corporation; profit and not-for-profit unincorporated association;  
14 business trust, estate, partnership, limited partnership, limited liability partnership, limited  
15 liability company, trust, and two or more persons having a joint or common economic interest;  
16 and state, United States, and foreign government.

17 (k) “Foreign corporation” means a corporation for profit incorporated under a law  
18 other than the law of the Republic.

19 (l) “Governmental subdivision” includes authority, county, district, and municipality.

20 (m) “Individual” includes the estate of an incompetent or deceased individual.

21 (n) “Person” includes individual and entity.

22 (o) “Principal office” means the office, either within or outside of the Republic, so  
23 designated in the annual report where the principal executive offices of a registered corporation  
24 are located.

25 (p) “Principal officer” means the president, chief executive officer, vice president,  
26 chief operations officer, treasurer/chief financial officer, or secretary.

---

1 (q) "Proceeding" includes civil suit and criminal, administrative, and investigatory  
2 action.

3 (r) "Record date" means the date established under this Chapter on which a  
4 registered corporation determines the identity of its shareholders and their shareholdings for  
5 purposes of this chapter. The determinations shall be made as of the close of business on the  
6 record date unless another time for doing so is specified when the record date is fixed.

7 (s) "Registered corporation" means a corporation for profit incorporated under or  
8 subject to the provisions of this chapter.

9 (t) "Registrar" means the registrar of registered corporations appointed by the  
10 President under section 1021.

11 (u) "Secretary" means the corporate officer to whom the board of directors has  
12 delegated responsibility under section 1141(c) for custody of the minutes of the meetings of the  
13 board of directors and of the shareholders and for authenticating records of the registered  
14 corporation.

15 (v) "Shares" means the units into which the proprietary interests in a registered  
16 corporation are divided.

17 (w) "Shareholder" means the person in whose name shares are registered in the  
18 records of a registered corporation or the beneficial owner of shares to the extent of the rights  
19 granted by a nominee certificate on file with a registered corporation.

20 (x) "Sign" or "signature" includes any manual, facsimile, conformed or electronic  
21 signature.

22 (y) "State," when referring to a part of the United States, includes a state and  
23 commonwealth (and their agencies and governmental subdivisions) and a territory and insular  
24 possession (and their agencies and governmental subdivisions) of the United States.

25 (z) "Subscriber" means a person who subscribes for shares in a registered  
26 corporation, whether before or after incorporation.

---

1 (aa) “United States” includes district, authority, bureau, commission, department, and  
2 any other agency of the United States.

3 (bb) “Voting group” means all shares of one or more classes or series that under the  
4 articles of incorporation or this chapter are entitled to vote and be counted together collectively  
5 on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or  
6 this chapter to vote generally on the matter are for that purpose a single voting group.

7 (cc) “Voting power” means the current power to vote in the election of directors.

8 § 1002 Filing documents.

9 (a) A document must satisfy the requirements of this section and of any other section  
10 that adds to or varies these requirements, to be entitled to filing by the registrar.

11 (b) The document must contain the information required by this chapter. It may contain  
12 other information as well.

13 (c) The document must be typewritten or printed or, if electronically transmitted, it must  
14 be in a format that can be retrieved or reproduced in typewritten or printed form.

15 (d) The document must be in the English language. A corporate name need not be in  
16 English if written in English letters or Arabic or Roman numerals.

17 (e) The document must be executed:

18 (1) by the chairman of the board of directors of a registered corporation, by its  
19 president, or by another of its officers;

20 (2) if directors have not been selected or the registered corporation has not been  
21 formed, by an incorporator; or

22 (3) if the registered corporation is in the hands of a receiver, trustee, or other  
23 court-appointed fiduciary, by that fiduciary.

24 (f) The person executing the document shall sign it and state beneath or opposite his  
25 signature his name and the capacity in which he signs. The document may but need not contain  
26 a corporate seal, attestation, acknowledgment, or verification.



(g) If the registrar has prescribed a mandatory form for the document under section 1003, the document must be in or on the prescribed form.

(h) The document must be delivered to the office of the registrar for filing. Delivery may be made by electronic transmission if and to the extent permitted by the registrar. If it is filed in typewritten or printed form and not transmitted electronically, the registrar may require one exact or conformed copy to be delivered with the document.

(i) When the document is delivered to the registrar for filing, the correct filing fee, and any franchise tax, license fee, or penalty required to be paid therewith by this chapter or other law must be paid or provision for payment made in a manner permitted by the registrar.

§ 1003 Forms.

(a) The registrar may prescribe and furnish on request forms for:

(1) an application for a certificate of existence; and

(2) the annual report. If the registrar so requires, use of these forms is mandatory.

(b) The registrar may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter but their use is not mandatory.

§ 1004 Filing, service, and copying fees.

(a) The registrar shall collect the following fees when the documents described in this subsection are delivered to him for filing:

<u>Document</u>	<u>Fee</u>
(1) Articles of incorporation:	
(A) Domestic corporation with only domestic operations and activities	\$1,000
(B) All other corporations	\$10,000
(2) Application for use of indistinguishable name	\$200
(3) Application for reserved name	\$200
(4) Notice of transfer of reserved name	\$200

1	(5)	Application for registered name	\$200
2	(6)	Application for renewal of registered name	\$200
3	(7)	Registered corporation's statement of change of	
4		registered agent or registered office or both	\$200
5	(8)	Agent's statement of change of registered office for each	
6		affected registered corporation not to exceed a total of	\$200
7	(9)	Agent's statement of resignation	No fee
8	(10)	Amendment of articles of incorporation	\$200
9	(11)	Restatement of articles of incorporation with amendment	\$200
10		of articles	
11	(12)	Articles of merger or share exchange	\$500
12	(13)	Articles of dissolution	\$500
13	(14)	Articles of revocation of dissolution	\$500
14	(15)	Certificate of administrative dissolution	No fee
15	(16)	Application for reinstatement following administrative	\$1,000
16		dissolution	
17	(17)	Certificate of reinstatement	No fee
18	(18)	Certificate of judicial dissolution	No fee
19	(19)	Annual report:	
20		(A) Domestic corporation with only domestic	
21		operations and activities	\$150
22		(B) All other corporations	\$1,000
23	(20)	Articles of correction	\$500
24	(21)	Application for certificate of existence or authorization	\$200
25	(22)	Any other document required or permitted to be filed by	\$200
26		this chapter.	

---

1 (b) The registrar shall collect a fee of \$200 each time process is served on the  
2 registrar under this chapter. The party to a proceeding causing service of process is entitled to  
3 recover this fee as costs if he prevails in the proceeding.

4 (c) The registrar shall collect the following fees for copying and certifying the copy  
5 of any filed document relating to a registered corporation:

6 (1) \$1.00 a page for copying; and

7 (2) \$20.00 for the certificate.

8 § 1005. Effective time and date of document.

9 (a) Except as provided in subsection (b) and section 1006(c), a document accepted  
10 for filing is effective:

11 (1) at the date and time of filing, as evidenced by such means as the registrar  
12 may use for the purpose of recording that date and time of filing; or

13 (2) at the time specified in the document as its effective time on the date it is  
14 filed.

15 (b) A document may specify a delayed effective time and date, and if it does so the  
16 document becomes effective at the time and date specified. If a delayed effective date but no  
17 time is specified, the document is effective at the close of business on that date. A delayed  
18 effective date for a document may not be later than the 90th day after the date it is filed.

19 § 1006. Correcting filed document<sup>1</sup>.

20 (a) A registered corporation may correct a document filed by the registrar if the  
21 document:

22 (1) contains an incorrect statement; or

23 (2) was defectively executed, attested, sealed, verified, or acknowledged; or

24 (3) the electronic transmission was defective.

25 (b) A document is corrected:

26 (1) by preparing articles of correction that

---

1 (A) describe the document (including its filing date) or attach a copy of  
2 it to the articles,

3 (B) specify the inaccuracy or defect to be corrected, and

4 (C) correct the inaccuracy or defect; and

5 (2) by delivering the articles to the registrar for filing.

6 (c) Articles of correction are effective on the effective date of the document they  
7 correct except as to persons relying on the uncorrected document and adversely affected by the  
8 correction. As to those persons, articles of correction are effective when filed.

9 § 1007. Filing duty of registrar.

10 (a) If a document delivered to the office of the registrar for filing satisfies the  
11 requirements of section 1002, the registrar shall file it.

12 (b) The registrar files a document by recording it as filed on the date and time of  
13 receipt. After filing a document, except as provided in sections 1063 the registrar shall deliver to  
14 the registered corporation or its representative a copy of the document with an acknowledgment  
15 of the date and time of filing.

16 (c) If the registrar refuses to file a document, the registrar shall return it to the  
17 registered corporation or its representative within five days after the document was delivered,  
18 together with a brief, written explanation of the reason for the refusal.

19 (d) The registrar's duty to file documents under this Section is ministerial. The  
20 registrar's filing or refusing to file a document does not:

21 (1) affect the validity or invalidity of the document in whole or part;

22 (2) relate to the correctness or incorrectness of information contained in the  
23 document;

24 (3) create a presumption that the document is valid or invalid or that  
25 information contained in the document is correct or incorrect.

26 § 1008. Appeal from registrar's refusal to file.

---

1 (a) If the registrar refuses to file a document delivered to its office for filing, the  
2 registered corporation may appeal the refusal to the Supreme Court within 30 days after the  
3 return of the document. The appeal is commenced by petitioning the Supreme Court to compel  
4 filing the document and by attaching to the petition the document and the registrar's explanation  
5 of its refusal to file.

6 (b) The Supreme Court may summarily order the registrar to file the document or  
7 take other action the court considers appropriate.

8 (c) The Supreme Court's final decision may be appealed as in other civil  
9 proceedings.

10 § 1009. Evidentiary effect of copy of filed document. A certificate attached to a copy of  
11 a document filed by the registrar, bearing its signature, which may be in facsimile, and the seal  
12 of the Republic, is conclusive evidence that the original document is on file with the registrar.

13 § 1010. Certificate of existence.

14 (a) Anyone may apply to the registrar to furnish a certificate of existence for a  
15 registered corporation.

16 (b) A certificate of existence sets forth:

- 17 (1) the registered corporation's corporate name;
- 18 (2) that the registered corporation is duly incorporated under the law of the  
19 Republic, the date of its incorporation, and the period of its duration if less  
20 than perpetual;
- 21 (3) that all fees, taxes, and penalties owed to the Republic have been paid, if:  
22 (A) payment is reflected in the records of the registrar and (B) non-  
23 payment affects the existence of the registered corporation;
- 24 (4) that its most recent annual report required by section 1278 has been  
25 delivered to the registrar;
- 26 (5) that articles of dissolution have not been filed; and
- 27 (6) other facts of record in the office of the registrar that may be requested by

---

1 the applicant.

2 (c) Subject to any qualification stated in the certificate, a certificate of existence  
3 issued by the registrar may be relied upon as conclusive evidence that the registered corporation  
4 is in existence.

5 § 1011. Penalty for signing false document<sup>1</sup>.

6 (a) A person commits an offense if he signs a document he knows is false in any  
7 material respect with intent that the document be delivered to the registrar for filing.

8 (b) An offense under this Section may be grounds for administrative dissolution  
9 under Sections 1250 through 1253.

10 § 1012. Notice<sup>1.41</sup>. Notice.

11 (a) Notice under this chapter must be in writing unless oral notice is reasonable under  
12 the circumstances. Notice by electronic transmission is written notice.

13 (b) Notice may be communicated in person; by mail or other method of delivery; or  
14 by telephone, voice mail or other electronic means. If these forms of personal notice are  
15 impracticable, notice may be communicated by a newspaper of general circulation in the area  
16 where published, or by radio, television, or other form of public broadcast communication.

17 (g) Written notice by a registered corporation to its shareholder, if in a  
18 comprehensible form, is effective:

19 (7)<sup>1</sup> upon deposit in the Republic of Palau Postal Service mail, if mailed  
20 postpaid and correctly addressed to the shareholder's address shown in the  
21 registered corporation's current record of shareholders; or

22 (2) when electronically transmitted to the shareholder in a manner authorized by  
23 the shareholder.

24 (d) Written notice to a registered corporation may be addressed to its registered agent  
25 at its registered office or to the corporation or its secretary at its principal office shown in its  
26 most recent annual report.

---

1 (e) Except as provided in subsection (c), written notice, if in a comprehensible form,  
2 is effective at the earliest of the following:

3 (1) when received;

4 (2) five days after its deposit in the Republic of Palau Postal Service Mail, if  
5 mailed postpaid and correctly addressed; or

6 (3) on the date shown on the return receipt, if sent by registered or certified  
7 mail, return receipt requested, and the receipt is signed by or on behalf of the  
8 addressee.

9 (f) Oral notice is effective when communicated if communicated in a comprehensible  
10 manner.

11 (g) If this chapter prescribes notice requirements for particular circumstances, those  
12 requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not  
13 inconsistent with this section or other provisions of this chapter, those requirements govern.

## 14 **Subchapter 2**

### 15 **Registrar**

#### 16 § 1021. Registrar; office created; duties.

17 (a) There shall be a registrar designated within the Ministry of Finance appointed by  
18 the President.

19 (b) The registrar shall issue, receive, and hold as custodian all certificates, papers,  
20 statements, or other records or documents required by the provisions of this chapter or the rules  
21 and regulations promulgated under this chapter. In addition, the registrar shall perform such  
22 other duties as may from time to time be assigned to the registrar by the President.

#### 23 § 1022. Same; Powers.

24 (a) The registrar has the power reasonably necessary to perform the duties required of  
25 the registrar by this chapter.

---

1 (b) The registrar, with the approval of the President, shall have the power to prescribe  
2 such rules and regulations as are deemed advisable to administer and carry into effect the  
3 provisions of this chapter. Such rules and regulations shall have the force and effect of law.

4 (c) The registrar may, when it deems it in the public interest, convene a special  
5 meeting of the shareholders, board or directors, or officers of any registered corporation  
6 organized or existing under the provisions of this chapter, by giving notice, not less than 10 days  
7 before the date of such meeting, to the shareholders, directors, or officers, as the case might be.  
8 Such notice shall state the purpose of the meeting and the subject or subjects to be discussed.

9 (d) In connection with the duties described in this chapter, the registrar is authorized  
10 and empowered to order the production of books of account, papers, and documents of any  
11 registered corporation. Refusal, without a showing of good cause, to produce books of accounts,  
12 papers, or documents within 60 days after an order by the registrar for the production thereof is a  
13 ground for administrative dissolution under section 1250.

14 **Subchapter 3**

15 **Incorporation**

16 § 1031. Number of shareholders.

17 (a) For purposes of this chapter, the following identified as a shareholder in a  
18 registered corporation's current record of shareholders constitutes one shareholder:

- 19 (1) three or fewer co-owners;  
20 (2) a corporation, partnership, trust, estate, or other entity;  
21 (3) the trustees, guardians, custodians, or other fiduciaries of a single trust,  
22 estate, or account.

23 (b) For purposes of this chapter, shareholdings registered in substantially similar  
24 names constitute one shareholder if it is reasonable to believe that the names represent the same  
25 person.

26 § 1032. Incorporators. One or more persons may act as the incorporator or incorporators  
27 of a registered corporation by delivering articles of incorporation to the registrar for filing.



---

1           § 1033. Articles of incorporation.

2           (a)     The articles of incorporation must set forth:

3                   (1)     a corporate name for the registered corporation that satisfies the  
4 requirements of section 1051;

5                   (2)     the number of shares the registered corporation is authorized to issue;

6                   (3)     the street address of the registered corporation's initial registered office  
7 and the name of its initial registered agent at that office;

8                   (4)     the name and address of each incorporator;

9                   (5)     a statement that the registered corporation will have an initial  
10 capitalization of at least one hundred thousand dollars (U.S. \$100,000);

11                  (6)     a statement regarding all tax that the registered corporation is subject to  
12 under the laws of the Republic of Palau; and

13                  (7)     a statement that no incorporator, director, principal officer, or ten-percent  
14 shareholder has been convicted or pleaded *nolo contendere* within the last five years,  
15 measured from the later of the date of parole or the date of conviction, before the filing of  
16 the articles of incorporation of a felony involving fraud or deceit, including but not  
17 limited to money laundering, tax evasion, securities fraud, mail or wire fraud, forgery,  
18 embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

19           (b)     The articles of incorporation may set forth:

20                   (1)     the names and addresses of the individuals who are to serve as the initial  
21 directors;

22                   (2)     provisions not inconsistent with law regarding:

23                           (A)     the purpose or purposes for which the registered corporation is  
24 organized;

25                           (B)     managing the business and regulating the affairs of the registered  
26 corporation;

---

1 (C) defining, limiting, and regulating the powers of the registered  
2 corporation, its board of directors, and shareholders;

3 (D) a par value for authorized shares or classes of shares;

4 (E) the imposition of personal liability on shareholders for the debts of  
5 the registered corporation to a specified extent and upon specified conditions;

6 (3) any provision that under this chapter is required or permitted to be set forth in the  
7 bylaws;

8 (4) a provision eliminating or limiting the liability of a director to the registered  
9 corporation or its shareholders for money damages for any action taken, or any failure to take  
10 any action, as a director, except liability for:

11 (A) the amount of a financial benefit received by a director to which he is not  
12 entitled;

13 (B) an intentional infliction of harm on the registered corporation or the  
14 shareholders; or

15 (C) a violation of section 1140; or (D) an intentional violation of criminal law;  
16 and

17 (5) a provision permitting or making obligatory indemnification of a director for  
18 liability (as defined in section 1151(e)) to any person for any action taken, or any failure  
19 to take any action, as a director, except liability for:

20 (C) receipt of a financial benefit to which he is not entitled;

21 (D) an intentional infliction of harm on the registered corporation or its  
22 shareholders;

23 (E) a violation of section 1140; or

24 (D) an intentional violation of criminal law.

25 (c) The articles of incorporation need not set forth any of the corporate powers  
26 enumerated in this chapter.

27 § 1034. Incorporation.

---

1 (a) Unless a delayed effective date is specified, the corporate existence begins when  
2 the articles of incorporation are filed.

3 (b) The registrar's filing of the articles of incorporation is conclusive proof that the  
4 incorporators satisfied all conditions precedent to incorporation except in a proceeding by the  
5 Republic to cancel or revoke the incorporation or involuntarily dissolve the registered  
6 corporation.

7 § 1035. Liability for pre-incorporation transactions. All persons purporting to act as or  
8 on behalf of a registered corporation, knowing there was no incorporation under this chapter, are  
9 jointly and severally liable for all liabilities created while so acting.

10 § 1036. Organization of registered corporation.

11 (a) After incorporation:

12 (1) if initial directors are named in the articles of incorporation, the initial  
13 directors shall hold an organizational meeting, at the call of a majority of the directors, to  
14 complete the organization of the registered corporation by appointing officers, adopting  
15 bylaws, and carrying on any other business brought before the meeting;

16 (2) if initial directors are not named in the articles, the incorporator or  
17 incorporators shall hold an organizational meeting at the call of a majority of the  
18 incorporators:

19 (A) to elect directors and complete the organization of the registered  
20 corporation; or

21 (B) to elect a board of directors who shall complete the organization of  
22 the registered corporation.

23 (b) Action required or permitted by this chapter to be taken by incorporators at an  
24 organizational meeting may be taken without a meeting if the action taken is evidenced by one or  
25 more written consents describing the action taken and signed by each incorporator.

26 (c) An organizational meeting may be held in or out of the Republic.

27 § 1037. Bylaws.

1 (a) The incorporators or board of directors of a registered corporation shall adopt  
2 initial bylaws for the registered corporation.

3 (b) The bylaws of a registered corporation may contain any provision for managing  
4 the business and regulating the affairs of the registered corporation that is not inconsistent with  
5 law or the articles of incorporation.

6 § 1038. Emergency bylaws.

7 (a) Unless the articles of incorporation provide otherwise, the board of directors of a  
8 registered corporation may adopt bylaws to be effective only in an emergency defined in  
9 subsection (d). The emergency bylaws, which are subject to amendment or repeal by the  
10 shareholders, may make all provisions necessary for managing the registered corporation during  
11 the emergency, including:

- 12 (1) procedures for calling a meeting of the board of directors;  
13 (2) quorum requirements for the meeting; and  
14 (3) designation of additional or substitute directors.

15 (b) All provisions of the regular bylaws consistent with the emergency bylaws remain  
16 effective during the emergency. The emergency bylaws are not effective after the  
17 emergency ends.

18 (c) Corporate action taken in good faith in accordance with the emergency bylaws:

- 19 (1) binds the registered corporation; and  
20 (2) may not be used to impose liability on a corporate director, officer,  
21 employee, or agent.

22 (d) An emergency exists for purposes of this section 1038, if a quorum of the  
23 registered corporation's directors cannot readily be assembled because of some catastrophic  
24 event.

25 **Subchapter 4**

26 **Purposes and Powers**

27 § 1041. Registered corporation purposes.

---

1 (a) Every registered corporation incorporated under this chapter shall set forth the  
2 purposes of engaging in any lawful business the articles of incorporation.

3 (b) A registered corporation engaging in a business that is subject to regulation under  
4 another statute of the Republic may incorporate under this chapter only if permitted by, and  
5 subject to all limitations of, the other statute.

6 (c) No registered corporation shall engage in banking activities or operations  
7 commonly associated with financial institutions unless and until it complies with the laws and  
8 regulations of any jurisdiction in which it performs or intends to perform such activities and  
9 operations.

10 (d) No registered corporation shall engage in any banking or financial institution  
11 activities in any jurisdiction which has been designated by either the United States, the  
12 Organization for Economic Cooperation and Development (OECD), or the United Nations  
13 Security Council as a jurisdiction which is non-compliant with international banking or anti-  
14 money laundering standards or which has been designated as a terrorist state.

15 § 1042. Registered corporation general powers. Unless its articles of incorporation  
16 provide otherwise, every registered corporation has perpetual duration and succession in its  
17 corporate name and has the same powers as an individual to do all things necessary or  
18 convenient to carry out its business and affairs, including without limitation power:

19 (a) to sue and be sued, complain and defend in its corporate name;

20 (b) to have a corporate seal, which may be altered at will, and to use it, or a facsimile  
21 of it, by impressing or affixing it or in any other manner reproducing it;

22 (c) to make and amend bylaws, not inconsistent with its articles of incorporation or with  
23 the laws of the Republic, for managing the business and regulating the affairs of the registered  
24 corporation;

25 (d) to purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and  
26 otherwise deal with, real or personal property, or any legal or equitable interest in property,  
27 wherever located;

---

1 (e) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or  
2 any part of its property;

3 (f) to purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell,  
4 mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in,  
5 or obligations of, any other entity;

6 (g) to make contracts and guarantees, incur liabilities, borrow money, issue its notes,  
7 bonds, and other obligations (which may be convertible into or include the option to purchase  
8 other securities of the registered corporation), and secure any of its obligations by mortgage or  
9 pledge of any of its property, franchises, or income;

10 (h) to lend money, invest and reinvest its funds, and receive and hold real and personal  
11 property as security for repayment;

12 (i) to be a promoter, partner, member, associate, or manager of any partnership, joint  
13 venture, trust, or other entity;

14 (j) to conduct its business, locate offices, and exercise the powers granted by this chapter  
15 within or without the Republic;

16 (k) to elect directors and appoint officers, employees, and agents of the registered  
17 corporation, define their duties, fix their compensation, and lend them money and credit;

18 (l) to pay pensions and establish pension plans, pension trusts, profit sharing plans, share  
19 bonus plans, share option plans, and benefit or incentive plans for any or all of its current or  
20 former directors, officers, employees, and agents;

21 (m) to make donations for the public welfare or for charitable, scientific, or educational  
22 purposes;

23 (n) to transact any lawful business that will aid governmental policy; and

24 (o) to make payments or donations, or do any other act, not inconsistent with law, that  
25 furthers the business and affairs of the registered corporation.

