

## APPENDIX E

# The Revised Model Business Corporation Act (Excerpts)

### Chapter 2. INCORPORATION

#### § 2.01 Incorporators

One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

#### § 2.02 Articles of Incorporation

- (a) The articles of incorporation must set forth:
- (1) a corporate name \* \* \* ;
  - (2) the number of shares the corporation is authorized to issue;
  - (3) the street address of the corporation's initial registered office and the name of its initial registered agent at that office; and
  - (4) the name and address of each incorporator.
- (b) The articles of incorporation may set forth:
- (1) the names and addresses of the individuals who are to serve as the initial directors;
  - (2) provisions not inconsistent with law regarding:
    - (i) the purpose or purposes for which the corporation is organized;
    - (ii) managing the business and regulating the affairs of the corporation;
    - (iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

- (iv) a par value for authorized shares or classes of shares;
- (v) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

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

(4) a provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for (A) the amount of a financial benefit received by a director to which he is not entitled; (B) an intentional infliction of harm on the corporation or the shareholders; (C) [unlawful distributions]; or (D) an intentional violation of criminal law.

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

#### § 2.03 Incorporation

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

(b) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

#### § 2.04 Liability for Preincorporation Transactions

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this Act, are jointly and severally liable for all liabilities created while so acting.

**§ 2.05 Organization of Corporation****(a) After incorporation:**

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

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

- (i) to elect directors and complete the organization of the corporation; or
- (ii) to elect a board of directors who shall complete the organization of the corporation.

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

(c) An organizational meeting may be held in or out of this state.

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**Chapter 3.****PURPOSES AND POWERS****§ 3.01 Purposes**

(a) Every corporation incorporated under this Act has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

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

**§ 3.02 General Powers**

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

- (1) to sue and be sued, complain and defend in its corporate name;
- (2) to have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
- (3) to make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;

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

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

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

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

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

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

(10) to conduct its business, locate offices, and exercise the powers granted by this Act within or without this state;

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

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

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

(14) to transact any lawful business that will aid governmental policy;

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

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**Chapter 5.****OFFICE AND AGENT****§ 5.01 Registered Office and Registered Agent**

Each corporation must continuously maintain in this state:

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

(2) a registered agent, who may be:

- (i) an individual who resides in this state and whose business office is identical with the registered office;

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

(iii) a foreign corporation or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

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#### § 5.04 Service on Corporation

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

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

- (1) the date the corporation receives the mail;
- (2) the date shown on the return receipt, if signed on behalf of the corporation; or
- (3) five days after its deposit in the United States Mail, if mailed postpaid and correctly addressed.

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

## Chapter 6.

### SHARES AND DISTRIBUTIONS

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#### Subchapter B. Issuance of Shares

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##### § 6.21 Issuance of Shares

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

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

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

(d) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

(e) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or

make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be cancelled in whole or part.

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##### § 6.27 Restriction on Transfer or Registration of Shares and Other Securities

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

(b) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement [sent to the shareholder]. Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

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

- (1) to maintain the corporation's status when it is dependent on the number or identity of its shareholders;
- (2) to preserve exemptions under federal or state securities law;
- (3) for any other reasonable purpose.

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

- (1) obligate the shareholder first to offer the corporation or other persons (separately, consecutively, or simultaneously) an opportunity to acquire the restricted shares;
- (2) obligate the corporate or other persons (separately, consecutively, or simultaneously) to acquire the restricted shares;
- (3) require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable;
- (4) prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

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

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## Chapter 7. SHAREHOLDERS

### Subchapter A. Meetings

#### § 7.01 Annual Meeting

- (a) A corporation shall hold annually at a time stated in or fixed in accordance with the bylaws a meeting of shareholders.
- (b) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.
- (c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

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#### § 7.05 Notice of Meeting

- (a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than 10 nor more than 60 days before the meeting date. Unless this Act or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.
- (b) Unless this Act or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.
- (c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.
- (d) If not otherwise fixed \* \* \*, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.
- (e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. \* \* \*

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#### § 7.07 Record Date

- (a) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.
- (b) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders.
- (c) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment

of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

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

### Subchapter B. Voting

#### § 7.20 Shareholders' List for Meeting

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

(b) The shareholders' list must be available for inspection by any shareholder, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, his agent, or attorney is entitled on written demand to inspect and, subject to the requirements of section 16.02(c), to copy the list, during regular business hours and at his expense, during the period it is available for inspection.

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

(d) If the corporation refuses to allow a shareholder, his agent, or attorney to inspect the shareholders' list before or at the meeting (or copy the list as permitted by subsection (b)), the [name or describe] court of the county where a corporation's principal office (or, if none in this state, its registered office) is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

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

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#### § 7.22 Proxies

- (a) A shareholder may vote his shares in person or by proxy.
- (b) A shareholder may appoint a proxy to vote or otherwise act for him by signing an appointment form, either personally or by his attorney-in-fact.
- (c) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form.

