

TABLE OF CONTENTS

PART I

Discussion of the Act and Massachusetts Corporate Law and Practice Generally

Chapter 1.	The Massachusetts Business Corporation Act	1-1
1.1.	Background of the Act	1-1
1.2.	Act Based on ABA Model Business Corporation Act	1-2
1.3.	Keeping the Act up to Date	1-2
1.4.	Application of the Act	1-2
1.5.	The Form of the Act	1-3
1.6.	Default Rules Created by Act, Subject to Modification by Charter or Bylaws	1-4
1.7.	Drafters' Comments to the Act	1-4
1.8.	Principal Changes from Previous Business Corporation Law	1-5
1.9.	Principal Differences from Delaware General Corporation Law and Model Act	1-12
1.9.1.	Delaware General Corporation Law	1-12
1.9.1.1.	Role of Secretary of State, Active versus Passive	1-13
1.9.1.2.	Standard for Availability of Corporate Name	1-13
1.9.1.3.	Vote Required for Shareholder Approval of Mergers, Charter Amendments and Other Significant Corporate Actions	1-13
1.9.1.4.	Requirement for Non-unanimous Shareholder Consents	1-14
1.9.1.5.	Merger Conditions and Charter Provisions Dependent on External Facts	1-14
1.9.1.6.	Derivative Actions	1-14
1.9.1.7.	Corporate Records; Shareholder Inspection Rights	1-14
1.9.1.8.	Consideration for Which Shares May Be Issued; Par Value	1-15
1.9.1.9.	Treasury Shares	1-15
1.9.1.10.	Share Exchanges	1-15
1.9.1.11.	Conversions	1-15
1.9.1.12.	Dissolution Provisions	1-16
1.9.2.	Model Act	1-16
Chapter 2.	The Corporations Division of the Massachusetts Secretary of State	2-1
2.1.	Overview	2-1
2.2.	Role of the Division; Pre-clearance of Documents	2-1
2.3.	Regulations of the Division	2-1

2.4.	Official Forms	2-1
2.5.	Alternatives to Official Forms	2-2
2.6.	Alternative Means of Filing with the Division	2-2
2.7.	Comments about Electronic Filings	2-3
2.8.	Methods of Payment of Filing Fees	2-4
2.9.	Review process for Filed Documents; Rejection of Filings	2-4
2.10.	Availability of Filed Documents on Division Website	2-5
Chapter 3.	The Incorporation Process	3-1
3.1.	Action by Incorporator(s)	3-1
3.2.	Articles of Organization	3-1
3.2.1.	Minimum Requirements for Articles	3-2
3.2.2.	Typical Articles	3-2
3.2.2.1.	Name of Corporation	3-2
3.2.2.2.	Corporate Purposes	3-2
3.2.2.3.	Corporate Powers	3-3
3.2.2.4.	Authorized Shares	3-3
3.2.2.5.	Description of Terms Applicable to Classes and Series of Shares	3-3
3.2.2.6.	Transfer Restrictions	3-3
3.2.2.7.	Other Permitted Charter Provisions	3-4
3.2.2.8.	Effective Date of Articles of Organization	3-5
3.2.2.9.	Other Required Information	3-6
3.2.2.10.	Typical Form of Articles of Organization	3-6
3.2.3.	Other Provisions for Consideration in Articles of Organization	3-6
3.2.3.1.	Shareholder Preemptive Rights	3-6
3.2.3.2.	Cumulative Voting.	3-7
3.2.3.3.	Reservation to the Shareholders of the Right to Issue New Shares	3-7
3.2.3.4.	Limiting the Right of the Corporation to Give Guarantees of Obligations of Related Entities	3-8
3.2.3.5.	Notice of Shareholder Meetings to Shareholders Not Entitled to Vote at the Meeting	3-8
3.2.3.6.	Charter Indemnification Provisions	3-8
3.3.	Bylaws	3-9
3.3.1.	Bylaws of Corporations Organized Prior to the Adoption of the Act	3-9
3.3.2.	Bylaws Reflecting the Act	3-10
3.3.3.	Bylaws for a Public Corporation	3-12
3.3.3.1.	Notice of Matters to Be Taken up at Meetings of Shareholders	3-12
3.3.3.2.	Meetings of Shareholders Solely by Remote Communications	3-12