26 § 1043. Emergency powers.

---

1 (a) In anticipation of or during an emergency defined in subsection (d), the board  
2 of directors of a registered corporation may:

3 (1) modify lines of succession to accommodate the incapacity of any director,  
4 officer, employee, or agent; and

5 (2) relocate the principal office, designate alternative principal offices or  
6 regional offices, or authorize the officers to do so.

7 (b) During an emergency defined in subsection (d), unless emergency bylaws provide  
8 otherwise:

9 (1) notice of a meeting of the board of directors need be given only to those  
10 directors whom it is practicable to reach and may be given in any practicable manner,  
11 including by publication and radio; and

12 (2) one or more officers of the registered corporation present at a meeting of  
13 the board of directors may be deemed to be directors for the meeting, in order of rank and  
14 within the same rank in order of seniority, as necessary to achieve a quorum.

15 (c) Corporate action taken in good faith during an emergency under this section 1043  
16 to further the ordinary business affairs of the registered corporation:

17 (1) binds the registered corporation; and

18 (2) may not be used to impose liability on a corporate director, officer,  
19 employee, or agent.

20 (d) An emergency exists for purposes of this section, if a quorum of the registered  
21 corporation's directors cannot readily be assembled because of some catastrophic event.

22 § 1044. Ultra vires.

23 (a) A registered corporation's power to act may be challenged:

24 (1) in a proceeding by a shareholder against the registered corporation to  
25 enjoin the act;

(2) in a proceeding by the registered corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the registered corporation; or

(3) in a proceeding by the Office of the Attorney General under section 1254.

(b) In a shareholder's proceeding under subsection (b)(1) to enjoin an unauthorized corporate act, the Supreme Court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss (other than anticipated profits) suffered by the registered corporation or another party because of enjoining the unauthorized act.

## Subchapter 5

### Name

#### § 1051. Corporate name.

(a) A corporate name:

(1) must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," or words or abbreviations of like import in another language; and

(2) may not contain language stating or implying that the registered corporation is organized for a purpose other than that permitted by section 1041 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d), a corporate name must be distinguishable (i.e., not the same or substantially identical to) upon the records of the registrar and upon the records of the Registrar of Corporations of the Republic from:

(1) the corporate name of a registered corporation or a domestic corporation, or a foreign corporation authorized to do business in the Republic;

(2) a corporate name reserved or registered under section 1052;

(3) the fictitious name adopted by a foreign corporation authorized to transact business in the Republic because its real name is unavailable;



---

1 (4) the corporate name of a not-for-profit corporation incorporated or  
2 authorized to transact business in the Republic; and

3 (5) the name of any other entity registered or authorized to transact business  
4 or conduct affairs under the laws of the Republic

5 (c) A registered corporation may apply to the registrar for authorization to use a  
6 name that is not distinguishable upon its records from one or more of the names  
7 described in subsection (b). The registrar shall authorize use of the name applied for if:

8 (1) the other corporation or entity consents to the use in writing and submits  
9 an undertaking in form satisfactory to the registrar to change its name to a name that is  
10 distinguishable upon the records of the registrar or the records of the Registrar of  
11 Corporations of the Republic (as applicable) from the name of the applying registered  
12 corporation; or

13 (2) the applicant delivers to the registrar a certified copy of the final judgment  
14 of a court of competent jurisdiction establishing the applicant's right to use the name  
15 applied for in the Republic.

16 (d) A registered corporation may use the name (including the fictitious name) of  
17 another registered, domestic, or foreign corporation that is used in the Republic if the other  
18 registered, domestic, or foreign corporation is incorporated or authorized to transact business in  
19 the Republic and the proposed user registered corporation:

20 (1) has merged with the other registered, domestic, or foreign corporation;

21 (2) has been formed by reorganization of the other registered, domestic, or  
22 foreign corporation; or

23 (3) has acquired all or substantially all of the assets, including the corporate  
24 name, of the other registered, domestic, or foreign corporation.

25 (e) This chapter does not control the use of fictitious names.

26 § 1052. Reserved name.

---

1 (a) A person may reserve the exclusive use of a corporate name, by delivering an  
2 application to the registrar for filing. The application must set forth the name and address of the  
3 applicant and the name proposed to be reserved. If the registrar finds that the corporate name  
4 applied for is available, the registrar shall reserve the name for the applicant's exclusive use for a  
5 nonrenewable 120-day period.

6 (b) The owner of a reserved corporate name may transfer the reservation to another  
7 person by delivering to the registrar a signed notice of the transfer that states the name and  
8 address of the transferee.

9 **Subchapter 6**

10 **Office and Agent**

11 § 1061. Registered office and registered agent. Each registered corporation must  
12 continuously maintain in the Republic:

13 (a) a registered office that may be the same as any of its places of business; and

14 (b) a registered agent, who may be:

15 (1) an individual who resides in the Republic and whose business office is  
16 identical with the registered office;

17 (2) a domestic corporation or not-for-profit domestic corporation whose  
18 business office is identical with the registered office; or

19 (3) a foreign corporation or not-for-profit foreign corporation authorized to  
20 transact business in the Republic whose business office is identical with the registered  
21 office.

22 § 1062. Change of registered office or registered agent.

23 (a) A registered corporation may change its registered office or registered agent by  
24 delivering to the registrar for filing a statement of change that sets forth:

25 (1) the name of the registered corporation,

26 (2) the street address of its current registered office;

---

1 (3) if the current registered office is to be changed, the street address of the  
2 new registered office;

3 (4) the name of its current registered agent;

4 (5) if the current registered agent is to be changed, the name of the new  
5 registered agent and the new agent's written consent (either on the statement or attached  
6 to it) to the appointment; and

7 (6) that after the change or changes are made, the street addresses of its  
8 registered office and the business office of its registered agent will be identical.

9 (b) If a registered agent changes the street address of his business office, he may  
10 change the street address of the registered office of any registered corporation for which he is the  
11 registered agent by notifying the registered corporation in writing of the change and signing  
12 (either manually or in facsimile) and delivering to the registrar for filing a statement that  
13 complies with the requirements of subsection (a) and recites that the registered corporation has  
14 been notified of the change.

15 § 1063. Resignation of registered agent.

16 (a) A registered agent may resign his agency appointment by signing and delivering  
17 to the registrar for filing the signed original and two exact or conformed copies of a statement of  
18 resignation. The statement may include a statement that the registered office is also  
19 discontinued.

20 (b) After filing the statement the registrar shall mail one copy to the registered office  
21 (if not discontinued) and the other copy to the registered corporation at its principal office.

22 (c) The agency appointment is terminated, and the registered office discontinued if so  
23 provided, on the 31st day after the date on which the statement was filed.

24 § 1064. Service on registered corporation.

25 (a) A registered corporation's registered agent is the registered corporation's agent  
26 for service of process, notice, or demand required or permitted by law to be served on the  
27 registered corporation.

---

1 (b) If a registered corporation has no registered agent, or the agent cannot with  
2 reasonable diligence be served, the registered corporation may be served by registered or  
3 certified mail, return receipt requested, addressed to the secretary of the registered corporation at  
4 its principal office. Service is perfected under this subsection at the earliest of:

5 (1) the date the registered corporation receives the mail;

6 (2) the date shown on the return receipt, if signed on behalf of the registered  
7 corporation; or

8 (3) five days after its deposit in the Republic of Palau Postal Service Mail, if  
9 mailed postpaid and correctly addressed.

10 (c) This section does not prescribe the only means, or necessarily the required means,  
11 of serving a registered corporation.

## 12 **Subchapter 7**

### 13 **Shares**

#### 14 § 1071. Authorized shares.

15 (a) The articles of incorporation must prescribe the classes of shares and the number  
16 of shares of each class that the registered corporation is authorized to issue. If more than one  
17 class of shares is authorized, the articles of incorporation must prescribe a distinguishing  
18 designation for each class, and before the issuance of shares of a class the preferences,  
19 limitations, and relative rights of that class must be described in the articles of incorporation. All  
20 shares of a class must have preferences, limitations, and relative rights identical with those of  
21 other shares of the same class except to the extent otherwise permitted by section 1072.

22 (b) The articles of incorporation must authorize (1) one or more classes of shares that  
23 together have unlimited voting rights, and (2) one or more classes of shares (which may be the  
24 same class or classes as those with voting rights) that together are entitled to receive the net  
25 assets of the registered corporation upon dissolution.

26 (c) The articles of incorporation may authorize one or more classes of shares that:

---

1 (1) have special, conditional, or limited voting rights, or no right to vote, except  
2 to the extent prohibited by this chapter;

3 (6)1 are redeemable or convertible as specified in the articles of incorporation

4 (A) at the option of the registered corporation, the shareholder, or another person  
5 or upon the occurrence of a designated event;

6 (B) for cash, indebtedness, securities, or other property;

7 (C) in a designated amount or in an amount determined in accordance with a  
8 designated formula or by reference to extrinsic data or events;

9 (3) entitle the holders to distributions calculated in any manner, including  
10 dividends that may be cumulative, noncumulative, or partially cumulative;

11 (4) have preference over any other class of shares with respect to distributions,  
12 including dividends and distributions upon the dissolution of the registered corporation.

13 (d) The description of the designations, preferences, limitations, and relative rights of  
14 share classes in subsection (c) is not exhaustive.

15 § 1072. Terms of class or series determined by board of directors.

16 (a) If the articles of incorporation so provide, the board of directors may determine,  
17 in whole or part, the preferences, limitations, and relative rights (within the limits set forth in  
18 section 1071) of (1) any class of shares before the issuance of any shares of that class or (2) one  
19 or more series within a class before the issuance of any shares of that series.

20 (b) Each series of a class must be given a distinguishing designation.

21 (c) All shares of a series must have preferences, limitations, and relative rights  
22 identical with those of other shares of the same series and, except to the extent otherwise  
23 provided in the description of the series, with those of other series of the same class.

24 (d) Before issuing any shares of a class or series created under this section 1072, the  
25 registered corporation must deliver to the registrar for filing articles of amendment, which are  
26 effective without shareholder action, that set forth:

27 (1) the name of the registered corporation;

---

1 (2) the text of the amendment determining the terms of the class or series of  
2 shares;

3 (3) the date it was adopted; and

4 (4) a statement that the amendment was duly adopted by the board of  
5 directors.

6 § 1073. Issued and outstanding shares.

7 (a) A registered corporation may issue the number of shares of each class or  
8 series authorized by the articles of incorporation. Shares that are issued are outstanding  
9 shares until they are reacquired, redeemed, converted, or cancelled.

10 (b) The reacquisition, redemption, or conversion of outstanding shares is  
11 subject to the limitations of subsection (c) of this section and to section 1086.

12 (c) At all times that shares of the registered corporation are outstanding, one  
13 or more shares that together have unlimited voting rights and one or more shares that  
14 together are entitled to receive the net assets of the registered corporation upon  
15 dissolution must be outstanding.

16 § 1074. Fractional shares.

17 (a) A registered corporation may:

18 (1) issue fractions of a share or pay in money the value of fractions of a share;

19 (2) arrange for disposition of fractional shares by the shareholders;

20 (3) issue scrip in registered or bearer form entitling the holder to receive a full  
21 share upon surrendering enough scrip to equal a full share.

22 (b) Each certificate representing scrip must be conspicuously labeled “scrip” and  
23 must contain the information required by section 1080(b).

24 (c) The holder of a fractional share is entitled to exercise the rights of a shareholder,  
25 including the right to vote, to receive dividends, and to participate in the assets of the registered  
26 corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the  
27 scrip provides for them.

---

1 (d) The board of directors may authorize the issuance of scrip subject to any condition  
2 considered desirable, including:

3 (1) that the scrip will become void if not exchanged for full shares before a  
4 specified date; and

5 (2) that the shares for which the scrip is exchangeable may be sold and the  
6 proceeds paid to the scrip holders.

7 § 1075. Subscription for shares before incorporation.

8 (a) A subscription for shares entered into before incorporation is irrevocable for six  
9 months unless the subscription agreement provides a longer or shorter period or all the  
10 subscribers agree to revocation.

11 (b) The board of directors may determine the payment terms of subscriptions for shares  
12 that were entered into before incorporation, unless the subscription agreement specifies them. A  
13 call for payment by the board of directors must be uniform so far as practicable as to all shares of  
14 the same class or series, unless the subscription agreement specifies otherwise.

15 (c) Shares issued pursuant to subscriptions entered into before incorporation are fully  
16 paid and nonassessable when the registered corporation receives the consideration specified in  
17 the subscription agreement.

18 (d) If a subscriber defaults in payment of money or property under a subscription  
19 agreement entered into before incorporation, the registered corporation may collect the amount  
20 owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the  
21 registered corporation may rescind the agreement and may sell the shares if the debt remains  
22 unpaid more than 20 days after the registered corporation sends written demand for payment to  
23 the subscriber.

24 (e) A subscription agreement entered into after incorporation is a contract between  
25 the subscriber and the registered corporation subject to section 1076.

26 § 1076. Issuance of shares.

---

1           (a)     The powers granted in this section 1076 to the board of directors may be reserved  
2 to the shareholders by the articles of incorporation.

3           (b)     The board of directors may authorize shares to be issued for consideration  
4 consisting of any tangible or intangible property or benefit to the registered corporation,  
5 including cash, promissory notes, services performed, contracts for services to be performed, or  
6 other securities of the registered corporation.

7           (c)     Before the registered corporation issues shares, the board of directors must  
8 determine that the consideration received or to be received for shares to be issued is adequate.  
9 That determination by the board of directors is conclusive insofar as the adequacy of  
10 consideration for the issuance of shares relates to whether the shares are validly issued, fully  
11 paid, and non-assessable.

12          (d)     When the registered corporation receives the consideration for which the board of  
13 directors authorized the issuance of shares, the shares issued therefore are fully paid and non-  
14 assessable.

15          (e)     The registered corporation may place in escrow shares issued for a contract for  
16 future services or benefits or a promissory note, or make other arrangements to restrict the  
17 transfer of the shares, and may credit distributions in respect of the shares against their purchase  
18 price, until the services are performed, the note is paid, or the benefits received. If the services  
19 are not performed, the note is not paid, or the benefits are not received, the shares escrowed or  
20 restricted and the distributions credited may be cancelled in whole or part.

21          (f)     An issuance of shares or other securities convertible into or rights exercisable for  
22 shares, in a transaction or a series of integrated transactions, requires approval of the  
23 shareholders, at a meeting at which a quorum exists consisting of at least a majority of the votes  
24 entitled to be cast on the matter, if:

- 25                 (1) the shares, other securities, or rights are issued for consideration other than  
26 cash or cash equivalents, and



---

(2) the voting power of shares that are issued and issuable as a result of the transaction or series of integrated transactions will comprise more than 20 percent of the voting power of the shares of the registered corporation that were outstanding immediately before the transaction.

(g) In this subsection:

(1) For purposes of determining the voting power of shares issued and issuable as a result of a transaction or series of integrated transactions, the voting power of shares shall be the greater of (i) the voting power of the shares to be issued, or (ii) the voting power of the shares that would be outstanding after giving effect to the conversion of convertible shares and other securities and the exercise of rights to be issued.

(2) A series of transactions is integrated if consummation of one transaction is made contingent on consummation of one or more of the other transactions.

§ 1077. Liability of shareholders.

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

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

§ 1078. Share dividends.

(a) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the registered corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

(b) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless (1) the articles of incorporation so authorize, (2) a majority of the votes entitled to be cast by the class or series to be issued approve the issue, or (3) there are no outstanding shares of the class or series to be issued.

---

1 (c) If the board of directors does not fix the record date for determining shareholders  
2 entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

3 § 1079. Share options.. A registered corporation may issue rights, options, or warrants  
4 for the purchase of shares of the registered corporation. The board of directors shall determine  
5 the terms upon which the rights, options, or warrants are issued, their form and content, and the  
6 consideration for which the shares are to be issued.

7 § 1080. Form and content of certificates.

8 (a) Shares may but need not be represented by certificates. Unless this chapter or  
9 another statute expressly provides otherwise, the rights and obligations of shareholders are  
10 identical whether or not their shares are represented by certificates.

11 (b) At a minimum each share certificate must state on its face:

12 (1) the name of the issuing registered corporation and that it is organized  
13 under the law of the Republic;

14 (2) the name of the person to whom issued; and

15 (3) the number and class of shares and the designation of the series, if any, the  
16 certificate represents.

17 (c) If the issuing registered corporation is authorized to issue different classes of  
18 shares or different series within a class, the designations, relative rights, preferences, and  
19 limitations applicable to each class and the variations in rights, preferences, and limitations  
20 determined for each series (and the authority of the board of directors to determine variations for  
21 future series) must be summarized on the front or back of each certificate. Alternatively, each  
22 certificate may state conspicuously on its front or back that the registered corporation will  
23 furnish the shareholder this information on request in writing and without charge.

24 (g) Each share certificate

25 (7)1 must be signed (either manually or in facsimile) by two officers  
26 designated in the bylaws or by the board of directors and

27 (2) may bear the corporate seal or its facsimile.

---

1 (e) If the person who signed (either manually or in facsimile) a share certificate no  
2 longer holds office when the certificate is issued, the certificate is nevertheless valid.

3 § 1081. Shares without certificates.

4 (a) Unless the articles of incorporation or bylaws provide otherwise, the board of  
5 directors of a registered corporation may authorize the issue of some or all of the shares of any or  
6 all of its classes or series without certificates. The authorization does not affect shares already  
7 represented by certificates until they are surrendered to the registered corporation.

8 (b) Within a reasonable time after the issue or transfer of shares without  
9 certificates, the registered corporation shall send the shareholder a written  
10 statement of the information required on certificates by this Chapter.

11 § 1082. Restriction on transfer of shares and other securities.

12 (a) The articles of incorporation, bylaws, an agreement among shareholders, or an  
13 agreement between shareholders and the registered corporation may impose restrictions on the  
14 transfer or registration of transfer of shares of the registered corporation. A restriction does not  
15 affect shares issued before the restriction was adopted unless the holders of the shares are parties  
16 to the restriction agreement or voted in favor of the restriction.

17 (b) A restriction on the transfer or registration of transfer of shares is valid and  
18 enforceable against the holder or a transferee of the holder if the restriction is authorized by this  
19 section 1082 and its existence is noted conspicuously on the front or back of the certificate or is  
20 contained in the information statement required by section 1081(b). Unless so noted, a  
21 restriction is not enforceable against a person without knowledge of the restriction.

22 (c) A restriction on the transfer or registration of transfer of shares is authorized:

23 (1) to maintain the registered corporation's status when it is dependent on the  
24 number or identity of its shareholders;

25 (2) to preserve exemptions under federal or state securities law;

26 (3) for any other reasonable purpose.

27 (d) A restriction on the transfer or registration of transfer of shares may:

---

1 (1) obligate the shareholder first to offer the registered corporation or other  
2 persons (separately, consecutively, or simultaneously) an opportunity to acquire the  
3 restricted shares;

4 (2) obligate the registered corporation or other persons (separately,  
5 consecutively, or simultaneously) to acquire the restricted shares;

6 (3) require the registered corporation, the holders of any class of its shares, or  
7 another person to approve the transfer of the restricted shares, if the requirement is not  
8 manifestly unreasonable;

9 (4) prohibit the transfer of the restricted shares to designated persons or  
10 classes of persons, if the prohibition is not manifestly unreasonable.

11 (e) For purposes of this section “shares” includes a security convertible into or  
12 carrying a right to subscribe for or acquire shares.

13 § 1083. Expense of issue. A registered corporation may pay the expenses of selling or  
14 underwriting its shares, and of organizing or reorganizing the registered corporation, from the  
15 consideration received for shares.

16 § 1084. Shareholders’ preemptive rights.

17 (a) The shareholders of a registered corporation do not have a preemptive right to  
18 acquire the registered corporation’s unissued shares except to the extent the articles of  
19 incorporation so provide.

20 (b) A statement included in the articles of incorporation that “the registered  
21 corporation elects to have preemptive rights” (or words of similar import) means that the  
22 following principles apply except to the extent the articles of incorporation expressly provide  
23 otherwise:

24 (1) The shareholders of the registered corporation have a preemptive right,  
25 granted on uniform terms and conditions prescribed by the board of directors, to provide  
26 a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of

---

1 the registered corporation's unissued shares upon the decision of the board of directors to  
2 issue them.

3 (2) A shareholder may waive his preemptive right. A waiver evidenced by a  
4 writing is irrevocable even though it is not supported by consideration.

5 (3) There is no preemptive right with respect to:

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

8 (B) shares issued to satisfy conversion or option rights created to  
9 provide compensation to directors, officers, agents, or employees of the registered  
10 corporation, its subsidiaries or affiliates;

11 (C) shares authorized in articles of incorporation that are issued within  
12 six months from the effective date of incorporation;

13 (D) shares sold otherwise than for money.

14 (4) Holders of shares of any class without general voting rights but with  
15 preferential rights to distributions or assets have no preemptive rights with respect to  
16 shares of any class.

17 (5) Holders of shares of any class with general voting rights but without  
18 preferential rights to distributions or assets have no preemptive rights with respect to  
19 shares of any class with preferential rights to distributions or assets unless the shares with  
20 preferential rights are convertible into or carry a right to subscribe for or acquire shares  
21 without preferential rights.

22 (6) Shares subject to preemptive rights that are not acquired by shareholders  
23 may be issued to any person for a period of one year after being offered to shareholders at  
24 a consideration set by the board of directors that is not lower than the consideration set  
25 for the exercise of preemptive rights. An offer at a lower consideration or after the  
26 expiration of one year is subject to the shareholders' preemptive rights.

---

1 (c) For purposes of this section 1084, “shares” includes a security convertible into or  
2 carrying a right to subscribe for or acquire shares.

3 § 1085. Registered corporation’s acquisition of its own shares.

4 (a) A registered corporation may acquire its own shares, and shares so acquired  
5 constitute authorized but unissued shares.

6 (b) If the articles of incorporation prohibit the reissue of acquired shares, the number  
7 of authorized shares is reduced by the number of shares acquired.

8 § 1086. Distributions to shareholders.

9 (a) A board of directors may authorize and the registered corporation may make  
10 distributions to its shareholders subject to restriction by the articles of incorporation and the  
11 limitation in subsection (c).

12 (b) If the board of directors does not fix the record date for determining shareholders  
13 entitled to a distribution (other than one involving a purchase, redemption, or other acquisition of  
14 the registered corporation’s shares), it is the date the board of directors authorizes the  
15 distribution.

16 (c) No distribution may be made if, after giving it effect:

17 (1) the registered corporation would not be able to pay its debts as they  
18 become due in the usual course of business; or

19 (2) the registered corporation’s total assets would be less than the sum of its  
20 total liabilities plus (unless the articles of incorporation permit otherwise) the amount that  
21 would be needed, if the registered corporation were to be dissolved at the time of the  
22 distribution, to satisfy the preferential rights upon dissolution of shareholders whose  
23 preferential rights are superior to those receiving the distribution.

24 (d) The board of directors may base a determination that a distribution is not prohibited  
25 under subsection (c) either on financial statements prepared on the basis of accounting practices  
26 and principles that are reasonable in the circumstances or on a fair valuation or other method that  
27 is reasonable in the circumstances.

---

1 (e) Except as provided in subsection (g), the effect of a distribution under subsection  
2 (c) is measured:

3 (1) in the case of distribution by purchase, redemption, or other acquisition of  
4 the registered corporation's shares, as of the earlier of (A) the date money or other  
5 property is transferred or debt incurred by the registered corporation or (B) the date the  
6 shareholder ceases to be a shareholder with respect to the acquired shares;

7 (2) in the case of any other distribution of indebtedness, as of the date the  
8 indebtedness is distributed; and

9 (3) in all other cases, as of (A) the date the distribution is authorized if the  
10 payment occurs within 120 days after the date of authorization or (B) the date the  
11 payment is made if it occurs more than 120 days after the date of authorization.