\* \* \* \*

**§ 7.28 Voting for Directors; Cumulative Voting**

- (a) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.
- (b) Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.
- (c) A statement included in the articles of incorporation that “[all] [a designated voting group of] shareholders are entitled to cumulate their votes for directors” (or words of similar import) means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.
- (d) Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:
- (1) the meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or
  - (2) a shareholder who has the right to cumulate his votes gives notice to the corporation not less than 48 hours before the time set for the meeting of his intent to cumulate his votes during the meeting, and if one shareholder gives this notice all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

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**Subchapter D. Derivative Proceedings**

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**§ 7.41 Standing**

A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

- (1) was a shareholder of the 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
- (2) fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

**§ 7.42 Demand**

No shareholder may commence a derivative proceeding until:

- (1) a written demand has been made upon the corporation to take suitable action; and
- (2) 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 corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90 day period.

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## Chapter 8. DIRECTORS AND OFFICERS

**Subchapter A. Board of Directors**

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**§ 8.02 Qualifications of Directors**

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

**§ 8.03 Number and Election of Directors**

- (a) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.
- (b) If a board of directors has power to fix or change the number of directors, the board may increase or decrease by 30 percent or less the number of directors last approved by the shareholders, but only the shareholders may increase or decrease by more than 30 percent the number of directors last approved by the shareholders.
- (c) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the shareholders or the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable-range size board or vice versa.
- (d) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under section 8.06.

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**§ 8.08 Removal of Directors by Shareholders**

- (a) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.
- (b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him.
- (c) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast 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 meet-

ing notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

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## Subchapter B. Meetings and Action of the Board

### § 8.20 Meetings

(a) The board of directors may hold regular or special meetings in or out of this state.

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

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### § 8.22 Notice of Meeting

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

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

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### § 8.24 Quorum and Voting

(a) Unless the articles of incorporation or bylaws require a greater number, a quorum of a board of directors consists of:

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

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

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

(d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (1) he objects at the beginning of the meeting (or promptly upon his arrival) to holding it or transacting business at the meeting; (2) his dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) he delivers

written notice of his dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

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## Subchapter C. Standards of Conduct

### § 8.30 General Standards for Directors

(a) A director shall discharge his duties as a director, including his duties as a member of a committee:

- (1) in good faith;
- (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) in a manner he reasonably believes to be in the best interests of the corporation.

(b) In discharging his duties a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (1) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
- (2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or
- (3) a committee of the board of directors of which he is not a member if the director reasonably believes the committee merits confidence.

(c) A director is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section.

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## Subchapter D. Officers

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### § 8.41 Duties of Officers

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

### § 8.42 Standards of Conduct for Officers

(a) An officer with discretionary authority shall discharge his duties under that authority:

- (1) in good faith;
- (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

- (3) in a manner he reasonably believes to be in the best interests of the corporation.
- (b) In discharging his duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
- (1) one or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or
  - (2) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.
- (c) An officer is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.
- (d) An officer is not liable for any action taken as an officer, or any failure to take any action, if he performed the duties of his office in compliance with this section.

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## Chapter 11. MERGER AND SHARE EXCHANGE

### § 11.01 Merger

- (a) One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders (if required \* \* \*) approve a plan of merger.
- (b) The plan of merger must set forth:
- (1) the name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;
  - (2) the terms and conditions of the merger; and
  - (3) the manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part.
- (c) The plan of merger may set forth:
- (1) amendments to the articles of incorporation of the surviving corporation; and
  - (2) other provisions relating to the merger.

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### § 11.04 Merger of Subsidiary

- (a) A parent corporation owning at least 90 percent of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary.
- (b) The board of directors of the parent shall adopt a plan of merger that sets forth:
- (1) the names of the parent and subsidiary; and
  - (2) the manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the

parent or any other corporation or into cash or other property in whole or part.

- (c) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.
- (d) The parent may not deliver articles of merger to the secretary of state for filing until at least 30 days after the date it mailed a copy of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.
- (e) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation (except for amendments enumerated in section 10.02).

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### § 11.06 Effect of Merger or Share Exchange

- (a) When a merger takes effect:
- (1) every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;
  - (2) the title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment;
  - (3) the surviving corporation has all liabilities of each corporation party to the merger;
  - (4) a proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;
  - (5) the articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and
  - (6) the shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property are converted and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under chapter 13.
- (b) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights under chapter 13.

