

TITLE 20: DEPARTMENT OF COMMERCE

CHAPTER 20-50 REGISTRAR OF CORPORATIONS

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Subchapter Authority: 1 CMC § 2153(b); 4 CMC § 4202; Executive Order 97-03 (effective November 13, 1997).

Subchapter History: Amdts Adopted 16 Com. Reg. 11886 (May 15, 1994); Amdts Emergency and Proposed 12 Com. Reg. 7401 (Oct. 15, 1990) (effective 120 days from Oct. 15, 1990); Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: 4 CMC § 4201 created a Registrar of Corporations within the Office of the Attorney General. Former 4 CMC § 4202 authorized the Registrar, with the approval of the Governor and Attorney General, to prescribe rules and regulations governing corporations, partnerships and associations. Pursuant to the authority of 4 CMC § 4202, the Registrar issued the 1990 Business Corporation Regulations and subsequent amendments.

PL 10-7 (effective May 10, 1996), the “Commonwealth Business Corporation Regulation Act,” codified at 4 CMC §§ 4251-4705 enacted the 1990 Business Corporation Regulations (as amended in 1994) as statutory law.

According to PL 10-7 §§ 1 and 3:

Section 1. Regulations Enacted as Statute.

(a) Except as provided by subsection (b), the rules and regulations governing business corporations in the Commonwealth, the Business Corporation Regulations, adopted July 15, 1990 in the Commonwealth Register, Volume 12, No. 7, pages 7201-6997 [sic], as amended on May 15, 1994 in the Commonwealth Register, Volume 16, Number 5, page 11888, are hereby incorporated by reference and enacted as statute law. The Commonwealth Law Revision Commission shall codify these former rules and regulations in the appropriate Commonwealth Code statutory format.

(b) Sections 1.02 and 8.03(a) of the Business Corporation Regulations are not incorporated by reference, are not enacted as statute law, and are hereby rescinded.

...

Section 3. Repealer. Any business corporation rules or regulations adopted, proposed, or promulgated pursuant to 4 CMC § 4202 between May 16, 1994 and the effective date of this Act are hereby rescinded and shall be without force of effect.

The Registrar of Corporations never formally repealed or rescinded the Business Corporation Regulations. However, the Registrar’s authority to regulate corporations for pecuniary profit was repealed. PL 10-7 § 2, codified at 4 CMC § 4202.

PL 10-7 cites volume 12, number 7, pages 7201-6997 in error. The Business Corporation Regulations were proposed on May 15, 1990 at 12 Com. Reg. 6907-6997 and adopted on July 15, 1990 at 12 Com. Reg. 7201-7202.

The Registrar proposed amendments to the Business Corporation Regulations on December 15, 1995. 17 Com. Reg. 13857 (Dec. 15, 1995); 18 Com. Reg. 14017 (Feb. 15, 1996) (extending comment period). They were not adopted and are governed by the repeal provision of PL 10-7 § 3.

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Prior to July 1990, regulations promulgated by the Trust Territory of the Pacific Islands, pursuant to the authority of 37 TTC § 52, governed corporations in the Commonwealth. See Territorial Register, volume 1, number 1, pages 5-36 (July 15, 1974), amended by 3 Com. Reg. 1334 (Aug. 31, 1981), and amended by 12 Com. Reg. 6794 (Jan. 15, 1990) (emergency regulations effective for 120 days from December 29, 1989); see also 4 CMC § 4202. NMIAC § 20-50.1-1620 (Business Corporation Regulations § 17.05), codified at 4 CMC § 4705, repealed the parts of the Trust Territory Regulations regulating for-profit corporations, effective July 25, 1990.

In 1997, the Governor transferred the Registrar of Corporations and the remaining legal functions of that office in regards to corporations of the Commonwealth from the Office of the Attorney General to the Department of Commerce. See Executive Order 97-03 (November 13, 1997).

Part 001 - General Provisions

Subpart A - Short Title and Reservation of Power

§ 20-50.1-001 Short Title

These regulations shall be known as the “Commonwealth Business Corporation Regulation.”

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 1.01 is codified at 4 CMC § 4251; see the general comment to this subchapter.

The commission moved the final period inside of the closing quotation mark.

§ 20-50.1-005 Reservation of Power to Amend or Repeal

[Rescinded by statute.]

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 1.02 was rescinded by PL 10-7 § (1)(b); see the general comment to this subchapter.

