DISTRICT OF COLUMBIA

OFFICIAL CODE

TITLE 29.

BUSINESS ORGANIZATIONS.

CHAPTER 3.

BUSINESS CORPORATIONS.

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CHAPTER 3. BUSINESS CORPORATIONS.

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CHAPTER 3. BUSINESS CORPORATIONS.

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§ 29-301.01. SHORT TITLE.

This chapter may be cited as the "Business Corporation Act of 2010".

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

Editor's Notes

Former § 29-301.01 has been recodified as § 29A-301.01.

§ 29-301.02. DEFINITIONS.

For the purpose of this chapter, the term:

(1) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(2) "Bylaws" means the code of rules, other than the articles of incorporation, adopted for the regulation and governance of the internal affairs of the corporation, regardless of the name or names used to refer to those rules.

(3) "Conspicuous" means so written, displayed, or presented that a reasonable person against whom it is to operate should have noticed it. Conspicuous terms shall include:

(A) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(4) "Corporation", "domestic corporation", or "domestic business corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to this chapter.

(5) "Distribution" means a direct or indirect transfer of money or other property, except a corporation's own shares, or incurrence of indebtedness by the corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of:

(A) A declaration or payment of a dividend;

(B) A purchase, redemption, or other acquisition of shares;

(C) A distribution of indebtedness; or

(D) Another method.

(6) "Domestic unincorporated entity" means an unincorporated entity whose internal affairs are governed by the laws of the District.

(7) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(8) "Electronic transmission" or "electronically transmitted" means any process of communication not

directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

(9) "Eligible interests" means interests or shares.

(10) "Employee" shall include an officer but not a director. A director may accept duties that make the director also an employee.

(11) "Expenses" means reasonable expenses of any kind that are incurred in connection with a matter.

(12) "Foreign corporation" means a corporation incorporated under a law other than the law of the District which would be a business corporation if incorporated under the laws of the District.

(13) "Foreign nonprofit corporation" means a corporation incorporated under a law other than the law of the District, which would be a nonprofit corporation if incorporated under the laws of the District.

(14) "Foreign unincorporated entity" means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than the District.

(15) "Owner liability" means personal liability for a debt, obligation, or liability of a domestic or foreign business or nonprofit corporation or unincorporated entity that is imposed on a person:

(A) Solely by reason of the person's status as a shareholder, member, or interest holder; or

(B) By the articles of incorporation, bylaws, or an organic document under a provision of the organic law of an entity authorizing the articles of incorporation, bylaws, or an organic document to make one or more specified shareholders, members, or interest holders liable in their capacity as shareholders, members, or interest holders for all or specified debts, obligations, or liabilities of the entity.

(16) "Public corporation" means a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national securities association.

(17) "Record date" means the date established under subchapter IV or V of this chapter on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(18) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under § 29-306.40(c) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

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

(20) "Shares" means the units into which the proprietary interests in a corporation are divided.

(21) "Subscriber" means a person that subscribes for shares in a corporation, whether before or after incorporation.

(22) "Unincorporated entity" means an entity that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not a domestic or foreign business or nonprofit corporation, an estate, a trust, a state, the United States, or a foreign government. The term "unincorporated entity" shall include a general partnership, limited liability company, limited partnership, limited cooperative association, business or statutory trust, joint stock association, and unincorporated nonprofit association.

(23) "Vote", "voting", or "casting a vote" includes the giving of consent without a meeting. The term "vote", "voting", "casting a vote" shall not include either recording the fact of abstention or failing to vote for a candidate or for approval or disapproval of a matter, whether or not the person entitled to vote characterizes the conduct as voting or casting a vote.

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

(25) "Voting power" means the current power to vote in the election of directors or to vote on approval of any type of fundamental transaction. For the purposes of this paragraph, the term "fundamental transaction" means an amendment of the articles of incorporation or bylaws, merger, interest exchange, sale of all or substantially all of the assets, domestication, conversion, or dissolution of a corporation.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

Editor's Notes

Former § 29-301.02 has been recodified as § 29A-301.02.

§ 29-301.03. NOTICE.

(a) Notice under this chapter shall be in the form of a record unless oral notice is authorized by this chapter or is reasonable under the circumstances.

(b) Notice may be communicated in person or by delivery. If these forms of communication are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication, including the Internet.

(c) Notice in the form of a record by a domestic or qualified foreign corporation to a shareholder shall be effective:

(1) Upon deposit in the United States mail or with a commercial delivery service, if the postage or delivery charge is paid and the notice is correctly addressed to the shareholder's address shown in the corporation's current record of shareholders; or

(2) When given if the notice is delivered in any other manner that the member has authorized.

(d) Notice to a domestic or qualified foreign corporation may be delivered to its registered agent or to the corporation or its secretary at its principal office shown in its most recent biennial report or, in the case of a foreign corporation that has not yet delivered a biennial report, in its application for a certificate of registration.

(e) Except as otherwise provided in subsection (c) of this section, notice shall be effective at the earliest of the following:

(1) When received;

(2) When left at the recipient's residence or usual place of business;

(3) Five days after its deposit in the United States mail or with a commercial delivery service, if the postage or delivery charge is paid and the notice is correctly addressed; or

(4) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, or by commercial delivery service.

(f) Oral notice shall be effective when communicated, if communicated in a comprehensible manner.

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

(h) With respect to electronic communications:

(1) Unless otherwise provided in the articles of incorporation or bylaws, or otherwise agreed between the sender and the recipient, an electronic communication is received when:

(A) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(B) It is in a form capable of being processed by that system.

(2) An electronic communication is received under paragraph (1) of this subsection even if no individual is aware of its receipt.

(3) Receipt of an electronic acknowledgment from an information processing system described in paragraph (1) of this subsection shall establish that a record was received but, by itself, shall not establish that the content sent corresponds to the content received.

(i) An authorization by a member of delivery of notices or communications by email or similar electronic means may be revoked by the member by notice to the corporation in the form of a record. The authorization shall be deemed revoked if:

(A) The corporation is unable to deliver 2 consecutive notices or other communications to the member in the manner authorized; and

(B) The inability becomes known to the secretary or other person responsible for giving the notice or other communication, but the failure to treat the inability as a revocation shall not invalidate any meeting or other action.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

Editor's Notes

Former § 29-301.03 has been recodified as § 29A-301.03.

§ 29-301.04. REFERENCE TO EXTRINSIC FACTS IN PLANS OR FILED DOCUMENTS.

(a) For the purposes of this subsection, the term:

(1) "Filed document" means a document filed with the Mayor under any provision of this chapter except § 29-102.11.

(2) "Plan" means a plan of domestication, nonprofit conversion, entity conversion, merger, or share exchange.

(b) Whenever a provision of this chapter permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

(1) The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document.

(2) The facts may include:

(A) Any of the following that is available in a nationally recognized news or information medium, either in print or electronically:

(i) Statistical or market indices;

(ii) Market prices of any security or group of securities;

(iii) Interest rates;

(iv) Currency exchange rates; or

(v) Similar economic or financial data;

(B) A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

(C) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

(3) The following provisions of a plan or filed document shall not be made dependent on facts outside the plan or filed document:

(A) The name and address of any person required in a filed document;

(B) The registered agent of any entity required in a filed document;

(C) The number of authorized shares and designation of each class or series of shares;

(D) The effective date of a filed document; or

(E) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

(4) If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in paragraph (2)(A) of this subsection or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, the corporation shall file with the Mayor articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this paragraph shall be deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

Editor's Notes

Former § 29-301.04 has been recodified as § 29A-301.04.

PART B. NUMBER OF SHAREHOLDERS; QUALIFIED DIRECTOR; HOUSEHOLDING.

§ 29-301.20. NUMBER OF SHAREHOLDERS.

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

(1) Three or fewer co-owners;

(2) A corporation, partnership, trust, estate, or other entity;

(3) The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

Editor's Notes

Former § 29-301.20 has been recodified as § 29A-301.20.

§ 29-301.21. QUALIFIED DIRECTOR.

(a) For the purposes of this section, the term:

(1) "Material interest" means an actual or potential benefit or detriment, other than one which would devolve on the corporation or the shareholders generally, that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

(2) "Material relationship" means a familial, financial, professional, employment, or other relationship that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

(b) A qualified director is a director who:

(1) At the time action is to be taken under § 29-305.54, does not have:

(A) A material interest in the outcome of the proceeding; or

(B) A material relationship with a person that has such an interest;

(2) At the time action is to be taken under § 29-306.53 or 29-306.55:

(A) Is not a party to the proceeding;

(B) Is not a director as to whom a transaction is a director's conflicting interest transaction or who sought a disclaimer of the corporation's interest in a business opportunity under § 29-306.80, which transaction or disclaimer is challenged in the proceeding; and

(C) Does not have a material relationship with a director described in either subparagraph (A) or (B) of this paragraph;

(3) At the time action is to be taken under § 29-306.72, is not a director:

(A) As to whom the transaction is a director's conflicting interest transaction; or

(B) Who has a material relationship with another director as to whom the transaction is a director's conflicting interest transaction; or

(4) At the time action is to be taken under § 29-306.80, would be a qualified director under subsection (b)(3) of this section if the business opportunity were a director's conflicting interest transaction.

(c) The presence of one or more of the following circumstances shall not by itself prevent a director from being a qualified director:

(1) Nomination or election of the director to the current board by any director who is not a qualified director with respect to the matter, or by any person that has a material relationship with that director, acting alone or participating with others;

(2) Service as a director of another corporation of which a director who is not a qualified director with respect to the matter, or any individual who has a material relationship with that director, is or was also a director; or

(3) With respect to action to be taken under § 29-305.54, status as a named defendant, as a director against whom action is demanded, or as a director who approved the conduct being challenged.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

Editor's Notes

Former § 29-301.21 has been recodified as § 29A-301.21.

§ 29-301.22. HOUSEHOLDING.

(a) A corporation shall have delivered written notice or any other report or statement under this chapter, the articles of incorporation, or the bylaws to all shareholders who share a common address if:

(1) The corporation delivers one copy of the notice, report, or statement to the common address;

(2) The corporation addresses the notice, report, or statement to those shareholders either as a group or to each of those shareholders individually or to the shareholders in a form to which each of those shareholders has consented; and

(3) Each of those shareholders consents to delivery of a single copy of the notice, report, or statement to the shareholders' common address.

(b) Any consent under subsection (a)(3) of this section shall be revocable by any of such shareholders that delivers written notice of revocation to the corporation. If the written notice of revocation is delivered, the corporation shall begin providing individual notices, reports, or other statements to the revoking shareholder no later than 30 days after delivery of the written notice of revocation.

(c) Any shareholder that fails to object by written notice to the corporation, within 60 days of written notice by the corporation of its intention to send single copies of notices, reports, or statements to shareholders that share a common address as permitted by subsection (a) of this section, shall be deemed to have consented to receiving such single copy at the common address.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

Editor's Notes

Former § 29-301.22 has been recodified as § 29A-301.22.

SUBCHAPTER II. INCORPORATION.

§ 29-302.01. INCORPORATORS.

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-302.02. ARTICLES OF INCORPORATION.

(a) The articles of incorporation shall set forth:

(1) A corporate name for the corporation that satisfies §§ 29-103.01 and 29-103.02(a);

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

(3) The information required by § 29-104.04; 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:

(A) The purpose or purposes for which the corporation is organized;

(B) Managing the business and regulating the affairs of the corporation;

(C) Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

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

(E) 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 chapter is required or permitted to be set forth in the bylaws;

(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 the director is not entitled;

(B) An intentional infliction of harm on the corporation or the shareholders;

(C) A violation of § 29-306.32; or

(D) An intentional violation of criminal law; and

(5) A provision permitting or making obligatory indemnification of a director for liability, as defined in § 29-306.50, to any person for any action taken, or any failure to take any action, as a director, except liability for:

(A) Receipt of a financial benefit to which the director is not entitled;

(B) An intentional infliction of harm on the corporation or its shareholders;

(C) A violation of § 29-306.32; 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 chapter.

(d) Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with § 29-301.04.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-302.03. INCORPORATION.

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

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-302.04. LIABILITY FOR PREINCORPORATION TRANSACTIONS.

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under

this chapter, shall be jointly and severally liable for all liabilities created while so acting.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-302.05. 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 to elect:

(A) Directors and complete the organization of the corporation; or

(B) A board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by this chapter 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 outside of the District.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-302.06. BYLAWS.

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

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-302.07. EMERGENCY BYLAWS.

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

(1) Procedures for calling a meeting of the board of directors;

(2) Quorum requirements for the meeting; and

(3) Designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws shall remain effective during the emergency. The emergency bylaws shall not be effective after the emergency ends.

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

(1) Binds the corporation; and

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

(d) An emergency exists for the purposes of this section if a quorum of the corporation's directors cannot

readily be assembled because of some catastrophic event.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

SUBCHAPTER III. PURPOSES AND POWERS.

§ 29-303.01. PURPOSES.

(a) Every corporation incorporated under this chapter shall have 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 law of the District may incorporate under this chapter only if permitted by, and subject to all limitations of, the other law.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-303.02. GENERAL POWERS.

Unless its articles of incorporation provide otherwise, every corporation shall have perpetual duration and succession in its corporate name and shall have the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including power to:

(1) Sue and be sued, and defend in its corporate name;

(2) 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) Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the District, for managing the business and regulating the affairs of the corporation;

(4) 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) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) 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) 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) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

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

(10) Conduct its business, locate offices, and exercise the powers granted by this chapter within or without the District;

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

(12) 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) Make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) Do any lawful business that will aid governmental policy; and

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-303.03. EMERGENCY POWERS.

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

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

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

(b) During an emergency defined in subsection (d) of this section, unless emergency bylaws provide otherwise:

(1) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication, radio, and messages sent over the Internet; and

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

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

(1) Binds the corporation; and

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

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-303.04. ULTRA VIRES.

(a) Except as otherwise provided in subsection (b) of this section, the validity of corporate action may not be challenged on the ground that the corporation lacks, or lacked, power to act.

(b) A corporation's power to act may be challenged in a proceeding by:

(1) A shareholder against the corporation to enjoin the act;

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

(3) The Attorney General for the District of Columbia under § 29-312.20.

(c) In a shareholder's proceeding under subsection (b)(1) of this section to enjoin an unauthorized corporate act, the Superior 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 corporation or another party because of enjoining the unauthorized act.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

SUBCHAPTER IV. SHARES AND DISTRIBUTIONS.

PART A. SHARES.

§ 29-304.01. AUTHORIZED SHARES.

(a) The articles of incorporation shall set forth any classes of shares and series of shares within a class, and the number of shares of each class and series, that the corporation is authorized to issue. If more than one class or series of shares is authorized, the articles of incorporation shall prescribe a distinguishing designation for each class or series and shall describe, prior to the issuance of shares of a class or series, the terms, including the preferences, rights, and limitations, of that class or series. Except to the extent varied as permitted by this section, all shares of a class or series must have terms, including preferences, rights, and limitations, that are identical with those of other shares of the same class or series.

