## **Contents**

# PART I ORGANIZATION

| CHAP  | TER 1:                                    | INTROD        | OUCTION                                 | 1-1            |  |
|-------|---|---------------|---|----------------|--|
| 1.1.  | Nature a                                  | and Use of T  | his Practice Manual                     | 1-2            |  |
| 1.2.  | Comparison of the LLC with Other Entities |               |   |                |  |
| 1.3.  | History                                   | of the LLC.   |   | 1-8.1          |  |
| 1.4.  | Classific                                 | cation of the | LLC as a Partnership for Federal        |                |  |
|       | and Stat                                  | e Income Ta   | x Purposes                              | 1-8.2          |  |
|       | 1.4.1.                                    | Introducti    | on                                      | 1-8.2          |  |
|       | 1.4.2.                                    | Conseque      | nces of Classification as a Corporation | 1-9            |  |
|       | 1.4.3.                                    | Tax Histor    | ry of the LLC                           | 1-10           |  |
|       | 1.4.4.                                    | Understan     | ding the Check-the-Box Rules            | 1-11           |  |
|       |   | 1.4.4.1.      | LLCs Organized on or after              |                |  |
|       |   |               | January 1, 1997                         | 1-13           |  |
|       |   | 1.4.4.2.      | LLCs Organized before January 1, 1997,  |                |  |
|       |   |               | for Periods before January 1, 1997      | 1-14           |  |
|       |   | 1.4.4.3.      | LLCs Organized before January 1,        |                |  |
|       |   |               | 1997, for Periods on or after           |                |  |
|       |   |               | January 1, 1997                         | 1-15           |  |
|       |   | 1.4.4.4.      | Elections                               | 1-16           |  |
|       |   | 1.4.4.5.      | Planning Opportunities of               |                |  |
|       | m,  |               | Single-Member LLCs                      | 1-17           |  |
| 1.5.  |   |               | Limited Liability Company Act —         | 1 17           |  |
| 1.6   |   |               |   | 1-17           |  |
| 1.6.  | _   |               | S Corporation                           | 1-19           |  |
|       | 1.6.1.                                    |               |   | 1-19           |  |
|       | 1.6.2.                                    |               | es Associated with Using the            | 1 10           |  |
|       | 1.62                                      |               | 1                                       | 1-19           |  |
|       | 1.6.3.                                    |               | ages Associated with Using the          | 1.20           |  |
| 1.7.  | Carias I                                  |               |   | 1-20<br>1-20.1 |  |
| 1./.  | 1.7.1.                                    |               | s                                       |                |  |
|       |   |               | C                                       | 1-20.1         |  |
| 1.0   | 1.7.2.                                    |               |   | 1-21           |  |
| 1.8.  |   |               | es                                      | 1-22           |  |
| 1.9.  |   |               | and Estate Planning                     | 1-23           |  |
| 1.10. | The 201                                   | / Tax Act     |   | 1-25           |  |

|       | 1.10.1.                              | 2017 Tax Ac                               | et's Impact on the Choice of Entity | 1-25  |  |
|-------|--------------------------------------|---|-------------------------------------|-------|--|
|       | 1.10.2.                              | Section 1997                              | A – Deduction for Qualified         |       |  |
|       |                                      | Business Inc                              | come                                | 1-27  |  |
|       | 1.10.3.                              | Massachuset                               | tts Conformity                      | 1-31  |  |
| CHAP  | TER 2:                               | FORMATI                                   | ON AND FILINGS                      | 2-1   |  |
| 2.1.  | Introduct                            | on  |                                     | 2-3   |  |
| 2.2.  | Pre-Form                             | ation Matters                             |                                     | 2-3   |  |
|       | Form 2-1                             | . Memora                                  | Memorandum to File on Execution and |       |  |
|       |                                      | Filing of                                 | f Certificate of Organization       | 2-4   |  |
|       | Form 2-2                             |   | Directing Execution and Filing of   |       |  |
|       |                                      | Certifica                                 | ate of Organization                 | 2-4   |  |
| 2.2A. | Ethical C                            | onsiderations                             | in Forming LLCs                     | 2-4.1 |  |
|       | Form 2A-                             | 1. Counsel                                | for Organizers and Counsel          |       |  |
|       |                                      |   | Company upon Formation              | 2-4.4 |  |
|       | Form 2A-                             |   | for One Organizer and Counsel       |       |  |
|       |                                      |   | Company upon Formation              | 2-4.7 |  |
|       | Form 2A-3. Joint                     |   | epresentation Waiver                | 2-4.8 |  |
| 2.3.  | Certificate of Organization          |   |                                     |       |  |
|       | 2.3.1.                               | Basic Requir                              | rements                             | 2-4.8 |  |
|       |                                      | 2.3.1.1.                                  | Federal Employer I.D. Number        | 2-4.8 |  |
|       |                                      | 2.3.1.2.                                  | Name                                | 2-4.9 |  |
|       |                                      | 2.3.1.3.                                  | Office                              | 2-5   |  |
|       |                                      | 2.3.1.4.                                  | General Character of Business       | 2-5   |  |
|       |                                      | 2.3.1.5.                                  | Date of Dissolution                 | 2-5   |  |
|       |                                      | 2.3.1.6.                                  | Registered Agent                    | 2-5   |  |
|       |                                      | 2.3.1.7.                                  | Name and Address of Managers        | 2-6   |  |
|       |                                      | 2.3.1.8.                                  | Other Authorized Person             | 2-6   |  |
|       |                                      | 2.3.1.9.                                  | Person Authorized to Execute and    |       |  |
|       |                                      |   | Record Instruments Affecting an     |       |  |
|       |                                      |   | Interest in Real Property           | 2-6   |  |
|       |                                      |   | Form 2-3. Certificate of            |       |  |
|       |                                      |   | Organization                        | 2-7   |  |
|       | 2.3.2.                               |   | ovisions                            | 2-10  |  |
|       | 2.3.3.                               |   |                                     | 2-10  |  |
| 2.4.  | Certificat                           | e of Amendm                               | ent                                 | 2-10  |  |
|       | Form 2-4                             | Form 2-4. Consent of Members to Amend the |                                     |       |  |
|       |                                      |   | ate of Organization                 | 2-12  |  |
|       | Form 2-5                             |   | ate of Amendment of Certificate of  | _     |  |
|       | _                                    |   | ation of, LLC                       | 2-13  |  |
| 2.5.  |                                      |   | Organization and Amended and        | 2.1.  |  |
|       | Restated Certificate of Organization |   |                                     |       |  |