12 (f) A registered corporation's indebtedness to a shareholder incurred by reason of a  
13 distribution made in accordance with this section 1086 is at parity with the registered  
14 corporation's indebtedness to its general, unsecured creditors except to the extent subordinated  
15 by agreement.

16 (g) Indebtedness of a registered corporation, including indebtedness issued as a  
17 distribution, is not considered a liability for purposes of determinations under subsection (c) if its  
18 terms provide that payment of principal and interest are made only if and to the extent that  
19 payment of a distribution to shareholders could then be made under this section. If the  
20 indebtedness is issued as a distribution, each payment of principal or interest is treated as a  
21 distribution, the effect of which is measured on the date the payment is actually made.

22 (h) This section 1086 shall not apply to distributions in liquidation under subchapter  
23 18.

24 **Subchapter 8**

25 **Shareholders**

26 § 1091. Annual meeting.

---

1 (a) A registered corporation shall hold a meeting of shareholders annually at a time  
2 stated in or fixed in accordance with the bylaws.

3 (b) Annual shareholders' meetings may be held in or out of the Republic at the place  
4 stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance  
5 with the bylaws, annual meetings shall be held at the registered corporation's principal office.

6 (c) The failure to hold an annual meeting at the time stated in or fixed in accordance  
7 with a registered corporation's bylaws does not affect the validity of any corporate action.

8 § 1092. Special meeting.

9 (a) A registered corporation shall hold a special meeting of shareholders:

10 (1) on call of its board of directors or the person or persons authorized to do  
11 so by the articles of incorporation or bylaws; or

12 (2) if the holders of at least 10 percent of all the votes entitled to be cast on  
13 any issue proposed to be considered at the proposed special meeting sign, date, and  
14 deliver to the registered corporation's secretary one or more written demands for the  
15 meeting describing the purpose or purposes for which it is to be held, provided that the  
16 articles of incorporation may fix a lower percentage or a higher percentage not exceeding  
17 25 percent of all the votes entitled to be cast on any issue proposed to be considered.

18 Unless otherwise provided in the articles of incorporation, a written demand for a special  
19 meeting may be revoked by a writing to that effect received by the registered corporation  
20 before the receipt by the registered corporation of demands sufficient in number to  
21 require the holding of a special meeting.

22 (b) If not otherwise fixed under section 1093 or 1097, the record date for determining  
23 shareholders entitled to demand a special meeting is the date the first shareholder signs the  
24 demand.

25 (c) Special shareholders' meetings may be held in or out of the Republic at the place  
26 stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with  
27 the bylaws, special meetings shall be held at the registered corporation's principal office.



---

1 (d) Only business within the purpose or purposes described in the meeting notice  
2 required by section 1095(c) may be conducted at a special shareholders' meeting.

3 § 1093. Court-ordered meeting.

4 (a) The Supreme Court may summarily order a meeting to be held:

5 (1) on application of any shareholder of the registered corporation entitled to  
6 participate in an annual meeting if an annual meeting was not held within the earlier of 6  
7 months after the end of the registered corporation's fiscal year or 15 months after its last  
8 annual meeting; or

9 (2) on application of a shareholder who signed a demand for a special meeting  
10 valid under section 1092 if:

11 (A) notice of the special meeting was not given within 30 days after  
12 the date the demand was delivered to the registered corporation's secretary; or

13 (B) the special meeting was not held in accordance with the notice.

14 (b) The Supreme Court may fix the time and place of the meeting, determine the  
15 shares entitled to participate in the meeting, specify a record date for determining shareholders  
16 entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting  
17 notice, fix the quorum required for specific matters to be considered at the meeting (or direct that  
18 the votes represented at the meeting constitute a quorum for action on those matters), and enter  
19 other orders necessary to accomplish the purpose or purposes of the meeting.

20 § 1094. Action without meeting.

21 (a) Action required or permitted by this chapter to be taken at a shareholders'  
22 meeting may be taken without a meeting if, before or after the action, a written consent is signed  
23 by stockholders holding at least a majority of the voting power entitled to vote on the action,  
24 except that if a different proportion of voting power entitled to vote on the action is required for  
25 such an action at a meeting, then that proportion of written consents is required. The action must  
26 be evidenced by one or more written consents bearing the date of signature describing the action  
27 taken, signed by all the shareholders entitled to vote on the action, and delivered to the registered

---

1 corporation for inclusion in the minutes or filing with the corporate records. In no instance  
2 where action is authorized by written consent need a meeting of stockholders be called or notice  
3 given.

4 (b) If not otherwise fixed under section 1093 or 1097, the record date for determining  
5 shareholders entitled to take action without a meeting is the date the first shareholder signs the  
6 consent under subsection (a). No written consent shall be effective to take the corporate action  
7 referred to therein unless, within 60 days of the earliest date appearing on a consent delivered to  
8 the registered corporation in the manner required by this section, written consents signed by  
9 stockholders holding at least a majority of the voting power entitled to vote on the action are  
10 received by the registered corporation. A written consent may be revoked by a writing to that  
11 effect received by the registered corporation before the receipt by the registered corporation of  
12 unrevoked written consents sufficient in number to take corporate action.

13 (c) A consent signed under this section 1094 has the effect of a meeting vote and may  
14 be described as such in any document.

15 (d) If this chapter requires that notice of proposed action be given to nonvoting  
16 shareholders and the action is to be taken by unanimous consent of the voting shareholders, the  
17 registered corporation must give its nonvoting shareholders written notice of the proposed action  
18 at least 10 days before the action is taken. The notice must contain or be accompanied by the  
19 same material that, under this chapter, would have been required to be sent to nonvoting  
20 shareholders in a notice of meeting at which the proposed action would have been submitted to  
21 the shareholders for action.

22 § 1095. Notice of meeting.

23 (a) A registered corporation shall notify shareholders of the date, time, and place of  
24 each annual and special shareholders' meeting no fewer than 10 nor more than 60 days before  
25 the meeting date. Unless this chapter or the articles of incorporation require otherwise, the  
26 registered corporation is required to give notice only to shareholders entitled to vote at the  
27 meeting.

---

1 (b) Unless this chapter or the articles of incorporation require otherwise, notice of an  
2 annual meeting need not include a description of the purpose or purposes for which the meeting  
3 is called.

4 (c) Notice of a special meeting must include a description of the purpose or purposes  
5 for which the meeting is called.

6 (d) If not otherwise fixed under section 1093 or 1097, the record date for determining  
7 shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the  
8 day before the first notice is delivered to shareholders.

9 (e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting  
10 is adjourned to a different date, time, or place, notice need not be given of the new date, time, or  
11 place if the new date, time, or place is announced at the meeting before adjournment. If a new  
12 record date for the adjourned meeting is or must be fixed under section 1097, however, notice of  
13 the adjourned meeting must be given under this section 1095 to persons who are shareholders as  
14 of the new record date.

15 § 1096. Waiver of notice.

16 (a) A shareholder may waive any notice required by this chapter, the articles of  
17 incorporation, or bylaws before or after the date and time stated in the notice. The waiver must  
18 be in writing, be signed by the shareholder entitled to the notice, and be delivered to the  
19 registered corporation for inclusion in the minutes or filing with the corporate records.

20 (b) A shareholder's attendance at a meeting:

21 (1) waives objection to lack of notice or defective notice of the meeting,  
22 unless the shareholder at the beginning of the meeting objects to holding the meeting or  
23 transacting business at the meeting;

24 (2) waives objection to consideration of a particular matter at the meeting that  
25 is not within the purpose or purposes described in the meeting notice, unless the  
26 shareholder objects to considering the matter when it is presented.

27 § 1097. Record date.

---

1 (a) The bylaws may fix or provide the manner of fixing the record date for one or  
2 more voting groups in order to determine the shareholders entitled to notice of a shareholders'  
3 meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not  
4 fix or provide for fixing a record date, the board of directors of the registered corporation may  
5 fix a future date as the record date.

6 (b) A record date fixed under this section 1097 may not be more than 70 days before  
7 the meeting or action requiring a determination of shareholders.

8 (c) determination of shareholders entitled to notice of or to vote at a shareholders'  
9 meeting is effective for any adjournment of the meeting unless the board of directors fixes a new  
10 record date, which it must do if the meeting is adjourned to a date more than 120 days after the  
11 date fixed for the original meeting.

12 (d) If the Supreme Court orders a meeting adjourned to a date more than 120 days  
13 after the date fixed for the original meeting, it may provide that the original record date  
14 continues in effect or it may fix a new record date.

15 § 1098. Conduct of the meeting.

16 (a) At each meeting of shareholders, a chair shall preside. The chair shall be  
17 appointed as provided in the bylaws or, in the absence of such provision, by the board.

18 (b) The chair, unless the articles of incorporation or bylaws provide otherwise, shall  
19 have the authority to determine the order of business and shall establish rules for the conduct of  
20 the meeting.

21 (c) Any rules adopted for, and the conduct of, the meeting shall be fair to  
22 shareholders.

23 (d) The chair of the meeting shall announce at the meeting when the polls close for  
24 each matter voted upon. If no announcement is made, the polls shall be deemed to have closed  
25 upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes nor  
26 any revocations or changes thereto may be accepted.

27 § 1099. Shareholders' list for meeting.

---

1 (a) After fixing a record date for a meeting, a registered corporation shall prepare an  
2 alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders'  
3 meeting. The list must be arranged by voting group (and within each voting group by class or  
4 series of shares) and show the address of and number of shares held by each shareholder.

5 (b) The shareholders' list must be available for inspection by any shareholder,  
6 beginning two business days after notice of the meeting is given for which the list was prepared  
7 and continuing through the meeting, at the registered corporation's principal office or at a place  
8 identified in the meeting notice in the city where the meeting will be held. A shareholder, his  
9 agent, or attorney is entitled on written demand to inspect and, subject to the requirements of  
10 section 1272(c), to copy the list, during regular business hours and at his expense, during the  
11 period it is available for inspection.

12 (c) The registered corporation shall make the shareholders' list available at the  
13 meeting, and any shareholder, his agent, or attorney is entitled to inspect the list at any time  
14 during the meeting or any adjournment.

15 (d) If the registered corporation refuses to allow a shareholder, his agent, or attorney  
16 to inspect the shareholders' list before or at the meeting (or copy the list as permitted by  
17 subsection (b)), the Supreme Court, on application of the shareholder, may summarily order the  
18 inspection or copying at the registered corporation's expense and may postpone the meeting for  
19 which the list was prepared until the inspection or copying is complete.

20 (e) Refusal or failure to prepare or make available the shareholders' list does not  
21 affect the validity of action taken at the meeting.

22 § 1100. Voting entitlement of shares.

23 (a) Except as provided in subsections (b) and (c) or unless the articles of  
24 incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one  
25 vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

26 (b) Absent special circumstances, the shares of a registered corporation are not  
27 entitled to vote if they are owned, directly or indirectly, by a second registered corporation,

---

1 registered, and the first registered corporation owns, directly or indirectly, a majority of the  
2 shares entitled to vote for directors of the second registered corporation.

3 (c) Subsection (b) does not limit the power of a registered corporation to vote any  
4 shares, including its own shares, held by it in a fiduciary capacity.

5 (d) Redeemable shares are not entitled to vote after notice of redemption is mailed to  
6 the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust  
7 company, or other financial institution under an irrevocable obligation to pay the holders the  
8 redemption price on surrender of the shares.

9 § 1101. Proxies.

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

11 (b) A shareholder or his agent or attorney-in-fact may appoint a proxy to vote or  
12 otherwise act for the shareholder by signing an appointment form or by an electronic  
13 transmission. An electronic transmission must contain or be accompanied by information from  
14 which one can determine that the shareholder, the shareholder's agent, or the shareholder's  
15 attorney-in-fact authorized the electronic transmission.

16 (c) An appointment of a proxy is effective a signed appointment form or an electronic  
17 transmission of the appointment is received by the inspector of election or the officer or agent of  
18 the registered corporation authorized to tabulate votes. An appointment is valid for 11 months  
19 unless a longer period is expressly provided in the appointment.

20 (d) An appointment of a proxy is revocable unless the appointment form or electronic  
21 transmission conspicuously states that it is irrevocable and the appointment is coupled with an  
22 interest. Appointments coupled with an interest include the appointment of:

23 (1) a pledgee;

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

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

---

1           (4)     an employee of the registered corporation whose employment contract  
2           requires the appointment; or

3           (5)     party to a voting agreement created under section 1109.

4           (e)     The death or incapacity of the shareholder appointing a proxy does not affect the  
5           right of the registered corporation to accept the proxy's authority unless notice of the death or  
6           incapacity is received by the secretary or other officer or agent authorized to tabulate votes  
7           before the proxy exercises his authority under the appointment.

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

10          (g)     transferee for value of shares subject to an irrevocable appointment may revoke  
11          the appointment if he did not know of its existence when he acquired the shares and the  
12          existence of the irrevocable appointment was not noted conspicuously on the certificate  
13          representing the shares or on the information statement for shares without certificates.

14          (h)     Subject to section 1103 and to any express limitation on the proxy's authority  
15          stated in the appointment form or electronic transmission, a registered corporation is entitled to  
16          accept the proxy's vote or other action as that of the shareholder making the appointment.

17          § 1102. Shares held by nominees.

18          (a)     A registered corporation may establish a procedure by which the beneficial owner  
19          of shares that are registered in the name of a nominee is recognized by the registered corporation  
20          as the shareholder. The extent of this recognition may be determined in the procedure.

21          (b)     The procedure may set forth:

22               (1)     the types of nominees to which it applies;

23               (2)     the rights or privileges that the registered corporation recognizes in a  
24          beneficial owner;

25               (3)     the manner in which the procedure is selected by the nominee;

26               (4)     the information that must be provided when the procedure is selected;

27               (5)     the period for which selection of the procedure is effective; and

---

1 (6) other aspects of the rights and duties created.

2 § 1103. Registered corporation's acceptance of votes.

3 (a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds  
4 to the name of a shareholder, the registered corporation if acting in good faith is entitled to  
5 accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the  
6 shareholder.

7 (b) If the name signed on a vote, consent, waiver, or proxy appointment does not  
8 correspond to the name of its shareholder, the registered corporation if acting in good faith is  
9 nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect  
10 as the act of the shareholder if:

11 (1) the shareholder is an entity and the name signed purports to be that of an  
12 officer or agent of the entity;

13 (2) the name signed purports to be that of an administrator, executor,  
14 guardian, or conservator representing the shareholder and, if the registered corporation  
15 requests, evidence of fiduciary status acceptable to the registered corporation has been  
16 presented with respect to the vote, consent, waiver, or proxy appointment;

17 (3) the name signed purports to be that of a receiver or trustee in bankruptcy  
18 of the shareholder and, if the registered corporation requests, evidence of this status  
19 acceptable to the registered corporation has been presented with respect to the vote,  
20 consent, waiver, or proxy appointment;

21 (4) the name signed purports to be that of a pledgee, beneficial owner, or  
22 attorney-in-fact of the shareholder and, if the registered corporation requests, evidence  
23 acceptable to the registered corporation of the signatory's authority to sign for the  
24 shareholder has been presented with respect to the vote, consent, waiver, or proxy  
25 appointment;



---

1           (5)     two or more persons are the shareholder as co-tenants or fiduciaries and  
2           the name signed purports to be the name of at least one of the co-owners and the person  
3           signing appears to be acting on behalf of all the co-owners.

4           (c)     The registered corporation is entitled to reject a vote, consent, waiver, or proxy  
5           appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good  
6           faith, has reasonable basis for doubt about the validity of the signature on it or about the  
7           signatory's authority to sign for the shareholder.

8           (d)     The registered corporation and its officer or agent who accepts or rejects a vote,  
9           consent, waiver, or proxy appointment in good faith and in accordance with the standards of this  
10          section or section 1101(b) are not liable in damages to the shareholder for the consequences of  
11          the acceptance or rejection.

12          (e)     Corporate action based on the acceptance or rejection of a vote, consent, waiver,  
13          or proxy appointment under this section 1103 or section 1101(b) is valid, unless a court of  
14          competent jurisdiction determines otherwise.

15          § 1104. Quorum and voting requirements for voting groups.

16          (a)     Shares entitled to vote as a separate voting group may take action on a matter at a  
17          meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of  
18          incorporation or this chapter provide otherwise, a majority of the votes entitled to be cast on the  
19          matter by the voting group constitutes a quorum of that voting group for action on that matter.

20          (b)     Once a share is represented for any purpose at a meeting, it is deemed present for  
21          quorum purposes for the remainder of the meeting and for any adjournment of that meeting  
22          unless a new record date is or must be set for that adjourned meeting.

23          (c)     If a quorum exists, action on a matter other than the election of directors, by a  
24          voting group is approved if the votes cast within the voting group favoring the action exceed the  
25          votes cast opposing the action, unless the articles of incorporation or this chapter require a  
26          greater number of affirmative votes.

---

1 (d) An amendment of articles of incorporation adding, changing, or deleting a  
2 quorum or voting requirement for a voting group greater than specified in subsection (a) or (c) is  
3 governed by section 1106.

4 (e) The election of directors is governed by section 1107.

5 § 1105. Action by single and multiple voting groups.

6 (a) If the articles of incorporation or this chapter provide for voting by a single voting  
7 group on a matter, action on that matter is taken when voted upon by that voting group as  
8 provided in section 1104.

9 (b) If the articles of incorporation or this chapter provide for voting by two or more  
10 voting groups on a matter, action on that matter is taken only when voted upon by each of those  
11 voting groups counted separately as provided in section 1104. Action may be taken by one  
12 voting group on a matter even though no action is taken by another voting group entitled to vote  
13 on the matter.

14 § 1106. Greater quorum or voting requirements.

15 (a) The articles of incorporation may provide for a greater quorum or voting  
16 requirement for shareholders (or voting groups of shareholders) than is provided for by this  
17 chapter.

18 (b) An amendment to the articles of incorporation that adds, changes, or deletes a  
19 greater quorum or voting requirement must meet the same quorum requirement and be adopted  
20 by the same vote and voting groups required to take action under the quorum and voting  
21 requirements then in effect or proposed to be adopted, whichever is greater.

22 § 1107. Voting for directors; cumulative voting.

23 (a) Unless otherwise provided in the articles of incorporation, directors are elected by  
24 a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a  
25 quorum is present.

26 (b) Shareholders do not have a right to cumulate their votes for directors unless the  
27 articles of incorporation so provide.

---

1 (c) A statement included in the articles of incorporation that “all (or a designated  
2 group of) shareholders are entitled to cumulate their votes for directors” (or words of similar  
3 import) means that the shareholders designated are entitled to multiply the number of votes they  
4 are entitled to cast by the number of directors for whom they are entitled to vote and cast the  
5 product for a single candidate or distribute the product among two or more candidates.

6 (d) Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a  
7 particular meeting unless:

8 (1) the meeting notice or proxy statement accompanying the notice states  
9 conspicuously that cumulative voting is authorized; or

10 (2) a shareholder who has the right to cumulate his votes gives notice to the  
11 registered corporation not less than 48 hours before the time set for the meeting of his  
12 intent to cumulate his votes during the meeting, and if one shareholder gives this notice  
13 all other shareholders in the same voting group participating in the election are entitled to  
14 cumulate their votes without giving further notice.

15 § 1108. Voting trusts7.30. Voting Trusts.

16 (a) One or more shareholders may create a voting trust, conferring on a trustee the  
17 right to vote or otherwise act for them, by signing an agreement setting out the provisions of the  
18 trust (which may include anything consistent with its purpose) and transferring their shares to the  
19 trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and  
20 addresses of all owners of beneficial interests in the trust, together with the number and class of  
21 shares each transferred to the trust, and deliver copies of the list and agreement to the registered  
22 corporation’s principal office.

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

26 (c) All or some of the parties to a voting trust may extend it for additional terms of  
27 not more than 10 years each by signing an extension agreement and obtaining the voting

---

1 trustee's written consent to the extension. An extension is valid for 10 years from the date the  
2 first shareholder signs the extension agreement. The voting trustee must deliver copies of the  
3 extension agreement and list of beneficial owners to the registered corporation's principal office.  
4 An extension agreement binds only those parties signing it.

5 § 1109. Voting agreements.

6 (a) Two or more shareholders may provide for the manner in which they will vote  
7 their shares by signing an agreement for that purpose. A voting agreement created under this  
8 section 1109 is not subject to the provisions of section 1108.

9 (b) A voting agreement created under this section 1109 is specifically enforceable.

10 § 1110. Shareholder agreements.

11 (a) An agreement among the shareholders of a registered corporation that complies  
12 with this section 1110 is effective among the shareholders and the registered corporation even  
13 though it is inconsistent with one or more other provisions of this chapter in that it:

14 (1) eliminates the board of directors or restricts the discretion or powers of the  
15 board of directors;

16 (2) governs the authorization or making of distributions whether or not in  
17 proportion to ownership of shares, subject to the limitations in section 1086;

18 (3) establishes who shall be directors or officers of the registered corporation, or  
19 their terms of office or manner of selection or removal;

20 (4) governs, in general or in regard to specific matters, the exercise or division of  
21 voting power by or between the shareholders and directors or by or among any of them,  
22 including use of weighted voting rights or director proxies;

23 (5) establishes the terms and conditions of any agreement for the transfer or use  
24 of property or the provision of services between the registered corporation and any  
25 shareholder, director, officer or employee of the registered corporation or among any of  
26 them;

---

1 (6) transfers to one or more shareholders or other persons all or part of the  
2 authority to exercise the corporate powers or to manage the business and affairs of the  
3 registered corporation, including the resolution of any issue about which there exists a  
4 deadlock among directors or shareholders;

5 (7) requires dissolution of the registered corporation at the request of one or more  
6 of the shareholders or upon the occurrence of a specified event or contingency; or

7 (8) otherwise governs the exercise of the corporate powers or the management of  
8 the business and affairs of the registered corporation or the relationship among the  
9 shareholders, the directors and the registered corporation, or among any of them, and is  
10 not contrary to public policy.

11 (b) An agreement authorized by this section 1110 shall be:

12 (1) set forth:

13 (A)A in the articles of incorporation or bylaws and approved by all  
14 persons who are shareholders at the time of the agreement; or

15 (B) in a written agreement that is signed by all persons who are  
16 shareholders at the time of the agreement and is made known to the  
17 registered corporation;

18 (2) subject to amendment only by all persons who are shareholders at the time  
19 of the amendment, unless the agreement provides otherwise; and

20 (3) valid for 10 years, unless the agreement provides otherwise.

21 (c) the existence of an agreement authorized by this section 1110 shall be noted  
22 conspicuously on the front or back of each certificate for outstanding shares or on the  
23 information statement required by section 1081(b). If at the time of the agreement the registered  
24 corporation has shares outstanding represented by certificates, the registered corporation shall  
25 recall the outstanding certificates and issue substitute certificates that comply with this  
26 subsection. The failure to note the existence of the agreement on the certificate or information  
27 statement shall not affect the validity of the agreement or any action taken pursuant to it. Any

---

1 purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the  
2 agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have  
3 knowledge of the existence of the agreement if its existence is noted on the certificate or  
4 information statement for the shares in compliance with this subsection and, if the shares are not  
5 represented by a certificate, the information statement is delivered to the purchaser at or before  
6 the time of purchase of the shares. An action to enforce the right of rescission authorized by this  
7 subsection must be commenced within the earlier of 90 days after discovery of the existence of  
8 the agreement or two years after the time of purchase of the shares.

9 (d) An agreement authorized by this section 1110 shall cease to be effective when  
10 shares of the registered corporation are listed on a national securities exchange or regularly  
11 traded in a market maintained by one or more members of a national or affiliated securities  
12 association. If the agreement ceases to be effective for any reason, the board of directors may, if  
13 the agreement is contained or referred to in the registered corporation's articles of incorporation  
14 or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder  
15 action, to delete the agreement and any references to it.