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## Chapter 13. DISSENTERS' RIGHTS

### Subchapter A. Right to Dissent and Obtain Payment for Shares

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#### § 13.02 Right to Dissent

- (a) A shareholder is entitled to dissent from, and obtain payment of the fair value of his shares in the event of, any of the following corporate actions:

(1) consummation of a plan of merger to which the corporation is a party (i) if shareholder approval is required for the merger by [statute] or the articles of incorporation and the shareholder is entitled to vote on the merger or (ii) if the corporation is a subsidiary that is merged with its parent under section 11.04;

(2) consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;

(3) consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;

(4) an amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it:

- (i) alters or abolishes a preferential right of the shares;
- (ii) creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares;
- (iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;
- (iv) excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or
- (v) reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash \* \* \* ; or

(5) any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(b) A shareholder entitled to dissent and obtain payment for his shares under this chapter may not challenge the corporate action creating his entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

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**Subchapter B. Procedure for Exercise of Dissenters' Rights**

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**§ 13.21 Notice of Intent to Demand Payment**

(a) If proposed corporate action creating dissenters' rights under section 13.02 is submitted to a vote at a shareholders'

meeting, a shareholder who wishes to assert dissenters' rights (1) must deliver to the corporation before the vote is taken written notice of his intent to demand payment for his shares if the proposed action is effectuated and (2) must not vote his shares in favor of the proposed action.

(b) A shareholder who does not satisfy the requirements of subsection (a) is not entitled to payment for his shares under this chapter.

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**§ 13.25 Payment**

(a) \* \* \* [A]s soon as the proposed corporate action is taken, or upon receipt of a payment demand, the corporation shall pay each dissenter \* \* \* the amount the corporation estimates to be the fair value of his shares, plus accrued interest.

\* \* \* \*

**§ 13.28 Procedure If Shareholder Dissatisfied with Payment or Offer**

(a) A dissenter may notify the corporation in writing of his own estimate of the fair value of his shares and amount of interest due, and demand payment of his estimate (less any payment under section 13.25) \* \* \* if:

- (1) the dissenter believes that the amount paid under section 13.25 \* \* \* is less than the fair value of his shares or that the interest due is incorrectly calculated;
- (2) the corporation fails to make payment under section 13.25 within 60 days after the date set for demanding payment; or
- (3) the corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within 60 days after the date set for demanding payment.

(b) A dissenter waives his right to demand payment under this section unless he notifies the corporation of his demand in writing under subsection (a) within 30 days after the corporation made or offered payment for his shares.

\* \* \* \*

**Chapter 14.  
DISSOLUTION**

**Subchapter A. Voluntary Dissolution**

\* \* \* \*

**§ 14.02 Dissolution by Board of Directors and Shareholders**

(a) A 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.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 7.05. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(e) Unless the articles of incorporation or the board of directors (acting pursuant to subsection (c)) require a greater vote or a vote by voting groups, the proposal to dissolve to be adopted must be approved by a majority of all the votes entitled to be cast on that proposal.

\* \* \* \*

#### § 14.05 Effect of Dissolution

(a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

- (1) collecting its assets;
- (2) disposing of its properties that will not be distributed in kind to its shareholders;
- (3) discharging or making provision for discharging its liabilities;
- (4) distributing its remaining property among its shareholders according to their interests; and
- (5) doing every other act necessary to wind up and liquidate its business and affairs.

(b) Dissolution of a corporation does not:

- (1) transfer title to the corporation's property;
- (2) prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;
- (3) subject its directors or officers to standards of conduct different from those prescribed in chapter 8;
- (4) change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;
- (5) prevent commencement of a proceeding by or against the corporation in its corporate name;
- (6) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
- (7) terminate the authority of the registered agent of the corporation.

\* \* \* \*

#### Subchapter C. Judicial Dissolution

##### § 14.30 Grounds for Judicial Dissolution

The [name or describe court or courts] may dissolve a corporation:

(1) in a proceeding by the attorney general if it is established that:

- (i) the corporation obtained its articles of incorporation through fraud; or
- (ii) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(2) in a proceeding by a shareholder if it is established that:

- (i) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(iii) the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(iv) the corporate assets are being misapplied or wasted;

(3) in a proceeding by a creditor if it is established that:

(i) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

\* \* \* \*

## Chapter 16. RECORDS AND REPORTS

### Subchapter A. Records

#### § 16.01 Corporate Records

(a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

- (1) its articles or restated articles of incorporation and all amendments to them currently in effect;
- (2) its bylaws or restated bylaws and all amendments to them currently in effect;
- (3) resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;
- (4) the minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years;
- (5) all written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years \* \* \*;
- (6) a list of the names and business addresses of its current directors and officers; and
- (7) its most recent annual report delivered to the secretary of state \* \* \*.

### § 16.02 Inspection of Records by Shareholders

(a) Subject to section 16.03(c), a shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in section 16.01(e) if he gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy.

(b) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (c) and gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy:

- (1) excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under section 16.02(a);
- (2) accounting records of the corporation; and
- (3) the record of shareholders.

(c) A shareholder may inspect and copy the records identified in subsection (b) only if:

- (1) his demand is made in good faith and for a proper purpose;
- (2) he describes with reasonable particularity his purpose and the records he desires to inspect; and
- (3) the records are directly connected with his purpose.

(d) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(e) This section does not affect:

- (1) the right of a shareholder to inspect records under section 7.20 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant;
- (2) the power of a court, independently of this Act, to compel the production of corporate records for examination.

(f) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on his behalf.