(b) The articles of incorporation shall authorize:

(1) One or more classes or series of shares that together have unlimited voting rights; and

(2) One or more classes or series of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

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

(1) Have special, conditional, or limited voting rights, or no right to vote, except to the extent otherwise provided by this chapter;

(2) Are redeemable or convertible as specified in the articles of incorporation:

(A) At the option of the corporation, the shareholder, or another person or upon the occurrence of a specified event;

(B) For cash, indebtedness, securities, or other property; and

(C) At prices and in amounts:

(i) Specified; or

(ii) Determined in accordance with a formula;

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

(4) Have preference over any other class or series of shares with respect to distributions, including distributions upon the dissolution of the corporation.

(d) Terms of shares may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with § 29-301.04.

(e) Any of the terms of shares may vary among holders of the same class or series so long as the variations are expressly set forth in the articles of incorporation.

(f) The description of the preferences, rights, and limitations of classes or series of shares in subsection (c) of this section is not exhaustive.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-304.02. TERMS OF CLASS OR SERIES DETERMINED BY BOARD OF DIRECTORS.

(a) If the articles of incorporation so provide, the board of directors may, without shareholder approval:

(1) Classify any unissued shares into one or more classes or into one or more series within a class;

(2) Reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes; or

(3) Reclassify any unissued shares of any series of any class into one or more classes or into one or more series within a class.

(b) If the board of directors acts pursuant to subsection (a) of this section, it shall determine the terms, including the preferences, rights, and limitations, to the same extent permitted under § 29-304.01, of:

(1) Any class of shares before the issuance of any shares of that class; or

(2) Any series within a class before the issuance of any shares of that series.

(c) Before issuing any shares of a class or series created under this section, the corporation shall deliver to the Mayor for filing articles of amendment setting forth the terms determined under subsection (a) and (b) of this section.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-304.03. ISSUED AND OUTSTANDING SHARES.

(a) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued shall be outstanding shares until they are reacquired, redeemed, converted, or canceled.

(b) The reacquisition, redemption, or conversion of outstanding shares shall be subject to the limitations of subsection (c) of this section and to § 29- 304.60.

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-304.04. FRACTIONAL SHARES.

(a) A corporation may:

(1) Issue fractions of a share or pay, in money, the value of fractions of a share;

(2) Arrange for disposition of fractional shares by the shareholders; or

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

(b) Each certificate representing scrip shall be conspicuously labeled "scrip" and shall contain the information required by § 29-304.25(b).

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

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

(1) Scrip will become void if not exchanged for full shares before a specified date; and

(2) Shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

PART B. ISSUANCE OF SHARES.

§ 29-304.20. SUBSCRIPTION FOR SHARES BEFORE INCORPORATION.

(a) A subscription for shares entered into before incorporation shall be irrevocable for 6 months unless the

subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

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

(c) Shares issued pursuant to subscriptions entered into before incorporation shall be fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

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

(e) A subscription agreement entered into after incorporation shall be a contract between the subscriber and the corporation subject to § 29-304.02.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-304.21. 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, and other securities of the corporation.

(c) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors shall be 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 shall be 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 canceled in whole or part.

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

(1) The shares, other securities, or rights are issued for consideration other than 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% of the voting power of the shares of the corporation that were outstanding immediately before the transaction.

(g) For the purposes of this subsection:

(1) For the 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 is the greater of:

(A) The voting power of the shares to be issued; or

(B) 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.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-304.22. LIABILITY OF SHAREHOLDERS.

(a) A purchaser from a corporation of its own shares shall not be liable to the 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 shall not be personally liable for the acts or debts of the corporation, except that the shareholder may become personally liable by reason of the shareholder's own acts or conduct.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-304.23. SHARE DIVIDENDS.

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

(b) Shares of one class or series shall 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.

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-304.24. SHARE OPTIONS.

(a)(1) A corporation may issue rights, options, or warrants for the purchase of shares or other securities of the corporation. The board of directors shall determine:

(A) The terms upon which the rights, options, or warrants are issued; and

(B) The terms, including the consideration, for which the shares or other securities are to be issued.

(2) The authorization by the board of directors for the corporation to issue the rights, options, or warrants under paragraph (1) of this subsection shall constitute authorization of the issuance of the shares or other securities for which the rights, options, or warrants are exercisable.

(b) The terms and conditions of the rights, options, or warrants, including those outstanding on the effective date of this section, may include restrictions or conditions that:

(1) Preclude or limit the exercise, transfer, or receipt of the rights, options, or warrants by any person owning or offering to acquire a specified number or percentage of the outstanding shares or other securities of the corporation or by any transferee of any such person; or

(2) Invalidate or void the rights, options, or warrants held by any such person or any such transferee.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-304.25. FORM AND CONTENT OF CERTIFICATES.

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

(b) At a minimum, each share certificate shall state on its face:

(1) The name of the issuing corporation and that it is organized under the law of the District;

(2) The name of the person to which issued; and

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

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

(d) Each share certificate:

(1) Shall be signed, either manually or in facsimile, by 2 officers designated in the bylaws or by the board of directors; and

(2) May bear the corporate seal or its facsimile.

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-304.26. SHARES WITHOUT CERTIFICATES.

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

(b) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by § 29-304.25(b) and (c), and, if applicable, § 29-304.27.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-304.27. RESTRICTION ON TRANSFER 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 shall 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 shall be 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 required by § 29-304.26(b). Unless so noted or contained, a restriction shall not be 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; or

(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 corporation 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; or

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

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-304.28. EXPENSE OF ISSUE.

A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

PART C. SUBSEQUENT ACQUISITION OF SHARES BY SHAREHOLDERS AND CORPORATION.

§ 29-304.40. SHAREHOLDERS' PREEMPTIVE RIGHTS.

(a) The shareholders of a corporation shall not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.

(b) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights", or words of similar import, means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(1) The shareholders of the corporation shall have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors, to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

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

(3) There shall be no preemptive right with respect to shares:

(A) Issued as compensation to directors, officers, agents, or employees of the corporation or its subsidiaries or affiliates:

(B) Issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation or its subsidiaries or affiliates;

(C) Authorized in articles of incorporation that are issued within 6 months after the effective date of incorporation;

(D) Sold otherwise than for money.

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

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

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

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-304.41. CORPORATION'S ACQUISITION OF ITS OWN SHARES.

(a) A corporation may acquire its own shares and shares so acquired shall constitute authorized but unissued shares.

(b) If the articles of incorporation prohibit the reissue of the acquired shares, the number of authorized shares shall be reduced by the number of shares acquired.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

PART D. DISTRIBUTIONS TO SHAREHOLDERS.

§ 29-304.60. DISTRIBUTIONS TO SHAREHOLDERS.

(a) A board of directors may authorize, and the corporation may make, distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (c) of this section.

(b) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares, the record date shall be the date the board of directors authorizes the distribution.

(c) A distribution shall not be made if, after giving it effect:

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

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

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

(e) Except as otherwise provided in subsection (g) of this section, the effect of a distribution under subsection (c) shall be measured:

(1) In the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of the date that:

(A) Money or other property is transferred or debt incurred by the corporation; or

(B) The shareholder ceases to be a shareholder with respect to the acquired shares;

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

(3) In all other cases, as of the date that:

(A) The distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(B) The payment is made if it occurs more than 120 days after the date of authorization.

(f) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section shall be at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

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

(h) This section shall not apply to distributions in liquidation under subchapter XII of this chapter.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

SUBCHAPTER V. SHAREHOLDERS.

PART A. MEETINGS.

§ 29-305.01. ANNUAL MEETING.

(a) Unless directors are elected by written consent in lieu of an annual meeting as permitted by § 29-305.04, a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws. However, if a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors pursuant to § 29-305.28, directors shall not be elected by less than unanimous consent.

(b) Annual shareholders' meetings may be held in or outside of the District 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 shall not affect the validity of any corporate action.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.02. SPECIAL MEETING.

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

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

(2) Subject to subsection (b) of this section, if the holders of at least 10% of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held; provided, that the articles of incorporation may fix a lower percentage or a higher percentage not exceeding 25% of all the votes entitled to be cast on any issue proposed to be considered.

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

(c) If not otherwise fixed under § 29-305.03 or 29-305.07, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(d) Special shareholders' meetings may be held in or outside of the District at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings must be held at the corporation's principal office.

(e) Only business within the purpose or purposes described in the meeting notice required by § 29-305.05(c) may be conducted at a special shareholders' meeting.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.03. COURT-ORDERED MEETING.

(a) The Superior Court may summarily order a meeting to be held on application of a shareholder:

(1) Entitled to participate in an annual meeting if an annual meeting was not held or action by written consent in lieu thereof did not become effective within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting; or

(2) That signed a demand for a special meeting valid under § 29-305.02, if:

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

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

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.04. ACTION WITHOUT MEETING.

(a) Action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action shall be evidenced by one or more written consents bearing the date of signature and describing the action taken, signed by all the shareholders entitled to vote on the action and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) The articles of incorporation may provide that any action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting, and without prior notice, if consents in writing setting forth the action so taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. The written consent shall bear the date of signature of the shareholder that signs the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(c) If not otherwise fixed under § 29-305.07 and if prior board action is not required with respect to the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting shall be the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under § 29-305.07 and if prior board action is required with respect to the action to be taken without a meeting, the record date shall be the close of business on the day the resolution of the board taking such prior action is adopted. No written consent is effective to take the corporate action referred to therein unless, within 60 days of the earliest date on which a consent delivered

to the corporation as required by this section was signed, written consents signed by sufficient shareholders to take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to take the corporate action are delivered to the corporation.

(d) A consent signed pursuant to this section shall have the effect of a vote taken at a meeting and may be described as such in any document. Unless the articles of incorporation, bylaws, or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written consent shall be effective when written consents signed by sufficient shareholders to take the action are delivered to the corporation.

(e)(1) If this chapter requires that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation shall give its nonvoting shareholders written notice of the action not more than 10 days after:

(A) Written consents sufficient to take the action have been delivered to the corporation; or

(B) Such later date that tabulation of consents is completed pursuant to an authorization under subsection (d) of this section.

(2) The notice under paragraph (1) of this subsection shall reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this chapter, would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

(f)(1) If action is taken by less than unanimous written consent of the voting shareholders, the corporation shall give its nonconsenting voting shareholders written notice of the action not more than 10 days after:

(A) Written consents sufficient to take the action have been delivered to the corporation; or

(B) Such later date that tabulation of consents is completed pursuant to an authorization under subsection (d) of this section.

(2) The notice under paragraph (1) of this subsection shall reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this chapter, would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

(g) The notice requirements in subsections (e) and (f) shall not delay the effectiveness of actions taken by written consent and a failure to comply with such notice requirements shall not invalidate actions taken by written consent; provided, that this subsection shall not limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give the notice within the required time period.

(h) An electronic transmission may be used to consent to an action if the electronic transmission contains or is accompanied by information from which the corporation can determine the date on which the electronic transmission was signed and that the electronic transmission was authorized by the shareholder, the shareholder's agent, or the shareholder's attorney-in-fact.

(i) Delivery of a written consent to the corporation under this section shall be made by delivery to the corporation's registered agent or to the secretary of the corporation at its principal office.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.05. NOTICE OF MEETING.

(a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no less than 10, or more than, 60 days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation shall give notice only to shareholders entitled to vote at the meeting.

(b) Unless this chapter 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 shall include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under § 29-305.03 or 29-305.07, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting shall be the day before the 1st 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; provided, that if a new record date for the adjourned meeting is or must be fixed under § 29-305.07, notice of the adjourned meeting shall be given under this section to persons that are shareholders as of the new record date.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.06. WAIVER OF NOTICE.

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

(b) A shareholder's attendance at a meeting waives object to:

(1) Lack of notice or defective notice of the meeting, unless the shareholder, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting; and

(2) Consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.07. RECORD DATE.

(a) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups 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 shall 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 shall be effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(d) If a Superior 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.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.08. CONDUCT OF THE MEETING.

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

(b) The chair, unless the articles of incorporation or bylaws provide otherwise, shall determine the order of business and may establish rules for the conduct of the meeting.

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

(d) The chair of the meeting shall announce at the meeting when the polls close for each matter voted

upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies, or votes, or any revocations or changes thereto, shall be accepted.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

PART B. VOTING.

§ 29-305.20. 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 that are entitled to notice of a shareholders' meeting. The list shall:

(1) Be arranged by voting group and, within each voting group, by class or series; and

(2) 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 2 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, or the shareholder's agent or attorney, shall be entitled on written demand to inspect and, subject to § 29-313.02(c), to copy the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

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

(d) If the corporation refuses to allow a shareholder, or the shareholder's agent or attorney, to inspect the shareholders' list before or at the meeting, or copy the list as permitted by subsection (b) of this section, the Superior Court, 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 shall not affect the validity of action taken at the meeting.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.21. VOTING ENTITLEMENT OF SHARES.

(a) Except as otherwise provided in subsections (b) and (d) of this section or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, shall be entitled to one vote on each matter voted on at a shareholders' meeting. Only shares shall be entitled to vote.

(b) Absent special circumstances, the shares of a corporation shall not be entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(c) Subsection (b) of this section shall not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.22. PROXIES.

(a) A shareholder may vote the shareholder's shares in person or by proxy.

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

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

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

(1) A pledgee;

(2) A person that purchased or agreed to purchase the shares;

(3) A creditor of the corporation that extended it credit under terms requiring the appointment;

(4) An employee of the corporation whose employment contract requires the appointment; or

(5) A party to a voting agreement created under § 29-305.41.

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

(f) An appointment made irrevocable under subsection (d) of this section shall be revoked when the interest with which it is coupled is extinguished.

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

(h) Subject to § 29-305.24 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation shall be entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.23. SHARES HELD BY NOMINEES.

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

(b) The procedure may set forth:

(1) The types of nominees to which it applies;

(2) The rights or privileges that the corporation recognizes in a beneficial owner;

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

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

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

(6) Other aspects of the rights and duties created.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.24. CORPORATION'S ACCEPTANCE OF VOTES.

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

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

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

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

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

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

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

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

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or § 29-305.22(b) shall not be liable in damages to the shareholder for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section shall be valid unless the Superior Court determines otherwise.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.25. QUORUM AND VOTING REQUIREMENTS FOR VOTING GROUPS.

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

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

(c) If a quorum exists, action on a matter, other than the election of directors, by a voting group shall be approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation require a greater number of affirmative votes.

(d) An amendment of articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (a) or (c) of this section shall be governed by § 29-305.27.

(e) The election of directors shall be governed by § 29-305.28.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.26. ACTION BY SINGLE AND MULTIPLE VOTING GROUPS.

(a) If the articles of incorporation or this chapter provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in § 29-305.25.

(b) If the articles of incorporation or this chapter provide for voting by 2 or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in § 29- 305.25. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.27. GREATER QUORUM OR VOTING REQUIREMENTS.

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

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.28. VOTING FOR DIRECTORS; CUMULATIVE VOTING.