X

| 2.6. | Reservation              | of Name; Trademark and Domain   |      |
|------|--------------------------|---|------|
|      | Name Consi               | iderations  | 2-15 |
|      | Form 2-6.                | Application to Reserve Name   | 2-16 |
| 2.7. | Annual Rep               | ort   | 2-17 |
| 2.8. | _                        | r Amendment by Judicial Order   | 2-17 |
| 2.9. |                          | ransparency Act   | 2-17 |
|      |                          |   |      |
|      |                          | PART II   |      |
|      |                          | OPERATIONS  |      |
| СНАН | PTER 3: T                | THE OPERATING AGREEMENT   | 3-1  |
| 3.1. | In General .             |   | 3-2  |
| 3.2. | "Operating               | Agreement" Defined  | 3-2  |
| 3.3. | Flexibility o            | of LLC Form   | 3-3  |
| 3.4. |                          | erating Agreement   | 3-3  |
| 3.5. |                          | f Adoption  | 3-4  |
| 3.6. |                          | t   | 3-5  |
|      |                          | n General   | 3-5  |
|      |                          | ormality Required   | 3-5  |
| 3.7. |                          | ting Agreements   | 3-5  |
| СНАІ | PTER 4: (                | DRGANIZATION  | 4-1  |
| 4.1. |                          | C Organization Provisions   | 4-3  |
| 4.2. | _                        | Paragraph   | 4-3  |
| 7.2. | Form 4-1.                | Introductory Paragraph — Names Parties  | 4-3  |
|      | Form 4-1.                | Introductory Paragraph — Does   | 4    |
|      | 1011114-2.               | Not Name Parties  | 4-4  |
| 4.3. | Rackground               | to Agreement.   | 4-4  |
| 4.5. | Form 4-3.                | Explanatory Statement   | 4-4  |
| 4.4. |                          | Explanatory Statement   | 4-4  |
| 4.4. | Form 4-4.                | General Definitions   | 4-5  |
| 4.5. |                          |   | 4-5  |
| 4.3. | Form 4-5.                | to Organize LLC   |      |
|      | Form 4-5.                | General Agreement to Organize LLC   | 4-6  |
|      | FOIII 4-0.               | Organizational Provision Confirming That Articles of Organization Have Been Filed | 4-6  |
|      | Form 4-7.                | Organizational Provisions Relating to Adoption                                    | 7 (  |
|      | 1 OIIII <del>1</del> -/. | of New LLC Agreement  | 4-6  |
| 4.6. | Name                     | _   | 4-7  |
|      | Form 4-8.                | Name Provision for Member-Managed LLC   | 4-7  |
|      | Form 4-9.                | Name Provision for Manager-Managed LLC  | 4-7  |
| 4.7. |                          | Powers  | 4-8  |
|      | •                        | Any Lawful Purpose and Broad Powers   | 4-8  |

|       | Form 4-11   | 1. Specific Purpose                            | 2 |
|-------|-------------|--|---|
|       | Form 4-12   |  | 4 |
|       | Form 4-13   | 3. Purpose Limited to Real Estate              |   |
| 4.8.  | Term        | -  | 4 |
|       | Form 4-14   | 4. Term Commences on Date of Filing            |   |
|       |             | of Certificate                                 | 4 |
|       | Form 4-15   | 5. Term Commences upon Execution of            |   |
|       |             | Operating Agreement                            | 4 |
| 4.9.  | Office in t | the Commonwealth                               | 4 |
|       | Form 4-16   | 6. Office in the Commonwealth of LLC Managed   |   |
|       |             | by Members                                     | 4 |
|       | Form 4-17   | $\mathcal{E}$                                  |   |
|       |             | by Managers                                    | 4 |
| 4.10. |             | Agent  | 4 |
|       | Form 4-18   | $\mathcal{E}$                                  | 4 |
| 4.11. | Members     |  | 4 |
|       | Form 4-19   | 9. Schedule of Members Set Forth in Exhibit    | 4 |
|       | Form 4-20   | O. Schedule of Members Set Forth in            |   |
|       |             | Text of Agreement                              | 4 |
|       | Form 4-2    |  | 4 |
| 4.12. | Miscellan   | eous Provisions                                | 4 |
|       | Form 4-22   | 2. Miscellaneous Provisions                    | 4 |
| 4.13. | Piercing t  | he Corporate Veil of LLCs                      | 4 |
|       | 4.13.1.     | Introduction                                   | 4 |
|       | 4.13.2.     | Piercing the Corporate Veil – General          | 4 |
|       | 4.13.3.     | Piercing the Corporate Veil of Corporations in |   |
|       |             | Massachusetts                                  | 4 |
|       | 4.13.4.     | Piercing the Corporate Veil of LLCs in         |   |
|       |             | Massachusetts                                  | 4 |
| CITAT | web z       | LIMITED LIADILITY COMPANY                      |   |
| CHAI  | PTER 5:     | LIMITED LIABILITY COMPANY CAPITAL              |   |
| 5.1.  | Duoftin a ( |  |   |
| 5.2.  | _           | Capital Provisionsntributions                  |   |
| J.L.  | Form 5-1.   |  |   |
|       |             |  |   |
|       | Form 5-2.   | Initial Contributions — Partly in Cash and     |   |
|       | Eom: 5.2    | Partly in Services.                            |   |
|       | Form 5-3.   | •  |   |
|       | Dam: 5 4    | Partly in Property                             |   |
|       | Form 5-4.   | 1  |   |
|       | F 5.5       | of Property                                    |   |
|       | Form 5-5    | Initial Contribution with Promissory Note      |   |

| 5.3.  | Additional C  | ontribution | ons  | 5-6.1       |
|-------|---------------|-------------|--|-------------|
|       | Form 5-6.     | Additio     | onal Contributions at Discretion of                                  |             |
|       |               | Manag       | er — Limit on Amount   | 5-6.1       |
|       | Form 5-7.     | Additio     | onal Contributions at Discretion of                                  |             |
|       |               | Membe       | ers — Limit on Amount  | 5-7         |
|       | Form 5-8.     | No Lia      | bility Beyond Initial Contribution                                   | 5-8         |
|       | Form 5-9.     | No Lia      | bility Beyond Additional Contributions                               | 5-8         |
| 5.4.  | Default in Pa | yment of    | Contributions  | 5-8         |
|       | Form 5-10.    | Remed       | y of Reduction of Member's Interest                                  |             |
|       |               | in Ever     | nt of Failure to Make Contribution                                   |             |
|       |               | to Man      | ager-Managed LLC   | 5-9         |
| 5.5.  | Interest on C | ontribution | ons  | 5-10        |
|       | Form 5-11.    | No Inte     | erest on Contributions   | 5-10        |
|       | Form 5-12.    | Interes     | t on Contributions   | 5-10        |
| 5.6.  | Return of Co  | ntributio   | ns   | 5-11        |
| 5.7.  | Distributions | and Allo    | cations of Profits   | 5-11        |
| 5.8.  | Form of Dist  | ribution .  |  | 5-11        |
|       | Form 5-13.    | Form o      | of Distribution — No Right to Receive                                |             |
|       |               | Anythi      | ng but Cash  | 5-12        |
|       | Form 5-14.    |             | of Distribution — Form of Distribution                               |             |
|       |               |             | iscretion of Manager in  |             |
|       |               |             | er-Managed LLC   | 5-12        |
| 5.9.  | -             |             |  | 5-12        |
|       | Form 5-15.    |             | Accounts Maintained in Accordance                                    |             |
|       |               |             | ode § 704  | 5-13        |
| 5.10. |               |             |  | 5-13        |
|       | Form 5-16.    |             | — General Authority of LLC to  |             |
|       |               |             | Money from Members or Managers on                                    | <b>5</b> 10 |
|       | D 5.45        |             | to Be Agreed upon in Future  | 5-13        |
|       | Form 5-17.    |             | — Authority to Make Specific Loan                                    |             |
|       |               |             | eneral Authority to Borrow Money  Iembers or Managers on Terms to Be |             |
|       |               |             | I upon in Future   | 5-14        |
| 5.11. | Introduction  |             | pensatory Call Options and   | 5-14        |
| J.11. |               |             |  | 5-14        |
|       |               |             | nsatory Call Options: Defined  | 5-15        |
|       |               | 11.1.1.     | Tax Consequences of Issuance and                                     | 5 15        |
|       | 3.            | 11.1.1.     | Exercise of Call Option  | 5-15        |
|       | 5             | 11.1.2.     | Tax Consequences of Exercise of                                      | 5 15        |
|       | 3.            |             | Option   | 5-16        |
|       |               |             | 5.11.1.2.1. Option Holder  | 5-16        |
|       |               |             | 5.11.1.2.2. Partnership  | 5-16        |
|       |               |             | 5.11.1.2.3. Disregarded Entities                                     | 5-17        |