16 (e) An agreement authorized by this section 1110 that limits the discretion or powers  
17 of the board of directors shall relieve the directors of, and impose upon the person or persons in  
18 whom such discretion or powers are vested, liability for acts or omissions imposed by law on  
19 directors to the extent that the discretion or powers of the directors are limited by the agreement.

20 (f) The existence or performance of an agreement authorized by this section 1110  
21 shall not be a ground for imposing personal liability on any shareholder for the acts or debts of  
22 the registered corporation even if the agreement or its performance treats the registered  
23 corporation as if it were a partnership or results in failure to observe the corporate formalities  
24 otherwise applicable to the matters governed by the agreement.

25 (g) Incorporators or subscribers for shares may act as shareholders with respect to an  
26 agreement authorized by this section 1110, if no shares have been issued when the agreement is  
27 made.

---

**Subchapter 9**

**Derivative Proceedings.**

§ 1111. Subchapter definitions. In this subchapter:

(a) “Derivative proceeding” means a civil suit in the right of a registered corporation.

(b) “Shareholder” includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner’s behalf.

§ 1112. Standing. A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(a) was a shareholder of the registered corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and

(b) fairly and adequately represents the interests of the registered corporation in enforcing the right of the registered corporation.

§ 1113. Demand. No shareholder may commence a derivative proceeding until:

(a) a written demand has been made upon the registered corporation to take suitable action; and

(b) 90 days have expired from the date the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the registered corporation or unless irreparable injury to the registered corporation would result by waiting for the expiration of the 90-day period.

§ 1114. Stay of proceedings. If the registered corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

§ 1115. Dismissal.

(a) A derivative proceeding shall be dismissed by the court on motion by the registered corporation if one of the groups specified in subsections (b) or (f) has determined in

---

1 good faith after conducting a reasonable inquiry upon which its conclusions are based that the  
2 maintenance of the derivative proceeding is not in the best interests of the registered corporation.

3 (b) Unless a panel is appointed pursuant to subsection (f), the determination in  
4 subsection (a) shall be made by:

5 (1) a majority vote of independent directors present at a meeting of the board  
6 of directors if the independent directors constitute a quorum; or

7 (2) a majority vote of a committee consisting of two or more independent  
8 directors appointed by majority vote of independent directors present at a meeting of the  
9 board of directors, whether or not such independent directors constituted a quorum.

10 (c) None of the following shall by itself cause a director to be considered not  
11 independent for purposes of this section 1115:

12 (1) the nomination or election of the director by persons who are defendants  
13 in the derivative proceeding or against whom action is demanded;

14 (2) the naming of the director as a defendant in the derivative proceeding or  
15 as a person against whom action is demanded; or

16 (3) the approval by the director of the act being challenged in the derivative  
17 proceeding or demand if the act resulted in no personal benefit to the director.

18 (d) If a derivative proceeding is commenced after a determination has been made  
19 rejecting a demand by a shareholder, the complaint shall allege with particularity facts  
20 establishing either (1) that a majority of the board of directors did not consist of independent  
21 directors at the time the determination was made or (2) that the requirements of subsection (a)  
22 have not been met.

23 (e) If a majority of the board of directors does not consist of independent directors at  
24 the time the determination is made, the registered corporation shall have the burden of proving  
25 that the requirements of subsection (a) have been met. If a majority of the board of directors  
26 consists of independent directors at the time the determination is made, the plaintiff shall have  
27 the burden of proving that the requirements of subsection (a) have not been met.



---

1 (f) The court may appoint a panel of one or more independent persons upon motion  
2 by the registered corporation to make a determination whether the maintenance of the derivative  
3 proceeding is in the best interests of the registered corporation. In such case, the plaintiff shall  
4 have the burden of proving that the requirements of subsection (a) have not been met.

5 § 1116. Discontinuance of settlement. A derivative proceeding may not be discontinued  
6 or settled without the court's approval. If the court determines that a proposed discontinuance or  
7 settlement will substantially affect the interests of the registered corporation's shareholders or a  
8 class of shareholders, the court shall direct that notice be given to the shareholders affected.

9 § 1117. Payment of Expenses. On termination of the derivative proceeding the court  
10 may:

11 (a) order the registered corporation to pay the plaintiff's reasonable expenses  
12 (including counsel fees) incurred in the proceeding if it finds that the proceeding has resulted in  
13 a substantial benefit to the registered corporation;

14 (b) order the plaintiff to pay any defendant's reasonable expenses (including counsel  
15 fees) incurred in defending the proceeding if it finds that the proceeding was commenced or  
16 maintained without reasonable cause or for an improper purpose; or

17 (c) order a party to pay an opposing party's reasonable expenses (including counsel  
18 fees) incurred because of the filing of a pleading, motion or other paper, if it finds that the  
19 pleading, motion or other paper was not well grounded in fact, after reasonable inquiry, or  
20 warranted by existing law or a good faith argument for the extension, modification or reversal of  
21 existing law and was interposed for an improper purpose, such as to harass or to cause  
22 unnecessary delay or needless increase in the cost of litigation.

23 **Subchapter 10**

24 **Directors and Officers**

25 § 1121. Requirement for and duties of board of directors.

26 (a) Except as provided in section 1110, each registered corporation must have a  
27 board of directors.

---

1 (b) All corporate powers shall be exercised by or under the authority of, and the  
2 business and affairs of the registered corporation managed by or under the direction of, its board  
3 of directors, subject to any limitation set forth in the articles of incorporation or in an agreement  
4 authorized under section 1110.

5 § 1122. Qualifications of directors. The articles of incorporation or bylaws may  
6 prescribe qualifications for directors. A director need not be a resident of the Republic or a  
7 shareholder of the registered corporation unless the articles of incorporation or bylaws so  
8 prescribe.

9 § 1123. Number and election of directors.

10 (a) A board of directors must consist of one or more individuals, with the number  
11 specified in or fixed in accordance with the articles of incorporation or bylaws.

12 (b) The number of directors may be increased or decreased from time to time by  
13 amendment to, or in the manner provided in, the articles of incorporation or the bylaws.

14 (c) Directors are elected at the first annual shareholders' meeting and at each annual  
15 meeting thereafter unless their terms are staggered under section 1126.

16 § 1124. Election of directors by certain classes of shareholders. If the articles of  
17 incorporation authorize dividing the shares into classes, the articles may also authorize the  
18 election of all or a specified number of directors by the holders of one or more authorized classes  
19 of shares. A class or classes of shares entitled to elect one or more directors is a separate voting  
20 group for purposes of the election of directors.

21 § 1125. Terms of directors generally.

22 (a) The terms of the initial directors of a registered corporation expire at the first  
23 shareholders' meeting at which directors are elected.

24 (b) The terms of all other directors expire at the next annual shareholders' meeting  
25 following their election unless their terms are staggered under section 1126.

26 (c) A decrease in the number of directors does not shorten an incumbent director's  
27 term.

---

1 (d) The term of a director elected to fill a vacancy expires at the next shareholders'  
2 meeting at which directors are elected.

3 (e) Despite the expiration of a director's term, he continues to serve until his  
4 successor is elected and qualifies or until there is a decrease in the number of directors.

5 § 1126. Staggered terms for directors. The articles of incorporation may provide for  
6 staggering the terms of directors by dividing the total number of directors into two or three  
7 groups, with each group containing one-half or one-third of the total, as near as may be. In that  
8 event, the terms of directors in the first group expire at the first annual shareholders' meeting  
9 after their election, the terms of the second group expire at the second annual shareholders'  
10 meeting after their election, and the terms of the third group, if any, expire at the third annual  
11 shareholders' meeting after their election. At each annual shareholders' meeting held thereafter,  
12 directors shall be chosen for a term of two years or three years, as the case may be, to succeed  
13 those whose terms expire.

14 § 1127. Resignation of directors.

15 (a) A director may resign at any time by delivering written notice to the board of  
16 directors, its chairman, or to the registered corporation.

17 (b) A resignation is effective when the notice is delivered unless the notice specifies a  
18 later effective date.

19 § 1128. Removal of directors by shareholders.

20 (a) The shareholders may remove one or more directors with or without cause unless  
21 the articles of incorporation provide that directors may be removed only for cause.

22 (b) If a director is elected by a voting group of shareholders, only the shareholders of  
23 that voting group may participate in the vote to remove him.

24 (c) If cumulative voting is authorized, a director may not be removed if the number  
25 of votes sufficient to elect him under cumulative voting is voted against his removal. If  
26 cumulative voting is not authorized, a director may be removed only if the number of votes cast  
27 to remove him exceeds the number of votes cast not to remove him.

---

(d) A director may be removed by the shareholders only at a meeting called for the purpose of removing him and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

§ 1129. Removal of directors by judicial proceeding.

(A) The Supreme Court may remove a director of the registered corporation from office in a proceeding commenced by or in the right of the registered corporation if the Supreme Court finds that:

(1)1 the director engaged in fraudulent conduct with respect to the registered corporation or its shareholders, grossly abused the position of director, or intentionally inflicted harm on the registered corporation; and

(1)2 considering the director's course of conduct and the inadequacy of other available remedies, removal would be in the best interest of the registered corporation.

(b) A shareholder proceeding on behalf of the registered corporation under subsection (a) shall comply with all of the requirements of subchapter 9, except section 1111(1).

(c) The Supreme Court, in addition to removing the director, may bar the director from reelection for a period prescribed by the court.

(d) Nothing in this section 1129 limits the equitable powers of the Supreme Court to order other relief.

§ 1130. Vacancy on board.

(a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) the shareholders may fill the vacancy;

(2) the board of directors may fill the vacancy; or

---

1 (3) if the directors remaining in office constitute fewer than a quorum of the  
2 board, they may fill the vacancy by the affirmative vote of a majority of all the directors  
3 remaining in office.

4 (b) If the vacant office was held by a director elected by a voting group of shareholders,  
5 only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled  
6 by the shareholders.

7 (c) A vacancy that will occur at a specific later date (by reason of a resignation  
8 effective at a later date under section 1127(b) or otherwise) may be filled before the vacancy  
9 occurs but the new director may not take office until the vacancy occurs.

10 § 1131. Compensation of directors. Unless the articles of incorporation or bylaws  
11 provide otherwise, the board of directors may fix the compensation of directors.

12 § 1132. Meetings8.20. Meetings.

13 (a) The board of directors may hold regular or special meetings in or out of the  
14 Republic.

15 (b) Unless the articles of incorporation or bylaws provide otherwise, the board of  
16 directors may permit any or all directors to participate in a regular or special meeting by, or  
17 conduct the meeting through the use of, any means of communication by which all directors  
18 participating may simultaneously hear each other during the meeting. A director participating in  
19 a meeting by this means is deemed to be present in person at the meeting.

20 § 1133. Action without meeting.

21 (a) Except to the extent that the articles of incorporation or bylaws require that action  
22 by the board of directors be taken at a meeting, action required or permitted by this chapter to be  
23 taken by the board of directors may be taken without a meeting if each director signs a consent  
24 describing the action to be taken and delivers it to the registered corporation.

25 (b) Action taken under this section is the act of the board of directors when one or  
26 more consents signed by all the directors are delivered to the registered corporation. The  
27 consent may specify the time at which the action taken is to be effective. A director's consent

---

1 may be withdrawn by a revocation signed by the director and delivered to the registered  
2 corporation before delivery to the registered corporation of unrevoked written consents signed by  
3 all the directors.

4 (c) A consent signed under this section 1133 has the effect of action taken at a  
5 meeting of the board of directors and may be described as such in any document.

6 § 1134. Notice of meeting.

7 (a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings  
8 of the board of directors may be held without notice of the date, time, place, or purpose of the  
9 meeting.

10 (b) Unless the articles of incorporation or bylaws provide for a longer or shorter  
11 period, special meetings of the board of directors must be preceded by at least two days' notice  
12 of the date, time, and place of the meeting. The notice need not describe the purpose of the  
13 special meeting unless required by the articles of incorporation or bylaws.

14 § 1135. Waiver of notice.

15 (a) A director may waive any notice required by this chapter, the articles of  
16 incorporation, or bylaws before or after the date and time stated in the notice. Except as  
17 provided by subsection (b), the waiver must be in writing, signed by the director entitled to the  
18 notice, and filed with the minutes or corporate records.

19 (b) A director's attendance at or participation in a meeting waives any required notice  
20 to him of the meeting unless the director at the beginning of the meeting (or promptly upon his  
21 arrival) objects to holding the meeting or transacting business at the meeting and does not  
22 thereafter vote for or assent to action taken at the meeting.

23 § 1136. Quorum and voting.

24 (a) Unless the articles of incorporation or bylaws require a greater number or unless  
25 otherwise specifically provided in this chapter, a quorum of a board of directors consists of:

26 (1) a majority of the fixed number of directors if the registered corporation  
27 has a fixed board size; or

---

1           (2) a majority of the number of directors prescribed, or if no number is  
2           prescribed the number in office immediately before the meeting begins, if the registered  
3           corporation has a variable-range size board.

4           (b) The articles of incorporation or bylaws may authorize a quorum of a board of  
5           directors to consist of no fewer than one-third of the fixed or prescribed number of directors  
6           determined under subsection (a).

7           (c) If a quorum is present when a vote is taken, the affirmative vote of a majority of  
8           directors present is the act of the board of directors unless the articles of incorporation or bylaws  
9           require the vote of a greater number of directors.

10          (a) A director who is present at a meeting of the board of directors or a  
11          committee of the board of directors when corporate action is taken is  
12          deemed to have assented to the action taken unless:

13           (1)1 he objects at the beginning of the meeting (or promptly upon his  
14           arrival) to holding it or transacting business at the meeting;

15           (1)2 his dissent or abstention from the action taken is entered in the  
16           minutes of the meeting; or

17           (1)3 he delivers written notice of his dissent or abstention to the  
18           presiding officer of the meeting before its adjournment or to the  
19           registered corporation immediately after adjournment of the  
20           meeting. The right of dissent or abstention is not available to a  
21           director who votes in favor of the action taken.

22          § 1137. Committeess.

23          (a) Unless this chapter, the articles of incorporation or the bylaws provide otherwise, a  
24          board of directors may create one or more committees and appoint one or more members of the  
25          board of directors to serve on any such committee.

26          (b) Unless this chapter otherwise provides, the creation of a committee and  
27          appointment of members to it must be approved by the greater of:

---

1 (2)1 a majority of all the directors in office when the action is taken or

2 (2) the number of directors required by the articles of incorporation or  
3 bylaws to take action under section 1136.

4 (c) Sections 1132 through 1136 apply both to committees of the board and to their  
5 members.

6 (d) To the extent specified by the board of directors or in the articles of incorporation  
7 or bylaws, each committee may exercise the powers of the board of directors under section 1121.

8 (e) A committee may not, however:

9 (1) authorize or approve distributions, except according to a formula or  
10 method, or within limits, prescribed by the board of directors;

11 (2) approve or propose to shareholders action that this chapter requires be  
12 approved by shareholders;

13 (3) fill vacancies on the board of directors or, subject to subsection (g) on any  
14 of its committees; or

15 (4) adopt, amend, or repeal bylaws.

16 (f) The creation of, delegation of authority to, or action by a committee does not  
17 alone constitute compliance by a director with the standards of conduct described in section  
18 1138.

19 (g) The board of directors may appoint one or more directors as alternate members of  
20 any committee to replace any absent or disqualified member during the member's absence or  
21 disqualification. Unless the articles of incorporation or the bylaws or the resolution creating the  
22 committee provide otherwise, in the event of the absence or disqualification of a member of a  
23 committee, the member or members present at any meeting and not disqualified from voting,  
24 unanimously, may appoint another director to act in place of the absent or disqualified member.

25 § 1138. Standards of conduct for directors.

26 (c) Each member of the board of directors, when discharging the duties of a  
27 director, shall act:



---

1 (3)1 in good faith,

2 (2) in a manner the director reasonably believes to be in the best interests of the  
3 registered corporation.

4 (b) The members of the board of directors or a committee of the board, when  
5 becoming informed in connection with their decision-making function or devoting attention to  
6 their oversight function, shall discharge their duties with the care that a person in a like position  
7 would reasonably believe appropriate under similar circumstances.

8 (c) In discharging board or committee duties a director, who does not have  
9 knowledge that makes reliance unwarranted, is entitled to rely on the performance by any of the  
10 persons specified in subsection (e)(1) or subsection (e)(3) to whom the board may have  
11 delegated, formally or informally by course of conduct, the authority or duty to perform one or  
12 more of the board's functions that are delegable under applicable law.

13 (d) In discharging board or committee duties a director, who does not have  
14 knowledge that makes reliance unwarranted, is entitled to rely on information, opinions, reports  
15 or statements, including financial statements and other financial data, prepared or presented by  
16 any of the persons specified in subsection (e).

17 (e) A director is entitled to rely, in accordance with subsection (c) or (d), on:

18 (1) one or more officers or employees of the registered corporation whom the  
19 director reasonably believes to be reliable and competent in the functions performed or  
20 the information, opinions, reports or statements provided;

21 (2) legal counsel, public accountants, or other persons retained by the  
22 registered corporation as to matters involving skills or expertise the director reasonably  
23 believes are matters within the particular person's professional or expert competence or  
24 as to which the particular person merits confidence; or

25 (3) a committee of the board of directors of which the director is not a  
26 member if the director reasonably believes the committee merits confidence.

27 § 1139. Standards of liability for directors.

---

1 (a) A director or shall not be liable to the registered corporation or its shareholders  
2 for any decision to take or not to take action, or any failure to take any action, as a director,  
3 unless the party asserting liability in a proceeding establishes that:

4 (1) any provision in the articles of incorporation authorized by section  
5 1033(b)(4) or the protection afforded by section 1162 for action taken in compliance with  
6 section 1163 or 1164, if interposed as a bar to the proceeding by the director, does not  
7 preclude liability; and

8 (2) the challenged conduct consisted or was the result of:

9 (A) action not in good faith; or

10 (B) a decision

11 (i) which the director did not reasonably believe to be in the  
12 best interests of the registered corporation, or

13 (ii) as to which the director was not informed to an extent the  
14 director reasonably believed appropriate in the  
15 circumstances; or

16 (C) a lack of objectivity due to the director's familial, financial or  
17 business relationship with, or a lack of independence due to the director's  
18 domination or control by, another person having a material interest in the  
19 challenged conduct

20 (i) which relationship or which domination or control could  
21 reasonably be expected to have affected the director's judgment  
22 respecting the challenged conduct in a manner adverse to the  
23 registered corporation, and

24 (ii) after a reasonable expectation to such effect has been  
25 established, the director shall not have established that the  
26 challenged conduct was reasonably believed by the director to be  
27 in the best interests of the registered corporation; or

---

1 (D) a sustained failure of the director to devote attention to ongoing  
2 oversight of the business and affairs of the registered corporation, or a failure to  
3 devote timely attention, by making or causing to be made appropriate inquiry,  
4 when particular facts and circumstances of significant concern materialize that  
5 would alert a reasonably attentive director to the need therefore; or

6 (E) receipt of a financial benefit to which the director was not entitled  
7 or any other breach of the director's duties to deal fairly with the registered  
8 corporation and its shareholders that is actionable under applicable law.

9 (b) The party seeking to hold the director liable:

10 (1) for money damages, shall also have the burden of establishing that:

11 (A) harm to the registered corporation or its shareholders has been  
12 suffered, and

13 (B) the harm suffered was proximately caused by the director's  
14 challenged conduct; or

15 (2) for other money payment under a legal remedy, such as compensation for  
16 the unauthorized use of corporate assets, shall also have whatever persuasion burden may  
17 be called for to establish that the payment sought is appropriate in the circumstances; or

18 (3) for other money payment under an equitable remedy, such as profit  
19 recovery by or disgorgement to the registered corporation, shall also have whatever  
20 persuasion burden may be called for to establish that the equitable remedy sought is  
21 appropriate in the circumstances.

22 (c) Nothing contained in this section 1139 shall:

23 (1) in any instance where fairness is at issue, such as consideration of the  
24 fairness of a transaction to the registered corporation under section 1162(b)(3), alter the  
25 burden of proving the fact or lack of fairness otherwise applicable,

---

1           (2)     alter the fact or lack of liability of a director under another section of this  
2           chapter, such as the provisions governing the consequences of an unlawful distribution  
3           under section 1140 or a transactional interest under section 1162, or

4           (3)     affect any rights to which the registered corporation or a shareholder may  
5           be entitled under another statute of the Republic or the United States.

6           § 1140. Directors' liability for unlawful distributions.

7           (a)     A director who votes for or assents to a distribution in excess of what may be  
8           authorized and made pursuant to section 1086(a) or 1249(a) is personally liable to the registered  
9           corporation for the amount of the distribution that exceeds what could have been distributed  
10          without violating section 1086 or 1249(a) if the party asserting liability establishes that when  
11          taking the action the director did not comply with section 1138.

12          (b)     A director held liable under subsection (a) for an unlawful distribution is entitled  
13          to:

14                 (1)     contribution from every other director who could be held liable under  
15                 subsection (a) for the unlawful distribution; and

16                 (2)     recoupment from each shareholder of the pro-rata portion of the amount of  
17                 the unlawful distribution the shareholder accepted, knowing the distribution was made in  
18                 violation of section 1086(a) or 1249(a).

19          (c)     A proceeding to enforce:

20                 (1)                 the liability of a director under subsection (a) is barred unless it is  
21   commenced within two years after the date:

22                                 (A)     on which the effect of the distribution was measured under section  
23                                 1086(e) or (g); or

24                                 (B)     as of which the violation of section 1086(a) occurred as the  
25                                 consequence of disregard of a restriction in the articles of incorporation, or

26                                 (C)     on which the distribution of assets to shareholders under section  
27                                 1249(a) was made; or

---

1           (2) contribution or recoupment under subsection (b) is barred unless it is  
2           commenced within one year after the liability of the claimant has been finally adjudicated  
3           under subsection (a).

4           § 1141. Required officers.

5           (a) A registered corporation has the offices described in its bylaws or designated by  
6           the board of directors in accordance with the bylaws.

7           (b) The board of directors may elect individuals to fill one or more offices of the  
8           registered corporation. An officer may appoint one or more officers if authorized by the bylaws  
9           or the board of directors.

10          (c) The bylaws or the board of directors shall assign to one of the officers  
11          responsibility for preparing the minutes of the directors' and shareholders' meetings and for  
12          maintaining and authenticating the records of the registered corporation required to be kept  
13          under sections 1271(a) and 1271(e).

14          (d) The same individual may simultaneously hold more than one office in a registered  
15          corporation.

16          § 1142. Duties of officers. Each officer has the authority and shall perform the duties  
17          set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the  
18          board of directors or by direction of an officer authorized by the board of directors to prescribe  
19          the duties of other officers.

20          § 1143. Standards of conduct for officers.

21          (a) An officer when performing in such capacity, shall act:

22               (1) in good faith;

23               (2) with the care that a person in a like position would reasonably exercise  
24               under similar circumstances; and

25               (3) in a manner the officer reasonably believes to be in the best interests of the  
26               registered corporation.

---

1 (b) In discharging those duties an officer, who does not have knowledge that makes  
2 reliance unwarranted, is entitled to rely on

3 (1) the performance of properly delegated responsibilities by one or more  
4 employees of the registered corporation whom the officer reasonably believes to be  
5 reliable and competent in performing the responsibilities delegated; or

6 (2) information, opinions, reports or statements, including financial  
7 statements and other financial data, prepared or presented by one or more employees of  
8 the registered corporation whom the officer reasonably believes to be reliable and  
9 competent in the matters presented; or by legal counsel, public accountants, or other  
10 persons retained by the registered corporation as to matters involving skills or expertise  
11 the officer reasonably believes are matters within the particular person's professional or  
12 expert competence or as to which the particular person merits confidence.

13 § 1144. Resignation and removal of officers.