(a) Unless otherwise provided in the articles of incorporation, directors shall be 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 shall 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" or "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 2 or more candidates.

(d) Shares otherwise entitled to vote cumulatively shall 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) A shareholder that 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 the shareholder's intent to cumulate votes during the meeting.

(B) If one shareholder gives this notice, all other shareholders in the same voting group participating in the election shall be entitled to cumulate their votes without giving further notice.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.29. INSPECTORS OF ELECTION.

(a) A public corporation shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders and make a written report of the inspectors' determinations. Each inspector shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of the inspector's ability.

(b) The inspectors shall:

(1) Ascertain the number of shares outstanding and the voting power of each;

(2) Determine the shares represented at a meeting;

(3) Determine the validity of proxies and ballots;

(4) Count all votes; and

(5) Determine the result.

(c) An inspector may be an officer or employee of the corporation.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

PART C. VOTING TRUSTS AND AGREEMENTS.

§ 29-305.40. VOTING TRUSTS.

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

(b) A voting trust shall be effective on the date the 1st shares subject to the trust are registered in the trustee's name. A voting trust shall not be valid for not more than 10 years after its effective date unless extended under subsection (c) of this section.

(c) All or some of the parties to a voting trust may extend it for additional terms of not more than 10 years each by signing written consent to the extension. An extension shall be valid for 10 years after the date the 1st shareholder signs the extension agreement. The voting trustee shall deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.41. VOTING AGREEMENTS.

(a) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section shall not be subject to § 29-305.40.

(b) A voting agreement created under this section shall be specifically enforceable.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.42. SHAREHOLDER AGREEMENTS.

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

(1) Eliminates the board of directors or restricts the discretion or powers of the board of directors;

(2) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in § 29-304. 60;

(3) Establishes who will be directors or officers of the corporation, their terms of office, or manner of their selection or removal;

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

(5) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;

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

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

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

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

(1) Set forth in:

(A) The articles of incorporation or bylaws and approved by all persons that are shareholders at the time of the agreement; or

(B) A written agreement that is signed by all persons that are shareholders at the time of the agreement and is made known to the corporation;

(2) Subject to amendment only by all persons that are shareholders at the time of the amendment, unless the agreement provides otherwise; and

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

(c) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by § 29-304.26(b). If, at the time of the agreement, the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares that, at the time of purchase, did not have knowledge of the existence of the agreement may rescind the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection shall be commenced within the earlier of 90 days after discovery of the existence of the agreement or 2 years after the time of purchase of the shares.

(d) An agreement authorized by this section shall cease to be effective when the corporation becomes a public corporation. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(e) An agreement authorized by this section that limits the discretion or powers of the board of directors relieves the directors of, and imposes upon the person or persons in which the discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

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

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

PART D. DERIVATIVE PROCEEDINGS.

§ 29-305.50. DEFINITIONS.

For the purposes of this part, the term:

(1) "Derivative proceeding" means a civil action in the right of a domestic corporation or, to the extent provided in § 29-305.57, in the right of a foreign corporation.

(2) "Shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.51. STANDING.

A shareholder shall 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 that was a shareholder at that time; and

(2) Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.52. DEMAND.

A shareholder shall not commence a derivative proceeding until:

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

(2) Ninety days have expired from the date the demand was made unless

(A) The shareholder has earlier been notified that the demand has been rejected by the corporation; or

(B) Irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.53. STAY OF PROCEEDINGS.

If the corporation commences an inquiry into the allegations made in the demand or complaint, the Superior Court may stay any derivative proceeding for such period as the court consider appropriate.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.54. DISMISSAL.

(a) The Superior Court shall dismiss a derivative proceeding on motion by the corporation if one of the groups specified in subsection (b) or subsection (e) of this section has determined in good faith, after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(b) Unless a panel is appointed pursuant to subsection (e) of this section, the determination in subsection (a) of this section shall be made by a majority vote of:

(1) Qualified directors present at a meeting of the board of directors if the qualified directors constitute a quorum; or

(2) A committee consisting of 2 or more qualified directors appointed by majority vote of qualified directors present at a meeting of the board of directors, regardless of whether the qualified directors constitute a quorum.

(c) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing that:

(1) A majority of the board of directors did not consist of qualified directors at the time the determination was made; or

(2) The requirements of subsection (a) of this section have not been met.

(d) If a majority of the board of directors consisted of qualified directors at the time the determination was made, the plaintiff shall have the burden of proving that the requirements of subsection (a) of this section have not been met. Otherwise, the corporation has the burden of proving that the requirements of subsection (a) of this section have been met.

(e) Upon motion by the corporation, the Superior Court may appoint a panel of one or more individuals to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff has the burden of proving that the requirements of subsection (a) of this section have not been met.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.55. DISCONTINUANCE OR SETTLEMENT.

A derivative proceeding shall not be discontinued or settled without the Superior Court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.56. PAYMENT OF EXPENSES.

On termination of the derivative proceeding, the Superior Court may order:

(1) The corporation to pay the plaintiff's expenses incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

(2) The plaintiff to pay any defendant's expenses incurred in defending the proceeding if it finds that the

proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-305.57. APPLICABILITY TO FOREIGN CORPORATIONS.

In any derivative proceeding in the right of a foreign corporation, the matters covered by this part shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation, except for §§ 29-305.53, 29- 305.55, and 29-305.56.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

PART E. PROCEEDING TO APPOINT CUSTODIAN OR RECEIVER.

§ 29-305.70. SHAREHOLDER ACTION TO APPOINT CUSTODIAN OR RECEIVER.

(a) The Superior Court may appoint one or more persons to be custodians or, if the corporation is insolvent, to be receivers, of and for a corporation in a proceeding by a shareholder if it is established that:

(1) 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

(2) The directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

(b) The Superior Court:

(1) May issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing is held;

(2) Shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and

(3) Shall have jurisdiction over the corporation and all of its property, wherever located.

(c) The Superior Court may appoint an individual or domestic or foreign corporation, authorized to do business in the District, as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

(d) The Superior Court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended. Among other powers:

(1) A custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation; and

(2) A receiver may:

(A) Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and

(B) Sue and defend in the receiver's own name as receiver.

(e) The Superior Court during a custodianship may redesignate the custodian a receiver and, during a receivership, may redesignate the receiver a custodian, if doing so is in the best interests of the

corporation.

(f) The Superior Court, during the custodianship or receivership, may order compensation paid and expense disbursements or reimbursements made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

SUBCHAPTER VI. DIRECTORS AND OFFICERS.

PART A. BOARD OF DIRECTORS.

§ 29-306.01. REQUIREMENT FOR AND FUNCTIONS OF BOARD OF DIRECTORS.

(a) Except as otherwise provided in § 29-305.42, each corporation shall have a board of directors.

(b) All corporate powers shall be exercised by or under the authority of the board of directors of the corporation and the business and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under § 29- 305.42.

(c) In the case of a public corporation, the board's oversight responsibilities shall include attention to:

(1) Business performance and plans;

(2) Major risks to which the corporation is or may be exposed;

(3) The performance and compensation of senior officers;

(4) Policies and practices to foster the corporation's compliance with law and ethical conduct;

(5) Preparation of the corporation's financial statements;

(6) The effectiveness of the corporation's internal controls;

(7) Arrangements for providing adequate and timely information to directors; and

(8) The composition of the board and its committees, taking into account the important role of independent directors.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.02. QUALIFICATIONS OF DIRECTORS.

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.03. NUMBER AND ELECTION OF DIRECTORS.

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

(b) The number of directors may be increased or decreased by amendment to, or in the manner provided

in, the articles of incorporation or the bylaws.

(c) Directors shall be elected at the 1st annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under § 29- 306.06.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.04. ELECTION OF DIRECTORS BY CERTAIN CLASSES OF SHAREHOLDERS.

If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. A class or classes of shares entitled to elect one or more directors shall be a separate voting group for the purposes of the election of directors.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.05. TERMS OF DIRECTORS GENERALLY.

(a) The terms of the initial directors of a corporation expire at the 1st shareholders' meeting at which directors are elected.

(b) The terms of all other directors shall expire at the next, or if their terms are staggered in accordance with § 29-306.06, at the applicable 2nd or 3rd, annual shareholders' meeting following their election, except to the extent:

(1) Provided in § 29-308.22 if a bylaw electing to be governed by that section is in effect; or

(2) A shorter term is specified in the articles of incorporation in the event of a director nominee failing to receive a specified vote for election.

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

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

(e) Except to the extent otherwise provided in the articles of incorporation or under § 29-308.22, if a bylaw electing to be governed by that section is in effect, despite the expiration of a director's term, the director shall continue to serve until the director's successor is elected and qualifies or there is a decrease in the number of directors.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.06. STAGGERED TERMS FOR DIRECTORS.

The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into 2 or 3 groups, with each group containing 1/2 or 1/3 of the total, as near as may be practicable. In that event, the terms of directors in the 1st group expire at the 1st annual shareholders' meeting after their election, the terms of the 2nd group expire at the 1st annual shareholders' meeting after their election, and the terms of the 3rd group, if any, expire at the 3rd annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of 2 years or 3 years, as the case may be, to succeed those whose terms expire.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.07. RESIGNATION OF DIRECTORS.

(a) A director may resign at any time by delivering a written resignation to the board of directors, or its chair, or to the secretary of the corporation.

(b) A resignation shall be effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that it is irrevocable.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.08. 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 shall be removed only for cause.

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

(c) If cumulative voting is authorized, a director shall not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against removal. If cumulative voting is not authorized, a director shall be removed only if the number of votes cast to remove exceeds the number of votes cast not to remove the director.

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.09. REMOVAL OF DIRECTORS BY JUDICIAL PROCEEDING.

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

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

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

(b) A shareholder proceeding on behalf of the corporation under subsection (a) of this section shall comply with all of the requirements of part D of subchapter V of this chapter, except § 29-305.51(1).

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

(d) This section shall not limit the equitable powers of the Superior Court to order other relief.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.10. 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

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

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group shall vote to fill the vacancy if it is filled by the shareholders and only the directors elected by that voting group shall fill the vacancy if it is filled by the directors.

(c) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under § 29-306.07(b) or otherwise, may be filled before the vacancy occurs, but the new director shall not take office until the vacancy occurs.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.11. COMPENSATION OF DIRECTORS.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

PART B. MEETINGS AND ACTION OF THE BOARD.

§ 29-306.20. MEETINGS.

(a) The board of directors may hold regular or special meetings in or outside of the District.

(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 shall be deemed to be present in person at the meeting.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.21. ACTION WITHOUT MEETING.

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

(b) Action taken under this section shall be the act of the board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify the time at which the action taken thereunder is to be effective. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by all the directors.

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.22. 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 shall be preceded by at least 2 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.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.23. WAIVER OF NOTICE.

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

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.24. QUORUM AND VOTING.

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

(1) Fixed number of directors if the corporation has a fixed board size; or

(2) 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 less than 1/3 of the fixed or prescribed number of directors determined under subsection (a) of this section.

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present shall be 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 shall be deemed to have assented to the action taken unless:

(1) The director objects at the beginning of the meeting, or promptly upon arrival, to holding it or transacting at the meeting;

(2) The dissent or abstention from the action taken is entered in the minutes of the meeting; or

(3) The director delivers written notice of the director's dissent or abstention to the presiding officer of

the meeting before its adjournment or to the corporation immediately after adjournment of the meeting, but the right of dissent or abstention is not available to a director who votes in favor of the action taken.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.25. COMMITTEES.

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

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

(1) A majority of all the directors in office when the action is taken; or

(2) The number of directors required by the articles of incorporation or bylaws to take action under § 29-306.24.

(c) Sections 29-306.20 through 29-306.24 apply both to committees of the board and to their members.

(d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the powers of the board of directors under § 29-306.01.

(e) A committee shall not:

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

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

(3) Fill vacancies on the board of directors or, subject to subsection (g) of this section, on any of its committees; or

(4) Adopt, amend, or repeal bylaws.

(f) The creation of, delegation of authority to, or action by a committee shall not alone constitute compliance by a director with the standards of conduct described in § 29-306.30.

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

PART C. DIRECTORS.

§ 29-306.30. STANDARDS OF CONDUCT FOR DIRECTORS.

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

(1) In good faith; and

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

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

(c) In discharging board or committee duties, a director shall disclose, or cause to be disclosed, to the other board or committee members information not already known by them but known by the director to be

material to the discharge of their decision-making or oversight functions; provided, that disclosure shall not be required to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule.

(d) In discharging board or committee duties, a director who does not have knowledge that makes reliance unwarranted may rely on:

(1) The performance by any of the persons specified in subsection (e)(1) or (3) of this section to which the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law; or

(2) Information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (e) of this section.

(e) A director may rely, in accordance with subsection (d) or (e) of this section, on:

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

(2) Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters:

(A) Within the particular person's professional or expert competence; or

(B) As to which the particular person merits confidence; or

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.31. STANDARDS OF LIABILITY FOR DIRECTORS.

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

(1) None of the following, if interposed as a bar to the proceeding by the director, precludes liability:

(A) Any provision in the articles of incorporation authorized by § 29- 302.02(b)(4);

(B) The protection afforded by § 29-306.71 for action taken in compliance with § 29-306.72 or § 29-306.73; or

(C) The protection afforded by § 29-306.80; and

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

(A) Action not in good faith;

(B) A decision:

(i) Which the director did not reasonably believe to be in the best interests of the corporation; or

(ii) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances;

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

(i) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation; and

(ii) After a reasonable expectation to such effect has been established, the director has not established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation; or

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

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

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

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

(A) Harm to the corporation or its shareholders has been suffered; and

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

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

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

(c) This section shall not:

(1) In any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under § 29-306.71(b)(3), alter the burden of proving the fact or lack of fairness otherwise applicable;

(2) Alters the fact or lack of liability of a director under another section of this chapter, such as the provisions governing the consequences of an unlawful distribution under § 29-306.32 or a transactional interest under § 29- 306.71; or

(3) Affects any rights to which the corporation or a shareholder may be entitled under another law of the District or the United States.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.32. DIRECTORS' LIABILITY FOR UNLAWFUL DISTRIBUTIONS.

(a) A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to § 29-304.60(a) or § 29-312.09(a) shall be personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating § 29-304.60(a) or § 29-312.09(a) if the party asserting liability establishes that when taking the action the director did not comply with § 29-306.30.

(b) A director held liable under subsection (a) of this section for an unlawful distribution shall be entitled to:

(1) Contribution from every other director who could be held liable under subsection (a) of this section for the unlawful distribution; and

(2) Recoupment from each shareholder of the pro-rata portion of the amount of the unlawful distribution the shareholder accepted, knowing the distribution was made in violation of § 29-304.60(a) or § 29-312.09(a).

(c) A proceeding to enforce:

(1) The liability of a director under subsection (a) of this section shall be barred unless it is commenced within 2 years after the date:

(A) On which the effect of the distribution was measured under § 29- 304.60(e) or (g);

(B) As of which the violation of § 29-304.60(a) occurred as the consequence of disregard of a restriction in the articles of incorporation; or

(C) On which the distribution of assets to shareholders under § 29-312.09(a) was made; or

(2) Contribution or recoupment under subsection (b) of this section shall be barred unless it is commenced within one year after the liability of the claimant has been finally adjudicated under subsection (a) of this section.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

PART D. OFFICERS.