TABLE OF CONTENTS

	3.3.3.3.	Staggered Terms of Directors	3-13
	3.3.3.4.	Nomination of Directors	3-13
	3.3.3.5.	Filling Vacancies on the Board of Directors	3-13
	3.3.3.6.	Removal of Directors	3-13
	3.3.3.7.	Loans to Directors	3-13
	3.3.3.8.	Bylaw Amendments	3-14
	3.3.4.	Amendments to Bylaws	3-14
3.4.		Placement of Provisions in Articles of Organization or in Bylaws	3-14
3.5.		Initial Director Action	3-15
3.6.		Corporate Name	3-15
	3.6.1.	Name Conflicts with Existing Registered Entities	3-15
	3.6.2.	Name Conflicts with Federally Registered Trademarks and Service Marks	3-16
	3.6.3.	Name Conflicts with Unregistered Trade Names	3-16
	3.6.4.	Corporate Indicators in Name	3-16
	3.6.5.	Reservation of Name	3-17
	3.6.6.	Local Registration of “True Name”	3-17
3.7.		Corporate Seal	3-17
3.8.		Filing Fees	3-18
Chapter 4.		Registered Office and Registered Agent	4-1
Chapter 5.		Annual Report to the Corporations Division	5-1
Chapter 6.		Close Corporation Provisions	6-1
Chapter 7.		Varying from the Corporate Norm; Agreements among Shareholders	7-1
Chapter 8.		Records to Be Retained; Shareholder and Director Inspection Rights; Financial Information to Be Furnished to Shareholders	8-1
8.1.		Records Required to Be Maintained in Massachusetts	8-1
8.2.		Other Records to Be Maintained	8-2
8.3.		Form of Records	8-2
8.4.		Right of Shareholders to Inspect Records	8-2
	8.4.1.	Records Listed in Paragraph 8.1	8-2
	8.4.2.	Records Listed in Paragraph 8.2	8-2
8.5.		What Is a Proper Purpose for the Inspection of Records	8-2
8.6.		Financial Information to Be Furnished to Shareholders	8-3
8.7.		Right of Directors to Inspect Records	8-3
Chapter 9.		Composition of Board of Directors and Election of Directors	9-1
9.1.		Number of Directors	9-1
9.2.		Term; Staggered Board	9-1
9.3.		Directors Elected by Classes of Shareholders; Duties of Such Directors	9-2

MASSACHUSETTS CORPORATE PRACTICE AND FORMS MANUAL

9.4.	Increases in Number of Directors Between Shareholder Meetings; Filling Vacancies	9-2
9.5.	Removal of Directors, with or without Cause	9-2
9.6.	Committees of the Board	9-3
9.6.1.	General Authority	9-3
9.6.2.	Commonly Used Committees	9-3
Chapter 10.	Officers	10-1
10.1.	Required Officers and Permitted Officers; Appointment of Officers	10-1
10.2.	“Secretary” versus “Clerk”	10-1
10.3.	Duties of Officers	10-2
10.4.	Execution of Documents	10-2
Chapter 11.	Conduct of Routine Corporate Activities	11-1
11.1.	Shareholder and Director Meeting by Remote Communications	11-1
11.1.1.	Meetings by Telephone	11-1
11.1.2.	Electronic Means of Communications for Notices, Proxies, Waivers, Consents and Meetings of Shareholders and Directors	11-1
11.2.	Director Action	11-2
11.2.1.	Meetings of Directors; Frequency of Meetings	11-2
11.2.2.	Applicable Procedural Rules	11-3
11.2.3.	Notice of Meetings of Directors	11-3
11.2.3.1.	Time Prior to Meeting when Notice Must Be Given	11-3
11.2.3.2.	Means of Communication of Notice	11-3
11.2.4.	Waiver of Notice	11-4
11.2.5.	Director Proxies	11-4
11.2.6.	Action by Directors	11-4
11.2.7.	Minutes of Meetings of Directors	11-5
11.2.8.	Changes to Minutes; “Rewriting History”	11-5
11.2.9.	Examples of Director Action	11-6
11.2.10.	Action by Consent of the Directors in Lieu of a Meeting	11-6.1
11.3.	Shareholder Action	11-6.1
11.3.1.	Meetings, Generally	11-6.1
11.3.1.1.	Privately Held Corporations	11-7
11.3.1.2.	Publicly Held Corporations	11-7
11.3.1.3.	Annual Meetings and Special Meetings	11-8
11.3.1.4.	Practical Considerations Concerning Annual Meetings of Closely Held Corporations	11-8
11.3.1.5.	Record Date for Determining Shareholders Entitled to Receive Notice and to Vote at a Meeting or Take Other Action	11-9
11.3.1.6.	Notice of Shareholder Meetings	11-9