14 (a) An officer may resign at any time by delivering notice to the registered  
15 corporation. A resignation is effective when the notice is delivered unless the notice specifies a  
16 later effective time. If a resignation is made effective at a later time and the board accepts the  
17 future effective time, the board may fill the pending vacancy before the effective time if the  
18 board provides that the successor does not take office until the effective time.

19 (b) An officer may be removed at any time with or without cause by: (1) the board of  
20 directors; or (2) the officer (including that officer's successor) who appointed such officer,  
21 unless the bylaws or the board of directors, acting in accordance with the bylaws, provide  
22 otherwise.

23 § 1145. Contract rights of officers.

24 (a) The appointment of an officer does not itself create contract rights.

25 (b) An officer's removal does not affect the officer's contract rights, if any, with the  
26 registered corporation. An officer's resignation does not affect the registered corporation's  
27 contract rights, if any, with the officer.

---

**Subchapter 11**

**Indemnification**

§ 1151. Subchapter Definitions. In this subchapter:

(a) “Corporation” includes any domestic or foreign predecessor entity of a registered corporation in a merger.

(b) “Director” or “officer” means an individual who is or was a director or officer, respectively, of a registered corporation or who, while a director or officer of the registered corporation, is or was serving at the registered corporation’s request as a director, officer, partner, trustee, employee, or agent of another registered, domestic, or foreign registered corporation, partnership, joint venture, trust, employee benefit plan, or other entity. A director or officer is considered to be serving an employee benefit plan at the registered corporation’s request if his duties to the registered corporation also impose duties on, or otherwise involve services by, him to the plan or to participants in or beneficiaries of the plan. “Director” or “officer” includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

(a) “Disinterested director” means a director who, at the time of a vote referred to in section 1154(c) or a vote or selection referred to in section 1156(b) or (c), is not:

- (1) a party to the proceeding, or
- (2) an individual having a familial, financial, professional or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director’s judgment when voting on the decision being made.

(d) “Expenses” includes counsel fees.

---

1 (e) "Liability" means the obligation to pay a judgment, settlement, penalty, fine  
2 (including an excise tax assessed with respect to an employee benefit plan), or reasonable  
3 expenses incurred with respect to a proceeding.

4 (c) "Official capacity" means:

5 (1) when used with respect to a director, the office of director  
6 in a registered corporation; and

7 (2) when used with respect to an officer, as contemplated in  
8 section 1157, the office in a registered corporation held by the  
9 officer. "Official capacity" does not include service for any other  
10 domestic or foreign registered corporation or any partnership, joint  
11 venture, trust, employee benefit plan, or other entity.

12 (g) "Party" means an individual who was, is, or is threatened to be made, a defendant  
13 or respondent in a proceeding.

14 (h) "Proceeding" means any threatened, pending, or completed action, suit, or  
15 proceeding, whether civil, criminal, administrative, arbitative, or investigative and whether  
16 formal or informal.

17 § 1152. Permissible indemnification.

18 (a) Except as otherwise provided in this section 8.51, a registered corporation may  
19 indemnify an individual who is a party to a proceeding because he is a director against liability  
20 incurred in the proceeding if:

21 (1) he conducted himself in good faith; and

22 (2) he reasonably believed:

23 (A) in the case of conduct in his official capacity, that his conduct was  
24 in the best interests of the registered corporation; and

25 (B) in all other cases, that his conduct was at least not opposed to the  
26 best interests of the registered corporation; and



---

1 (C) in the case of any criminal proceeding, he had no reasonable cause

2 to believe his conduct was unlawful; or

3 (2) he engaged in conduct for which broader indemnification has been made  
4 permissible or obligatory under a provision of the articles of incorporation as  
5 authorized by section 1033(b)(5).

6 (b) A director's conduct with respect to an employee benefit plan for a purpose he  
7 reasonably believed to be in the interests of the participants in, and the beneficiaries of,  
8 the plan is conduct that satisfies the requirement of subsection (a)(1)(A)(ii).

9 (c) The termination of a proceeding by judgment, order, settlement, or conviction, or  
10 upon a plea of *nolo contendere* or its equivalent, is not, of itself, determinative that the  
11 director did not meet the relevant standard of conduct described in this section.

12 (d) Unless ordered by a court under section 1155(a)(3), a registered corporation may  
13 not indemnify a director:

14 (1) in connection with a proceeding by or in the right of the registered  
15 corporation, except for reasonable expenses incurred in connection with the  
16 proceeding if it is determined that the director has met the relevant standard of  
17 conduct under subsection (a); or

18 (2) in connection with any proceeding with respect to conduct for which he  
19 was adjudged liable on the basis that he received a financial benefit to which he  
20 was not entitled, whether or not involving action in his official capacity.

21 § 1153. Mandatory indemnification. A registered corporation shall indemnify a director  
22 who was wholly successful, on the merits or otherwise, in the defense of any proceeding to  
23 which he was a party because he was a director of the registered corporation against reasonable  
24 expenses incurred by him in connection with the proceeding.

25 § 1154. Advance for expenses.

---

1 (a) A registered corporation may, before final disposition of a proceeding, advance  
2 funds to pay for or reimburse the reasonable expenses incurred by a director who is a party to a  
3 proceeding because he is a director if he delivers to the registered corporation:

4 (1) a written affirmation of his good faith belief that he has met the relevant  
5 standard of conduct described in section 1152 or that the proceeding involves conduct for  
6 which liability has been eliminated under a provision of the articles of incorporation as  
7 authorized by section 1033(b)(4); and

8 (2) his written undertaking to repay any funds advanced if he is not entitled to  
9 mandatory indemnification under section 1153 and it is ultimately determined under  
10 section 1155 or section 1156 that he has not met the relevant standard of conduct  
11 described in section 1152.

12 (b) The undertaking required by subsection (a)(2) must be an unlimited general  
13 obligation of the director but need not be secured and may be accepted without reference to the  
14 financial ability of the director to make repayment.

15 (c) Authorizations under this section 1154 shall be made:

16 (1) by the board of directors:

17 (A) if there are two or more disinterested directors, by a majority vote  
18 of all the disinterested directors (a majority of whom shall for such purpose  
19 constitute a quorum) or by a majority of the members of a committee of two or  
20 more disinterested directors appointed by such a vote; or

21 (B) if there are fewer than two disinterested directors, by the vote  
22 necessary for action by the board in accordance with section 1136(c), in which  
23 authorization directors who do not qualify as disinterested directors may  
24 participate; or

25 (2) by the shareholders, but shares owned by or voted under the control of a  
26 director who at the time does not qualify as a disinterested director may not be voted on  
27 the authorization.

---

1           § 1155. Court-ordered indemnification and advance for expenses.

2           (a)     A director who is a party to a proceeding because he is a director may apply for  
3 indemnification or an advance for expenses to the court conducting the proceeding or to another  
4 court of competent jurisdiction. After receipt of an application and after giving any notice it  
5 considers necessary, the court shall:

6                   (1)     order indemnification if the court determines that the director is entitled to  
7 mandatory indemnification under section 1153;

8                   (2)     order indemnification or advance for expenses if the court determines that  
9 the director is entitled to indemnification or advance for expenses pursuant to a provision  
10 authorized by section 1159(a); or

11                   (3)     order indemnification or advance for expenses if the court determines, in  
12 view of all the relevant circumstances, that it is fair and reasonable

13                           (A)     to indemnify the director, or

14                           (B)     to advance expenses to the director, even if he has not met the  
15 relevant standard of conduct set forth in section 1152(a), failed to comply with  
16 section 1154 or was adjudged liable in a proceeding referred to in subsection  
17 1152(d)(1) or (d)(2), but if he was adjudged so liable his indemnification shall be  
18 limited to reasonable expenses incurred in connection with the proceeding.

19           (b)     If the court determines that the director is entitled to indemnification under  
20 subsection (a)(1) or to indemnification or advance for expenses under subsection (a)(2), it shall  
21 also order the registered corporation to pay the director's reasonable expenses incurred in  
22 connection with obtaining court-ordered indemnification or advance for expenses. If the court  
23 determines that the director is entitled to indemnification or advance for expenses under  
24 subsection (a)(3), it may also order the registered corporation to pay the director's reasonable  
25 expenses to obtain court-ordered indemnification or advance for expenses.

26           § 1156. Determination and authorization of indemnification.

---

1 (a) A registered corporation may not indemnify a director under section 1152 unless  
2 authorized for a specific proceeding after a determination has been made that indemnification of  
3 the director is permissible because he has met the relevant standard of conduct set forth in  
4 section 1152.

5 (b) The determination shall be made:

6 (1) if there are two or more disinterested directors, by the board of directors  
7 by a majority vote of all the disinterested directors (a majority of whom shall for such  
8 purpose constitute a quorum), or by a majority of the members of a committee of two or  
9 more disinterested directors appointed by such a vote; or

10 (2) by special legal counsel:

11 (A) selected in the manner prescribed in subdivision (1); or

12 (B) if there are fewer than two disinterested directors, selected by the  
13 board of directors (in which selection directors who do not qualify as disinterested  
14 directors may participate); or

15 (3) by the shareholders, but shares owned by or voted under the control of a  
16 director who at the time does not qualify as a disinterested director may not be voted on  
17 the determination.

18 (c) Authorization of indemnification shall be made in the same manner as the  
19 determination that indemnification is permissible, except that if there are fewer than two  
20 disinterested directors or if the determination is made by special legal counsel, authorization of  
21 indemnification shall be made by those entitled under subsection (b)(2)(B) to select special legal  
22 counsel.

23 § 1157. Officers8.56. Officers.

24 (a) A registered corporation may indemnify and advance expenses under this  
25 subchapter to an officer of the registered corporation who is a party to a proceeding because he is  
26 an officer of the registered corporation:

27 (1) to the same extent as a director; and

---

1           (2)    if he is an officer but not a director, to such further extent as may be  
2           provided by the articles of incorporation, the bylaws, a resolution of the board of  
3           directors, or contract except for:

4                   (A)    liability in connection with a proceeding by or in the right of the  
5                   registered corporation other than for reasonable expenses incurred in connection  
6                   with the proceeding or

7                   (B)    liability arising out of conduct that constitutes

8                           (i)    receipt by him of a financial benefit to which he is not  
9                           entitled; or

10                           (ii)   an intentional infliction of harm on the registered  
11                           corporation or the shareholders; or

12                           (iii)   an intentional violation of criminal law.

13           (b)    The provisions of subsection (a)(2) shall apply to an officer who is also a director  
14           if the basis on which he is made a party to the proceeding is an act or omission solely as an  
15           officer.

16           (c)    An officer of a registered corporation who is not a director is entitled to  
17           mandatory indemnification under section 1153, and may apply to a court under section 1155 for  
18           indemnification or an advance for expenses, in each case to the same extent to which a director  
19           may be entitled to indemnification or advance for expenses under those provisions.

20           § 1158. Insurance. A registered corporation may purchase and maintain insurance on  
21           behalf of an individual who is a director or officer of the registered corporation, or who, while a  
22           director or officer of the registered corporation, serves at the registered corporation's request as a  
23           director, officer, partner, trustee, employee, or agent of another domestic or foreign registered  
24           corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against  
25           liability asserted against or incurred by him in that capacity or arising from his status as a  
26           director or officer, whether or not the registered corporation would have power to indemnify or  
27           advance expenses to him against the same liability under this subchapter.

---

1           § 1159. Variation by corporate action; application of subchapter.

2           (a)     A registered corporation may, by a provision in its articles of incorporation or  
3 bylaws or in a resolution adopted or a contract approved by its board of directors or  
4 shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to  
5 provide indemnification in accordance with section 1152 or advance funds to pay for or  
6 reimburse expenses in accordance with section 1154. Any such obligatory provision shall be  
7 deemed to satisfy the requirements for authorization referred to in section 1154(c) and in section  
8 1156(c). Any such provision that obligates the registered corporation to provide indemnification  
9 to the fullest extent permitted by law shall be deemed to obligate the registered corporation to  
10 advance funds to pay for or reimburse expenses in accordance with section 1154 to the fullest  
11 extent permitted by law, unless the provision specifically provides otherwise.

12           (b)     Any provision pursuant to subsection (a) shall not obligate the registered  
13 corporation to indemnify or advance expenses to a director of a predecessor of the registered  
14 corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically  
15 provided. Any provision for indemnification or advance for expenses in the articles of  
16 incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor  
17 of the registered corporation in a merger or in a contract to which the predecessor is a party,  
18 existing at the time the merger takes effect, shall be governed by section 1207(a)(4).

19           (c)     A registered corporation may, by a provision in its articles of incorporation, limit  
20 any of the rights to indemnification or advance for expenses created by or pursuant to this  
21 subchapter.

22           (d)     This subchapter does not limit a registered corporation's power to pay or  
23 reimburse expenses incurred by a director or an officer in connection with his appearance as a  
24 witness in a proceeding at a time when he is not a party.

25           (e)     This subchapter does not limit a registered corporation's power to indemnify,  
26 advance expenses to or provide or maintain insurance on behalf of an employee or agent.

27           § 1160. Exclusivity of subchapter.

---

1 A registered corporation may provide indemnification or advance expenses to a director or an  
2 officer only as permitted by this subchapter.

3 **Subchapter 12**

4 **Directors' Conflicting Interest Transactions**

5 § 1161. Subchapter definitions.

6 In this subchapter:

7 (a) "Conflicting interest" with respect to a registered corporation means the interest a  
8 director of the registered corporation has respecting a transaction effected or proposed to be  
9 effected by the registered corporation (or by a subsidiary of the registered corporation or any  
10 other entity in which the registered corporation has a controlling interest) if:

11 (1) whether or not the transaction is brought before the board of directors of  
12 the registered corporation for action, the director knows at the time of commitment that  
13 he or a related person is a party to the transaction or has a beneficial financial interest in  
14 or so closely linked to the transaction and of such financial significance to the director or  
15 a related person that the interest would reasonably be expected to exert an influence on  
16 the director's judgment if he were called upon to vote on the transaction; or

17 (2) the transaction is brought (or is of such character and significance to the  
18 registered corporation that it would in the normal course be brought) before the board of  
19 directors of the registered corporation for action, and the director knows at the time of  
20 commitment that any of the following persons is either a party to the transaction or has a  
21 beneficial financial interest in or so closely linked to the transaction and of such financial  
22 significance to the person that the interest would reasonably be expected to exert an  
23 influence on the director's judgment if he were called upon to vote on the transaction:

24 (A) an entity (other than the registered corporation) of which the director is a director,  
25 general partner, agent, or employee; (B) a person that controls one or more of the entities  
26 specified in subclause (A) or an entity that is controlled by, or is under common control

---

1 with, one or more of the entities specified in subclause (A); or (C) an individual who is a  
2 general partner, principal, or employer of the director.

3 (b) “Director’s conflicting interest transaction” with respect to a registered  
4 corporation means a transaction effected or proposed to be effected by the registered corporation  
5 (or by a subsidiary of the registered corporation or any other entity in which the registered  
6 corporation has a controlling interest) respecting which a director of the registered corporation  
7 has a conflicting interest.

8 (C) “Related person” of a director means:

- 9 1. the spouse (or a parent or sibling thereof) of the director, or a child,  
10 grandchild, sibling, parent (or spouse of any thereof) of the director, or  
11 an individual residing in the same dwelling the director, or a trust or  
12 estate of which an individual specified in this subsection is a  
13 substantial beneficiary; or  
14 2. a trust, estate, incompetent, conservatee, or minor of which the  
15 director is a fiduciary.

16 (D) “Required disclosure” means disclosure by the director who has a  
17 conflicting interest of:

- 18 (2)1 the existence and nature of his conflicting interest; and  
19 (2) all facts known to him respecting the subject matter of the  
20 transaction that an ordinarily prudent person would reasonably  
21 believe to be material to a judgment about whether or not to  
22 proceed with the transaction.

23 (e) “Time of commitment” respecting a transaction means the time when the  
24 transaction is consummated or, if made pursuant to contract, the time when the registered  
25 corporation or its subsidiary or the entity in which it has a controlling interest becomes  
26 contractually obligated so that its unilateral withdrawal from the transaction would entail  
27 significant loss, liability, or other damage.



---

1           § 1162. Judicial action.

2           (a)     A transaction effected or proposed to be effected by a registered corporation or by  
3 a subsidiary of the registered corporation or any other entity in which the registered corporation  
4 has a controlling interest that is not a director's conflicting interest transaction may not be  
5 enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a  
6 shareholder or by or in the right of the registered corporation, because a director of the registered  
7 corporation, or any person with whom or which he has a personal, economic, or other  
8 association, has an interest in the transaction.

9           (b)     A director's conflicting interest transaction may not be enjoined, set aside, or give  
10 rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the  
11 right of the registered corporation, because the director, or any person with whom or which he  
12 has a personal, economic, or other association, has an interest in the transaction if:

13                   (1)     directors' action respecting the transaction was at any time taken in  
14 compliance with section 1163;

15                   (2)     shareholders' action respecting the transaction was at any time taken in  
16 compliance with section 1164; or

17                   (3)     the transaction, judged according to the circumstances at the time of  
18 commitment, is established to have been fair to the registered corporation.

19           § 1163. Directors' action.

20           (a)     Directors' action respecting a transaction is effective for purposes of section  
21 1162(b)(1) if the transaction received the affirmative vote of a majority (but no fewer than two)  
22 of those qualified directors on the board of directors or on a duly empowered committee of the  
23 board who voted on the transaction after either required disclosure to them (to the extent the  
24 information was not known by them) or compliance with subsection (b); provided that action by  
25 a committee is so effective only if:

26                   (1)     all its members are qualified directors; and

---

1           (2)     its members are either all the qualified directors on the board or are  
2           appointed by the affirmative vote of a majority of the qualified directors on the board.

3           (b)     If a director has a conflicting interest respecting a transaction, but neither he nor a  
4           related person of the director specified in section 1161(c)(1) is a party to the transaction, and if  
5           the director has a duty under law or professional canon, or a duty of confidentiality to another  
6           person, respecting information relating to the transaction such that the director may not make the  
7           disclosure described in section 1161(d)(2), then disclosure is sufficient for purposes of  
8           subsection (a) if the director (1) discloses to the directors voting on the transaction the existence  
9           and nature of his conflicting interest and informs them of the character and limitations imposed  
10          by that duty before their vote on the transaction, and (2) plays no part, directly or indirectly, in  
11          their deliberations or vote.

12          (c)     A majority (but no fewer than two) of all the qualified directors on the board of  
13          directors, or on the committee, constitutes a quorum for purposes of action that complies with  
14          this section 1163. Directors' action that otherwise complies with this section 1163 is not  
15          affected by the presence or vote of a director who is not a qualified director.

16          (d)     For purposes of this section 1163, "qualified director" means, with respect to a  
17          director's conflicting interest transaction, any director who does not have either (1) a conflicting  
18          interest respecting the transaction, or (2) a familial, financial, professional, or employment  
19          relationship with a second director who does have a conflicting interest respecting the  
20          transaction, which relationship would, in the circumstances, reasonably be expected to exert an  
21          influence on the first director's judgment when voting on the transaction.

22          § 1164. Shareholders' action.

23          (a)                 Shareholders' action respecting a transaction is effective for purposes of  
24                                 section 1162(b)(2) if a majority of the votes entitled to be cast by the  
25                                 holders of all qualified shares were cast in favor of the transaction after:

26                 (1)     notice to shareholders describing the director's conflicting interest  
27                 transaction; and

---

1 (2) provision of the information referred to in subsection (d); and

2 (3) required disclosure to the shareholders who voted on the transaction (to  
3 the extent the information was not known by them).

4 (b) For purposes of this section 1164, “qualified shares” means any shares entitled to  
5 vote with respect to the director’s conflicting interest transaction except shares that, to the  
6 knowledge, before the vote, of the secretary (or other officer or agent of the registered  
7 corporation authorized to tabulate votes), are beneficially owned (or the voting of which is  
8 controlled) by a director who has a conflicting interest respecting the transaction or by a related  
9 person of the director, or both.

10 (c) A majority of the votes entitled to be cast by the holders of all qualified shares  
11 constitutes a quorum for purposes of action that complies with this section 1164. Subject to the  
12 provisions of subsections (d) and (e), shareholders’ action that otherwise complies with this  
13 section 1164 is not affected by the presence of holders, or the voting, of shares that are not  
14 qualified shares.

15 (d) For purposes of compliance with subsection (a), a director who has a conflicting  
16 interest respecting the transaction shall, before the shareholders’ vote, inform the secretary (or  
17 other office or agent of the registered corporation authorized to tabulate votes) of the number,  
18 and the identity of persons holding or controlling the vote, of all shares that the director knows  
19 are beneficially owned, or the voting of which is controlled by the director or by a related person  
20 of the director, or both.

21 (e) If a shareholders’ vote does not comply with subsection (a) solely because of a  
22 failure of a director to comply with subsection (d), and if the director establishes that his failure  
23 did not determine and was not intended by him to influence the outcome of the vote, the court  
24 may, with or without further proceedings respecting section 1162(b)(3), take such action  
25 respecting the transaction and the director, and give such effect, if any, to the shareholders’ vote,  
26 as it considers appropriate in the circumstances.

27 **Subchapter 13**

---

[Reserved]

**Subchapter 14**

**Amendment of Articles of Incorporation and By laws**

§ 1181. Authority to amend.

(a) A registered corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation as of the effective date of the amendment or to delete a provision not required in the articles of incorporation.

(b) A shareholder of the registered corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the registered corporation.

§ 1182. Amendment before issuance of shares. If a registered corporation has not yet issued shares, its board of directors, or its incorporators if it has no board of directors, may adopt one or more amendments to the registered corporation's articles of incorporation. § 1183.

Amendment by board of directors and shareholders. If a registered corporation has issued shares, an amendment to the articles of incorporation shall be adopted in the following manner:

(a) The proposed amendment must be adopted by the board of directors.

(b) Except as provided in sections 1185, 1187, and 1188, after adopting the proposed amendment the board of directors must submit the amendment to the shareholders for their approval. The board of directors must also transmit to the share holders a recommendation that the shareholders approve the amendment, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the shareholders the basis for that determination.

(c) The board of directors may condition its submission of the amendment to the shareholders on any basis.

---

1 (d) If the amendment is required to be approved by the shareholders, and the approval  
2 is to be given at a meeting, the registered corporation must notify each shareholder, whether or  
3 not entitled to vote, of the meeting of shareholders at which the amendment is to be submitted  
4 for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to  
5 consider the amendment and must contain or be accompanied by a copy of the amendment.

6 (e) Unless the articles of incorporation, or the board of directors acting pursuant to  
7 subsection (c), requires a greater vote or a greater number of shares to be present, approval of the  
8 amendment requires the approval of the shareholders at a meeting at which a quorum consisting  
9 of at least majority of the votes entitled to be cast on the amendment exists, and, if any class or  
10 series of shares is entitled to vote as a separate group on the amendment, except as provided in  
11 section 1184(c), the approval of each such separate voting group at a meeting at which a quorum  
12 of the voting group consisting of at least a majority of the votes entitled to be cast on the  
13 amendment by that voting group exists.

14 § 1184. Voting on amendments by voting groups.

15 (a) If a registered corporation has more than one class of shares outstanding, the  
16 holders of the outstanding shares of a class are entitled to vote as a separate voting group (if  
17 shareholder voting is otherwise required by this chapter) on a proposed amendment to the  
18 articles of incorporation if the amendment would:

19 (1) effect an exchange or reclassification of all or part of the shares of the  
20 class into shares of another class;

21 (2) effect an exchange or reclassification, or create the right of exchange, of  
22 all or part of the shares of another class into shares of the class;

23 (3) change the rights, preferences, or limitations of all or part of the shares of  
24 the class;

25 (4) change the shares of all or part of the class into a different  
26 number of shares of the same class;

---

1 (5) create a new class of shares having rights or preferences with respect to  
2 distributions or to dissolution that are prior or superior, to the shares of the class;

3 (6) increase the rights, preferences, or number of authorized shares of any  
4 class that, after giving effect to the amendment, have rights or preferences with respect to  
5 distributions or to dissolution that are prior or superior, to the shares of the class;

6 (7) limit or deny an existing preemptive right of all or part of the shares of the  
7 class; or

8 (8) cancel or otherwise affect rights to distributions that have accumulated but  
9 not yet been authorized on all or part of the shares of the class.