§ 29-306.40. OFFICERS.

(a) A corporation shall have the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

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

(c) The bylaws or the board of directors shall assign to one of the officers responsibility for preparing the minutes of the directors' and shareholders' meetings and for maintaining and authenticating the records of the corporation required to be kept under § 29-313.01(a) and (e).

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.41. FUNCTIONS OF OFFICERS.

Each officer has the authority to, and shall, perform:

(1) The functions set forth in the bylaws; or

(2) To the extent consistent with the bylaws, the functions prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the functions of other officers.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.42. STANDARDS OF CONDUCT FOR OFFICERS.

(a) An officer, when performing in such capacity, shall have the duty to act:

(1) In good faith;

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

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

(b) The duty of an officer shall include the obligation to inform the:

(1) Superior officer to whom, or the board of directors or the committee thereof to which, the officer reports of information about the affairs of the corporation known to the officer, within the scope of the officer's functions, and known to the officer to be material to the superior officer, board or committee; and

(2) Officer's superior officer, another appropriate person within the corporation, or the board of directors, or a committee thereof, of any actual or probable material violation of law involving the corporation or material breach of duty to the corporation by an officer, employee, or agent of the corporation, that the officer believes has occurred or is likely to occur.

(c) In discharging his or her duties, an officer who does not have knowledge that makes reliance unwarranted may rely on:

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

(2) Information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented, or by legal counsel, public

accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters:

(A) Within the particular person's professional or expert competence; or

(B) As to which the particular person merits confidence.

(d) An officer shall not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as an officer, if the duties of the office are performed in compliance with this section. Whether an officer who does not comply with this section has liability depends in such instance on applicable law, including those principles of § 29-306.31 that are relevant.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.43. RESIGNATION AND REMOVAL OF OFFICERS.

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

(b) An officer may be removed at any time with or without cause by:

(1) The board of directors;

(2) The officer who appointed such officer, unless the bylaws or the board of directors provide otherwise; or

(3) Any other officer if authorized by the bylaws or the board of directors.

(c) For the purposes of this section, the term "appointing officer" means the officer, including any successor to that officer, who appointed the officer resigning or being removed.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.44. CONTRACT RIGHTS OF OFFICERS.

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

(b) An officer's removal shall not affect the officer's contract rights, if any, with the corporation. An officer's resignation shall not affect the corporation's contract rights, if any, with the officer.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

PART E. INDEMNIFICATION AND ADVANCE FOR EXPENSES.

§ 29-306.50. DEFINITIONS.

For the purposes of this part, the term:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger.

(2) "Director" or "officer" means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, manager, partner, trustee, employee, or agent of another entity or employee benefit plan. A director or officer shall be considered to be serving an employee benefit plan

at the corporation's request if the individual's duties to the corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan. The term "director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

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

(4)(A) "Official capacity" means:

(i) When used with respect to a director, the office of director in a corporation; and

(ii) When used with respect to an officer, as contemplated in § 29-306.56, the office in a corporation held by the officer.

(B) The term "official capacity" shall not include service for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan, or other entity.

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

(6) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative and whether formal or informal.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.51. PERMISSIBLE INDEMNIFICATION.

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

(1)(A) Conducted himself or herself in good faith;

(B) Reasonably believed:

(i) In the case of conduct in an official capacity, that his or her conduct was in the best interests of the corporation; and

(ii) In all other cases, that the director's conduct was at least not opposed to the best interests of the corporation; and

(C) In the case of any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful; or

(2) Engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation, as authorized by § 29-302.02(b)(5).

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in, and the beneficiaries of, the plan shall be conduct that satisfies subsection (a)(1)(B)(ii) of this section.

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

(d) Unless ordered by the Superior Court under § 29-306.54(a)(3), a corporation may not indemnify a director in connection with a proceeding:

(1) By or in the right of the corporation, except for expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection (a) of this section; or

(2) With respect to conduct for which the director was adjudged liable on the basis of receiving a financial benefit to which the director was not entitled, whether or not involving action in the director's official capacity.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.52. MANDATORY INDEMNIFICATION.

A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because he or she was a director of the corporation against expenses incurred by the director in connection with the proceeding.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.53. ADVANCE FOR EXPENSES.

(a) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a member of the board of directors if the director delivers to the corporation:

(1) A written affirmation of the director's good faith belief that the relevant standard of conduct described in § 29-306.51 has been met by the director or that the proceeding involves conduct for which liability has been eliminated under a provision of the articles of incorporation as authorized by § 29- 302.02(b)(4); and

(2) A written undertaking of the director to repay any funds advanced if the director is not entitled to mandatory indemnification under § 29-306.52 and it is ultimately determined under § 29-306.54 or § 29-306.55 that the director has not met the relevant standard of conduct described in § 29- 306.51.

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

(c) The authorization under this section shall be made:

(1) By the board of directors:

(A) If there are 2 or more qualified directors, by a majority vote of all the qualified directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of 2 or more qualified directors appointed by such a vote; or

(B) If there are fewer than 2 qualified directors, by the vote necessary for action by the board in accordance with § 29-306.24(c), in which authorization directors who are not qualified directors may participate; or

(2) By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director shall not be voted on the authorization.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.54. COURT-ORDERED INDEMNIFICATION AND ADVANCE FOR EXPENSES.

(a) A director who is a party to a proceeding because he or she is a director may apply for indemnification or an advance for expenses to the Superior Court. After receipt of an application and after giving any notice it considers necessary, the court shall:

(1) Order indemnification if the court determines that the director is entitled to mandatory indemnification under § 29-306.52;

(2) Order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by § 29-306.58(a); or

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

(A) Indemnify the director; or

(B) Advance expenses to the director, even if the director has not met the relevant standard of conduct set forth in § 29-306.51(a), failed to comply with § 29-306.53, or was adjudged liable in a proceeding referred to in § 29-306.51(d)(1) or (2) of this section, but, if the director was adjudged so liable, indemnification shall be limited to expenses incurred in connection with the proceeding.

(b) If the Superior Court determines that the director is entitled to indemnification under subsection (a)(1) of this section or to indemnification or advance for expenses under subsection (a)(2) of this section, it shall also order the corporation to pay the director's expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subsection (a)(3) of this section, it may also order the corporation to pay the director's expenses to obtain court-ordered indemnification or advance for expenses.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.55. DETERMINATION AND AUTHORIZATION OF INDEMNIFICATION.

(a) A corporation shall not indemnify a director under § 29-306.51 unless authorized for a specific proceeding after a determination has been made that indemnification is permissible because the director has met the relevant standard of conduct set forth in § 29-306.51.

(b) The determination under subsection (a) of this section shall be made:

(1) If there are 2 or more qualified directors, by the board of directors by a majority vote of all the qualified directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of 2 or more qualified directors appointed by such a vote;

(2) By special legal counsel:

(A) Selected in the manner prescribed in paragraph (1) of this subsection; or

(B) If there are fewer than 2 qualified directors, selected by the board of directors, in which selection directors who are not qualified directors may participate; or

(3) By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director shall not be voted on the determination.

(c) Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible; provided, that if there are fewer than 2 qualified directors, or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled to select special legal counsel under subsection (b)(2)(B) of this section.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.56. INDEMNIFICATION OF OFFICERS.

(a) A corporation may indemnify and advance expenses under this part to an officer of the corporation who is a party to a proceeding because he or she is an officer of the corporation:

(1) To the same extent as a director; and

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

(A) In connection with a proceeding by or in the right of the corporation other than for expenses incurred in connection with the proceeding; or

(B) Arising out of conduct that constitutes:

(i) Receipt by the officer of a financial benefit to which the officer is not entitled;

(ii) An intentional infliction of harm on the corporation or the shareholders; or

(iii) An intentional violation of criminal law.

(b) Subsection (a)(2) of this section shall apply to an officer who is also a director if the basis on which the officer is made a party to the proceeding is an act or omission solely as an officer.

(c) An officer of a corporation who is not a director shall be entitled to mandatory indemnification under § 29-306.52, and may apply to the Superior Court under § 29-306.54 for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those provisions.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.57. INSURANCE.

A corporation may purchase insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to the individual against the same liability under this part.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.58. VARIATION BY CORPORATE ACTION; APPLICATION OF PART.

(a) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with § 29-306.51 or advance funds to pay for or reimburse expenses in accordance with § 29-306.53. Any such obligatory provision shall satisfy the requirements for authorization referred to in § 29-306.53(c) and in § 29-306. 55(c). Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law obligates the corporation to advance funds to pay for or reimburse expenses in accordance with § 29-306.53 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(b) Any provision pursuant to subsection (a) of this section shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor shall be a party, existing at the time the merger takes effect, shall be governed by § 29- 309.07(a)(4).

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

(d) This part shall not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with appearing as a witness in a proceeding at a time when he or she is not a party.

(e) This part shall not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.59. EXCLUSIVITY OF PART.

A corporation may provide indemnification or advance expenses to a director or an officer only as

permitted by this part.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

PART F. DIRECTORS' CONFLICTING INTEREST TRANSACTIONS.

§ 29-306.70. DEFINITIONS.

For the purposes of this part, the term:

(1) "Control", including the term "controlled by", means:

(A) Having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract, or otherwise; or

(B) Being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

(2) "Director's conflicting interest transaction" means a transaction effected or proposed to be effected by the corporation, or by an entity controlled by the corporation:

(A) To which, at the relevant time, the director is a party;

(B) Respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director; or

(C) Respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

(3) "Fair to the corporation" means, for the purposes of § 29-306.71(b)(3), that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was:

(A) Fair in terms of the director's dealings with the corporation; and

(B) Comparable to what might have been obtainable in an arm's length transaction, given the consideration paid or received by the corporation.

(4) "Material financial interest" means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's judgment when participating in action on the authorization of the transaction.

(5) "Related person" means:

(A) The director's spouse;

(B) A child, stepchild, grandchild, parent, step parent, grandparent, sibling, step sibling, half sibling, aunt, uncle, niece or nephew, or spouse of any thereof, of the director or of the director's spouse;

(C) An individual living in the same home as the director;

(D) An entity, other than the corporation or an entity controlled by the corporation, controlled by the director or any person specified above in this paragraph;

(E) A domestic or foreign:

(i) Business or nonprofit corporation, other than the corporation or an entity controlled by the corporation, of which the director is a governor;

(ii) Unincorporated entity of which the director is a governor or a member of the governing body; or

(iii) Individual, trust, or estate for whom or of which the director is a trustee, guardian, personal representative, or like fiduciary; or

(F) A person that is, or an entity that is controlled by, an employer of the director.

(6) "Relevant time" means:

(A) The time at which directors' action respecting the transaction is taken in compliance with § 29-306.72; or

(B) If the transaction is not brought before the board of directors of the corporation, or its

committee, for action under § 29-306.72, at the time the corporation, or an entity controlled by the corporation, becomes legally obligated to consummate the transaction.

(7) "Required disclosure" means disclosure of:

(A) The existence and nature of the director's conflicting interest; and

(B) All facts known to the director respecting the subject matter of the transaction that a director free of such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.71. JUDICIAL ACTION.

(a) A transaction effected or proposed to be effected by the corporation, or by an entity controlled by the corporation, shall not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, on the ground that the director has an interest respecting the transaction, if it is not a director's conflicting interest transaction.

(b) A director's conflicting interest transaction shall not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, on the ground that the director has an interest respecting the transaction, if:

(1) Directors' action respecting the transaction was taken in compliance with § 29-306.72 at any time;

(2) Shareholders' action respecting the transaction was taken in compliance with § 29-306.73 at any time; or

(3) The transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.72. DIRECTORS' ACTION.

(a) Except as otherwise provided in subsection (b) of this section, directors' action respecting a director's conflicting interest transaction shall be effective for the purposes of § 29-306.71(b)(1) if the transaction has been authorized by the affirmative vote of a majority, but no fewer than 2, of the qualified directors who voted on the transaction, after required disclosure by the conflicted director of information not already known by such qualified directors, or after modified disclosure in compliance with subsection (b) of this section; provided, that:

(1) The qualified directors have deliberated and voted outside the presence of and without the participation by any other director; and

(2)(A) If the action has been taken by a committee, all members of the committee were qualified directors; and

(B)(i) The committee was composed of all the qualified directors on the board of directors; or

(ii) The members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board.

(b) Notwithstanding subsection (a) of this section, when a transaction is a director's conflicting interest transaction only because a related person described in § 29-306.70(5)(E) or (F) is a party to or has a material financial interest in the transaction, the conflicted director shall not be obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule; provided, that the conflicted director discloses to the qualified directors voting on the transaction:

(1) All information required to be disclosed that is not so violative;

(2) The existence and nature of the director's conflicting interest; and

(3) The nature of the conflicted director's duty not to disclose the confidential information.

(c) A majority, but no fewer than 2, of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for the purposes of action that complies with this section.

(d) If directors' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws, or a provision of law, independent action to satisfy those authorization requirements shall be taken by the board of directors or a committee, in which action directors who are not qualified directors may participate.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-306.73. SHAREHOLDERS' ACTION.

(a) Shareholders' action respecting a director's conflicting interest transaction shall be effective for the purposes of § 29-306.71(b)(2) if a majority of the votes cast by the holders of all qualified shares are in favor of the transaction after:

(1) Notice to shareholders describing the action to be taken respecting the transaction;

(2) Provision to the corporation of the information referred to in subsection (b) of this section; and

(3) Communication to the shareholders entitled to vote on the transaction of the information that is the subject of required disclosure, to the extent the information is not known by them.

(b) A director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes, in writing, of the number of shares that the director knows are not qualified shares under subsection (c) of this section, and the identity of the holders of those shares.

(c) For the purposes of this section, the term:

(1) "Holder" means, and "held by" refers to, shares held by both a record shareholder and a beneficial shareholder.

(2) "Qualified shares" means all shares entitled to be voted with respect to the transaction except for shares that the secretary or other officer or agent of the corporation authorized to tabulate votes either knows, or under subsection (b) of this section is notified, are held by:

(A) A director who has a conflicting interest respecting the transaction; or

(B) A related person of the director, excluding a person described in § 29- 306.70(5)(F).

(d) A majority of the votes entitled to be cast by the holders of all qualified shares shall constitute a quorum for purposes of compliance with this section. Subject to subsection (e) of this section, shareholders' action that otherwise complies with this section shall not be affected by the presence of holders, or by the voting, of shares that are not qualified shares.

(e) If a shareholders' vote does not comply with subsection (a) of this section solely because of a director's failure to comply with subsection (b) of this section, and if the director establishes that the failure was not intended to influence and did not in fact determine the outcome of the vote, the Superior Court may take such action respecting the transaction and the director, and may give such effect, if any, to the shareholders' vote, as the court considers appropriate in the circumstances.