|            | 5.11.2.                                 | Convertible Interests  | 5-17       |  |  |
|------------|---|--|------------|--|--|
|            |   | 5.11.2.1. Description of Convertible Preferred                               |            |  |  |
|            |   | Interests  | 5-17       |  |  |
|            |   | 5.11.2.2. Tax Consequences of Issuance and Exercise of Convertible Preferred |            |  |  |
|            | 5.11.3.                                 | Interests  | 5-18       |  |  |
|            | 5.11.5.                                 | Convertible Debt Interests   | 5-19       |  |  |
| СНАІ       | PTER 6:                                 | ALLOCATION AND DISTRIBUTION  | . 1        |  |  |
| <i>c</i> 1 | m .:                                    | PROVISIONS   | 6-1        |  |  |
| 6.1.       |   | of the LLC   | 6-3        |  |  |
| 6.2.       |   | Allocation and Distribution Concepts   | 6-3        |  |  |
| 6.3.       |   | tion Restrictions Under the Act  | 6-4<br>6-4 |  |  |
| 6.4.       | Allocation Restrictions — Code § 704(b) |  |            |  |  |
|            | 6.4.1.                                  | Overview   | 6-4        |  |  |
|            | 6.4.2.                                  | The Three Alternative Allocation Tests                                       | 6-5        |  |  |
|            |   | 6.4.2.1. The First Test: Partners' Interests                                 | 6-5        |  |  |
|            |   | 6.4.2.2. The Second Test: Substantial Economic                               |            |  |  |
|            |   | Effect and Capital Accounts  | 6-6        |  |  |
|            |   | 6.4.2.3. The Third Test: Nonrecourse Debt                                    | 6-7        |  |  |
|            | 6.4.3.                                  | Allocations to Members   | 6-8        |  |  |
| 6.5.       | Definition                              | ons  | 6-9        |  |  |
|            | 6.5.1.                                  | Distribution-Related Definitions   | 6-9        |  |  |
|            |   | Form 6-1. Distribution Definitions   | 6-9        |  |  |
|            | 6.5.2.                                  | Allocation-Related Definitions   | 6-10       |  |  |
|            |   | Form 6-2. Tax Definitions  | 6-10       |  |  |
| 6.6.       | Basic Di                                | istribution Provisions   | 6-12       |  |  |
|            | 6.6.1.                                  | In General   | 6-12       |  |  |
|            |   | 6.6.1.1. Tax Distributions   | 6-13       |  |  |
|            |   | 6.6.1.2. Taxation of Distributions   | 6-14.1     |  |  |
|            |   | 6.6.1.3. Distributions and Allocations for                                   |            |  |  |
|            |   | LLCs Taxed as S Corporations   | 6-14.2     |  |  |
|            | 6.6.2.                                  | Cash Flow from Operations  | 6-14.2     |  |  |
|            |   | Form 6-3. Distributions of Cash Flow   | 6-14.2     |  |  |
|            |   | Form 6-3A. Distributions to Pay Taxes  | 6-14.2     |  |  |
|            |   | Form 6-3B. Withholding   | 6-14.3     |  |  |
|            | 6.6.3.                                  | Distribution of Capital Proceeds   | 6-14.5     |  |  |
|            |   | Form 6-4. Distribution of Capital Proceeds                                   | 6-14.5     |  |  |
|            | 6.6.4.                                  | Liquidation Proceeds   | 6-14.6     |  |  |
|            |   | Form 6-5. Liquidation and Dissolution  | 6-15       |  |  |

|      |                  | Form 6-6. Liquidation and Dissolution — Deficit Restoration Obligation |
|------|------------------|--|
| 6.7. | Basic A          | llocation Provisions   |
| 0.7. | 6.7.1.           | Basic Allocations of Income and Loss                                   |
|      | 0,,,1,           | Form 6-7. Profit or Loss   |
|      | 6.7.2.           | Qualified Income Offset and Minimum Gain                               |
|      |                  | Chargeback   |
|      |                  | Form 6-8. Qualified Income Offset and                                  |
|      |                  | Minimum Gain Chargeback  |
|      | 6.7.3.           | Other Regulatory Allocations   |
|      |                  | Form 6-9. Regulatory Allocations                                       |
|      | 6.7.4.           | General Provisions   |
| 60   | Commla           | Form 6-10. General Provisions  |
| 6.8. |                  | x and Disproportionate Distribution and fon Provisions                 |
|      | 6.8.1.           | Distribution Preferences   |
|      | 0.0.1.           | Form 6-11. Distribution Preference                                     |
|      | 6.8.2.           | Disproportionate Allocation of Losses                                  |
|      | 0.0.2.           | Form 6-12. Disproportionate Allocation of Loss                         |
|      | 6.8.3.           | Flips  |
|      |                  | Form 6-13. Flip on Sale  |
| 6.9. | Forced A         | Allocations  |
|      | Form 6-          | 14. Forced Allocations   |
| CITA | DTED 7.          | MANACEMENT DROVICIONS  |
| 7.1. | PTER 7:          | MANAGEMENT PROVISIONS  |
| /.1. | _                | g LLC Management Provisions  |
|      | 7.1.1.<br>7.1.2. | General Flexibility under the Act                                      |
|      | 7.1.2.           | Typical Approaches   |
| 7.2  |                  | Officers, Managers and Authorized Persons r-Managed LLC Provisions     |
| 7.2. | Form 7-          | -  |
|      | Form 7-          |  |
|      | roilli /-        | of Ministerial Manager   |
| 7.3. | Renrese          | entative Management  |
| 1.5. | 7.3.1.           | Management by a "General Partner"-Like Manager.                        |
|      | 7.5.1.           | Form 7-3. Manager with "General Partner"-                              |
|      |                  | Like Authority   |
|      |                  | Form 7-4. Manager with "General Partner"-                              |
|      |                  | Like Authority — Alternate Form  |
|      | 7.3.2.           | Management by Management Committee                                     |
|      |                  | Form 7-5. Management Committee   |
| 7.4. | Replace          | ement of Managers  |