10 (b) If a proposed amendment would affect a series of a class of shares in one or more  
11 of the ways described in subsection (a), the holders of shares of that series are entitled to vote as  
12 a separate voting group on the proposed amendment.

13 (c) If a proposed amendment that entitles the holders of two or more classes or series  
14 of shares to vote as separate voting groups under this section 1184 would affect those two or  
15 more classes or series in the same or a substantially similar way, the holders of shares of all the  
16 classes or series so affected must vote together as a single voting group on the proposed  
17 amendment, unless otherwise provided in the articles of incorporation or required by the board  
18 of directors.

19 (d) A class or series of shares is entitled to the voting rights granted by this section  
20 although the articles of incorporation provide that the shares are nonvoting shares.

21 § 1185. Amendment by board of directors. Unless the articles of incorporation provide  
22 otherwise, a registered corporation's board of directors may adopt amendments to the registered  
23 corporation's articles of incorporation without shareholder approval:

24 (a) to extend the duration of the registered corporation if it was incorporated at a time  
25 when limited duration was required by law;

26 (b) to delete the names and addresses of the initial directors;

---

1 (c) to delete the name and address of the initial registered agent or registered office,  
2 if a statement of change is on file with the registrar;

3 (d) if the registered corporation has only one class of shares outstanding:

4 (1) to change each issued and unissued authorized share of the class into a  
5 greater number of whole shares of that class; or

6 (2) to increase the number of authorized shares of the class to the extent  
7 necessary to permit the issuance of shares as a share dividend;

8 (e) to change the corporate name by substituting the word “corporation,”  
9 “incorporated,” “company,” “limited,” or the abbreviation “corp.,” “inc.,” “co.,” or “ltd.,” for a  
10 similar word or abbreviation in the name, or by adding, deleting, or changing a geographical  
11 attribution for the name;

12 (f) to reflect a reduction in authorized shares, as a result of the operation of section  
13 1085(b), when the registered corporation has acquired its own shares and the articles of  
14 incorporation prohibit the reissue of the acquired shares;

15 (g) to delete a class of shares from the articles of incorporation, as a result of the  
16 operation of section 1085(b), when there are no remaining shares of the class because the  
17 registered corporation has acquired all shares of the class and the articles of incorporation  
18 prohibit the reissue of the acquired shares; or

19 (h) to make any change expressly permitted by section 1072(d) to be made without  
20 shareholder approval.

21 § 1186. Articles of amendment. After an amendment to the articles of incorporation has  
22 been adopted and approved in the manner required by this chapter and by the articles of  
23 incorporation, the registered corporation shall deliver to the registrar, for filing, articles of  
24 amendment, which shall set forth:

25 (a) the name of the registered corporation;

26 (b) the text of each amendment adopted;

---

1 (c) if an amendment provides for an exchange, reclassification, or cancellation of  
2 issued shares, provisions for implementing the amendment if not contained in the amendment  
3 itself;

4 (d) the date of each amendment's adoption; and

5 (e) if an amendment:

6 (1) was adopted by the incorporators or board of directors without shareholder  
7 approval, a statement that the amendment was duly approved by the incorporators or by  
8 the board of directors, as the case may be, and that shareholder approval was not  
9 required;

10 (2) required approval by the shareholders, a statement that the amendment  
11 was duly approved by the shareholders in the manner required by this chapter and by the  
12 articles of incorporation.

13 § 1187. Restated articles of incorporation.

14 (a) A registered corporation's board of directors may restate its articles of  
15 incorporation at any time, with or without shareholder approval, to consolidate all amendments  
16 into a single document.

17 (b) If the restated articles include one or more new amendments that require  
18 shareholder approval, the amendments must be adopted and approved as provided in section  
19 1183.

20 (c) A registered corporation that restates its articles of incorporation shall deliver to  
21 the registrar for filing articles of restatement setting forth the name of the registered corporation  
22 and the text of the restated articles of incorporation together with a certificate which states that  
23 the restated articles consolidate all amendments into a single document and, if a new amendment  
24 is included in the restated articles, which also includes the statements required under section  
25 1186.

26 (d) Duly adopted restated articles of incorporation supersede the original articles of  
27 incorporation and all amendments thereto.



---

1 (e) The registrar may certify restated articles of incorporation as the articles of  
2 incorporation currently in effect, without including the certificate information required by  
3 subsection (c).

4 § 1188. Amendment pursuant to reorganization.

5 (a) A registered corporation's articles of incorporation may be amended without  
6 action by the board of directors or shareholders to carry out a plan of reorganization ordered or  
7 decreed by a court of competent jurisdiction under the authority of a law of the United States.

8 (b) The individual or individuals designated by the court shall deliver to the registrar  
9 for filing articles of amendment setting forth:

10 (1) the name of the registered corporation;

11 (2) the text of each amendment approved by the court;

12 (3) the date of the court's order or decree approving the articles of  
13 amendment;

14 (4) the title of the reorganization proceeding in which the order or decree was  
15 entered; and

16 (5) a statement that the court had jurisdiction of the proceeding under federal  
17 statute.

18 (c) This section 1188 does not apply after entry of a final decree in the reorganization  
19 proceeding even though the court retains jurisdiction of the proceeding for limited purposes  
20 unrelated to consummation of the reorganization plan.

21 § 1189. Effect of amendment. An amendment to articles of incorporation does not affect  
22 a cause of action existing against or in favor of the registered corporation, a proceeding to which  
23 the registered corporation is a party, or the existing rights of persons other than shareholders of  
24 the registered corporation. An amendment changing a registered corporation's name does not  
25 abate a proceeding brought by or against the registered corporation in its former name.

26 § 1190. Amendment by board of directors or shareholders.

---

1 (a) A registered corporation's shareholders may amend or repeal the registered  
2 corporation's bylaws.

3 (b) A registered corporation's board of directors may amend or repeal the registered  
4 corporation's bylaws, unless:

5 (1) the articles of incorporation or section 1191 reserve that power exclusively  
6 to the shareholders in whole or part; or

7 (2) the shareholders in amending, repealing, or adopting a bylaw expressly  
8 provide that the board of directors may not amend, repeal, or reinstate that bylaw.

9 § 1191. Bylaw increasing quorum or voting requirement for shareholders.

10 (a) A bylaw that increases a quorum or voting requirement for the shareholders may be  
11 amended or repealed:

12 (1) if adopted by the shareholders, unless the bylaw otherwise provides; or

13 (2) if adopted by the board of directors.

14 (b) A bylaw adopted or amended by the shareholders that increases a quorum or  
15 voting requirement for the board of directors may provide that it can be amended or repealed  
16 only by a specified vote of either the shareholders or the board of directors.

17 (c) Action by the board of directors under subsection (a) to amend or repeal a bylaw  
18 that changes the quorum or voting requirement for the board of directors must meet the same  
19 quorum requirement and be adopted by the same vote required to take action under the quorum  
20 and voting requirement then in effect or proposed to be adopted, whichever is greater.

21 § 1192. Bylaw increasing quorum or voting requirement for directors.

22 (a) A bylaw that fixes a greater quorum or voting requirement for the board of  
23 directors may be amended or repealed:

24 (1) if adopted by the shareholders; or

25 (2) if adopted by the board of directors.

(b) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(c) Action by the board of directors under subsection (a)(2) to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

### **Subchapter 15**

#### **Merger and Share Exchange**

##### § 1201. Definitions.

As used in this subchapter 15:

(a) “Interests” means the proprietary interests in an other entity.

(b) “Merger” means a business combination pursuant to section 1102.

(c) “Organizational documents” means the basic document or documents that create, or determine the internal governance of, an other entity.

(d) “Other entity” means any association or legal entity, other than a registered, domestic, or foreign corporation, organized to conduct business, including, without limitation, limited partnerships, general partnerships, limited liability partnerships, limited liability companies, joint ventures, joint stock companies, and business trusts.

(e) “Party to a merger” or “party to a share exchange” means any registered, domestic, or foreign corporation or other entity that will either:

(1) merge under a plan of merger;

(2) acquire shares or interests of another corporation or an other entity in a share exchange; or

(3) have all of its shares or interests or all of one or more classes or series of its shares or interests acquired in a share exchange.

(f) “Share exchange” means a business combination pursuant to section 1203.

---

1 (g) “Survivor” in a merger means the corporation or other entity into which one or  
2 more other corporations or other entities are merged. A survivor of a merger may preexist the  
3 merger or be created by the merger.

4 § 1202. Merger.

5 (a) One or more registered corporations may merge with a registered, domestic, or  
6 foreign corporation pursuant to a plan of merger.

7 (b) A domestic or foreign corporation, or a domestic or foreign other entity, may be a  
8 party to the merger, or may be created by the terms of the plan of merger, only if:

9 (1) the merger is permitted by the laws under which the corporation or other  
10 entity is organized or by which it is governed; and

11 (2) in effecting the merger, the corporation or other entity complies with such  
12 laws and with its articles of incorporation or organizational documents.

13 (c) The plan of merger must include:

14 (1) the name of each corporation or other entity that will merge and the name  
15 of the corporation or other entity that will be the survivor of the merger;

16 (2) the terms and conditions of the merger;

17 (3) the manner and basis of converting the shares of each merging corporation  
18 and interests of each merging other entity into shares, or other securities, interests,  
19 obligations, rights to acquire shares or other securities, cash, other property, or any  
20 combination of the foregoing;

21 (4) the articles of incorporation of any corporation, or the organizational  
22 documents of any other entity, to be created by the merger, or if a new corporation or  
23 other entity is not to be created by the merger, any amendments to the survivor’s articles  
24 of incorporation or organizational documents; and

25 (5) any other provisions required by the laws under which any party to the  
26 merger is organized or by which it is governed, or by the articles of incorporation or  
27 organizational documents of any such party.

---

1 (d) The terms described in subsections (c)(2) and (c)(3) may be made dependent on  
2 facts ascertainable outside the plan of merger, provided that those facts are objectively  
3 ascertainable. The term “facts” includes, but is not limited to, the occurrence of any event,  
4 including a determination or action by any person or body, including the corporation.

5 (e) The plan of merger may also include a provision that the plan may be amended  
6 before filing the articles of merger with the registrar, provided that if the shareholders of a  
7 domestic corporation that is a party to the merger are required or permitted to vote on the plan,  
8 the plan must provide that after approval of the plan by such shareholders the plan may not be  
9 amended to:

10 (1) change the amount or kind of shares or other securities, interests,  
11 obligations, rights to acquire shares or other securities, cash, or other property to be  
12 received by the shareholders of or owners of interests in any party to the merger upon  
13 conversion of their shares or interests under the plan;

14 (2) change the articles of incorporation of any corporation, or the organizational  
15 documents of any other entity, that will survive or be created as a result of the merger,  
16 except for changes permitted by section 1004 or by comparable provisions of the laws  
17 under which the foreign corporation or other entity is organized or governed; or

18 (3) change any of the other terms or conditions of the plan if the change  
19 would adversely affect such shareholders in any material respect.

20 § 1203. Share exchange.

21 (a) Through a share exchange:

22 (1) a registered corporation may acquire all of the shares of one or more classes  
23 or series of shares of another registered, domestic, or foreign corporation, or all of the  
24 interests of one or more classes or series of interests of a registered, domestic, or foreign  
25 other entity, in exchange for shares or other securities, interests, obligations, rights to  
26 acquire shares or other securities, cash, other property, or any combination of the  
27 foregoing, pursuant to a plan of share exchange, or

---

1           (2) all of the shares of one or more classes or series of shares of a domestic  
2           corporation may be acquired by another domestic or foreign corporation or other entity,  
3           in exchange for shares or other securities, interests, obligations, rights to acquire shares  
4           or other securities, cash, other property, or any combination of the foregoing, pursuant to  
5           a plan of share exchange.

6           (b) A domestic or foreign corporation, or a domestic or foreign other entity, may be a  
7           party to the share exchange only if:

8                   (1) the share exchange is permitted by the laws under which the corporation  
9                   or other entity is organized or by which it is governed; and

10                   (2) in effecting the share exchange, the corporation or other entity complies  
11                   with such laws and with its articles of incorporation or organizational documents.

12           (c) The plan of share exchange must include:

13                   (1) the name of each corporation or other entity whose shares or interests will  
14                   be acquired and the name of the corporation or other entity that will acquire those shares  
15                   or interests;

16                   (2) the terms and conditions of the share exchange;

17                   (3) the manner and basis of exchanging shares of a corporation or interests in  
18                   an other entity whose shares or interests will be acquired under the share exchange into  
19                   shares or other securities, interests, obligations, rights to acquire shares or other  
20                   securities, cash, other property, or any combination of the foregoing; and

21                   (4) any other provisions required by the laws under which any party to the  
22                   share exchange is organized or by the articles of incorporation or organizational  
23                   documents of any such party.

24           (d) The terms described in subsections (c)(2) and (c)(3) may be made dependent on  
25           facts ascertainable outside the plan of share exchange, provided that those facts are objectively  
26           ascertainable. The term “facts” includes, but is not limited to, the occurrence of any event,  
27           including a determination or action by any person or body, including the corporation.

---

1 (e) The plan of share exchange may also include a provision that the plan may be  
2 amended before filing of the articles of share exchange with the registrar, provided that if the  
3 shareholders of a domestic corporation that is a party to the share exchange are required or  
4 permitted to vote on the plan, the plan must provide that after approval of the plan by such  
5 shareholders the plan may not be amended to:

6 (1) change the amount or kind of shares or other securities, interests,  
7 obligations, rights to acquire shares or other securities, cash, or other property to be  
8 issued by the corporation or to be received by the shareholders of or owners of interests  
9 in any party to the share exchange in exchange for their shares or interests under the plan;

10 or

11 (2) change any of the terms or conditions of the plan if the change would  
12 adversely affect such shareholders in any material respect.

13 (f) This section 1203 does not limit the power of a registered corporation to acquire  
14 shares of another corporation or interests in another entity in a transaction other than a share  
15 exchange.

16 § 1204. Action on plan. In the case of a registered corporation that is a party to a merger  
17 or share exchange:

18 (a) The plan of merger or share exchange must be adopted by the board of directors.

19 (b) Except as provided in subsection (g) and in section 1205, after adopting the plan  
20 of merger or share exchange the board of directors must submit the plan to the shareholders for  
21 their approval. The board of directors must also transmit to the shareholders a recommendation  
22 that the shareholders approve the plan, unless the board of directors makes a determination that  
23 because of conflicts of interest or other special circumstances it should not make such a  
24 recommendation, in which case the board of directors must transmit to the shareholders the basis  
25 for that determination.

26 (c) The board of directors may condition its submission of the plan of merger or  
27 share exchange to the shareholders on any basis.

---

1 (d) If the plan of merger or share exchange is required to be approved by the  
2 shareholders, and if the approval is to be given at a meeting, the registered corporation must  
3 notify each shareholder, whether or not entitled to vote, of the meeting of shareholders' at which  
4 the plan is to be submitted for approval. The notice must state that the purpose, or one of the  
5 purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or  
6 summary of the plan. If the registered corporation is to be merged into an existing corporation or  
7 other entity, the notice shall also include or be accompanied by a copy or summary of the articles  
8 of incorporation or organizational documents of that corporation or other entity. If the registered  
9 corporation is to be merged into a corporation or other entity that is to be created pursuant to the  
10 merger, the notice shall include or be accompanied by a copy or a summary of the articles of  
11 incorporation or organizational documents of the new corporation or other entity.

12 (e) Unless the articles of incorporation, or the board of directors acting pursuant to  
13 subsection (c), requires a greater vote or a greater number of votes to be present, the approval of  
14 the plan of merger or share exchange shall require the approval of the shareholders at a meeting  
15 at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan  
16 exists, and, if any class or series of shares is entitled to vote as a separate group on the plan of  
17 merger or share exchange, the approval of each such separate voting group at a meeting at which  
18 a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on  
19 the merger or share exchange by that voting group is present.

20 (f) Separate voting by voting groups is required:

21 (1) on a plan of merger, by each class or series of shares that;

22 (A) are to be converted, pursuant to the provisions of the plan of  
23 merger, into shares or other securities, interests, obligations, rights to acquire  
24 shares or other securities, cash, other property, or any combination of the  
25 foregoing; or



---

1 (B) would have a right to vote as a separate group on a provision in the  
2 plan that, if contained in a proposed amendment to articles of incorporation,  
3 would require action by separate voting groups under section 1184;

4 (2) on a plan of share exchange, by each class or series of shares included in  
5 the exchange, with each class or series constituting a separate voting group; and

6 (3) on a plan of merger or share exchange, if the voting group is entitled under  
7 the articles of incorporation to vote as a voting group to approve a plan of merger or  
8 share exchange.

9 (g) Unless the articles of incorporation otherwise provide, approval by the registered  
10 corporation's shareholders of a plan of merger or share exchange is not required if:

11 (1) the registered corporation will survive the merger or is the acquiring  
12 corporation in a share exchange;

13 (2) except for amendments permitted by section 1185, its articles of  
14 incorporation will not be changed;

15 (3) each shareholder of the registered corporation whose shares were  
16 outstanding immediately before the effective date of the merger or share exchange will  
17 hold the same number of shares, with identical preferences, limitations, and relative  
18 rights, immediately after the effective date of change; and

19 (4) the issuance in the merger or share exchange of shares or other securities  
20 convertible into or rights exercisable for shares does not require a vote under section  
21 1076(f).

22 (h) If as a result of a merger or share exchange one or more shareholders of a  
23 registered corporation would become subject to personal liability for the obligations or liabilities  
24 of any other person or entity, approval of the plan of merger shall require the execution, by each  
25 such shareholder, of a separate written consent to become subject to such personal liability.

26 § 1205. Merger between parent and subsidiary or between subsidiaries.

---

1 (a) A parent registered corporation that owns shares of a registered, domestic, or  
2 foreign subsidiary corporation that carry at least 90 percent of the voting power of each class and  
3 series of the outstanding shares of the subsidiary that have voting power may merge the  
4 subsidiary into itself or into another such subsidiary, or merge itself into the subsidiary, without  
5 the approval of the board of directors or shareholders of the subsidiary, unless the articles of  
6 incorporation of any of the corporations otherwise provide, and unless, in the case of a foreign  
7 subsidiary, approval by the subsidiary's board of directors or shareholders is required by the  
8 laws under which the subsidiary is organized.

9 (b) If under subsection (a) approval of a merger by the subsidiary's shareholders is  
10 not required, the parent corporation shall, within ten days after the effective date of the merger,  
11 notify each of the subsidiary's shareholders that the merger has become effective.

12 (c) Except as provided in subsections (a) and (b), a merger between a parent and a  
13 subsidiary shall be governed by the provisions of subchapter 15 applicable to mergers generally.

14 § 1206. Articles of merger or share exchange.

15 (a) After a plan of merger or share exchange has been adopted and approved as  
16 required by this chapter, articles of merger or share exchange shall be executed on behalf of each  
17 party to the merger or share exchange by any officer or other duly authorized representative.

18 The articles shall set forth:

19 (1) the names of the parties to the merger or share exchange and the date on  
20 which the merger or share exchange occurred or is to be effective;

21 (2) if the articles of incorporation of the survivor of a merger are amended, or  
22 if a new corporation is created as a result of a merger, the amendments to the survivor's  
23 articles of incorporation or the articles of incorporation of the new corporation;

24 (3) if the plan of merger or share exchange required approval by the  
25 shareholders of a domestic corporation that was a party to the merger or share exchange,  
26 a statement that the plan was duly approved by the shareholders and, if voting by any

---

1 separate voting group was required, by each such separate voting group, in the manner  
2 required by this chapter and the articles of incorporation;

3 (4) if the plan of merger or share exchange did not require approval by the  
4 shareholders of a domestic corporation that was a party to the merger or share exchange,  
5 a statement to that effect; and

6 (5) as to each domestic or foreign corporation and each other entity that was a  
7 party to the merger or share exchange, a statement that the plan and the performance of  
8 its terms were duly authorized by all action required by the laws under which the  
9 corporation or other entity is organized or by which it is governed, and by its articles of  
10 incorporation or organizational documents.

11 (b) articles of merger or share exchange shall be delivered to the registrar for filing  
12 by the survivor of the merger or the acquiring corporation in a share exchange and shall take  
13 effect on the effective date.

14 § 1207. Effect of merger or share exchange.

15 (a) When a merger becomes effective:

16 (1) the corporation or other entity that is designated in the plan of merger as  
17 the survivor continues or comes into existence, as the case may be;

18 (2) the separate existence of every corporation or other entity that is merged  
19 into the survivor ceases;

20 (3) all property owned by, and every contract right possessed by, each  
21 corporation or other entity that merges into the survivor is vested in the survivor without  
22 reversion or impairment;

23 (4) all liabilities of each corporation or other entity that is merged into the  
24 survivor are vested in the survivor;

25 (5) the name of the survivor may, but need not be, substituted in any pending  
26 proceeding for the name of any party to the merger whose separate existence ceased in  
27 the merger;

---

1           (6)    the articles of incorporation or organizational documents of the survivor  
2           are amended to the extent provided in the plan of merger;

3           (7)    the articles of incorporation or organizational documents of a survivor that  
4           is created by the merger become effective; and

5           (8)    the shares of each corporation that is a party to the merger, and the  
6           interests in an other entity that is a party to a merger, that are to be converted under the  
7           plan of merger into shares, interests, obligations, rights to acquire securities, other  
8           securities, cash, other property, or any combination of the foregoing, are converted, and  
9           the former holders of such shares or interests are entitled only to the rights provided to  
10          them in the plan of merger or to any rights they may have under subchapter 17.

11          (b)    When a share exchange becomes effective, the shares of each registered or  
12          domestic corporation that are to be exchanged for shares or other securities, interests,  
13          obligations, rights to acquire shares or securities, other securities, cash, other property, or any  
14          combination of the foregoing, are entitled only to the rights provided to them in the plan of share  
15          exchange or to any rights they may have under subchapter 17.

16          (c)    Any shareholder of a registered or domestic corporation that is a party to a merger  
17          or share exchange who, before the merger or share exchange, was liable for the liabilities or  
18          obligations of such corporation, shall not be released from such liabilities or obligations by  
19          reason of the merger or share exchange.

20          (d)    Upon a merger becoming effective, a foreign corporation, or a foreign other  
21          entity, that is the survivor of the merger is deemed to:

22               (1)    appoint the registrar as its agent for service of process in a proceeding to  
23               enforce the rights of shareholders of each domestic corporation that is a party to the  
24               merger who exercise appraisal rights, and

25               (2)    agree that it will promptly pay the amount, if any, to which such  
26               shareholders are entitled under subchapter 17.

27          § 1208. Abandonment of merger or share exchange.

1 (a) Unless otherwise provided in a plan of merger or share exchange or in the laws  
2 under which a domestic or foreign corporation or a domestic or foreign other entity that is a  
3 party to a merger or a share exchange is organized or by which it is governed, after the plan has  
4 been adopted and approved as required by this chapter, and at any time before the merger or  
5 share exchange has become effective, it may be abandoned by any party thereto without action  
6 by the party's shareholders or owners of interests, in accordance with any procedures set forth in  
7 the plan of merger or share exchange or, if no such procedures are set forth in the plan, in the  
8 manner determined by the board of directors of a corporation, or the managers of an other entity,  
9 subject to any contractual rights of other parties to the merger or share exchange.

10 (b) If a merger or share exchange is abandoned under subsection (a) after articles of  
11 merger or share exchange have been filed with the registrar but before the merger or share  
12 exchange has become effective, a statement that the merger or share exchange has been  
13 abandoned in accordance with this section, executed on behalf of a party to the merger or share  
14 exchange by an officer or other duly authorized representative, shall be delivered to the registrar  
15 for filing before the effective date of the merger or share exchange. Upon filing, the statement  
16 shall take effect and the merger or share exchange shall be deemed abandoned and shall not  
17 become effective.