(f) If shareholders' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws, or a provision of law, independent action to satisfy those authorization requirements shall be taken by the shareholders, in which action shares that are not qualified shares may participate.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

PART G. BUSINESS OPPORTUNITIES.

§ 29-306.80. BUSINESS OPPORTUNITIES.

(a) A director's taking advantage, directly or indirectly, of a business opportunity shall not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, in a proceeding by or in the right of the corporation on the ground that the opportunity should have first been offered to the corporation, if, before becoming legally obligated respecting the opportunity, the director brings it, to the attention of the corporation and:

(1) Action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in § 29- 306.72, as if the decision being made concerned a director's conflicting interest transaction; or

(2) Shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in § 29- 306. 73, as if the decision being made concerned a director's conflicting interest transaction; provided, that rather than making "required disclosure" as defined in § 29-306.70, in each case the director shall have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity that are then known to the director.

(b) In any proceeding seeking equitable relief or other remedies based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ the procedure described in subsection (a) of this section before taking advantage of the opportunity shall not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

SUBCHAPTER VII. DOMESTICATION.

§ 29-307.01. DOMESTICATION.

(a) A foreign business corporation may become a domestic business corporation only if the domestication is permitted by the organic law of the foreign corporation.

(b) A domestic business corporation may become a foreign business corporation if the domestication is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be approved by the adoption by the corporation of a plan of domestication in the manner provided in this subchapter.

(c) The plan of domestication shall include:

(1) A statement of the jurisdiction in which the corporation is to be domesticated;

(2) The terms and conditions of the domestication;

(3) The manner and basis of reclassifying the shares of the corporation following its domestication into shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing; and

(4) Any desired amendments to the articles of incorporation of the corporation following its domestication.

(d) The plan of domestication may also include a provision that the plan may be amended prior to filing the document required by the laws of the District or the other jurisdiction to consummate the domestication; provided, that subsequent to approval of the plan by the shareholders, the plan shall not be amended to change:

(1) The amount or kind of shares or other securities, obligations, rights to acquire shares or other securities, cash, or other property to be received by the shareholders under the plan;

(2) The articles of incorporation as they will be in effect immediately following the domestication, except for changes permitted by § 29-308.05 or by comparable provisions of the laws of the other jurisdiction; or

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

(e) Terms of a plan of domestication may be made dependent upon facts objectively ascertainable outside the plan in accordance with § 29-301.04.

(f) If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or executed by a domestic business corporation before the effective date of this chapter contains a provision applying to a merger of the corporation and the document does not refer to a domestication of the corporation, the provision shall be deemed to apply to a domestication of the corporation until such time as the provision shall be amended subsequent to that date.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-307.02. ACTION ON A PLAN OF DOMESTICATION.

(a) In the case of a domestication of a domestic business corporation in a foreign jurisdiction, the following rules apply:

(1) The plan of domestication shall be adopted by the board of directors.

(2) After adopting the plan of domestication, the board of directors shall submit the plan to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the plan, 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 shall transmit to the shareholders the basis for that determination.

(3) The board of directors may condition its submission of the plan of domestication to the shareholders on any basis.

(4) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan of domestication is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan and shall contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the articles of incorporation as they will be in effect immediately after the domestication.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to paragraph (3) of this subsection, requires a greater vote or a greater number of votes to be present, approval of the plan of domestication requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists, and, if any class or series of shares is entitled to vote as a separate group on the plan, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the domestication by that voting group exists.

(6) Separate voting by voting groups shall be required by each class or series of shares that:

(A) Are to be reclassified under the plan of domestication into other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing;

(B) Would be entitled to vote as a separate group on a provision of the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under § 29-308. 04; or

(C) Is entitled under the articles of incorporation to vote as a voting group to approve an amendment of the articles.

(7) If any provision of the articles of incorporation, bylaws, or an agreement to which any of the directors or shareholders are parties, adopted, or entered into before the effective date of this chapter, applies to a merger of the corporation and that document does not refer to a domestication of the corporation, the provision shall apply to a domestication of the corporation until such time as the provision is amended subsequent to that date.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-307.03. ARTICLES OF DOMESTICATION.

(a) After the domestication of a foreign business corporation has been authorized as required by the laws of the foreign jurisdiction, articles of domestication must be signed by any officer or other duly authorized representative. The articles shall set forth:

(1) The name of the corporation immediately before the filing of the articles of domestication and, if that name is unavailable for use in the District or the corporation desires to change its name in connection with the domestication, a name that satisfies the requirements of § 29-103.02(a);

(2) The jurisdiction of incorporation of the corporation immediately before the filing of the articles of domestication and the date the corporation was incorporated in that jurisdiction; and

(3) A statement that the domestication of the corporation in the District was duly authorized as required by the laws of the jurisdiction in which the corporation was incorporated immediately before its domestication in the District.

(b)(1) The articles of domestication shall contain:

(A) All of the provisions that § 29-302.02(a) requires to be set forth in articles of incorporation and any other desired provisions that § 29- 302.02(b) permits to be included in articles of incorporation; or

(B) Have attached articles of incorporation.

(2) For the purposes of paragraph (1) of this subsection, provisions that would not be required to be included in restated articles of incorporation may be omitted.

(c) The articles of domestication shall be delivered to the Mayor for filing and take effect at the effective time provided in § 29-102.03.

(d) If the foreign corporation is authorized to do business in the District under subchapter V of Chapter 1 of this title, its certificate of registration shall be canceled automatically on the effective date of its domestication.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-307.04. SURRENDER OF CHARTER UPON DOMESTICATION.

(a) Whenever a domestic business corporation has adopted and approved, in the manner required by this subchapter, a plan of domestication providing for the corporation to be domesticated in a foreign jurisdiction, articles of charter surrender shall be signed on behalf of the corporation by any officer or other duly authorized representative. The articles of charter surrender shall set forth:

(1) The name of the corporation;

(2) A statement that the articles of charter surrender are being filed in connection with the domestication of the corporation in a foreign jurisdiction;

(3) A statement that the domestication was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by this chapter and the articles of incorporation; and

(4) The corporation's new jurisdiction of incorporation.

(b) The articles of charter surrender shall be delivered by the corporation to the Mayor for filing. The articles of charter surrender shall be effective on the effective time provided in § 29-102.03.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-307.05. EFFECT OF DOMESTICATION.

(a) When a domestication becomes effective:

(1) The title to all real and personal property, both tangible and intangible, of the corporation shall remain in the corporation without reversion or impairment;

(2) The liabilities of the corporation shall remain the liabilities of the corporation;

(3) An action or proceeding pending against the corporation shall continue against the corporation as if the domestication had not occurred;

(4) The articles of domestication, or the articles of incorporation attached to the articles of domestication, shall constitute the articles of incorporation of a foreign corporation domesticating in the District;

(5) The shares of the corporation shall be reclassified into shares, other securities, obligations, rights to acquire shares or other securities, or into cash or other property in accordance with the terms of the domestication, and the shareholders shall be entitled only to the rights provided by those terms and to any appraisal rights they may have under the organic law of the domesticating corporation; and

(6) The corporation shall be deemed to:

(A) Be incorporated under and subject to the organic law of the domesticated corporation for all purposes;

(B) Be the same corporation without interruption as the domesticating corporation; and

(C) Have been incorporated on the date the domesticating corporation was originally incorporated.

(b) When a domestication of a domestic business corporation in a foreign jurisdiction becomes effective:

(1) In a proceeding to enforce the rights of shareholders that exercise appraisal rights in connection with the domestication, service of process may be made on the foreign business corporation in accordance with § 29-104.12; and

(2) The foreign business corporation shall be deemed to agree that it will promptly pay the amount, if any, to which such shareholders are entitled under subchapter XI of this chapter.

(c) The owner liability of a shareholder in a foreign corporation that is domesticated in the District shall be as follows:

(1) The domestication shall not discharge any owner liability under the laws of the foreign jurisdiction to the extent any such owner liability arose before the effective time of the articles of domestication.

(2) The shareholder shall not have owner liability under the laws of the foreign jurisdiction for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of domestication.

(3) The laws of the foreign jurisdiction shall continue to apply to the collection or discharge of any owner liability preserved by paragraph (1) of this subsection, as if the domestication had not occurred.

(4) The shareholder shall have whatever rights of contribution from other shareholders are provided by the laws of the foreign jurisdiction with respect to any owner liability preserved by paragraph (1) of this subsection, as if the domestication had not occurred.

(d) A shareholder that becomes subject to owner liability for some or all of the debts, obligations, or liabilities of the corporation as a result of its domestication in the District shall have owner liability only for those debts, obligations, or liabilities of the corporation that arise after the effective time of the articles of domestication.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-307.06. ABANDONMENT OF A DOMESTICATION.

(a) Unless otherwise provided in a plan of domestication of a domestic business corporation, after the plan has been adopted and approved as required by this subchapter, and at any time before the domestication has become effective, it may be abandoned by the board of directors without action by the shareholders.

(b) If a domestication is abandoned under subsection (a) of this section after articles of charter surrender have been filed with the Mayor but before the domestication has become effective, a statement that the domestication has been abandoned in accordance with this section, signed by an officer or other duly authorized representative, shall be delivered to the Mayor for filing prior to the effective date of the domestication. The statement shall be effective upon filing and the domestication shall be deemed abandoned and shall not become effective.

(c) If the domestication of a foreign business corporation in the District is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication have been filed with the Mayor, a statement that the domestication has been abandoned, signed by an officer or other duly authorized representative, shall be delivered to the Mayor for filing. The statement shall be effective upon filing and the

domestication shall be deemed abandoned and shall not become effective.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

SUBCHAPTER VIII. AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS.

PART A. AMENDMENT OF ARTICLES OF INCORPORATION.

§ 29-308.01. AUTHORITY TO AMEND.

(a) A 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 that is not required to be contained in the articles of incorporation.

(b) A shareholder of the corporation shall 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 corporation.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-308.02. AMENDMENT BEFORE ISSUANCE OF SHARES.

If a 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 corporation's articles of incorporation.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-308.03. AMENDMENT BY BOARD OF DIRECTORS AND SHAREHOLDERS.

If a corporation has issued shares, an amendment to the articles of incorporation shall be adopted in the following manner:

(1) The proposed amendment shall be adopted by the board of directors.

(2) Except as otherwise provided in §§ 29-308.05, 29-308.07, and 29- 308.08, after adopting the proposed amendment, the board of directors shall submit the amendment to the shareholders for their approval. The board of directors shall also transmit to the shareholders 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 shall transmit to the shareholders the basis for that determination.

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

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

(5) Unless the articles of incorporation, or the board of directors acting pursuant to paragraph (3) of this subsection requires a greater vote or a greater number of shares to be present, approval of the amendment shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the amendment exists, and, if any class or series of shares is entitled to vote as a separate group on the amendment, except as otherwise provided in § 29-308.04(c), the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the amendment by that voting group exists.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-308.04. VOTING ON AMENDMENTS BY VOTING GROUPS.

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

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

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

(3) Change the rights, preferences, or limitations of all or part of the shares of the class;

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

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

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

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

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

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

(c) If a proposed amendment that entitles the holders of 2 or more classes or series of shares to vote as separate voting groups under this section would affect those 2 or more classes or series in the same or a substantially similar way, the holders of shares of all the classes or series so affected shall vote together as a single voting group on the proposed amendment, unless otherwise provided in the articles of incorporation or required by the board of directors.

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-308.05. AMENDMENT BY BOARD OF DIRECTORS.

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval:

(1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) To delete the names and addresses of the initial directors;

(3) To change the information required by § 29-104.04

(4) If the corporation has only one class of shares outstanding:

(A) To change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or

(B) To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;

(5) To change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name;

(6) To reflect a reduction in authorized shares, as a result of the operation of § 29-304.41(b), when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares;

(7) To delete a class of shares from the articles of incorporation, as a result of the operation of § 29-304.41(b), if there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares; or

(8) To make any change expressly permitted by § 29-304.02(a) or (b) to be made without shareholder approval.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-308.06. ARTICLES OF AMENDMENT.

After an amendment to the articles of incorporation has been adopted and approved in the manner required by this chapter and by the articles of incorporation, the corporation shall deliver to the Mayor for filing articles of amendment, which shall set forth:

(1) The name of the corporation;

(2) The text of each amendment adopted or the information required by § 29- 301.04;

(3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself, which may be made dependent upon facts objectively ascertainable outside the articles of amendment in accordance with § 29- 301.04;

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

(5) If an amendment:

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

(B) Required approval by the shareholders, a statement that the amendment was duly approved by the shareholders in the manner required by this chapter and by the articles of incorporation; or

(C) Is being filed pursuant to § 29-301.04, a statement to that effect.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-308.07. RESTATED ARTICLES OF INCORPORATION.

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

(b) If the restated articles include one or more new amendments that require shareholder approval, the amendments shall be adopted and approved as provided in § 29-308.03.

(c) A corporation that restates its articles of incorporation shall deliver to the Mayor for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation, together with a certificate which states that the restated articles consolidate all amendments into a single

document and, if a new amendment is included in the restated articles, which also includes the statements required under § 29- 308.06.

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

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-308.08. AMENDMENT PURSUANT TO REORGANIZATION.

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

(b) The individual designated by the Superior Court shall deliver to the Mayor for filing articles of amendment setting forth:

(1) The name of the corporation;

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

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

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

(5) A statement that the court had jurisdiction of the proceeding under federal law.

(c) This section shall not apply after entry of a final decree in the reorganization proceeding even though the Superior Court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-308.09. EFFECT OF AMENDMENT.

An amendment to the articles of incorporation shall not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name shall not abate a proceeding brought by or against the corporation in its former name.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

PART B. AMENDMENT OF BYLAWS.

§ 29-308.20. AMENDMENT BY BOARD OF DIRECTORS OR SHAREHOLDERS.

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

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

(1) The articles of incorporation, § 29-308.21 or, if applicable, § 29- 308.22 reserve that power exclusively to the shareholders in whole or part; or

(2) The shareholders in amending, repealing, or adopting a bylaw expressly provide that the board of

directors shall not amend, repeal, or reinstate that bylaw.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-308.21. BYLAW INCREASING QUORUM OR VOTING REQUIREMENT FOR DIRECTORS.

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

(1) If originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides;

(2) If adopted by the board of directors, either by the shareholders or by the board of directors.

(b) A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the board of directors may provide that it can 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) of this section to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors shall 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.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-308.22. BYLAW PROVISIONS RELATING TO THE ELECTION OF DIRECTORS.

(a) Unless the articles of incorporation specifically prohibit the adoption of a bylaw pursuant to this section, alter the vote specified in § 29- 305.28(a), or provide for cumulative voting, a public corporation may elect in its bylaws to be governed in the election of directors as follows:

(1) Each vote entitled to be cast may be voted for or against up to that number of candidates that is equal to the number of directors to be elected, or a shareholder may indicate an abstention, but without cumulating the votes.