|       | Form 7-6.  | Remov              | al of Manager for Only                 |                |
|-------|------------|--------------------|--|----------------|
|       |            | Specific           | ed Reasons                             | 7-13           |
|       | Form 7-7.  | Remov              | al of Manager for Any Reason           | 7-14           |
| 7.5.  | Meetings o | of Members         |  | 7-14           |
|       | Form 7-8.  | Procedi            | ure for Calling and Holding Meetings   | 7-15           |
| 7.6.  | Informal A | ction of Me        | embers; Form of Member Consents        | 7-15           |
|       | Form 7-9.  | Informa            | al Actions                             | 7-16           |
|       | Form 7-10. | . Form o           | f Consent of Members                   | 7-16           |
| 7.7.  | Deadlock a | and Dispute        | Resolution                             | 7-17           |
|       | Form 7-12. | A. Mediat          | ion                                    | 7-18           |
|       | Form 7-12  | B. Arbitra         | tion                                   | 7-19           |
|       | Form 7-13. | . Russiar          | n Roulette in the Event of Deadlock    | 7-20           |
| 7.8.  | Compensat  | tion and Re        | imbursement                            | 7-21           |
|       | Form 7-14. | . No Arra          | angement for Compensation              |                |
|       |            | (Memb              | er-Managed)                            | 7-21           |
|       | Form 7-15. | . Compe            | nsation (Manager-Managed)              | 7-22           |
|       | Form 7-16. | . Extraor          | dinary Compensation                    | 7-22           |
| 7.9.  | Standard o | f Care and l       | Duty of Loyalty                        | 7-23           |
|       | 7.9.1.     | Default Fid        | uciary Duties                          | 7-23           |
|       | 7.9.2.     | Defining Sc        | cope of Fiduciary Duties Contractually | 7-24.8         |
|       |            | Form 7-17 <i>A</i> | A. Standard of Care and Duty of        |                |
|       |            |                    | Loyalty                                | 7-24.21        |
|       |            | Form 7-17E         | B. Elimination of Fiduciary Duties     |                |
|       |            |                    | (Manager-Managed LLC)                  | 7-24.21        |
|       | -          | Form 7-170         | C. Elimination of Fiduciary Duties     |                |
|       |            |                    | (Member-Managed LLC)                   | 7-25           |
| 7.10. |            |                    | xculpation                             | 7-25           |
|       | Form 7-18. |                    | y and Indemnification of Managers      |                |
|       |            | _                  | ger-Managed)                           | 7-26.10        |
|       | Form 7-19. |                    | y and Indemnification of Members       | <b>=</b> 26.44 |
|       | ***        |                    | er-Managed)                            |                |
| 7.11. | _          | _                  | LCs                                    | 7-26.12        |
|       |            |                    | f Litigation-Related Provisions        | <b>=</b> 26.42 |
|       |            |                    |  | 7-26.13        |
|       | Ţ.         |                    | Direct Claims By or Against            | <b>=</b> 26.42 |
|       |            |                    |  | 7-26.13        |
|       |            | 7.11.1.2.          | Claims by Members or Managers in       | 7.06.14        |
|       |            |                    | the Name of the LLC                    |                |
|       |            | 7.11.1.3.          | Jurisdictional Considerations          | 7-26.15        |
|       | ĺ          | 7.11.1.4.          | Costs and Expenses of a Derivative     | 7.06.15        |
|       | 7 11 2     | D: .:              | Suiting Derivative and Direct Claims   |                |
|       | 7 11 7     | i netinameh        | ing Lierwative and Litrect Claims      | 7 76 10        |

|       | 7.11.3.   | Issues Arisin   | g From Suits Under Section 56          |        |
|-------|-----------|-----------------|--|--------|
|       |           | of the Act      |  | -26.23 |
|       | 7.11.4.   | Massachuset     | tts Court Application of Corporate     |        |
|       |           | Derivative Pr   | rinciples to LLC Disputes7             | -26.24 |
|       | 7.11.5.   | Interplay Be    | tween the Act and Rule 23.1            | -26.29 |
|       | 7.11.6.   | Piercing the    | Corporate Veil                         | -26.30 |
| 7.12. | Liability |                 | es                                     |        |
| 7.13. | Power of  | Attorney        |  | -26.33 |
|       | Form 7-2  |                 | f Attorney                             | 7-27   |
| 7.14. | Access to |                 | ntiality of Information; Records       | 7-28   |
|       | Form 7-2  |                 | to Information Provision               | 7-28   |
| CHAP  | TER 8:    |                 | R AND BUY-SELL PROVISIONS              | 8-1    |
| 8.1.  |           |                 | s for Transfers                        | 8-3    |
| 8.2.  | Tax Aspe  | cts of Transfer | r Restrictions                         | 8-3    |
|       | 8.2.1.    | Partnership (   | Classification                         | 8-3    |
|       | 8.2.2.    | Basis Issues    |  | 8-4    |
| 8.3.  | Prelimina | ary Drafting C  | onsiderations                          | 8-5    |
|       | Form 8-1  | . Definition    | onal Provision — Transfer              | 8-5    |
| 8.4.  | Drafting  | Transfer Provi  | isions That Follow the Act's           |        |
|       | Default F |                 |  | 8-5    |
|       | Form 8-2  |                 | Provision Following the Act's          |        |
|       |           |                 | Rules                                  | 8-5    |
| 8.5.  |           |                 | isions That Permit Some Free           |        |
|       | Transfera |                 | ests                                   | 8-6    |
|       | Form 8-3  |                 | insferability of Interests and         |        |
|       |           | _               |  | 8-6    |
|       | Form 8-3  |                 | insferability of Interests and Limited |        |
|       |           |                 | rability of Other Rights               | 8-6    |
| 8.6.  | _         |                 | sions That Absolutely Prohibit         | 0.5    |
|       |           | •               | D 1333                                 | 8-7    |
| 0.7   | Form 8-4  |                 | e Prohibition of Transfers             | 8-7    |
| 8.7.  | _         |                 | sions That Permit Transfers            | 0.7    |
|       | •         |                 | tions                                  | 8-7    |
|       | 8.7.1.    | Form 8-5.       | Transfer Permitted on Satisfaction of  | 8-7    |
|       |           | FOIII 6-3.      | Certain Conditions                     | 8-8    |
|       | 8.7.2.    | First Dafusal   | Rights                                 | 8-9    |
|       | 0.7.2.    | Form 8-6.       | Right of First Refusal; LLC Purchases; | 0-5    |
|       |           | 1 01111 0-0.    | Installments Allowed                   | 8-10   |
|       |           | Form 8-7.       | Right of First Refusal; Member's       | 5 10   |
|       |           | 0 /.            | Purchase Payment Terms Matched         | 8-11   |