## 18 **Subchapter 16**

### 19 **Sale of Assets**

#### 20 § 1211. Sale of assets in regular course of business and mortgage of assets.

21 (a) A registered corporation may, on the terms and conditions and for the  
22 consideration determined by the board of directors:

23 (1) sell, lease, exchange, or otherwise dispose of all, or substantially all, of its  
24 property in the usual and regular course of business;

25 (2) mortgage, pledge, dedicate to the repayment of indebtedness (whether  
26 with or without recourse), or otherwise encumber any or all of its property whether or not  
27 in the usual and regular course of business; or

---

1                   (3)     transfer any or all of its property to a registered corporation all the shares  
2                   of which are owned by the registered corporation.

3                   (b)     Unless the articles of incorporation require it, approval by the shareholders of a  
4 transaction described in subsection (a) is not required.

5                   § 1212. Sale of assets other than in regular course of business.

6                   (a)     A sale, lease, exchange, or other disposition of assets, other than a disposition  
7 described in section 1211, requires approval of the registered corporation's shareholders if the  
8 disposition would leave the registered corporation without a significant continuing business  
9 activity. If a registered corporation retains a business activity that represented at least 25 percent  
10 of total assets at the end of the most recently completed fiscal year, and 25 percent of either  
11 income from continuing operations before taxes or revenues from continuing operations for that  
12 fiscal year, in each case of the registered corporation and its subsidiaries on a consolidated basis,  
13 the registered corporation will conclusively be deemed to have retained a significant continuing  
14 business activity.

15                  (b)     A disposition that requires approval of the shareholders under subsection (a) shall  
16 be initiated by a resolution by the board of directors authorizing the disposition. After adoption  
17 of such a resolution, the board of directors shall submit the proposed disposition to the  
18 shareholders for their approval. The board of directors shall also transmit to the shareholders a  
19 recommendation that the shareholders approve the proposed disposition, unless the board of  
20 directors makes a determination that because of conflicts of interest or other special  
21 circumstances it should not make such a recommendation, in which case the board of directors  
22 shall transmit to the shareholders the basis for that determination.

23                  (c)     The board of directors may condition its submission of a disposition to the  
24 shareholders under subsection (b) on any basis.

25                  (d)     If a disposition is required to be approved by the shareholders under subsection  
26 (a), and if the approval is to be given at a meeting, the registered corporation shall notify each  
27 shareholder, whether or not entitled to vote, of the meeting of shareholders at which the

---

1 disposition is to be submitted for approval. The notice shall state that the purpose, or one of the  
2 purposes, of the meeting is to consider the disposition and shall contain a description of the  
3 disposition, including the terms and conditions thereof and the consideration to be received by  
4 the registered corporation.

5 (e) Unless the articles of incorporation or the board of directors acting pursuant to  
6 subsection (c) require a greater vote, or a greater number of votes to be present, the approval of a  
7 disposition by the shareholders shall require the approval of the shareholders at a meeting at  
8 which a quorum consisting of at least a majority of the votes entitled to be cast on the disposition  
9 exists.

10 (f) After a disposition has been approved by the shareholders under subsection (b),  
11 and at any time before the disposition has been consummated, it may be abandoned by the  
12 registered corporation without action by the shareholders, subject to any contractual rights of  
13 other parties to the disposition.

14 (g) A disposition of assets in the course of dissolution under subchapter 18 is not  
15 governed by this section.

16 (h) The assets of a direct or indirect consolidated subsidiary shall be deemed the  
17 assets of the parent corporation for the purposes of this section.

## 18 **Subchapter 17**

### 19 **Dissenters' Rights**

20 § 1221. Definitions. In this chapter:

21 (a) "Corporation" means the issuer of the shares held by a dissenter before the  
22 corporate action, or the surviving or acquiring registered corporation by merger or share  
23 exchange of that issuer.

24 (b) "Dissenter" means a shareholder who is entitled to dissent from corporate action  
25 under section 1222 and who exercises that right when and in the manner required by sections  
26 1224 through 1232.

---

1 (c) "Fair value," with respect to a dissenter's shares, means the value of the shares  
2 immediately before the effectuation of the corporate action to which the dissenter objects,  
3 excluding any appreciation or depreciation in anticipation of the corporate action unless  
4 exclusion would be inequitable.

5 (d) "Interest" means interest from the effective date of the corporate action until the  
6 date of payment, at the average rate currently paid by the registered corporation on its principal  
7 bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

8 (e) "Record shareholder" means the person in whose name shares are registered in  
9 the records of a registered corporation or the beneficial owner of shares to the extent of the rights  
10 granted by a nominee certificate on file with a registered corporation.

11 (f) "Beneficial shareholder" means the person who is a beneficial owner of shares  
12 held in a trust or by a nominee as the record shareholder.

13 (g) "Shareholder" means the record shareholder or the beneficial shareholder.

14 § 1222. Right to dissent.

15 (a) A shareholder is entitled to dissent from, and obtain payment of the fair value of  
16 his shares in the event of, any of the following corporate actions:

17 (1) consummation of a plan of merger to which the registered corporation is a  
18 party;

19 (A) if shareholder approval is required for the merger by section 1203  
20 or the articles of incorporation and the shareholder is entitled to vote on the  
21 merger or

22 (B) if the registered corporation is a subsidiary that is merged with its  
23 parent under section 1204;

24 (2) consummation of a plan of share exchange to which the registered  
25 corporation is a party as the registered corporation whose shares will be acquired, if the  
26 shareholder is entitled to vote on the plan;



---

1           (3) consummation of a sale or exchange of all, or substantially all, of the  
2 property of the registered corporation other than in the usual and regular course of  
3 business, if the shareholder is entitled to vote on the sale or exchange, including a sale in  
4 dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to  
5 a plan by which all or substantially all of the net proceeds of the sale will be distributed  
6 to the shareholders within one year after the date of sale;

7           (4) an amendment of the articles of incorporation that materially and  
8 adversely affects rights in respect of a dissenter's shares because it:

9                   (A) alters or abolishes a preferential right of the shares;

10                   (B) creates, alters, or abolishes a right in respect of redemption,  
11 including a provision respecting a sinking fund for the redemption or repurchase,  
12 of the shares;

13                   (C) alters or abolishes a preemptive right of the holder of the shares to  
14 acquire shares or other securities;

15                   (D) excludes or limits the right of the shares to vote on any matter, or  
16 to cumulate votes, other than a limitation by dilution through issuance of shares or  
17 other securities with similar voting rights; or

18                   (E) reduces the number of shares owned by the shareholder to a  
19 fraction of a share if the fractional share so created is to be acquired for cash  
20 under section 1074; or

21           (5) any corporate action taken pursuant to a shareholder vote to the extent the  
22 articles of incorporation, bylaws, or a resolution of the board of directors provides that  
23 voting or nonvoting shareholders are entitled to dissent and obtain payment for their  
24 shares.

25           (b) A shareholder entitled to dissent and obtain payment for his shares under this  
26 subchapter may not challenge the corporate action creating his entitlement unless the action is  
27 unlawful or fraudulent with respect to the shareholder or the registered corporation.

---

1           § 1223. Dissent by nominees and beneficial owners.

2           (a)     A record shareholder may assert dissenters' rights as to fewer than all the shares  
3 registered in his name only if he dissents with respect to all shares beneficially owned by any  
4 one person and notifies the registered corporation in writing of the name and address of each  
5 person on whose behalf he asserts dissenters' rights. The rights of a partial dissenter under this  
6 subsection are determined as if the shares as to which he dissents and his other shares were  
7 registered in the names of different shareholders.

8           (b)     A beneficial shareholder may assert dissenters' rights as to shares held on his  
9 behalf only if:

10           (1)     he submits to the registered corporation the record shareholder's written  
11 consent to the dissent not later than the time the beneficial shareholder asserts dissenters'  
12 rights; and

13           (2)     he does so with respect to all shares of which he is the beneficial  
14 shareholder or over which he has power to direct the vote.

15           § 13.20. Notice of dissenters' rights.

16           (a)     If proposed corporate action creating dissenters' rights under section 1222 is  
17 submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders  
18 are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a  
19 copy of this chapter.

20           (b)     If corporate action creating dissenters' rights under section 1222 is taken without  
21 a vote of shareholders, the registered corporation shall notify in writing all shareholders entitled  
22 to assert dissenters' rights that the action was taken and send them the dissenters' notice  
23 described in section 1226.

24           § 1225. Notice of intent to demand payment.

25           (a)     If proposed corporate action creating dissenters' rights under section 1222 is  
26 submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters'  
27 rights (1) must deliver to the registered corporation before the vote is taken written notice of his

---

1 intent to demand payment for his shares if the proposed action is effectuated and (2) must not  
2 vote his shares in favor of the proposed action.

3 (b) A shareholder who does not satisfy the requirements of subsection (a) is not  
4 entitled to payment for his shares under this subchapter.

5 § 1226. Dissenters' notice13.22. Dissenters' Notice.

6 (a) If proposed corporate action creating dissenters' rights under section 1222 is  
7 authorized at a shareholders' meeting, the registered corporation shall deliver a written  
8 dissenters' notice to all shareholders who satisfied the requirements of section 1225.

9 (b) The dissenters' notice must be sent no later than 10 days after the corporate action  
10 was taken, and must:

11 (1) state where the payment demand must be sent and where and when  
12 certificates for certificated shares must be deposited;

13 (2) inform holders of uncertificated shares to what extent transfer of the  
14 shares will be restricted after the payment demand is received;

15 (3) supply a form for demanding payment that includes the date of the first  
16 announcement to news media or to shareholders of the terms of the proposed corporate  
17 action and requires that the person asserting dissenters' rights certify whether or not he  
18 acquired beneficial ownership of the shares before that date;

19 (4) set a date by which the registered corporation must receive the payment  
20 demand, which date may not be fewer than 30 nor more than 60 days after the date the  
21 subsection (a) notice is delivered; and

22 (5) be accompanied by a copy of this chapter.

23 § 1227. Duty to demand payment.

24 (a) A shareholder sent a dissenters' notice described in section 1226 must demand  
25 payment, certify whether he acquired beneficial ownership of the shares before the date required  
26 to be set forth in the dissenters' notice pursuant to section 1226(b)(3), and deposit his certificates  
27 in accordance with the terms of the notice.

---

1 (b) The shareholder who demands payment and deposits his share certificates under  
2 subsection (a) retains all other rights of a shareholder until these rights are cancelled or modified  
3 by the taking of the proposed corporate action.

4 (c) A shareholder who does not demand payment or deposit his share certificates  
5 where required, each by the date set in the dissenters' notice, is not entitled to payment for his  
6 shares under this chapter.

7 § 1228. Share restrictions.

8 (a) The registered corporation may restrict the transfer of uncertified shares from the  
9 date the demand for their payment is received until the proposed corporate action is taken or the  
10 restrictions released under section 1230.

11 (b) The person for whom dissenters' rights are asserted as to uncertified shares  
12 retains all other rights of a shareholder until these rights are cancelled or modified by the taking  
13 of the proposed corporate action.

14 § 1229. Payment.

15 (a) Except as provided in section 1231, as soon as the proposed corporate action is  
16 taken, or upon receipt of a payment demand, the registered corporation shall pay each dissenter  
17 who complied with section 1227 the amount the registered corporation estimates to be the fair  
18 value of his shares, plus accrued interest.

19 (b) The payment must be accompanied by:

20 (1) the registered corporation's balance sheet as of the end of a fiscal year  
21 ending not more than 16 months before the date of payment, an income statement for that  
22 year, a statement of changes in shareholders' equity for that year, and the latest available  
23 interim financial statements, if any;

24 (2) a statement of the registered corporation's estimate of the fair value of the  
25 shares;

26 (3) an explanation of how the interest was calculated;

---

1 (4) a statement of the dissenter's right to demand payment under section  
2 1232; and

3 (5) a copy of this subchapter.

4 § 1230. Failure to take action.

5 (a) If the registered corporation does not take the proposed action within 60 days  
6 after the date set for demanding payment and depositing share certificates, the registered  
7 corporation shall return the deposited certificates and release the transfer restrictions imposed on  
8 uncertified shares.

9 (b) If after returning deposited certificates and releasing transfer restrictions, the  
10 registered corporation takes the proposed action, it must send a new dissenters' notice under  
11 section 1226 and repeat the payment demand procedure.

12 § 1231. After-acquired shares.

13 (a) A registered corporation may elect to withhold payment required by section 1229  
14 from a dissenter unless he was the beneficial owner of the shares before the date set forth in the  
15 dissenters' notice as the date of the first announcement to news media or to shareholders of the  
16 terms of the proposed corporate action.

17 (b) To the extent the registered corporation elects to withhold payment under  
18 subsection (a), after taking the proposed corporate action, it shall estimate the fair value of the  
19 shares, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it  
20 in full satisfaction of his demand. The registered corporation shall send with its offer a statement  
21 of its estimate of the fair value of the shares, an explanation of how the interest was calculated,  
22 and a statement of the dissenter's right to demand payment under section 1232.

23 § 1232. Procedure if shareholder dissatisfied with payment or offer.

24 (a) A dissenter may notify the registered corporation in writing of his own estimate of  
25 the fair value of his shares and amount of interest due, and demand payment of his estimate (less  
26 any payment under section 1229), or reject the registered corporation's offer under section 1231  
27 and demand payment of the fair value of his shares and interest due, if:

---

1 (1) the dissenter believes that the amount paid under section 1325 or offered  
2 under section 1231 is less than the fair value of his shares or that the interest due is  
3 incorrectly calculated;

4 (2) the registered corporation fails to make payment under section 1229  
5 within 60 days after the date set for demanding payment; or

6 (3) the registered corporation, having failed to take the proposed action, does  
7 not return the deposited certificates or release the transfer restrictions imposed on  
8 uncertified shares within 60 days after the date set for demanding payment.

9 (b) A dissenter waives his right to demand payment under this section 1232 unless he  
10 notifies the registered corporation of his demand in writing under subsection (a) within 30 days  
11 after the registered corporation made or offered payment for his shares.

12 § 1233. Court action.

13 (a) If a demand for payment under section 1232 remains unsettled, the registered  
14 corporation shall commence a proceeding within 60 days after receiving the payment demand  
15 and petition the court to determine the fair value of the shares and accrued interest. If the  
16 registered corporation does not commence the proceeding within the 60-day period, it shall pay  
17 each dissenter whose demand remains unsettled the amount demanded.

18 (b) The registered corporation shall commence the proceeding in the Supreme Court.

19 (c) The registered corporation shall make all dissenters whether or not residents of  
20 the Republic, whose demands remain unsettled parties to the proceeding as in an action against  
21 their shares and all parties must be served with a copy of the petition. Nonresidents may be  
22 served by registered or certified mail or by publication as provided by law.

23 (d) The jurisdiction of the Supreme Court in which the proceeding is commenced  
24 under subsection (b) is plenary and exclusive. The Supreme Court may appoint one or more  
25 persons as appraisers to receive evidence and recommend decision on the question of fair value.  
26 The appraisers have the powers described in the order appointing them, or in any amendment to  
27 it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

---

(e) Each dissenter made a party to the proceeding is entitled to judgment (1) for the amount, if any, by which the Supreme Court finds the fair value of his shares, plus interest, exceeds the amount paid by the registered corporation or (2) for the fair value, plus accrued interest, of his after-acquired shares for which the registered corporation elected to withhold payment under section 1231.

§ 1234. Court costs and counsel fees.

(a) The Supreme Court in an appraisal proceeding commenced under section 1233 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the Supreme Court. The Supreme Court shall assess the costs against the registered corporation, except that the Supreme Court may assess costs against all or some of the dissenters, in amounts the Supreme Court finds equitable, to the extent the Supreme Court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under section 1232.

(b) The Supreme Court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the Supreme Court finds equitable:

(1) against the registered corporation and in favor of any or all dissenters if the Supreme Court finds the registered corporation did not substantially comply with the requirements of sections 1224 through 1232; or

(2) against either the registered corporation or a dissenter, in favor of any other party, if the Supreme Court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

(c) If the Supreme Court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the registered corporation, the Supreme Court may award to these counsel reasonable fees to be paid out of the amounts awarded the dissenters who were benefited.

---

**Subchapter 18**

**Dissolution**

§ 1241. Dissolution by incorporators or initial directors. Dissolution by Incorporators or Initial Directors. A majority of the incorporators or initial directors of a registered corporation that has not issued shares or has not commenced business may dissolve the registered corporation by delivering to the registrar for filing articles of dissolution that set forth:

(a) the name of the registered corporation;

(b) the date of its incorporation;

(c) either:

(1) that none of the registered corporation's shares has been issued; or

(2) that the registered corporation has not commenced business;

(d) that no debt of the registered corporation remains unpaid;

(e) that the net assets of the registered corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and

(f) that a majority of the incorporators or initial directors authorized the dissolution.

§ 1242. Dissolution by board of directors and shareholders.

(a) A registered corporation's board of directors may propose dissolution for submission to the shareholders.

(b) For a proposal to dissolve to be adopted:

(1) the board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(2) the shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (e).

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.



---

1 (d) The registered corporation shall notify each shareholder, whether or not entitled  
2 to vote, of the proposed shareholders' meeting. The notice must also state that the purpose, or  
3 one of the purposes, of the meeting is to consider dissolving the registered corporation.

4 (e) Unless the articles of incorporation or the board of directors acting pursuant to  
5 subsection (c) require a greater vote, a greater number of shares to be present, or a vote by voting  
6 groups, adoption of the proposal to dissolve shall require the approval of the shareholders at a  
7 meeting at which a quorum consisting of at least a majority of the votes entitled to be cast exists.

8 § 1243. Articles of dissolution.

9 (a) At any time after dissolution is authorized, the registered corporation may  
10 dissolve by delivering to the registrar for filing articles of dissolution setting forth:

11 (1) the name of the registered corporation;

12 (2) the date dissolution was authorized; and

13 (3) if dissolution was approved by the shareholders, a statement that the  
14 proposal to dissolve was duly approved by the shareholders in the manner required by  
15 this chapter and by the articles of incorporation.

16 (b) A registered corporation is dissolved upon the effective date of its articles of  
17 dissolution.

18 (c) For purposes of this subchapter, "dissolved registered corporation" means a  
19 registered corporation whose articles of dissolution have become effective and includes a  
20 successor entity to which the remaining assets of the registered corporation are transferred  
21 subject to its liabilities for purposes of liquidation.

22 § 1244. Revocation of dissolution.

23 (a) A registered corporation may revoke its dissolution within 120 days of its  
24 effective date.

25 (b) Revocation of dissolution must be authorized in the same manner as the  
26 dissolution was authorized unless that authorization permitted revocation by action of the board

---

1 of directors alone, in which event the board of directors may revoke the dissolution without  
2 shareholder action.

3 (c) after the revocation of dissolution is authorized, the registered corporation may  
4 revoke the dissolution by delivering to the registrar for filing articles of revocation of  
5 dissolution, together with a copy of its articles of dissolution, that set forth:

6 (1) the name of the registered corporation;

7 (2) the effective date of the dissolution that was revoked;

8 (3) the date that the revocation of dissolution was authorized;

9 (4) if the registered corporation's board of directors, or incorporators revoked,  
10 the dissolution, a statement to that effect;

11 (5) if the registered corporation's board of directors revoked a dissolution  
12 authorized by the shareholders, a statement that revocation was permitted by action by  
13 the board of directors alone pursuant to that authorization; and

14 (6) if shareholder action was required to revoke the dissolution, the  
15 information required by section 1243(a)(3).

16 (d) Revocation of dissolution is effective upon the effective date of the articles of  
17 revocation of dissolution.

18 (e) When the revocation of dissolution is effective, it relates back to and takes effect  
19 as of the effective date of the dissolution and the registered corporation resumes carrying on its  
20 business as if dissolution had never occurred.

21 § 1245. Effect of dissolution.

22 (a) A dissolved registered corporation continues its corporate existence but may not  
23 carry on any business except that appropriate to wind up and liquidate its business and affairs,  
24 including:

25 (1) collecting its assets;

26 (2) disposing of its properties that will not be distributed in kind to its  
27 shareholders;

---

1 (3) discharging or making provision for discharging its liabilities;

2 (4) distributing its remaining property among its shareholders according to  
3 their interests; and

4 (5) doing every other act necessary to wind up and liquidate its business and  
5 affairs.

6 (b) Dissolution of a registered corporation does not:

7 (1) transfer title to the registered corporation's property;

8 (2) prevent transfer of its shares or securities, although the authorization to  
9 dissolve may provide for closing the registered corporation's share transfer records;

10 (3) subject its directors or officers to standards of conduct different from those  
11 prescribed in subchapters 10 and 11;

12 (4) change quorum or voting requirements for its board of directors or  
13 shareholders; change provisions for selection, resignation, or removal of its directors or  
14 officers or both; or change provisions for amending its bylaws;

15 (5) prevent commencement of a proceeding by or against the registered  
16 corporation in its corporate name;

17 (6) abate or suspend a proceeding pending by or against the registered  
18 corporation on the effective date of dissolution; or

19 (7) terminate the authority of the registered agent of the registered  
20 corporation.

21 § 1246. Known claims against dissolved registered corporation.

22 (a) A dissolved registered corporation may dispose of the known claims against it by  
23 notifying its known claimants in writing of the dissolution at any time after its effective date.

24 (b) The written notice must:

25 (1) describe information that must be included in a claim;

26 (2) provide a mailing address where a claim may be sent;

---

1 (3) state the deadline, which may not be fewer than 120 days from the  
2 effective date of the written notice, by which the dissolved registered corporation must  
3 receive the claim; and

4 (4) state that the claim will be barred if not received by the deadline.

5 (c) A claim against the dissolved registered corporation is barred:

6 (1) if a claimant who was given written notice under subsection (b) does not  
7 deliver the claim to the dissolved registered corporation by the deadline;

8 (2) if a claimant whose claim was rejected by the dissolved registered  
9 corporation does not commence a proceeding to enforce the claim within 90 days from  
10 the effective date of the rejection notice.

11 (d) For purposes of this section, “claim” does not include a contingent liability or a  
12 claim based on an event occurring after the effective date of dissolution.

13 § 1247. Unknown claims against dissolved registered corporation.

14 (a) A dissolved registered corporation may also publish notice of its dissolution and  
15 request that persons with claims against the dissolved registered corporation present them in  
16 accordance with the notice.

17 (b) The notice must:

18 (1) be published one time in a newspaper of general circulation in the county  
19 where the dissolved registered corporation’s principal office (or, if none in this state, its  
20 registered office) is or was last located;

21 (2) describe the information that must be included in a claim and provide a  
22 mailing address where the claim may be sent; and

23 (3) state that a claim against the dissolved registered corporation will be  
24 barred unless a proceeding to enforce the claim is commenced within three years after the  
25 publication of the notice.

26 (c) If the dissolved registered corporation publishes a newspaper notice in accordance  
27 with subsection (b), the claim of each of the following claimants is barred unless the claimant

---

1 commences a proceeding to enforce the claim against the dissolved registered corporation within  
2 three years after the publication date of the newspaper notice:

3 (1) a claimant who was not given written notice under section 1246;

4 (2) a claimant whose claim was timely sent to the dissolved registered  
5 corporation but not acted on;

6 (3) a claimant whose claim is contingent or based on an event occurring after  
7 the effective date of dissolution.

8 (d) A claim not barred by section 1246(b) or 1247(c) may be enforced:

9 (1) against the dissolved registered corporation, to the extent of its  
10 undistributed assets; or

11 (2) except as provided in section 1248(d), if the assets have been distributed  
12 in liquidation, against a shareholder of the dissolved registered corporation to the extent  
13 of the shareholder's pro rata share of the claim or the corporate assets distributed to the  
14 shareholder in liquidation, whichever is less, but a shareholder's total liability for all  
15 claims under this section 1247 may not exceed the total amount of assets distributed to  
16 the shareholder.