(2)(A) To be elected, a nominee shall have received a plurality of the votes cast by holders of shares entitled to vote in the election at a meeting at which a quorum is present; provided, that a nominee who is elected but receives more votes against than for election serves as a director for a term that terminates on the date that is the earlier of:

(i) Ninety days from the date on which the voting results are determined pursuant to § 29-305.29(b)(5); or

(ii) The date on which an individual is selected by the board of directors to fill the office held by the director, which selection shall be deemed to constitute the filling of a vacancy by the board to which § 29-306. 10 applies.

(B) Subject to paragraph (3) of this subsection, a nominee who is elected but receives more votes against than for election shall not serve as a director beyond the 90-day period set forth in subparagraph (A)(i) of this paragraph.

(3) The board of directors may select any qualified individual to fill the office held by a director who received more votes against than for election.

(b) Subsection (a) of this section shall not apply to an election of directors by a voting group if (1) at the expiration of the time fixed under a provision requiring advance notification of director candidates, or (2) absent such a provision, at a time fixed by the board of directors which is not more than 14 days before notice is given of the meeting at which the election is to occur, there are more candidates for election by the voting group than the number of directors to be elected, one or more of whom are properly proposed by shareholders. An individual shall not be considered a candidate for purposes of this subsection if the board of directors determines before the notice of meeting is given that the individual's candidacy shall not

create a bona fide election contest.

(c) A bylaw electing to be governed by this section shall be repealed:

(1) If originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides;

(2) If adopted by the board of directors, by the board of directors or the shareholders.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

SUBCHAPTER IX. MERGER AND SHARE EXCHANGES.

§ 29-309.01. DEFINITIONS.

For the purposes of this subchapter, the term:

(1) "Acquired corporation" means the domestic or foreign corporation whose shares are acquired in a share exchange.

(2) "Acquiring corporation" means the domestic or foreign corporation that acquires shares in a share exchange.

(3) "Merger" means a business combination pursuant to § 29-309.02.

(4) "Party to a merger" or "party to a share exchange" means any domestic or foreign corporation that will:

(A) Merge under a plan of merger;

(B) Acquire shares of another corporation or an eligible entity in a share exchange; or

(C) Have all of its shares or all of one or more classes or series of its shares acquired in a share exchange.

(5) "Share exchange" means a business combination pursuant to § 29-309.03.

(6) "Survivor" in a merger means the corporation into which one or more other corporations are merged. A survivor of a merger may preexist the merger or be created by the merger.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-309.02. MERGER.

(a) One or more domestic business corporations may merge with one or more domestic or foreign business corporations pursuant to a plan of merger, or 2 or more foreign business corporations or domestic may merge into a new domestic business corporation to be created in the merger, in the manner provided in this subchapter.

(b) A foreign business may be a party to a merger with a domestic business corporation, or may be the survivor in such a merger, if the merger is permitted by the jurisdiction of the foreign business corporation is incorporated.

(c) If the organic law of a domestic eligible entity does not provide procedures for the approval of a merger, a plan of merger may be adopted and approved, the merger effectuated, and appraisal rights exercised in accordance with the procedures in this subchapter and subchapter XI of this chapter. For the purposes of applying this subchapter and subchapter XI of this chapter:

(1) The eligible entity, its members or interest holders, eligible interests and organic documents taken together shall be deemed to be a domestic business corporation, shareholders, shares and articles of incorporation, respectively and vice versa as the context may require; and

(2) If the business and affairs of the eligible entity are managed by a group of persons that is not identical to the members or interest holders, that group shall be deemed to be the board of directors.

(d) The plan of merger shall include:

(1) The name of each domestic or foreign business corporation that will merge and the name of the domestic or foreign business corporation that will be the survivor of the merger;

(2) The terms and conditions of the merger;

(3) The manner and basis of converting the shares of each merging domestic or foreign business corporation into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property, or any combination of the foregoing;

(4) The articles of incorporation of any domestic or foreign business corporation to be created by the merger, or if a new domestic or foreign business corporation is not to be created by the merger, any amendments to the survivor's articles of incorporation; and

(5) Any other provisions required by the laws under which any party to the merger is incorporated, or by the articles of incorporation of any such party.

(e) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with § 29-301.04.

(f) The plan of merger may also include a provision that the plan may be amended by the directors or shareholders of a domestic business corporation; provided, that the shareholders that were entitled to vote on the plan shall be entitled to vote on any amendment of the plan that will change:

(1) The amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, or other property to be received under the plan by the shareholders of any party to the merger;

(2) The articles of incorporation of any corporation that will survive or be created as a result of the merger, except for changes permitted by § 29- 308.05; or

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

(g) A merger in which a business corporation and another form of entity are parties shall be governed by Chapter 2 of this title.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-309.03. SHARE EXCHANGE.

(a) Through a share exchange:

(1) A domestic business corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign business corporation in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange; or

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

(b) A foreign business corporation may be a party to a share exchange only if the share exchange is permitted by the laws under which the corporation is incorporated.

(c) The plan of share exchange shall include:

(1) The name of the acquired corporation and the name of the acquiring corporation;

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

(3) The manner and basis of exchanging shares of the acquired corporation into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities, or eligible interests, cash, other property, or any combination of the foregoing; and

(4) Any other provisions required by the laws under which any party to the share exchange is incorporated or by the articles of incorporation of any party.

(d) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with § 29-301.04.

(e) The plan of share exchange may also include a provision that the plan may be amended by the directors or shareholders of a domestic acquired corporation; provided, that the shareholders that were entitled to vote on the plan shall be entitled to vote on any amendment of the plan that will change:

(1) The amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, or other property to be issued by the corporation or to be received under the plan by the shareholders of the acquired corporation; or

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

(f) This section shall not limit the power of a domestic corporation to acquire shares of another corporation in a transaction other than a share exchange.

(g) A share exchange or interest exchange in which a business corporation and another form of entity are parties shall be governed by Chapter 2 of this title.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-309.04. ACTION ON A PLAN OF MERGER OR SHARE EXCHANGE.

In the case of a domestic corporation that is a party to a merger or share exchange:

(1) The plan of merger or share exchange shall be adopted by the board of directors.

(2) Except as otherwise provided in paragraph (7) of this section and in § 29-309.05, after adopting the plan of merger or share exchange, the board of directors shall submit the plan to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the plan, 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 shall transmit to the shareholders the basis for that determination.

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

(4) If the plan of merger or share exchange is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan and shall contain or be accompanied by a copy or summary of the plan. The notice shall also include or be accompanied by a copy or summary of the articles of incorporation of the survivor.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to paragraph (3) of this subsection, requires a greater vote or a greater number of votes to be present, approval of the plan of merger or share exchange shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists, and, if any class or series of shares is entitled to vote as a separate group on the plan of merger or share exchange, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the merger or share exchange by that voting group is present.

(6) Separate voting by voting groups shall be required:

(A) On a plan of merger, by each class or series of shares that:

(i) Are to be converted under the plan of merger into other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property, or any combination of the foregoing; or

(ii) Would be entitled to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under § 29-308. 04;

(B) On a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and

(C) On a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange.

(7) Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger or share exchange shall not be required if:

(A) The corporation will survive the merger or is the acquiring corporation in a share exchange;

(B) Except for amendments permitted by § 29-308.05, its articles of incorporation will not be changed;

(C) Each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger or share exchange will hold the same number of shares, with identical preferences, limitations, and relative rights, immediately after the effective date of the merger or share exchange; and

(D) The issuance in the merger or share exchange of shares or other securities convertible into or rights exercisable for shares does not require a vote under § 29-304.21(f).

(8) If as a result of a merger or share exchange one or more shareholders of a domestic business corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of merger or share exchange shall require the execution, by each such shareholder, of a separate written consent to become subject to such owner liability.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-309.05. MERGER BETWEEN PARENT AND SUBSIDIARY OR BETWEEN SUBSIDIARIES.

(a) A domestic parent corporation that owns shares of a domestic or foreign subsidiary corporation that carry at least 90% of the voting power of each class and series of the outstanding shares of the subsidiary that have voting power may merge the subsidiary into itself or into another such subsidiary, or merge itself into the subsidiary, without the approval of the board of directors or shareholders of the subsidiary, unless the articles of incorporation of any of the corporations otherwise provide, and unless, in the case of a foreign subsidiary, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized.

(b) If, under subsection (a) of this section, approval of a merger by the subsidiary's shareholders is not required, the parent corporation shall, within 10 days after the effective date of the merger, notify each of the subsidiary's shareholders that the merger has become effective.

(c) Except as otherwise provided in subsections (a) and (b) of this section, a merger between a parent and a subsidiary shall be governed by the provisions of this subchapter applicable to mergers generally.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-309.06. ARTICLES OF MERGER OR SHARE EXCHANGE.

(a) After a plan of merger or a plan of share exchange involving a domestic acquired corporation has been adopted and approved as required by this chapter, articles of merger or share exchange shall be executed on behalf of each party to the merger or the acquired corporation in the share exchange by any officer or other duly authorized representative. The articles shall set forth:

(1) The names of the parties to the merger or share exchange;

(2) If the articles of incorporation of the survivor of a merger are amended, or if a new corporation is created as a result of a merger, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation;

(3) If the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by this chapter and the articles of incorporation;

(4) If the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement to that effect; and

(5) As to each foreign corporation that was a party to the merger or share exchange, a statement that the participation of the foreign corporation was duly authorized as required by the laws of the foreign

jurisdiction.

(b) Articles of merger or share exchange shall be delivered to the Mayor for filing by the survivor of the merger or the acquiring corporation in a share exchange and shall be effective at the effective time provided in § 29- 102.03.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-309.07. EFFECT OF MERGER OR SHARE EXCHANGE.

(a) When a merger becomes effective:

(1) The corporation that is designated in the plan of merger as the survivor shall continue or come into existence, as the case may be;

(2) The separate existence of every corporation that is merged into the survivor shall cease;

(3) All property owned by, and every contract right possessed by, each corporation that merges into the survivor shall be vested in the survivor without reversion or impairment;

(4) All liabilities of each corporation that is merged into the survivor shall be vested in the survivor;

(5) The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(6) The articles of incorporation of the survivor shall be amended to the extent provided in the plan of merger;

(7) The articles of incorporation of a survivor that is created by the merger shall become effective; and

(8) The shares of each corporation that is a party to the merger, and the interests in an eligible entity that is a party to a merger, that are to be converted under the plan of merger into shares, other securities, eligible interests, obligations, rights to acquire shares, other securities, or eligible interests, cash, other property, or any combination of the foregoing, shall be converted, and the former holders of such shares shall be entitled only to the rights provided to them in the plan of merger or to any rights they may have under subchapter XI of this chapter.

(b) When a share exchange becomes effective, the shares of the acquired corporation that are to be exchanged for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities, or eligible interests, cash, other property, or any combination of the foregoing, shall be entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under subchapter XI of this chapter.

(c) A person that becomes subject to owner liability for some or all of the debts, obligations, or liabilities of any entity as a result of a merger or share exchange shall have owner liability only to the extent provided in the organic law of the entity and only for those debts, obligations, and liabilities that arise after the effective time of the articles of merger or share exchange.

(d) Upon a merger becoming effective, a foreign corporation that is the survivor of the merger shall be deemed to agree that:

(1) Service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger that exercise appraisal rights may be made in the manner provided in § 29-104.12; and

(2) It will promptly pay the amount, if any, to which such shareholders are entitled under subchapter XI of this chapter.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-309.08. ABANDONMENT OF A MERGER OR SHARE EXCHANGE.

(a) Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign business corporation that is a party to a merger or a share exchange is, after the plan has been adopted and approved as required by this subchapter, and at any time before the merger or share exchange has

become effective, it may be abandoned by a domestic business corporation that is a party thereto without action by its shareholders in accordance with any procedures set forth in the plan of merger or share exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors, subject to any contractual rights of other parties to the merger or share exchange.

(b) If a merger or share exchange is abandoned under subsection (a) of this section after articles of merger or share exchange have been filed with the Mayor, but before the merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this section, executed on behalf of a party to the merger or share exchange by an officer or other duly authorized representative, shall be delivered to the Mayor for filing prior to the effective date of the merger or share exchange. Upon filing, the statement shall take effect and the merger or share exchange shall be deemed abandoned and shall not become effective.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

SUBCHAPTER X. DISPOSITION OF ASSETS.

§ 29-310.01. DISPOSITION OF ASSETS NOT REQUIRING SHAREHOLDER APPROVAL.

The approval of the shareholders of a corporation shall not be required, unless the articles of incorporation otherwise provide, to:

(1) Sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;

(2) Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of the corporation's assets, whether or not in the usual and regular course of business;

(3) Transfer any or all of the corporation's assets to one or more corporations or other entities all of the shares or interests of which are owned by the corporation; or

(4) Distribute assets pro rata to the holders of one or more classes or series of the corporation's shares.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-310.02. SHAREHOLDER APPROVAL OF CERTAIN DISPOSITIONS.

(a) A sale, lease, exchange, or other disposition of assets, other than a disposition described in § 29-310.01, shall require approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. If a corporation retains a business activity that represented at least 25% of total assets at the end of the most recently completed fiscal year, and 25% of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis, the corporation shall conclusively be deemed to have retained a significant continuing business activity.

(b) A disposition that requires approval of the shareholders under subsection (a) of this section shall be initiated by a resolution by the board of directors authorizing the disposition. After adoption of such a resolution, the board of directors shall submit the proposed disposition to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the proposed disposition, 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 shall transmit to the shareholders the basis for that determination.

(c) The board of directors may condition its submission of a disposition to the shareholders under subsection (b) of this section on any basis.

(d) If a disposition is required to be approved by the shareholders under subsection (a) of this section, and

if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the disposition is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the disposition and shall contain a description of the disposition, including the terms and conditions thereof and the consideration to be received by the corporation.

(e) Unless the articles of incorporation or the board of directors acting pursuant to subsection (c) of this section requires a greater vote, or a greater number of votes to be present, the approval of a disposition by the shareholders shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the disposition exists.

(f) After a disposition has been approved by the shareholders under subsection (b) of this section, and at any time before the disposition has been consummated, it may be abandoned by the corporation without action by the shareholders, subject to any contractual rights of other parties to the disposition.

(g) A disposition of assets in the course of dissolution under subchapter XII of this chapter shall not be governed by this section.

(h) The assets of a direct or indirect consolidated subsidiary shall be deemed the assets of the parent corporation for the purposes of this section.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

SUBCHAPTER XI. APPRAISAL RIGHTS.

PART A. RIGHT TO APPRAISAL AND PAYMENT FOR SHARES.

§ 29-311.01. DEFINITIONS.

For the purposes of this subchapter, the term:

(1) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive thereof. For the purposes of § 29- 311.02(b)(4), a person shall be deemed to be an affiliate of its senior executives.

(2) "Beneficial shareholder" means a person that is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf.

(3) "Corporation" means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in §§ 29-311.12 to 29- 311.31, includes the surviving entity in a merger.

(4) "Fair value" means the value of the corporation's shares determined:

(A) Immediately before the effectuation of the corporate action to which the shareholder objects;

(B) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(C) Without discounting for lack of marketability or minority status, except, if appropriate, for amendments to the articles pursuant to § 29- 311.02(a)(5).