TABLE OF CONTENTS

11.3.1.7.	Waiver of Notice	11-10
11.3.1.8.	Proxies	11-10
11.3.1.9.	Use of Proxy or Information Statement	11-11
11.3.1.10.	Shareholder List	11-11
11.3.1.11.	Quorum Requirements	11-12
11.3.1.12.	Participation of Shareholders in Meetings by Remote Communications	11-13
11.3.1.13.	Voting Groups; Votes Required for Shareholder Approval of Matters Submitted to a Vote	11-13
11.3.1.14.	Applicable Procedural Rules	11-15
11.3.1.15.	Minutes of Shareholder Meetings	11-15
11.3.2.	Shareholder Action by Consent	11-15
11.3.3.	Ratification of Director Actions by Shareholders	11-16
Chapter 12.	Special Massachusetts Provisions Intended to Protect Against Hostile Takeovers	12-1
Chapter 13.	Capitalization and Related Matters	13-1
13.1.	Par Value; Minimum Consideration to Be Received on Issuance of Shares ..	13-1
13.2.	Consideration to Be Received for Shares; Fully Paid Shares	13-1
13.3.	Share Dividends	13-2
13.4.	The “Bank of Shares” Concept	13-3
13.5.	Elimination of Treasury Shares	13-3
13.6.	Classes and Series of Shares; Residual Right to Vote and to Receive Distributions	13-4
13.7.	Voting by Shareholder “Voting Groups”; Separate Class or Series Vote Requirements	13-5
13.8.	Form of Charter Amendment Creating New Class of Shares	13-6
13.9.	Share Certificates and Uncertificated Shares	13-6
13.10.	Shareholder List	13-7
13.11.	Transfer Restrictions	13-7
13.12.	Preemptive Rights	13-8
13.13.	Stock Options; Incentive Stock Options and Non-qualified Options	13-9
13.14.	Restricted Shares	13-10
Chapter 14.	Voting Agreements and Voting Trusts	14-1
14.1.	Voting Trusts	14-1
14.2.	Voting Agreements	14-1
Chapter 15.	Distributions to Shareholders	15-1
15.1.	“Distributions” Defined	15-1
15.2.	Test for Establishing Propriety of Distributions	15-1

15.2.1.	Insolvency Test	15-1
15.2.2.	Balance Sheet Test	15-2
15.2.3.	Distributions to Shareholders in the Form of Notes	15-2
15.2.4.	Distributions in Liquidation	15-2
15.2.5.	Liabilities for Improper Distributions to Shareholders	15-2
15.2.5.1.	Director Liability	15-2
15.2.5.2.	Shareholder Liability	15-3
15.2.5.3.	Cut-off of Liability	15-3
Chapter 16.	Duties of Directors, Officers and Shareholders; Conflict of Interest	
	Transactions	16-1
16.1.	Director Standards of Conduct	16-1
16.2.	Whose Interests the Directors Must Consider in Discharging their Duties; Insolvency	16-2
16.3.	Director Conflicts of Interest	16-2
16.4.	Loans to Directors	16-3
16.5.	Officer Standards of Conduct	16-3
16.6.	Common Law Duties	16-3
Chapter 17.	Exoneration and Indemnity	17-1
17.1.	Exoneration of Directors	17-1
17.2.	Indemnification of Directors and Officers	17-3
17.2.1.	The Statutory Scheme	17-3
17.2.1.1.	Court-Ordered Indemnification	17-3
17.2.1.2.	Mandatory Indemnification	17-3
17.2.1.3.	Permissive Indemnification	17-3
17.2.1.4.	Inclusion of Indemnity Provisions in the Charter, the Bylaws or a Contract.	17-4
17.2.1.5.	Advancement of Expenses	17-5
17.2.1.6.	Limitations on Indemnification	17-6
17.2.1.7.	Indemnity beyond the Provisions of the Act	17-6
17.2.1.8.	Rationale for Indemnification	17-6
17.2.1.9.	Authorization of Indemnification	17-7
17.3.	Coverage of Employees and Agents	17-7
Chapter 18.	Derivative Shareholder Actions	18-1
18.1.	General Comments	18-1
18.2.	Derivative Actions Defined	18-1
18.3.	Requirement of Prior Demand on Corporation	18-1
18.4.	Appropriate Corporate Response to Demand	18-1
18.5.	Advanced Drafting Considerations	18-2
18.6.	Judicial Developments	18-2