|       |             | Form 8-8.      | Right of First Offer; LLC Purchases;<br>Cash Purchase     | 8-13 |
|-------|-------------|----------------|---|------|
|       | 8.7.3.      | Admission o    | f Transferee as a Member                                  | 8-14 |
|       |             | Form 8-9.      | Transferee as a Member  Transferee Not Admitted as Member | 0-14 |
|       |             | 1 OIIII 6-9.   | without Consent of Members                                | 8-14 |
|       |             | Form 8-10.     | Transferee Automatically Admitted as                      | 0-1- |
|       |             | 101111 0-10.   | Member  | 8-14 |
|       |             | Form 8-10 1    | Admission of Transferee as Member                         | 0 14 |
|       |             | 101111 0 10.11 | after Consent of Members                                  | 8-15 |
|       | 8.7.4.      | Transfers to   | Members' Affiliates and Family                            | 8-15 |
|       |             | Form 8-11.     | Definitional Provision — Family                           | 8-16 |
|       |             | Form 8-12.     | Transfers to Affiliates and Family                        | 8-16 |
| 8.8.  | Withdrawa   | l under the A  | .ct   | 8-16 |
|       |             |                | ithdrawal   | 8-16 |
|       |             | Form 8-13.     | Voluntary Withdrawal Defined                              | 8-16 |
|       |             | Form 8-14.     | Voluntary Withdrawal — Not                                |      |
|       |             |                | Permitted   | 8-17 |
|       | 8.8.2.      | Involuntary V  | Withdrawal (Pre-1997 LLCs)                                | 8-17 |
|       |             | Form 8-15.     | Involuntary Withdrawal Defined                            |      |
|       |             |                | (Long Form for Pre-1997 LLCs)                             | 8-17 |
|       |             | Form 8-16.     | Involuntary Withdrawal Defined                            |      |
|       |             |                | (Short Form for Pre-1997 LLCs)                            | 8-19 |
| 8.9.  | Consequer   | nces of Disso  | ciation in General  | 8-19 |
|       | Form 8-17   | . Compan       | y Continues after Member Withdraws;                       |      |
|       |             | No Buy-        | Out   | 8-19 |
| 8.10. | Creating B  |                | ts  | 8-19 |
|       | Form 8-18   |                | Buy-Out; Company Buys;                                    |      |
|       |             | Cash Pu        | rchase  | 8-20 |
|       | Form 8-19   |                | ory Buy-Out; Members Buy;                                 |      |
|       |             |                | ents Permitted  | 8-21 |
| 8.11. | Valuation 1 | Provisions     |   | 8-22 |
|       | Form 8-20   | . Agreed       | Value   | 8-22 |
|       | Form 8-21   | . Book Va      | lue   | 8-23 |
|       | Form 8-22   | . Appraise     | ed Value  | 8-24 |
| 8.12. | Miscellane  | ous Transfer   | Provisions  | 8-24 |
|       | Form 8-23   | . Installm     | ent Buy-Outs  | 8-25 |
| 8.13. | Withholdin  | ng on Transfe  | ers   | 8-25 |
| CHAP' | TER 9:      | DISSOLUT       | ION   | 9-1  |
| 9.1.  | Tax Aspec   | ts of LLC Di   | ssolution   | 9-2  |
| 9.2.  | Overview    | of the Act's I | Dissolution Provisions                                    | 9-2  |
| 9.3.  | Events of I | Dissolution .  |   | 9-3  |

|       | Form 9-1.           | Dissolution — Events of Dissolution                     | 9-4   |
|-------|---------------------|---|-------|
|       | Form 9-2.           | Sample Resolutions Approving Continuation               |       |
|       |                     | of Business after Dissolution                           | 9-4.1 |
| 9.4.  | Procedure for       | r Winding Up and Distribution of Assets                 | 9-5   |
|       | Form 9-3.           | Procedure for Winding Up in Member-                     |       |
|       |                     | Managed LLC   | 9-6   |
|       | Form 9-4.           | Procedure for Winding Up in Manager-                    |       |
|       |                     | Managed LLC   | 9-7   |
|       | Form 9-5.           | Procedure for Winding Up in Member-                     |       |
|       |                     | Managed LLC; Reference to Another Section of            |       |
|       |                     | Operating Agreement for Manner of Distribution to       |       |
|       |                     | Members   | 9-7   |
|       | Form 9-6.           | Procedure for Winding Up in Manager-                    |       |
|       |                     | Managed LLC; Reference to Another Section               |       |
|       |                     | of Operating Agreement for Manner of                    | 0.5   |
| 0.5   |                     | Distribution to Members                                 | 9-7   |
| 9.5.  |                     | Certificate of Cancellation                             | 9-8   |
|       | Form 9-7.           | Filing of a Certificate of Cancellation —               | 0.0   |
|       | F 0.0               | Member-Managed LLC                                      | 9-8   |
|       | Form 9-8.           | Filing of a Certificate of Cancellation —               | 0.0   |
|       | F 0. 0              | Manager-Managed LLC                                     | 9-9   |
|       | Form 9-9.           | Certificate of Cancellation Signed by Authorized Person | 9-9   |
| 9.6.  | A desiminate of the | ve Dissolution  | 9-9   |
| 9.0.  | Administrativ       | ve Dissolution  | 9-10  |
| CHAI  | PTER 10: B          | SOOKS, RECORDS, AND ACCOUNTING                          | 10-1  |
| 10.1. | Introduction        | •                 | 10-2  |
| 10.2. | Records             |   | 10-2  |
|       | Form 10-1.          | Maintenance of Records —                                |       |
|       |                     | Member-Managed LLC                                      | 10-2  |
|       | Form 10-2.          | Maintenance of Records —                                |       |
|       |                     | Manager-Managed LLC                                     | 10-3  |
| 10.3. | Banking             |   | 10-4  |
|       | Form 10-3.          | Bank Accounts   | 10-4  |
| 10.4. | Accounting I        | Period; Taxable Year                                    | 10-4  |
|       | Form 10-4.          | Calendar Year Accounting Period                         |       |
|       |                     | Specified   | 10-5  |
|       | Form 10-5.          | Fiscal Year Accounting Period Specified                 | 10-5  |
|       | Form 10-6.          | Year to Be Determined by Members                        | 10-5  |
|       | Form 10-7.          | Annual Accounting Period Established                    |       |
|       |                     | by Managers   | 10-5  |
| 10.5. | Reports             |   | 10-5  |

|       | Form 10-8              | Member                   | ion of Reports (Short Form) for -Managed or Manager-   | 10-6   |
|-------|------------------------|--------------------------|--|--------|
|       | Form 10-9              | Preparat                 | d LLC  | 10-0   |
| 10.6. | "Tax Matt              |                          |  | 10-7   |
|       | Form 10-1              | 0. Tax Mat               | ters Partner/Partnership Representative orm)   | 10-11  |
| 10.7. | Tax Flecti             |                          |  | 10-14  |
| 10.7. | Form 10-1              |                          | etions   | 10-14  |
|       | Form 10-1              | 2. Tax Elec<br>For Use   | tions — Applies to Code § 754 Only — in Either Member-Managed or                               |        |
|       |                        | _                        | r-Managed LLC  | 10-14  |
| 10.8. |                        |                          |  | 10-15  |
|       | Form 10-1<br>Form 10-1 |                          | Property — In Company Name   | 10-15  |
|       |                        |                          | e Permitted  | 10-15  |
|       |                        | MI                       | PART III<br>SCELLANEOUS  |        |
| CHAP  | TER 11:                | REORGAN                  | NIZATION OF THE LLC  | 11-1   |
| 11.1. |                        |                          |  | 11-2.1 |
| 11.2. | Admission              |                          | mbers  | 11-2.1 |
|       | 11.2.1.                |                          | of Interest from Company   | 11-2.1 |
|       |                        | Form 11-1. Form 11-2.    | Simple Subscription Agreement for LLC Membership Interest Long Form Subscription Agreement for | 11-3   |
|       |                        |                          | LLC Membership Interest  | 11-4   |
|       |                        | Form 11-3.               | Amendment to Operating Agreement<br>Admitting Assignee of Interest                             |        |
|       |                        |                          | as a Member  | 11-6   |
|       | 11.2.2.                | -                        | of Interest from Another Member  | 11-8   |
|       | _                      | Form 11-4.               | Joinder Agreement  | 11-8   |
| 11.3. |                        |                          | ng Entity into an LLC  | 11-9   |
|       | 11.3.1.                |                          |  | 11-9   |
|       | 11.3.2.                | Conversion of Form 11-5. | of General Partnership to LLC<br>Explanatory Statement (Conversion of                          | 11-9   |
|       |                        | Form 11-6.               | General Partnership into LLC)  Term Is Continuation of Term of                                 | 11-11  |
|       |                        |                          | Partnership  | 11_11  |