(5) "Interest" means interest from the effective date of the corporate action until the date of payment at the rate of interest on judgments in the District on the effective date of the corporate action.

(6) "Interested transaction" means a corporate action described in § 29- 311.02(a), other than a merger pursuant to § 29-309.05, involving an interested person in which any of the shares or assets of the corporation are being acquired or converted. For the purposes of this definition, the term:

(A) "Interested person" means a person, or an affiliate of a person, who at any time during the one-year period immediately preceding approval by the board of directors of the corporate action:

(i) Was the beneficial owner of 20% or more of the voting power of the corporation, other than as owner of excluded shares;

(ii) Had the power, contractually or otherwise, other than as owner of excluded shares, to cause the appointment or election of 25% or more of the directors to the board of directors of the corporation; or

(iii) Was a senior executive or director of the corporation or a senior executive of any affiliate thereof, and that senior executive or director will receive, as a result of the corporate action, a

financial benefit not generally available to other shareholders as such, other than:

(I) Employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action;

(II) Employment, consulting, retirement, or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in § 29-306.72; or

(III) In the case of a director of the corporation, who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate.

(B) "Beneficial owner" means any person that, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares; provided, that a member of a national securities exchange shall not deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because the member is the record holder of the securities if the member is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When 2 or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby shall be deemed to have acquired beneficial ownership, as of the date of the agreement, of all voting shares of the corporation beneficially owned by any member of the group.

(C) "Excluded shares" means shares acquired pursuant to an offer for all shares having voting power if the offer was made within one year prior to the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action.

(7) "Preferred shares" means a class or series of shares whose holders have preference over any other class or series with respect to distributions.

(8) "Record shareholder" means the person in whose name shares are registered in the records of the corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with the corporation.

(9) "Senior executive" means the chief executive officer, chief operating officer, chief financial officer, and anyone in charge of a principal business unit or function.

(10) "Shareholder" means a record shareholder or a beneficial shareholder.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-311.02. RIGHT TO APPRAISAL.

(a) Except as otherwise provided in subsection (b) of this section, a shareholder shall be entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

(1) Consummation of a merger to which the corporation is a party:

(A) If shareholder approval is required for the merger by § 29-309.04 and the shareholder is entitled to vote on the merger, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger; or

(B) If the corporation is a subsidiary and the merger is governed by § 29- 309.05;

(2) Consummation of a share exchange in which the corporation is the acquired corporation if the shareholder is entitled to vote on the exchange, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

(3) Consummation of a disposition of assets pursuant to § 29-310.02 if the shareholder is entitled to vote on the disposition;

(4) An amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created;

(5) Any other amendment to the articles of incorporation, merger, share exchange, or disposition of assets to the extent provided by the articles of incorporation, bylaws, or a resolution of the board of directors;

(6) Consummation of a domestication if the shareholder does not receive shares in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder in all material respects, and represent at least the same percentage interest of the total voting rights of the outstanding shares of the corporation, as the shares held by the shareholder before the domestication; or

(7) Consummation of a conversion of the corporation to a different form of entity under Chapter 2 of this title.

(b) Notwithstanding subsection (a) of this section, the availability of appraisal rights under subsection (a)(1), (2), (3), (4), and (6) of this section shall limited in accordance with the following provisions:

(1) Appraisal rights shall not be available for the holders of shares of any class or series of shares which is:

(A) A covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933, approved May 27, 1933 (48 Stat. 85; 15 U.S.C. § 77r);

(B) Traded in an organized market and has at least 2,000 shareholders and a market value of at least $20 million, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors, and beneficial shareholders owning more than 10% of such shares; or

(C) Issued by an open end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, approved August 22, 1940 (54 Stat. 789; 15 U.S.C. § 80a-1 *et seq.*), and may be redeemed at the option of the holder at net asset value.

(2) The applicability of paragraph (1) of this subsection shall be determined as of:

(A) The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

(B) The day before the effective date of such corporate action if there is no meeting of shareholders.

(3) Paragraph (1) of this subsection shall not be applicable and appraisal rights are available pursuant to subsection (a) of this section for the holders of any class or series of shares that are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in paragraph (1) of this subsection at the time the corporate action becomes effective.

(4) Paragraph (1) of this subsection shall not be applicable and appraisal rights shall be available pursuant to subsection (a) of this section for the holders of any class or series of shares if the corporate action is an interested transaction.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-311.03. ASSERTION OF RIGHTS BY NOMINEES AND BENEFICIAL OWNERS.

(a) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder and notifies the corporation in writing of the name and address of each beneficial shareholder on whose behalf appraisal rights are being asserted. The rights of a record shareholder that asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(b) A beneficial shareholder may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if the shareholder:

(1) Submits to the corporation the record shareholder's written consent to the assertion of such rights no later than the date referred to in § 29- 311.12(b)(2)(B); and

(2) Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

PART B. PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS.

§ 29-311.10. NOTICE OF APPRAISAL RIGHTS.

(a) If any corporate action specified in § 29-311.02(a) is to be submitted to a vote at a shareholders' meeting, the meeting notice shall state that the corporation has concluded that the shareholders are, are not, or may be entitled to assert appraisal rights under this subchapter. If the corporation concludes that appraisal rights are or may be available, a copy of this subchapter shall accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

(b) In a merger pursuant to § 29-309.05, the parent corporation shall notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. The notice shall be sent within 10 days after the corporate action became effective and include the materials described in § 29-311.12.

(c) If any corporate action specified in § 29-311.02(a) is to be approved by written consent of the shareholders pursuant to § 29-305.04, written notice that appraisal rights are, are not, or may be available shall be:

(1) Given to each record shareholder from which a consent is solicited at the time consent of such shareholder is first solicited and, if the corporation has concluded that appraisal rights are or may be available, shall be accompanied by a copy of this subchapter; and

(2) Delivered together with the notice to nonconsenting and nonvoting shareholders required by § 29-305.04(e) and (f), may include the materials described in § 29-311.12, and, if the corporation has concluded that appraisal rights are or may be available, shall be accompanied by a copy of this subchapter.

(d) If corporate action described in § 29-311.02(a) is proposed, or a merger pursuant to § 29-309.05 is effected, the notice referred to in subsection (a) or (c) of this section, if the corporation concludes that appraisal rights are or may be available, and in subsection (b) of this section shall be accompanied by:

(1) The annual financial statements specified in § 29-313.07(a) of the corporation that issued the shares that may be subject to appraisal, which shall be as of a date ending not more than 16 months before the date of the notice and shall comply with § 29-313.07(b); provided, that if such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and

(2) The latest available quarterly financial statements of such corporation, if any.

(e) The right to receive the information described in subsection (d) of this section may be waived in writing by a shareholder before or after the corporate action.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-311.11. NOTICE OF INTENT TO DEMAND PAYMENT AND CONSEQUENCES OF VOTING OR CONSENTING.

(a) If a corporate action specified in § 29-311.02(a) is submitted to a vote at a shareholders' meeting, a shareholder that wishes to assert appraisal rights with respect to any class or series of shares shall:

(1) Deliver to the corporation, before the vote is taken, written notice of the shareholder's intent to demand payment if the proposed action is effectuated; and

(2) Not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed

action.

(b) If a corporate action specified in § 29-311.02(a) is to be approved by less than unanimous written consent, a shareholder that wishes to assert appraisal rights with respect to any class or series of shares shall not execute a consent in favor of the proposed action with respect to that class or series of shares.

(c) A shareholder that fails to satisfy the requirements of subsection (a) or (b) of this section shall not be entitled to payment under this subchapter.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-311.12. APPRAISAL NOTICE AND FORM.

(a) If a corporate action requiring appraisal rights under § 29-311.02(a) becomes effective, the corporation shall deliver a written appraisal notice and form required by subsection (b)(1) of this section to all shareholders who satisfy the requirements of § 29-311.11(a) or (b). In the case of a merger under § 29-309.05, the parent shall deliver a written appraisal notice and form to all record shareholders that may be entitled to assert appraisal rights.

(b) The appraisal notice shall be sent no earlier than the date the corporate action specified in § 29-311.02(a) became effective, and no later than 10 days after such date, and shall:

(1) Supply a form that:

(A) Specifies the first date of any announcement to shareholders made before the date the corporate action became effective of the principal terms of the proposed corporate action;

(B) If such announcement was made, requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date; and

(C) Requires the shareholder asserting appraisal rights to certify that such shareholder did not vote for or consent to the transaction;

(2) State:

(A) Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date shall not be earlier than the date for receiving the required form under subparagraph (B) of this paragraph;

(B) A date by which the corporation must receive the form, which date may not be fewer than 40 nor more than 60 days after the date the appraisal notice and form required by subsection (a) of this section are sent, and state that the shareholder has waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date;

(C) The corporation's estimate of the fair value of the shares;

(D) That, if requested in writing, the corporation will provide, to the shareholder so requesting, within 10 days after the date specified in paragraph (2)(B) of this subsection the number of shareholders that return the forms by the specified date and the total number of shares owned by them; and

(E) The date by which the notice to withdraw under § 29-311.13 shall be received, which date must be within 20 days after the date specified subparagraph (B) of this paragraph; and

(3) Be accompanied by a copy of this subchapter.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-311.13. PERFECTION OF RIGHTS; RIGHT TO WITHDRAW.

(a) A shareholder that receives notice pursuant to § 29-311.12 and that wishes to exercise appraisal rights shall sign and return the form sent by the corporation and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to § 29-311.12(b)(2)(B). In addition, if applicable, the shareholder shall certify on the form whether

the beneficial owner of such shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to § 29-311.12(b)(1). If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under § 29-311.15. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the signed forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection (b).

(b) A shareholder that has complied with subsection (a) of this section may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to § 29-311.12(b)(2)(E). A shareholder that fails to so withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(c) A shareholder that does not sign and return the form and, in the case of certificated shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in § 29-311.12(b), shall not be entitled to payment under this subchapter.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-311.14. PAYMENT.

(a) Except as otherwise provided in § 29-311.15, within 30 days after the form required by § 29-311.12(b)(2)(B) is due, the corporation shall pay in cash to those shareholders who complied with § 29-311.13(a) the amount the corporation estimates to be the fair value of their shares, plus interest.

(b) The payment to each shareholder pursuant to subsection (a) of this section shall be accompanied by:

(1) The annual financial statements specified in § 29-313.07(a) of the corporation that issued the shares to be appraised, which shall be of a date ending not more than 16 months before the date of payment and shall comply with § 29-313.07(b); provided, that if such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information, and the latest available quarterly financial statements of such corporation, if any;

(2) A statement of the corporation's estimate of the fair value of the shares, which estimate shall equal or exceed the corporation's estimate given pursuant to § 29-311.12(b)(2)(C);

(3) A statement that shareholders described in subsection (a) of this section have the right to demand further payment under § 29-311.16 and that if any such shareholder does not do so within the time period specified therein, the shareholder shall be deemed to have accepted such payment in full satisfaction of the corporation's obligations under this subchapter.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-311.15. AFTER-ACQUIRED SHARES.

(a) A corporation may elect to withhold payment required by § 29-311.14 from any shareholder that was required to, but did not, certify that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to § 29-311.12(b)(1).

(b) If the corporation elected to withhold payment under subsection (a) of this section, it shall, within 30 days after the form required by § 29- 311.12(b)(2)(B) is due, notify all shareholders described in subsection (a) of this section:

(1) Of the information required by § 29-311.14(b)(1);

(2) Of the corporation's estimate of fair value pursuant to § 29- 311.14(b)(2);

(3) That they may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under § 29-311.16;

(4) That those shareholders that wish to accept such offer shall so notify the corporation of their acceptance of the corporation's offer within 30 days after receiving the offer; and

(5) That those shareholders that do not satisfy the requirements for demanding appraisal under § 29-

311.16 shall be deemed to have accepted the corporation's offer.

(c) Within 10 days after receiving the shareholder's acceptance pursuant to subsection (b) of this section, the corporation shall pay in cash the amount it offered under subsection (b)(2) of this section to each shareholder that agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

(d) Within 40 days after sending the notice described in subsection (b) of this section, the corporation shall pay in cash the amount it offered to pay under subsection (b)(2) of this section to each shareholder described in subsection (b)(5) of this section.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-311.16. PROCEDURE IF SHAREHOLDER DISSATISFIED WITH PAYMENT OR OFFER.

(a) A shareholder paid pursuant to § 29-311.14 that is dissatisfied with the amount of the payment shall notify the corporation in writing of that shareholder's estimate of the fair value of the shares and demand payment of that estimate plus interest, less any payment under § 29-311.14. A shareholder offered payment under § 29-311.15 that is dissatisfied with that offer shall reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares plus interest.

(b) A shareholder that fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (a) of this section within 30 days after receiving the corporation's payment or offer of payment under § 29-311. 14 or § 29-311.15, respectively, waives the right to demand payment under this section and is entitled only to the payment made or offered pursuant to those respective sections.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

PART C. JUDICIAL APPRAISAL OF SHARES.

§ 29-311.30. JUDICIAL PROCEEDING.

(a) If a shareholder makes demand for payment under § 29-311.16 which remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the Superior Court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to § 29-311.16 plus interest.

(b) The corporation shall commence the proceeding in the Superior Court.

(c) The corporation shall make all shareholders, whether or not residents of the District, whose demands remain unsettled parties to the proceeding as in an action against their shares, and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the Superior Court in which the proceeding is commenced under subsection (b) shall be plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The shareholders demanding appraisal rights shall be entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(e) Each shareholder made a party to the proceeding shall be entitled to judgment:

(1) For the amount, if any, by which the Superior Court finds the fair value of the shareholder's shares, plus interest, exceeds the amount paid by the corporation to the shareholder for such shares or

(2) For the fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under § 29-311.15.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-311.31. COURT COSTS AND EXPENSES.

(a) The Superior Court in an appraisal proceeding commenced under § 29-311.2 shall determine all court costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the court costs against the corporation, except that the court may assess court costs against all or some of the shareholders demanding appraisal, in amounts which the court finds equitable, to the extent the court finds the shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this subchapter.

(b) The Superior Court in an appraisal proceeding may also assess the expenses of the respective parties in amounts the court finds equitable:

(1) Against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of § 29-311.10, § 29-311.12, § 29-311.14, or § 29- 311.15; or

(2) Against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds the party against whom expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this subchapter.

(c) If the Superior Court in an appraisal proceeding finds that the expenses incurred by any shareholder were of substantial benefit to other shareholders similarly situated and that the expenses should not be assessed against the corporation, the court may direct that the expenses be paid out of the amounts awarded the shareholders who were benefited.

(d) To the extent the corporation fails to make a required payment pursuant to § 29-311.14, § 29-311.15, or § 29-311.16, the shareholder may sue directly for the amount owed, and to the extent successful, shall be entitled to recover from the corporation all expenses of the suit.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

PART D. OTHER REMEDIES.

§ 29-311.50. OTHER REMEDIES LIMITED.