TABLE OF CONTENTS

Chapter 19. Charter Amendments	19-1
19.1. Director Approval	19-1
19.2. Shareholder Approval	19-1
19.3. Anomaly in Shareholder Vote Requirement	19-1
19.4. Voting by Separate Voting Groups	19-2
19.5. Filing Requirements; Possibility of Rejection	19-3
Chapter 20. Merger, Share Exchange and Sale of Substantially All the Assets	20-1
20.1. Share Exchange, a New Concept	20-1
20.2. Plan of Merger or Share Exchange	20-2
20.3. Sale of Assets	20-3
20.3.1. Assets Sales Not Requiring Shareholder Approval	20-3
20.3.2. Assets Sales Requiring Shareholder Approval	20-3
20.4. Approvals Required	20-3
20.4.1. Director Approval	20-3
20.4.2. Shareholder Approval; Exceptions	20-4
20.4.2.1. General Rule	20-4
20.4.2.2. Exceptions	20-4
20.4.3. Parent-Subsidiary Mergers	20-4
20.4.4. Filings Required	20-5
Chapter 21. Appraisal Rights	21-1
21.1. Events Giving Rise to a Right to Appraisal	21-1
21.2. Procedure in the Event There Is or May Be a Right to an Appraisal	21-3
Chapter 22. Dissolution	22-1
22.1. Safe Harbor Dissolution Provisions	22-1
22.2. Other Means of Dissolution	22-2
22.2.1. Administrative Dissolution	22-2
22.2.2. Judicial Dissolution; Deadlock	22-2
22.2.3. Effect of Dissolution; Revival	22-2
Chapter 23. Choice of Organizational Form and Jurisdiction of Organization	23-1
23.1. Choice of Entity	23-1
23.1.1. Business Corporations Not Electing S Corporation Tax Status	23-1
23.1.2. Business Corporations Electing S Corporation Tax Status	23-2
23.1.3. Limited Liability Companies	23-2
23.1.4. Limited Partnerships	23-4
23.1.5. Limited Liability General Partnerships	23-4
23.1.6. General Partnerships Without Limited Liability	23-5
23.1.7. Sole Proprietorships	23-5
23.2. Choice of Jurisdiction for Organization of Entity	23-5
23.2.1. Sole Proprietorships	23-5
23.2.2. General Partnerships, Including Limited Liability Partnerships	23-6

MASSACHUSETTS CORPORATE PRACTICE AND FORMS MANUAL

23.2.3.	Limited Partnerships and Limited Liability Companies	23-6
23.2.4.	Business Corporations	23-7
23.2.4.1.	The Corporate Statutes	23-7
23.2.4.2.	Additional Costs and Filing Requirements	23-8
23.2.4.3.	Delaware Chancery Court and Delaware “Corporate Common Law”	23-9
23.2.4.4.	The Massachusetts Comments	23-9
23.2.4.5.	The Delaware Cachet; Bias of the Financial Community and Its Advisors Toward Delaware Law	23-10
23.2.4.6.	The “Bottom Line” for Choice of Law for a Business Corporation	23-10
23.3.	Incorporation under the Law of a State Other than Massachusetts or Delaware	23-10
Chapter 24.	Domestication and Conversion	24-1
24.1.	General Comments	24-1
24.2.	Domestication	24-1
24.3.	Conversion	24-2
Chapter 25.	Qualification of Foreign Corporations in Massachusetts	25-1
25.1.	Activities Constituting Doing Business in Massachusetts So as to Require Qualification	25-1
25.2.	Name in Which a Foreign Corporation Does Business in Massachusetts	25-2
25.3.	Appointment of Registered Agent	25-2
25.4.	Certificate to be Filed in Massachusetts by Foreign Corporation	25-2
25.5.	Consequences of Failure to Qualify as a Foreign Corporation	25-2
Chapter 26.	Final Thoughts Concerning Massachusetts Corporate Practice and the Act	26-1

PART II

Forms

Form 2.4	Official Form of Articles of Organization	FORM-1
Form 3.1	Written Action by Incorporator	FORM-5
Form 3.2.1	Simple Articles of Organization	FORM-6
Form 3.2.2	Typical Articles of Organization	FORM-9
Form 3.2.3.1	Providing Shareholder Preemptive Rights	FORM-14
Form 3.2.3.2	Permitting Cumulative Voting	FORM-16
Form 3.2.3.3	Reserving to Shareholders the Power to Issue Shares	FORM-17
Form 3.2.3.4	Limiting the Right to Make Contracts of Guarantee	FORM-17
Form 3.2.3.5	Requiring Notice to Shareholders Not Entitled to Vote	FORM-18