|        |            | Form 11-7.     | Initial Capital Contributions in Property<br>Consisting of Partnership Interests in | 7       |
|--------|------------|----------------|---|---------|
|        |            |                | LLC's Predecessor   | 11-12   |
|        |            | Form 11-8.     | Assignment of General Partnership   |         |
|        |            |                | Interests to LLC  | 11-12   |
|        |            | Form 11-9.     | Resolutions of Members Approving  |         |
|        |            |                | Liquidation of Partnership Into LLC   | 11-13   |
|        | 11.3.3.    | Conversion of  | of Limited Partnership into LLC   | 11-13   |
|        | 11.3.4.    | Conversion of  | of Corporation into LLC   | 11-14   |
|        | 11.3.5.    | Statutory Co   | nversion of an Existing Entity  |         |
|        |            | into an LLC    |   | 11-16   |
| 11.4.  | Conversion | on of LLC into | Corporation   | 11-18   |
| 11.4A. | Determin   | ation of Holdi | ng Period after Conversion  | 11-18.2 |
|        | Form 11-   | 9A. Mandato    | ory Incorporation Prior to  |         |
|        |            | Public C       | Offering  | 11-18.3 |
| 11.5.  | Recapital  | izing the LLC  | · · · · · · · · · · · · · · · · · · ·   | 11-18.4 |
|        | Form 11-   | 10. Form of    | Amendment of Operating  |         |
|        |            | Agreem         | ent   | 11-18.5 |
| 11.6.  | Mergers I  | Involving a Ma | assachusetts LLC  | 11-19   |
|        | 11.6.1.    | Certificate of | f Merger Generally  | 11-20   |
|        |            | Form 11-11.    | Merger of Two Massachusetts   |         |
|        |            |                | LLCs  | 11-22   |
|        | 11.6.2.    | Filing for Mo  | ergers Involving a Massachusetts  |         |
|        |            | Corporation    | and a Massachusetts LLC   | 11-25   |
|        | 11.6.3.    | Tax Treatme    | nt of Mergers Involving LLCs  | 11-25   |
| CHAP'  | TER 11A:   | SPECIAL U      | USES OF LLCS  | 11A-1   |
| 11A.1. | Creative 1 | Use of Single- | Member LLCs   | 11A-2   |
|        |            |                | Single-Member LLCs  | 11A-2   |
|        |            |                | eorganizations Involving  |         |
|        |            |                | ber LLCs  | 11A-2   |
|        | 11A.1.3.   | Single-Mem     | ber LLCs in Like-Kind Exchanges   | 11A-5   |
|        | 11A.1.4.   |                | ber LLCs in Lieu of Consolidated  |         |
|        |            |                |   | 11A-6   |
|        | 11A.1.5.   |                | lember," Single-Member LLC  | 11A-7   |
| 11A.2. |            |                | e Insurance Holding Company   |         |
|        |            | -              |   | 11A-8   |
| 11A.3. |            |                | and Private Equity-Backed   |         |
|        |            |                |   | 11A-9   |
| 11A.4. | -          |                | r LLC to Facilitate the Acquisition   |         |
|        | _          | orporation's B | -   | 11A-11  |

| CHAP' | TER 12:    | MASSACH         | USETTS TAXATION                        | 12-1  |
|-------|------------|-----------------|--|-------|
| 12.1. | Classifica | tion as a Partn | ership                                 | 12-2  |
| 12.2. | Taxation   | of Individual N | Members                                | 12-2  |
| 12.3. | Taxation   | of Corporate N  | Members                                | 12-3  |
|       | 12.3.1.    | Excise Tax .    |  | 12-3  |
|       | 12.3.2.    | Apportionme     | nt                                     | 12-5  |
|       | 12.3.3.    | Investment Ta   | ax Credits                             | 12-7  |
|       | 12.3.4.    | Property Tax    | Exemption                              | 12-7  |
| 12.4. | Reporting  |                 | S                                      | 12-7  |
| 12.5. |            | _               |  | 12-9  |
| CHAP' | TER 13:    | DOING IN        | TERSTATE BUSINESS                      | 13-1  |
| 13.1. | Foreign L  | LCs Doing Bu    | usiness in Massachusetts               | 13-2  |
|       | 13.1.1.    | Governing La    | aw                                     | 13-2  |
|       | 13.1.2.    | Doing Busine    | ess                                    | 13-3  |
|       | 13.1.3.    | Procedure for   | r Registration                         | 13-3  |
|       |            | Form 13-1.      | Registration for Foreign LLC           | 13-5  |
|       |            | Form 13-2.      | Registration for Foreign Professional  |       |
|       |            |                 | LLC                                    | 13-8  |
|       | 13.1.4.    | •               | rement                                 | 13-11 |
|       | 13.1.5.    | _               | ent for Service of Process             | 13-11 |
|       |            | Form 13-3.      | Statement of Change of Resident Agent/ | 10.10 |
|       |            | F 12 4          | Resident Office                        | 13-12 |
|       |            | Form 13-4.      | Statement of Resignation as Resident   | 13-14 |
|       | 13.1.6.    | Annual Dana     | Agent                                  | 13-14 |
|       | 13.1.0.    | _               | rt                                     | 13-16 |
|       | 13.1.7.    |                 | to Registration                        | 13-10 |
|       | 13.1.6.    |                 | val of Registration                    | 13-16 |
|       |            | Form 13-5.      | Certificate of Cancellation of         | 13-10 |
|       |            | 101111 13 3.    | Registration for Foreign LLC           | 13-17 |
|       |            | Form 13-6.      | Certificate of Withdrawal of           | 10 17 |
|       |            |                 | Registration for Foreign LLC           | 13-18 |
|       | 13.1.9.    | Fees            |  | 13-19 |
|       | 13.1.10.   |                 | ess without Registration               | 13-19 |
| 13.2. | Massachu   | _               | oing Business Outside of               |       |
|       |            |                 |  | 13-20 |
|       | 13.2.1.    | Doing Busine    | ess in Other States and Foreign        |       |
|       |            |                 |  | 13-20 |
|       | 13.2.2.    | Protective Mo   | easures for Massachusetts LLCs         |       |
|       |            | Doing Busine    | ess Outside of Massachusetts           | 13-21 |