(a) The legality of a proposed or completed corporate action described in § 29-311.02(a) shall not be contested and the corporate action shall not be enjoined, set aside, or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

(b) Subsection (a) of this section shall not apply to a corporate action that:

(1) Was not authorized and approved in accordance with the applicable provisions of:

(A) Subchapter VII, VIII, IX, or X of this chapter;

(B) The articles of incorporation or bylaws; or

(C) The resolution of the board of directors authorizing the corporate action;

(2) Was procured as a result of fraud, a material misrepresentation, or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading;

(3) Is an interested transaction, unless it has been recommended by the board of directors in the same manner as is provided in § 29-306.72 and has been approved by the shareholders in the same manner as is provided in § 29- 306.73 as if the interested transaction were a director's conflicting interest transaction; or

(4) Is approved by less than unanimous consent of the voting shareholders pursuant to § 29-305.04 if:

(A) The challenge to the corporate action is brought by a shareholder that did not consent and as to which notice of the approval of the corporate action was not effective at least 10 days before the corporate action was effected; and

(B) The proceeding challenging the corporate action is commenced within 10 days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

SUBCHAPTER XII. DISSOLUTION.

PART A. VOLUNTARY DISSOLUTION.

§ 29-312.01. DISSOLUTION BY INCORPORATORS OR INITIAL DIRECTORS.

A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the Mayor for filing articles of dissolution that set forth:

(1) The name of the corporation;

(2) The date of its incorporation;

(3)(A) That none of the corporation's shares has been issued; or

(B) That the corporation has not commenced business;

(4) That no debt of the corporation remains unpaid;

(5) That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and

(6) That a majority of the incorporators or initial directors authorized the dissolution.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-312.02. 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 shall 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) of this section.

(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. The notice shall 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) of this section require a greater vote, a greater number of shares to be present, or a vote by voting groups, adoption of the proposal to dissolve requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast exists.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-312.03. ARTICLES OF DISSOLUTION.

(a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Mayor for filing articles of dissolution setting forth:

(1) The name of the corporation;

(2) The date dissolution was authorized; and

(3) If dissolution was approved by the shareholders, a statement that the proposal to dissolve was duly approved by the shareholders in the manner required by this chapter and by the articles of incorporation.

(b) A corporation shall be dissolved upon the effective date of its articles of dissolution.

(c) For purposes of this part, the term "dissolved corporation" means a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-312.04. REVOCATION OF DISSOLUTION.

(a) A corporation may revoke its dissolution within 120 days of its effective date.

(b) Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Mayor for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(1) The name of the corporation;

(2) The effective date of the dissolution that was revoked;

(3) The date that the revocation of dissolution was authorized;

(4) If the corporation's board of directors, or incorporators, revoked the dissolution, a statement to that effect;

(5) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(6) If shareholder action was required to revoke the dissolution, the information required by § 29-312.03(a)(3).

(d) Revocation of dissolution shall be effective upon the effective date of the articles of revocation of dissolution.

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-312.05. EFFECT OF DISSOLUTION.

(a) A dissolved corporation continues its corporate existence but shall 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 shall 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 subchapter VI of this chapter;

(4) Change:

(A) Quorum or voting requirements for its board of directors or shareholders;

(B) Provisions for selection, resignation, or removal of its directors or officers, or both;

(C) 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.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-312.06. KNOWN CLAIMS AGAINST DISSOLVED CORPORATION.

(a) A dissolved corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after its effective date.

(b) The written notice shall:

(1) Describe information that must be included in a claim;

(2) Provide a mailing address where a claim may be sent;

(3) State the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(4) State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation shall be barred if a claimant:

(1) That was given written notice under subsection (b) of this section does not deliver the claim to the dissolved corporation by the deadline; or

(2) Whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(d) For purposes of this section, the term "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-312.07. OTHER CLAIMS AGAINST DISSOLVED CORPORATION.

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

(b) The notice shall:

(1) Be published one time in a newspaper of general circulation in the District;

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within 3 years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b) of this section, the claim of each of the following claimants shall be barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within 3 years after the publication date of the newspaper notice:

(1) A claimant that was not given written notice under § 29-312.06;

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on;

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim that is not barred by § 29-312.06(c) or subsection (c) of this section may be enforced:

(1) Against the dissolved corporation, to the extent of its undistributed assets; or

(2) Except as otherwise provided in § 29-312.08(d), if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section shall not exceed the total amount of assets distributed to the shareholder.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-312.08. JUDICIAL PROCEEDINGS.

(a) A dissolved corporation that has published a notice under § 29-312.07 may file an application with the Superior Court for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under § 29- 312.07(c).

(b) Within 10 days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(c) The Superior Court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

(d) Provision by the dissolved corporation for security in the amount and the form ordered by the Superior Court under § 29-312.08(a) satisfies the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation, or are based on an event occurring after the effective date of dissolution. Such claims shall not be enforced against a shareholder that received assets in liquidation.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-312.09. DIRECTOR DUTIES.

(a) Directors shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims and make distributions of assets to shareholders after payment or provision for claims.

(b) Directors of a dissolved corporation which has disposed of claims under § 29-312.06, § 29-312.07, or § 29-312.08 shall not be liable for breach of subsection (a) of this section with respect to claims against the dissolved corporation that are barred or satisfied under § 29-312.06, § 29-312.07, or § 29-312.08.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

PART B. JUDICIAL DISSOLUTION.

§ 29-312.20. GROUNDS FOR JUDICIAL DISSOLUTION.

(a) The Superior Court may dissolve a corporation:

(1) In a proceeding by the Attorney General for the District of Columbia if it is established that the corporation:

(A) Obtained its articles of incorporation through fraud; or

(B) 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:

(A) 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;

(B) 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;

(C) The shareholders are deadlocked in voting power and have failed, for a period that includes at least 2 consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(D) The corporate assets are being misapplied or wasted;

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

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

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

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision; or

(5) In a proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

(b) Subsection (a)(2) of this section shall not apply in the case of a corporation that, on the date of the filing of the proceeding, has shares which are:

(1) Listed on the New York Stock Exchange, the American Stock Exchange or on any exchange owned or operated by the NASDAQ Stock Market LLC, or listed or quoted on a system owned or operated by the Financial Industry Regulatory Authority; or

(2) Not so listed or quoted, but are held by at least 300 shareholders and the shares outstanding have a market value of at least $20 million, exclusive of the value of the shares held by the corporation's subsidiaries, senior executives, directors, and beneficial shareholders owning more than 10% of such shares).

(c) For the purposes of this section, the term "beneficial shareholder" has the meaning specified in § 29-311.01(2).

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-312.21. PROCEDURE FOR JUDICIAL DISSOLUTION.

(a) It shall not be necessary to make shareholders parties to a proceeding to dissolve a corporation unless

relief is sought against them individually.

(b) The Superior Court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(c) Within 10 days of the commencement of a proceeding to dissolve a corporation under § 29-312.20(a)(2), the corporation shall send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under § 29-312.24 and accompanied by a copy of § 29-312.24.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-312.22. RECEIVERSHIP OR CUSTODIANSHIP.

(a) Unless an election to purchase has been filed under § 29-312.24, the Superior Court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has jurisdiction over the corporation and all of its property wherever located.

(b) The Superior Court may appoint an individual or a domestic or foreign corporation, authorized to do business in the District, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The Superior Court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended. Among other powers:

(1) The receiver may:

(A) Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and

(B) Sue and defend in his or her own name as receiver of the corporation;

(2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(d) The Superior Court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and its creditors.

(e) The Superior Court during the receivership or custodianship may order compensation paid and expenses paid or reimbursed to the receiver or custodian from the assets of the corporation or proceeds from the sale of the assets.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-312.23. DECREE OF DISSOLUTION.

(a) If, after a hearing, the Superior Court determines that one or more grounds for judicial dissolution described in § 29-312.20 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Mayor, who shall file it.

(b) After entering the decree of dissolution, the Superior Court shall direct the winding-up and liquidation of the corporation's business and affairs in accordance with § 29-312.05 and the notification of claimants in accordance with §§ 29-312.06 and 29-312.07.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-312.24. ELECTION TO PURCHASE IN LIEU OF DISSOLUTION.

(a) In a proceeding under § 29-312.20(a)(2) to dissolve a corporation, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

(b) An election to purchase pursuant to this section may be filed with the Superior Court at any time within 90 days after the filing of the petition under § 29-312.20(a)(2) or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within 10 days thereafter, give written notice to all shareholders, other than the petitioner. The notice shall state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and shall advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders that wish to participate shall file notice of their intention to join in the purchase no later than 30 days after the effective date of the notice to them. All shareholders that have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under § 29-312.20(a)(2) shall not be discontinued or settled and the petitioning shareholder shall not sell or otherwise dispose of his or her shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other disposition.

(c) If, within 60 days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the Superior Court shall enter an order directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

(d) If the parties are unable to reach an agreement as provided for in subsection (c) of this section, the Superior Court, upon application of any party, shall stay the § 29-312.20(a)(2) proceedings and determine the fair value of the petitioner's shares as of the day before the date on which the petition under § 29-312.20(a)(2) was filed or as of such other date as the court deems appropriate under the circumstances.

(e) Upon determining the fair value of the shares, the Superior Court shall enter an order directing the purchase upon such terms and conditions as the court considers appropriate, which may include payment of the purchase price in installments, if necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court shall attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under § 29-312.20(a)(2)(B) or (D), it may award expenses to the petitioning shareholder.

(f) Upon entry of an order under subsections (c) or (e) of this section, the Superior Court shall dismiss the petition to dissolve the corporation under § 29-312.20(a)(2), and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded by the order of the court which enforceable in the same manner as any other judgment.

(g) The purchase ordered pursuant to subsection (e) of this section shall be made within 10 days after the date the order becomes final unless before that time the corporation files with the Superior Court a notice of its intention to adopt articles of dissolution pursuant to §§ 29-312.02 and 29-312.03, which articles shall then be adopted and filed within 50 days thereafter. Upon filing of such articles of dissolution, the corporation is dissolved in accordance with §§ 29-312.05 through 29-312.07, and the order entered pursuant to subsection (e) of this section shall no longer be of any force or effect, except that the court may award the petitioning shareholder expenses in accordance with the last sentence of subsection (e) of this section and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

(h) Any payment by the corporation pursuant to an order under subsections (c) or (e) of this section, other than an award of expenses pursuant to subsection (e) of this section, shall be subject to § 29-304.60.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

PART C. MISCELLANEOUS.

§ 29-312.40. DEPOSIT WITH MAYOR.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the Mayor for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the Mayor shall pay the person or the person's representative that amount.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

SUBCHAPTER XIII. RECORDS AND REPORTS.

PART A. RECORDS.

§ 29-313.01. 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, all amendments to them currently in effect, and any notices to shareholders referred to in § 29- 301.04 regarding facts on which a filed document is dependent;

(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 3 years;

(5) All written communications to shareholders generally within the past 3 years, including the financial statements furnished for the past 3 years under § 29-313.07;

(6) A list of the names and business addresses of its current directors and officers; and

(7) Its most recent biennial report delivered to the Mayor under § 29- 102.11.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-313.02. INSPECTION OF RECORDS BY SHAREHOLDERS.

(a) A shareholder of a corporation shall be entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in § 29-313.01(e) if the shareholder gives the corporation written notice of the shareholder's demand at least 5 business days before the date on which the shareholder wishes to inspect and copy.

(b) A shareholder of a corporation shall be 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) of this section and gives the corporation written notice of the shareholder's demand at least 5 business days before the date on which the shareholder 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 § 29-313.02(a);

(2) Accounting records of the corporation; and

(3) The record of shareholders.

(c) A shareholder may inspect and copy the records described in subsection (b) of this section only if:

(1) The shareholder's demand is made in good faith and for a proper purpose;

(2) The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and

(3) The records are directly connected with the shareholder's purpose.

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

(e) This section shall not affect:

(1) The right of a shareholder to inspect records under § 29-305.20 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(2) The power of the Superior Court, independently of this chapter, to compel the production of corporate records for examination.

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

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-313.03. SCOPE OF INSPECTION RIGHT.

(a) A shareholder's agent or attorney shall have the same inspection and copying rights as the shareholder represented.

(b) The right to copy records under § 29-313.02 includes, if reasonable, the right to receive copies by xerographic or other means, including copies through an electronic transmission if available and so requested by the shareholder.

(c) The corporation may comply at its expense with a shareholder's demand to inspect the record of shareholders under § 29-313.02(b)(3) by providing the shareholder with a list of shareholders that was compiled no earlier than the date of the shareholder's demand.

(d) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge shall not exceed the estimated cost of production, reproduction, or transmission of the records.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-313.04. COURT-ORDERED INSPECTION.

(a) If a corporation does not allow a shareholder that complies with § 29- 313.02(a) to inspect and copy any records required by that subsection to be available for inspection, the Superior Court may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(b) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder that complies with § 29- 313.02(b) and (c) may apply to the Superior Court for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the Superior Court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's expenses incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(d) If the Superior Court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-313.05. INSPECTION OF RECORDS BY DIRECTORS.

(a) A director of a corporation shall be entitled to inspect and copy the books, records and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(b) The Superior Court may order inspection and copying of the books, records, and documents at the corporation's expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the Superior Court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's expenses incurred in connection with the application.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-313.06. EXCEPTION TO NOTICE REQUIREMENT.

(a) Whenever notice is required to be given under any provision of this chapter to any shareholder, the notice shall not be required to be given if:

(1) Notice of 2 consecutive annual meetings, and all notices of meetings during the period between such 2 consecutive annual meetings, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable; or

(2) All, but not less than 2, payments of dividends on securities during a 12- month period, or 2 consecutive payments of dividends on securities during a period of more than 12 months, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable.

(b) If any such shareholder delivers to the corporation a written notice setting forth the shareholder's then-current address, the requirement that notice be given to the shareholder is reinstated.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

PART B. REPORTS.

§ 29-313.07. FINANCIAL STATEMENTS FOR SHAREHOLDERS.

(a) A corporation shall deliver to its shareholders annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis.

(b) If the annual financial statements are reported upon by a public accountant, the report shall accompany them. If not, the statements shall be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(1) Stating such person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) A corporation shall mail the annual financial statements to each shareholder within 120 days after the close of each fiscal year. Thereafter, on written request from a shareholder that was not mailed the statements, the corporation shall mail the shareholder the latest financial statements.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

SUBCHAPTER XIV. TRANSITION PROVISIONS.

§ 29-314.01. APPLICATION TO EXISTING DOMESTIC CORPORATIONS.

This chapter shall apply to all domestic corporations in existence on its effective date that were incorporated under any general statute of the District providing for incorporation of corporations for profit.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.

§ 29-314.02. APPLICATION TO QUALIFIED FOREIGN CORPORATIONS.

A foreign corporation authorized to do business in the District on the effective date of this chapter shall be subject to this chapter but is not required to obtain a new certificate of registration to do business under this chapter.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For history of Law 18-378, see notes under § 29-101.01.