TABLE OF CONTENTS

Form 3.2.3.6	Providing Indemnification in the Articles	FORM-18
Form 3.2.3.7	Restrictions on the Transfer of Shares	FORM-23
Form 3.2.3.8	Staggering the Terms of Directors–Non-public Corporation	FORM-28
Form 3.2.3.9	Reducing the Percentage of Votes Needed to Call a Special Meeting of Shareholders	FORM-29
Form 3.2.3.10	Elections under Chapter 110D and 110F	FORM-29
Form 3.3.2	Bylaws	FORM-30
Form 3.3.3	Bylaws for a Publicly Held Corporation	FORM-53
Form 3.5	Unanimous Consent of Directors in Lieu of First Meeting	FORM-78
Form 5	Massachusetts Annual Report Form for Corporation	FORM-81
Form 11.2.3	Notice of Meeting of Directors	FORM-83
Form 11.2.4	Waiver of Notice of Meeting of Directors	FORM-84
Form 11.2.7	Minutes of Meeting of Directors	FORM-85
Form 11.2.9	Illustrative Director Resolutions	FORM-87
Form 11.2.10	Director Action by Written Consent	FORM-93
Form 11.3.1.2	Script for Annual Meeting of Shareholders of Public Company	FORM-94
Form 11.3.1.4A	Written Consent of Shareholders in Lieu of Annual Meeting	FORM-99
Form 11.3.1.4B	Written Consent of Directors in Lieu of Annual Meeting ..	FORM-100
Form 11.3.1.6A	Notice of Annual Meeting of Shareholders	FORM-101
Form 11.3.1.6B	Notice of Special Meeting of Shareholders	FORM-102
Form 11.3.1.7	Waiver of Notice of Meeting of Shareholders	FORM-103
Form 11.3.1.8	Appointment of Shareholder Proxy	FORM-104
Form 11.3.1.15A	Minutes of Meeting of Shareholders of Privately Held Corporation	FORM-106
Form 11.3.1.15B	Minutes of Meeting of Shareholders of Publicly Held Corporation	FORM-108
Form 11.3.2A	Action by Written Consent of Shareholders in Lieu of a Meeting	FORM-110
Form 11.3.2B	Notice of Action of Shareholders by Less than Unanimous Written Consent	FORM-111
Form 13.8	Charter Amendment Creating a New Class of Shares	FORM-112
Form 13.9	Share Certificate Text	FORM-139
Form 13.11	Share Transfer Restriction Agreement	FORM-140
Form 13.12	Preemptive Rights Agreement	FORM-145
Form 13.13	Restricted Share Agreement	FORM-148
Form 13.13A	Omnibus Incentive Stock Plan	FORM-166
Form 14.1	Voting Trust	FORM-166
Form 14.2	Voting Agreement	FORM-176
Form 17.2.1.4	Indemnity Agreement Between a Corporation and a Member of Its Board of Directors	FORM-184

MASSACHUSETTS CORPORATE PRACTICE AND FORMS MANUAL

Form 19A	Official Form of Articles of Amendment	FORM-191
Form 19B	Example of Articles of Amendment	FORM-195
Form 20.2A	Agreement and Plan of Merger	FORM-199
Form 20.2B	Short Form of Agreement and Plan of Merger	FORM-256
Form 20.4.1	Director Resolutions Approving Agreement and Plan of Merger	FORM-258
Form 20.4.2.1	Shareholder Vote Approving Agreement and Plan of Merger	FORM-258
Form 20.4.3	Official Form for Articles of Merger	FORM-259
Form 21.2	Notices to Shareholders Concerning Appraisal Rights	FORM-262

PART III

Appendices

Appendix A:	Information Regarding How to File	APP A-1
Appendix B:	MGL Chapter 156D The Massachusetts Business Corporation Act as enacted by Chapter 127 of the Laws of 2003 as amended by Chapter 178 of the Laws of 2004 Including Drafters' Comments [on disk only]	APP B-1
Appendix C:	Emergency Regulations of the Massachusetts Secretary of State under MGL Chapter 156D	APP C-1
<i>Forms Index</i>		INDEX-1
<i>Table of Massachusetts Laws</i>		INDEX-3
<i>Subject Index</i>		INDEX-15