| CHAPTER 14:  14.1. Credit Ag |          | COMMERCIAL AND SECURITIES LAW ASPECTS OF LLCS                                    |         |  |
|------------------------------|----------|--|---------|--|
|                              |          |  |         |  |
|                              |          | Form 14-1. Manager's Certificate   | 14-5    |  |
|                              |          | Form 14-2. Member's Certificate  | 14-7    |  |
|                              |          | Form 14-3. Majority Members' Certificate   | 14-9    |  |
|                              | 14.1.2.  | Documentation  | 14-12   |  |
|                              |          | 14.1.2.1. Recourse   | 14-12   |  |
|                              |          | 14.1.2.2. Representations and Warranties   | 14-12   |  |
|                              |          | 14.1.2.3. Covenants  | 14-12   |  |
|                              | 14.1.3.  | Remedies/Bankruptcy  | 14-12.1 |  |
|                              | 14.1.4.  | Conversions of Existing Entities   | 14-13   |  |
|                              | 14.1.5.  | Tax Considerations   | 14-14   |  |
| 14.2.                        | Opinion  | Letters  | 14-14   |  |
|                              | Form 14  |  |         |  |
|                              |          | for an LLC 1   | 4-16.1  |  |
|                              | Form 14  | -4A. Excerpts for LLC's Counsel Opinion to                                       |         |  |
|                              |          | Investors in the LLC When LLC Is a Venture                                       |         |  |
|                              |          | Capital Fund   | 14-17   |  |
| 14.3.                        | Pledge o | of Membership Interest   | 14-19   |  |
|                              | 14.3.1.  | Pledge of Membership Interest  | 14-19   |  |
|                              |          | Form 14-4B. Amendment to "Opt-In" to Article 8                                   | 14-20   |  |
|                              |          | Form 14-4C. LLC's Acknowledgement and  |         |  |
|                              |          | Consent to Be Governed by  |         |  |
|                              |          | Article 8 of UCC   | 14-22   |  |
|                              |          | Form 14-4D. Operating Agreement Provision that                                   |         |  |
|                              |          | LLC will not "Opt-Out" of Article 8 1  | 4-22.1  |  |
|                              |          | Form 14-4E. Operating Agreement Provision  |         |  |
|                              |          | that LLC Interests Will Be General   | 14 22 1 |  |
|                              |          | Intangibles  | .4-22.1 |  |
|                              |          | Form 14-5. Collateral Assignment of Membership Interest and Security Agreement 1 | 14 22 3 |  |
|                              |          | Form 14-6. UCC-1 Description for Collateral                                      | .4-22.3 |  |
|                              |          | Assignment of Membership   |         |  |
|                              |          | Interest   | 14-33   |  |
|                              | 14.3.2.  | Pledge of Membership Notes   | 14-34   |  |
| 14.4.                        |          | es Law Aspects   | 14-34   |  |
|                              | 14.4.1.  | LLC Interests as Securities  | 14-35   |  |
|                              | 14.4.2.  | Status of the LLC as an Issuer   | 14-36   |  |
|                              | 14 4 3   | Status of the LLC as an Investor   | 14-36   |  |

| 14.5.  |               | of the Pre-Merger Notification Requirements | 14-36 |
|--------|---------------|---|-------|
|        |               | cott-Rodino Act to LLCs                     | 14-30 |
|        |               | ckground                                    | 14-37 |
|        |               | alifying Transactions                       | 14-36 |
|        |               | -   | 14-39 |
| 14.6.  |               | eatment of LLCs under the Interpretation    | 14-39 |
| 14.0.  | Diversity Jun | sulction for LLes.                          | 14-40 |
| CHAP   |               | IMITED LIABILITY PARTNERSHIPS               | 15-1  |
| 15.1.  |               |   | 15-2  |
|        |               | x Classification                            | 15-3  |
| 15.2.  | Formation of  | an LLP                                      | 15-3  |
|        | Form 15-1.    | Registration for Domestic LLP               | 15-5  |
|        | Form 15-2.    | Registration for Professional LLP           | 15-5  |
| 15.3.  | Name Requir   | ement                                       | 15-6  |
| 15.4.  | Registered Ag | gent  | 15-7  |
|        | Form 15-3.    | Certificate of Appointment of Registered    |       |
|        |               | Agent for Service of Process                | 15-8  |
|        | Form 15-4.    | Certificate of Revocation of Agency         | 15-9  |
|        | Form 15-5.    | Certificate of Resignation as Registered    |       |
|        |               | Agent for Service of Process                | 15-9  |
| 15.5.  | Insurance Re  | quirements for Professional LLPs            | 15-10 |
| 15.6.  | Annual Repo   | rt  | 15-10 |
|        | Form 15-6.    | Annual Report for Domestic LLP              | 15-11 |
|        | Form 15-7.    | Annual Report for Professional LLP          | 15-12 |
|        | Form 15-8.    | Annual Report for Foreign LLP               | 15-13 |
|        | Form 15-9.    | Annual Report for Foreign Professional LLP  | 15-13 |
| 15.7.  | Amendments    |   | 15-14 |
|        | Form 15-10.   | Certificate of Amendment                    | 15-15 |
| 15.8.  | Revocation as | nd Withdrawal of Registration               | 15-16 |
|        | Form 15-11.   | Certificate of Withdrawal of Registration   |       |
|        |               | For LLP                                     | 15-17 |
| 15.9.  | Fees          |   | 15-17 |
| 15.10. |               | nterstate Commerce                          | 15-18 |
| 15.11. | _             | S   | 15-18 |
|        | Form 15-12.   | Registration for Foreign LLP                | 15-19 |
|        | Form 15-13.   |   | 15-20 |
| CILLE  | TED 17 - E4   | OTHER COMPENSATION AND                      |       |
| СНАР   |               | QUITY COMPENSATION AND<br>HE LLC            | 16-1  |
| 16.1.  |               | de lle                                      | 16-2  |
|        |               | ecte  | 16-2  |