17 § 1248. Court proceedings.

18 (a) A dissolved registered corporation that has published a notice under section 1247  
19 may file an application with the Supreme Court for a determination of the amount and form of  
20 security to be provided for payment of claims that are contingent or have not been made known  
21 to the dissolved registered corporation or that are based on an event occurring after the effective  
22 date of dissolution but that, based on the facts known to the dissolved registered corporation, are  
23 reasonably estimated to arise after the effective date of dissolution. Provision need not be made  
24 for any claim that is or is reasonably anticipated to be barred under section 1247(c).

25 (b) Within 10 days after the filing of the application, notice of the proceeding shall be  
26 given by the dissolved registered corporation to each claimant holding a contingent claim whose  
27 contingent claim is shown on the records of the dissolved registered corporation.

---

1 (c) The Supreme Court may appoint a guardian ad litem to represent all claimants  
2 whose identities are unknown in any proceeding brought under this section 1247. The  
3 reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall  
4 be paid by the dissolved registered corporation.

5 (d) Provision by the dissolved registered corporation for security in the amount and  
6 the form ordered by the Supreme Court under section 1248(a) shall satisfy the dissolved  
7 registered corporation's obligations with respect to claims that are contingent, have not been  
8 made known to the dissolved registered corporation or are based on an event occurring after the  
9 effective date of dissolution, and such claims may not be enforced against a shareholder who  
10 received assets in liquidation.

11 § 1249. Director duties.

12 (a) Directors shall cause the dissolved registered corporation to discharge or make  
13 reasonable provision for the payment of claims and make distributions of assets to shareholders  
14 after payment or provision for claims.

15 (b) Directors of a dissolved registered corporation which has disposed of claims  
16 under section 1246, 1247, or 1248 shall not be liable for breach of section 1249(a) with respect  
17 to claims against the dissolved registered corporation that are barred or satisfied under section  
18 1246, 1247, or 1248.

19 § 1250. Grounds for administrative dissolution. The registrar may commence a  
20 proceeding under section 1251 to administratively dissolve a registered corporation if:

21 (a) the registered corporation does not pay within 60 days after they are due any  
22 franchise taxes or penalties imposed by this chapter or other law;

23 (b) the registered corporation does not deliver its annual report to the registrar within  
24 60 days after it is due;

25 (c) the registered corporation is without a registered agent or registered office in the  
26 Republic for 60 days or more;

---

1 (d) the registered corporation does not notify the registrar within 60 days that its  
2 registered agent or registered office has been changed, that its registered agent has resigned, or  
3 that its registered office has been discontinued;

4 (e) the registered corporation's period of duration stated in its articles of  
5 incorporation expires;

6 (f) the registered corporation refuses, without a showing of good cause, to produce  
7 books of accounts, papers, or documents within 60 days after an order by the registrar for the  
8 production thereof; or

9 (g) an authorized person acting for the registered corporation signs a false document,  
10 as set forth in section 1011.

11 § 1251. Procedure for and effect of administrative dissolution.

12 (a) If the registrar determines that one or more grounds exist under section 1250 for  
13 dissolving a registered corporation, the registrar shall serve the registered corporation with  
14 written notice of his determination under section 1064.

15 (b) If the registered corporation does not correct each ground for dissolution or  
16 demonstrate to the reasonable satisfaction of the registrar that each ground determined by the  
17 registrar does not exist within 60 days after service of the notice is perfected under section 1064,  
18 the registrar shall administratively dissolve the registered corporation by signing a certificate of  
19 dissolution that recites the ground or grounds for dissolution and its effective date. The registrar  
20 shall file the original of the certificate and serve a copy on the registered corporation under  
21 section 1064.

22 (c) A registered corporation administratively dissolved continues its corporate  
23 existence but may not carry on any business except that necessary to wind up and liquidate its  
24 business and affairs under section 1245 and notify claimants under sections 1246 and 1247.

25 (d) The administrative dissolution of a registered corporation does not terminate the  
26 authority of its registered agent.

27 § 1252. Reinstatement following administrative dissolution.

---

1 (a) A registered corporation administratively dissolved under section 1251 may apply  
2 to the registrar for reinstatement within two years after the effective date of dissolution. The  
3 application must:

4 (1) recite the name of the registered corporation and the effective date of its  
5 administrative dissolution;

6 (2) state that the ground or grounds for dissolution either did not exist or have  
7 been eliminated;

8 (3) state that the registered corporation's name satisfies the requirements of  
9 section 1051; and

10 (4) contain a certificate from the Bureau of Revenue, Customs and Taxation  
11 reciting that all taxes owed by the registered corporation have been paid.

12 (b) If the registrar determines that the application contains the information required  
13 by subsection (a) and that the information is correct, the registrar shall cancel the certificate of  
14 dissolution and prepare a certificate of reinstatement that recites the determination of the  
15 registrar and the effective date of reinstatement, file the original of the certificate, and serve a  
16 copy on the registered corporation under section 1064.

17 (c) When the reinstatement is effective, it relates back to and takes effect as of the  
18 effective date of the administrative dissolution and the registered corporation resumes carrying  
19 on its business as if the administrative dissolution had never occurred.

20 § 1253. Appeal from denial of reinstatement.

21 (a) If the registrar denies a registered corporation's application for reinstatement  
22 following administrative dissolution, the registrar shall serve the registered corporation under  
23 section 1064 with a written notice that explains the reason or reasons for denial.

24 (b) The registered corporation may appeal the denial of reinstatement to the Supreme  
25 Court within 30 days after service of the notice of denial is perfected. The registered corporation  
26 appeals by petitioning the Supreme Court to set aside the dissolution and attaching to the petition



---

1 copies of the registrar's certificate of dissolution, the registered corporation's application for  
2 reinstatement, and the registrar's notice of denial.

3 (c) The Supreme Court summarily may order the registrar to reinstate the dissolved  
4 registered corporation or may take other action the Supreme Court considers appropriate.

5 (d) The Supreme Court's final decision may be appealed as in other civil  
6 proceedings.

7 § 1254. Grounds for judicial dissolution. Grounds for Judicial Dissolution.14.30.  
8 Grounds for Judicial Dissolution. The Supreme Court may dissolve a registered  
9 corporation:

10 (a) in a proceeding by the Officer of the Attorney General if it is established that:

11 (1) the registered corporation obtained its articles of incorporation through  
12 fraud; or

13 (2) the registered corporation has continued to exceed or abuse the authority  
14 conferred upon it by law;

15 (b) in a proceeding by a shareholder if it is established that:

16 (1) the directors are deadlocked in the management of the corporate affairs,  
17 the shareholders are unable to break the deadlock, and irreparable injury to the registered  
18 corporation is threatened or being suffered, or the business and affairs of the registered  
19 corporation can no longer be conducted to the advantage of the shareholders generally,  
20 because of the deadlock;

21 (2) the directors or those in control of the registered corporation have acted,  
22 are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

23 (3) the shareholders are deadlocked in voting power and have failed, for a  
24 period that includes at least two consecutive annual meeting dates, to elect successors to  
25 directors whose terms have expired; or

26 (4) the corporate assets are being misapplied or wasted;

27 c) in a proceeding by a creditor if it is established that:

---

1 (1) the creditor's claim has been reduced to judgment, the execution on the  
2 judgment returned unsatisfied, and the registered corporation is insolvent; or

3 (2) the registered corporation has admitted in writing that the creditor's claim  
4 is due and owing and the registered corporation is insolvent; or

5 (d) in a proceeding by the registered corporation to have its voluntary dissolution  
6 continued under court supervision.

7 § 1255. Procedure for judicial dissolution.

8 (a) Venue for a proceeding by the Office of the Attorney General to dissolve a  
9 registered corporation lies in the Supreme Court. Venue for a proceeding brought by any other  
10 party named in section 1254 also lies in the Supreme Court.

11 (b) It is not necessary to make shareholders parties to a proceeding to dissolve a  
12 registered corporation unless relief is sought against them individually.

13 (c) The Supreme Court in a proceeding brought to dissolve a registered corporation  
14 may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties  
15 the Supreme Court directs, take other action required to preserve the corporate assets wherever  
16 located, and carry on the business of the registered corporation until a full hearing can be held.

17 (d) Within 10 days of the commencement of a proceeding under section 1254(b) to  
18 dissolve a registered corporation that has no shares listed on a national securities exchange or  
19 regularly traded in a market maintained by one or more members of a national securities  
20 exchange, the registered corporation must send to all shareholders, other than the petitioner, a  
21 notice stating that the shareholders are entitled to avoid the dissolution of the registered  
22 corporation by electing to purchase the petitioner's shares under section 1258 and accompanied  
23 by a copy of section 1258.

24 § 1256. Receivership or custodianship.

25 (a) The Supreme Court in a judicial proceeding brought to dissolve a registered  
26 corporation may appoint one or more receivers to wind up and liquidate, or one or more  
27 custodians to manage, the business and affairs of the registered corporation. The Supreme Court

---

1 shall hold a hearing, after notifying all parties to the proceeding and any interested persons  
2 designated by the Supreme Court, before appointing a receiver or custodian. The Supreme Court  
3 appointing a receiver or custodian has exclusive jurisdiction over the registered corporation and  
4 all of its property wherever located.

5 (b) The Supreme Court may appoint an individual or a registered, domestic, or  
6 foreign corporation (authorized to transact business in the Republic) as a receiver or custodian.  
7 The Supreme Court may require the receiver or custodian to post bond, with or without sureties,  
8 in an amount the Supreme Court directs.

9 (c) The Supreme Court shall describe the powers and duties of the receiver or  
10 custodian in its appointing order, which may be amended from time to time. Among other  
11 powers:

12 the receiver:

13 (A) may dispose of all or any part of the assets of the registered  
14 corporation wherever located, at a public or private sale, if authorized by the  
15 Supreme Court; and

16 (B) may sue and defend in his own name as receiver of the registered  
17 corporation in all courts of the Republic;

18 (2) the custodian may exercise all of the powers of the registered  
19 corporation, through or in place of its board of directors or officers, to the extent  
20 necessary to manage the affairs of the registered corporation in the best interests  
21 of its shareholders and creditors.

22 (d) The Supreme Court during a receivership may redesignate the receiver a  
23 custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in  
24 the best interests of the registered corporation, its shareholders, and creditors.

25 (e) The Supreme Court from time to time during the receivership or custodianship  
26 may order compensation paid and expense disbursements or reimbursements made to the

---

1 receiver or custodian and his counsel from the assets of the registered corporation or proceeds  
2 from the sale of the assets.

3 § 1257. Decree of Dissolution.

4 (a) If after a hearing the Supreme Court determines that one or more grounds for  
5 judicial dissolution described in section 1254 exist, it may enter a decree dissolving the  
6 registered corporation and specifying the effective date of the dissolution, and the clerk of the  
7 Supreme Court shall deliver a certified copy of the decree to the registrar, who shall file it.

8 (b) After entering the decree of dissolution, the Supreme Court shall direct the  
9 winding up and liquidation of the registered corporation's business and affairs in accordance  
10 with section 1245 and the notification of claimants in accordance with sections 1246 and 1247.

11 § 1258. (Reserved)

12 § 1259. Deposit with National Treasury. Assets of a dissolved registered corporation  
13 that should be transferred to a creditor, claimant, or shareholder of the registered corporation  
14 who cannot be found or who is not competent to receive them shall be reduced to cash and  
15 deposited with the National Treasury or other appropriate national government official for  
16 safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of  
17 entitlement to the amount deposited, the National Treasury or other appropriate national  
18 government official shall pay him or his representative that amount.

19 **Subchapter 19**

20 **[Reserved]**

21 **Subchapter 20**

22 **Records and Reports**

23 § 1271. Corporate records.

24 (a) A registered corporation shall keep as permanent records minutes of all meetings  
25 of its shareholders and board of directors, a record of all actions taken by the shareholders or  
26 board of directors without a meeting, and a record of all actions taken by a committee of the  
27 board of directors in place of the board of directors on behalf of the registered corporation.

---

1 (b) A registered corporation shall maintain appropriate accounting records.

2 (c) A registered corporation or its agent shall maintain a record of its shareholders, in  
3 a form that permits preparation of a list of the names and addresses of all shareholders, in  
4 alphabetical order by class of shares showing the number and class of shares held by each.

5 (d) A registered corporation shall maintain its records in written form or in another  
6 form capable of conversion into written form within a reasonable time.

7 (e) A registered corporation shall keep a copy of the following records at its principal  
8 office:

9 (1) its articles or restated articles of incorporation and all amendments to them  
10 currently in effect;

11 (2) its bylaws or restated bylaws and all amendments to them currently in  
12 effect;

13 (3) resolutions adopted by its board of directors creating one or more classes  
14 or series of shares, and fixing their relative rights, preferences, and limitations, if shares  
15 issued pursuant to those resolutions are outstanding;

16 (4) the minutes of all shareholders' meetings, and records of all action taken  
17 by shareholders without a meeting, for the past three years;

18 (5) all written communications to shareholders generally within the past three  
19 years, including the financial statements furnished for the past three years under section  
20 1277;

21 (6) a list of the names and business addresses of its current directors and  
22 officers; and

23 (7) its most recent annual report delivered to the registrar under section 1622.

24 § 1272. Inspection of records by shareholders.

25 (a) A shareholder of a registered corporation is entitled to inspect and copy, during  
26 regular business hours at the registered corporation's principal office, any of the records of the  
27 registered corporation described in section 1271(e) if he gives the registered corporation written

---

1 notice of his demand at least five business days before the date on which he wishes to inspect  
2 and copy.

3 (b) A shareholder of a registered corporation is entitled to inspect and copy, during  
4 regular business hours at a reasonable location specified by the registered corporation, any of the  
5 following records of the registered corporation if the shareholder meets the requirements of  
6 subsection (c) and gives the registered corporation written notice of his demand at least five  
7 business days before the date on which he wishes to inspect and copy:

8 (1) excerpts from minutes of any meeting of the board of directors, records of  
9 any action of a committee of the board of directors while acting in place of the board of  
10 directors on behalf of the registered corporation, minutes of any meeting of the  
11 shareholders, and records of action taken by the shareholders or board of directors  
12 without a meeting, to the extent not subject to inspection under section 1602(a);

13 (2) accounting records of the registered corporation; and

14 (3) the record of shareholders.

15 (c) A shareholder may inspect and copy the records described in subsection (b) only  
16 if:

17 (1) his demand is made in good faith and for a proper purpose;

18 (2) he describes with reasonable particularity his purpose and the records he  
19 desires to inspect; and

20 (3) the records are directly connected with his purpose.

21 (d) The right of inspection granted by this section 1272 may not be abolished  
22 or limited by a registered corporation's articles of incorporation or bylaws.

23 (e) This section 1272 does not affect:

24 (1) the right of a shareholder to inspect records under section 1099 or, if the  
25 shareholder is in litigation with the registered corporation, to the same extent as any other  
26 litigant;

---

1 (2) the power of the Supreme Court, independently of this chapter, to compel  
2 the production of corporate records for examination.

3 (f) For purposes of this section 1272, “shareholder” includes a beneficial owner  
4 whose shares are held in a voting trust or by a nominee on his behalf.

5 § 1273. Scope of inspection right.

6 (a) A shareholder’s agent or attorney has the same inspection and copying rights as  
7 the shareholder represented.

8 (b) The right to copy records under section 1272 includes, if reasonable, the right to  
9 receive copies by xerographic or other means, including copies through an electronic  
10 transmission if available and so requested by the shareholder.

11 (c) The registered corporation may comply at its expense with a shareholder’s  
12 demand to inspect the record of shareholders under section 1272(b)(3) by providing the  
13 shareholder with a list of shareholders that was compiled no earlier than the date of the  
14 shareholder’s demand.

15 (d) The registered corporation may impose a reasonable charge, covering the costs of  
16 labor and material, for copies of any documents provided to the shareholder. The charge may  
17 not exceed the estimated cost of production, reproduction or transmission of the records.

18 § 1274. Court-ordered inspection.

19 (a) If a registered corporation does not allow a shareholder who complies with  
20 section 1272(a) to inspect and copy any records required by that subsection to be available for  
21 inspection, the Supreme Court summarily may order inspection and copying of the records  
22 demanded at the registered corporation’s expense upon application of the shareholder.

23 (b) If a registered corporation does not within a reasonable time allow a shareholder  
24 to inspect and copy any other record, the shareholder who complies with sections 1272(b) and  
25 (c) may apply to the Supreme Court for an order to permit inspection and copying of the records  
26 demanded. The Supreme Court shall dispose of an application under this subsection on an  
27 expedited basis.

---

1 (c) If the Supreme Court orders inspection and copying of the records demanded, it  
2 shall also order the registered corporation to pay the shareholder's costs (including reasonable  
3 counsel fees) incurred to obtain the order unless the registered corporation proves that it refused  
4 inspection in good faith because it had a reasonable basis for doubt about the right of the  
5 shareholder to inspect the records demanded.

6 (d) If the Supreme Court orders inspection and copying of the records demanded, it  
7 may impose reasonable restrictions on the use or distribution of the records by the demanding  
8 shareholder.

9 § 1275. Inspection of records by directors.

10 (a) A director of a registered corporation is entitled to inspect and copy the books,  
11 records and documents of the registered corporation at any reasonable time to the extent  
12 reasonably related to the performance of the director's duties as a director, including duties as a  
13 member of a committee, but not for any other purpose or in any manner that would violate any  
14 duty to the registered corporation.

15 (b) The Supreme Court may order inspection and copying of the books, records, and  
16 documents at the registered corporation's expense, upon application of a director who has been  
17 refused such inspection rights, unless the registered corporation establishes that the director is  
18 not entitled to such inspection rights. The Supreme Court shall dispose of an application under  
19 this subsection on an expedited basis.

20 (c) If an order is issued, the Supreme Court may include provisions protecting the  
21 registered corporation from undue burden or expense, and prohibiting the director from using  
22 information obtained upon exercise of the inspection rights in a manner that would violate a duty  
23 to the registered corporation, and it also may order the registered corporation to reimburse the  
24 director for the director's costs including reasonable counsel fees incurred in connection with the  
25 application.

26 § 1276. Exception to notice requirement.



---

1 (a) Whenever notice is required to be given under any provision of this chapter to any  
2 shareholder, such notice shall not be required to be given if:

3 (1) Notice of two consecutive annual meetings, and all notices of meetings during the  
4 period between such two consecutive annual meetings, have been sent to such shareholder at  
5 such shareholder's address as shown on the records of the registered corporation and have been  
6 returned undeliverable; or

7 (2) All, but not less than two, payments of dividends on securities during a twelve-  
8 month period, or two consecutive payments of dividends on securities during a period of more  
9 than twelve months, have been sent to such shareholder at such shareholder's address as shown  
10 on the records of the registered corporation and have been returned undeliverable.

11 (b) If any such shareholder shall deliver to the registered corporation a written notice  
12 setting forth such shareholder's then-current address, the requirement that notice be given to  
13 such shareholder shall be reinstated.

14 § 1277. Financial statements for shareholders.

15 (a) A registered corporation shall furnish its shareholders annual financial statements,  
16 which may be consolidated or combined statements of the registered corporation and one or  
17 more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal  
18 year, an income statement for that year, and a statement of changes in shareholders' equity for  
19 the year unless that information appears elsewhere in the financial statements. If financial  
20 statements are prepared for the registered corporation on the basis of generally accepted  
21 accounting principles, the annual financial statements must also be prepared on that basis.

22 (b) If the annual financial statements are reported upon by a public accountant, his  
23 report must accompany them. If not, the statements must be accompanied by a statement of the  
24 president or the person responsible for the registered corporation's accounting records:

25 (1) stating his reasonable belief whether the statements were prepared on the basis of  
26 generally accepted accounting principles and, if not, describing the basis of preparation; and

---

1 (2) describing any respects in which the statements were not prepared on a basis of  
2 accounting consistent with the statements prepared for the preceding year.

3 c) A registered corporation shall mail the annual financial statements to each  
4 shareholder within 120 days after the close of each fiscal year. Thereafter, on written request  
5 from a shareholder who was not mailed the statements, the registered corporation shall mail him  
6 the latest financial statements.

7 § 1278. Annual report for registrar.

8 (a) Each registered corporation shall deliver to the registrar for filing an annual report  
9 that sets forth:

10 (1) the name of the registered corporation;

11 (2) the address of its registered office and the name of its registered agent at that  
12 office in the Republic;

13 (3) the address of its principal office;

14 (4) the names and business addresses of its directors and principal officers;

15 (5) a brief description of the nature of its business;

16 (6) the total number of authorized shares, itemized by class and series, if any, within  
17 each class;

18 (7) the total number of issued and outstanding shares, itemized by class and series, if  
19 any, within each class;

20 (8) the total capitalization of the registered corporation, which meets the dollar  
21 amount requirement of section 1033(a)(5); and

22 (9) a statement that no current director, current principal officer or current ten-percent  
23 shareholder has been convicted or pleaded *nolo contendere* within the last five years, measured  
24 from the later of the date of parole or the date of conviction, before the filing of the annual report  
25 of a felony involving fraud or deceit, including but not limited to money laundering, tax evasion,  
26 securities fraud, mail or wire fraud, forgery, embezzlement, obtaining money under false  
27 pretenses, larceny, or conspiracy to defraud. If a registered corporation cannot make the

---

1 statement required by this subsection 1278(a)(9), then the corporation instead shall file with its  
2 annual report a detailed explanation of why it cannot do so.

3 Making a false statement in an annual report by act or omission, may be grounds for  
4 administrative dissolution of the registered corporation by the registrar.

5 (b) Information in the annual report must be current as of the date the annual report is  
6 executed on behalf of the registered corporation.

7 (c) The first annual report must be delivered to the registrar between January 1 and  
8 April 1 of the year following the calendar year in which a registered corporation was  
9 incorporated. Subsequent annual reports must be delivered to the registrar between January 1 and  
10 April 1 of the following calendar years.

11 (d) If an annual report does not contain the information required by this section 1278,  
12 the registrar shall promptly notify the reporting registered corporation in writing and return the  
13 report to it for correction. If the report is corrected to contain the information required by this  
14 section 1278 and delivered to the registrar within 30 days after the effective date of notice, it is  
15 deemed to be timely filed.

16 § 1279. Other reports to shareholders.

17 (a) If a registered corporation indemnifies or advances expenses to a director under  
18 section 1152, 1153, 1154, or 1155 in connection with a proceeding by or in the right of the  
19 registered corporation, then the registered corporation shall report the indemnification or  
20 advance in writing to the shareholders with or before the notice of the next shareholders'  
21 meeting.

22 (b) If a registered corporation issues or authorizes the issuance of shares for  
23 promissory notes or for promises to render services in the future, then the registered corporation  
24 shall report in writing to the shareholders the number of shares authorized or issued, and the  
25 consideration received by the registered corporation, with or before the notice of the next  
26 shareholders' meeting.

27 **Subchapter 21**

---

---

---

**Transition Provisions**

1  
2           § 1281. Severability. If any provision of this chapter or its application to any person or  
3 circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect  
4 other provisions or applications of the chapter that can be given effect without the invalid  
5 provision or application, and to this end the provisions of the chapter are severable.”

6           **Section 3. Authorization and Appropriation of Funds**. The amount of One Hundred  
7 Thousand Dollars (\$100,000.00) is hereby authorized to be appropriated and is appropriated  
8 from local revenue for funding of the office of the registrar.

9           **Section 4. Effective Date**. This Act shall take effect upon its approval by the President  
10 of the Republic of Palau or upon its becoming law without such approval, except as otherwise  
11 provided by law.

---

---

Date: \_\_\_\_\_

Introduced by: \_\_\_\_\_  
Senator Alfonso Diaz

---

Senator Johnny Reklai