| 16.3. | Vested P                             | rofits Interests                             | 16-3         |
|-------|--------------------------------------|--|--------------|
| 16.4. | Profits Interests Subject to Vesting |  |              |
| 16.5. | Options                              |  |              |
| 16.6. |                                      | Employee Status                              | 16-7<br>16-8 |
| 16.7. |                                      | ion of Code § 409A to LLC Interests          | 16-8.1       |
| 16.8. |                                      | I Regulations on Compensatory                | 10 0.1       |
| 10.0. |                                      | nip Interests                                | 16-10        |
|       | 1 di dicisi                          | np interests                                 | 10 10        |
| CHAP  | TER 17:                              | LLCS AS TAX-EXEMPT 501(C)(3) ORGANIZATIONS   | 17-1         |
| 17 1  | Interestrate                         |  | 17-1         |
| 17.1. |                                      | tion   |              |
| 17.2. |                                      | on Documents                                 | 17-4         |
|       | 17.2.1.                              | Organizational Documents                     | 17-4         |
|       | 17.2.2.                              | Certificate of Organization                  | 17-4         |
| 17.3. |                                      | sequences                                    | 17-4         |
|       | 17.3.1.                              | Reporting                                    | 17-4         |
|       | 17.3.2.                              | Charitable Deductions                        | 17-5         |
|       | 17.3.3.                              | Unrelated Business Taxable Income            | 17-5         |
| 17.4. | Miscella                             | neous  | 17-5         |
|       | 17.4.1.                              | Limited Liability Companies with             |              |
|       |                                      | Multiple Members                             | 17-5         |
|       |                                      | Form 17-1. Certificate of Organization       | 17-8         |
|       | 17.4.2.                              | Benefit Corporations in Comparison to LLCs   | 17-10        |
| СНАР  | TER 18:                              | BANKRUPTCY RELATED ISSUES                    | 18-1         |
| 18.1. | Introduct                            | tion   | 18-3         |
| 18.2. | Eligibilit                           | y of an LLC to Become a Debtor in Bankruptcy | 18-3         |
| 18.3. | _                                    | y to Commence a Voluntary Case               | 18-4         |
| 18.4. |                                      | ncing an Involuntary Bankruptcy Case         |              |
|       |                                      | an LLC                                       | 18-6         |
| 18.5. | The Banl                             | kruptcy Estate of an LLC                     | 18-8         |
|       | 18.5.1.                              | General                                      | 18-8         |
|       | 18.5.2.                              | Capital Calls                                | 18-8         |
|       | 18.5.3.                              | Member's Bankruptcy Estate's Right           |              |
|       |                                      | to LLC Property                              | 18-9         |
| 18.6. | Insiders                             |  | 18-13        |
| 18.7  | Exculpat                             | ory Clauses in Bankruptcy                    | 18-14        |
| 18.8. | _                                    | g Agreements in Bankruptcy                   | 18-15        |
|       | 18.8.1.                              | Effect of Member's Bankruptcy                | 18-15        |
|       | 18.8.2.                              | Operating Agreement as an Executory Contract | 18-16        |
|       |                                      | 18.8.2.1. Executory                          | 18-16        |
|       |                                      | 18 8 2.2 Not Executory                       | 18-17        |

|       | 18.8.3.  | Assignment or Sale of the Membership Interest         | 18-18   |
|-------|----------|---|---------|
|       | 18.8.4.  | Management Rights                                     | 18-18.1 |
|       | 18.8.5.  | Discharge of Indebtedness                             | 18-18.1 |
| 18.9. | Bankrupt | cy Remote LLCs  | 18-19   |
|       | 18.9.1.  | Generally   | 18-19   |
|       | 18.9.2.  | Purpose Limitation                                    | 18-20   |
|       |          | Form 18-1. Sample Special Purpose Limitation          |         |
|       |          | Provision   | 18-20   |
|       | 18.9.3.  | Independent Manager or Member                         | 18-20   |
|       |          | 18.9.3.1. Sample Independent Manager                  |         |
|       |          | Provisions  | 18-21   |
|       |          | Form 18-2. Definition of Independent                  | 10.01   |
|       |          | Manager   | 18-21   |
|       |          | Form 18-3. Company Must Have At Least One Independent |         |
|       |          | Manager   | 18-23   |
|       |          | Form 18-4. Actions Requiring                          | 10 23   |
|       |          | Unanimous Written                                     |         |
|       |          | Consent   | 18-23   |
|       | 18.9.4.  | Separateness Covenants                                | 18-24   |
|       |          | Form 18-5. Sample Separateness Covenants              | 18-24   |
|       | 18.9.5.  | Non-Economic/Springing Members                        | 18-26   |
|       |          | Form 18-6. Sample Springing Member Provision .        | 18-26   |
|       | 18.9.6.  | No Dissolution/Disassociation Upon Member's           |         |
|       |          | Bankruptcy  | 18-27   |
|       |          | Form 18-7. Sample No Dissolution/Disassociation       | 10.07   |
|       | 1007     | Provision   | 18-27   |
|       | 18.9.7.  | Fiduciary Duties                                      | 18-28   |
|       |          | Form 18-8. Sample Fiduciary Duties Provision          | 18-28   |
|       |          |   |         |
|       |          | PART IV   |         |
|       |          | APPENDICES  |         |
| APPE  | NDIX A:  | MODEL OPERATING AGREEMENT                             |         |
|       |          | MEMBER-MANAGED  | PP A-1  |
| APPE  | NDIX B:  | MODEL OPERATING AGREEMENT                             |         |
|       |          | MANAGER-MANAGED A                                     | PP B-1  |
| APPE  | NDIX C:  | CHAPTER 156C. LIMITED LIABILITY                       |         |
|       |          | COMPANY ACT GENERAL                                   |         |
|       |          | PROVISIONS A  | PP C-1  |
| A DDE | NDIV D.  | CHADTED 100A DADTNEDCHIDC                             | DD D 1  |

| APPENDIX E:      | 950 CMR 112.00: LIMITED LIABILITY   |              |
|------------------|---|--------------|
|                  | COMPANIES   | APP E-1      |
| APPENDIX F:      | 950 CMR 111:00: LIMITED LIABILITY   |              |
|                  | PARTNERSHIPS  |              |
| APPENDIX G:      | IRS FORM 8832   | APP G-1      |
| APPENDIX H:      | UNDERSTANDING THE CLASSIFICATION RULES PRIOR TO CHECK-THE-BOX AND THE CHECK-THE-BOX REGULATIONS (TREAS. REG. §§ 301.7701-1-3) | APP H-1      |
| APPENDIX I:      | MODEL CORPORATE-TYPE STRUCTURE OPERATING AGREEMENT  | APP I-1      |
| APPENDIX J:      | SINGLE-MEMBER LLC AGREEMENT   |              |
| APPENDIX K:      | CHECKLIST FOR FORMATION OF LLC  | APP K-1      |
| APPENDIX L:      | FORM OF OPERATING AGREEMENT<br>FOR USE OF LLC AS A BUY-SELL<br>LIFE INSURANCE HOLDING<br>COMPANY TOOL                         | ADDI 1       |
| ADDENINIV M.     | FORM OF EQUITY INCENTIVE  | AFF L-1      |
| AFFENDIA WI:     | PLAN AND EMPLOYEE GRANT AGREEMENT   | APP M-1      |
| APPENDIX N:      | OPERATING AGREEMENT (FOR USE IF S CORPORATION TAX TREATMENT IS TO BE ELECTED)   | APP N-1      |
|                  | PART V<br>LLP AND LLC CASES   |              |
| LLP and LLC Ca   | ses L   | LC Cases-1   |
|                  | PART VI   |              |
|                  | INDICES   |              |
| Cumulative Table | of Internal Revenue Code Citations  | INDEX-1      |
|                  | of Treasury Regulations   | INDEX-4      |
| Cumulative Table | of Revenue Rulings and Revenue Procedures   | INDEX-7      |
|                  | of Massachusetts Limited Liability  | INDEX-8      |
| Company          | / ACL Sections  | LINIDE X - X |

| Cumulative Table of Massachusetts General Law Sections | INDEX-12 |
|--|----------|
| Subject Index  | INDEX-14 |
| Forms Index  | INDEX-30 |