Subpart B - Filing of Documents

§ 20-50.1-010 Filing Requirements

- (a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the Registrar of Corporations.
- (b) This subchapter must require or permit filing the document in the office of the Registrar of Corporations.
- (c) The document must contain the information required by this subchapter. It may contain other information as well.
- (d) The document must be typewritten or printed.
- (e) The document must be executed:

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- (1) By the chairman of the board of directors, the president, or other officer of the corporation;
 - (2) If directors have not been selected or the corporation has not been formed, by the incorporator; or
 - (3) If the corporation is in the hands of a receiver, trustee, or other court appointed fiduciary, by the fiduciary.
- (f) The person executing the document shall sign it and state beneath or opposite his signature his name and capacity in which he signs. The document may but need not contain:
- (1) The corporate seal;
 - (2) An attestation by the secretary or an assistant secretary;
 - (3) An acknowledgment, verification, or proof.
- (g) If the Registrar of Corporations has prescribed a mandatory form for a document under § 20-50.1-015, the document must be in or on the prescribed form.
- (h) The document must be delivered to the office of the Registrar of Corporations for filing and must be accompanied by two exact or conformed copies (except as provided in §§ 20-50.1-410 and 20-50.1-1440), and proof of payment of filing fees required by law.

Modified, 1 CMC § 3806(c), (d), (f), (g)

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 1.20 is codified at 4 CMC § 4261; see the general comment to this subchapter.

In subsection (g)(3), the commission corrected the spelling of “acknowledgment.” The Commission corrected the commas at the ends of subsections (f)(1) and (f)(2) to semicolons pursuant to 1 CMC § 3806(g).

§ 20-50.1-015 Forms

- (a)(1) The Registrar of Corporations may prescribe and furnish forms for:
- (i) An application for a certificate of existence;
 - (ii) A foreign corporation’s application for a certificate of authority to transact business in the Commonwealth;
 - (iii) A foreign corporation’s application for a certificate of withdrawal; and
 - (iv) The annual report.
- (2) If the Registrar of Corporations so requires, use of these forms is mandatory.
- (b) The Registrar of Corporations may prescribe and furnish on request forms for other documents required or permitted to be filed by this subchapter but their use is not mandatory.

Modified 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: The original paragraphs of subsection (a) were not designated. The commission designated subsections (a)(1) and (2). The Commission corrected the commas at the ends of subsections (a)(1)(i) through (a)(1)(iii) to semicolons pursuant to 1 CMC § 3806(g).

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Bus. Corp. Reg. § 1.21 is codified at 4 CMC § 4262; see the general comment to this subchapter.

§ 20-50.1-020 Filing, Service and Copying Fees

(a) The following fees shall be paid to the Department of Finance and proof of payment delivered to the Registrar of Corporations when the documents described in this subsection are delivered for filing:

- (1) Articles of incorporation \$100.
- (2) Application for reserved name \$10.
- (3) Notice of transfer of reserved name \$10.
- (4) Application for registered name \$10.
- (5) Application for renewal of registered name \$10.
- (6) Corporations statement of change of registered agent or registered office or both \$10.
- (7) Agent's statement of change in registered office for each affected corporation \$10.
- (8) Agent's statement of resignation \$10.
- (9) Amended articles of incorporation \$50.
- (10) Restated articles of incorporation \$50.
- (11) Articles of merger or share exchange \$50.
- (12) Articles of dissolution \$50.
- (13) Articles of revocation of dissolution \$50.
- (14) Certificate of administrative dissolution no fee.
- (15) Application for reinstatement following administrative dissolution \$100.
- (16) Certificate of reinstatement no fee.
- (17) Certificate of judicial dissolution no fee.
- (18) Application for certificate of authority \$100.
- (19) Application for amended certificate of authority \$25.
- (20) Application for certificate of withdrawal \$25.
- (21) Certificate of revocation of authority to transact business no fee.
- (22) Annual report \$50.
- (23) Articles of correction \$25.
- (24) Application for certificate of existence or authorization \$10.
- (25) Application for use of indistinguishable name \$25.
- (26) Any other document required or permitted to be filed by this subchapter \$25.

(b) The Registrar of Corporations shall collect a fee of \$25 each time process is served on him under this subchapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if he prevails in the proceeding.

(c) The Registrar of Corporations shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (1) \$.50 a page for copying; and
- (2) \$2.50 for certificate.

Modified 1 CMC § 3806(d), (f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

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Commission Comment: Bus. Corp. Reg. § 1.22 is codified at 4 CMC § 4263; see the general comment to this subchapter.

In subsection (a)(7), the commission changed “agents” to “agent’s” to correct a manifest error.

§ 20-50.1-025 Effective Time and Date of Document

(a) Except as provided in subsection (b) and § 20-50.1-030(c) a document accepted for filing is effective:

- (1) At the time of filing on the date it is filed, as evidenced by the Registrar of Corporations’ date and time endorsement on the original document; or
- (2) At the time specified in the document as its effective time on the date it is filed.

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

Modified 1 CMC § 3806(c), (f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 1.23 is codified at 4 CMC § 4264; see the general comment to this subchapter.

In subsection (a)(1), the commission inserted the apostrophe in ACorporations@ to correct a manifest error.

§ 20-50.1-030 Correcting Filed Document

(a) A domestic or foreign corporation may correct a document filed by the Registrar of Corporations if the document

- (1) Contains an incorrect statement or
- (2) Was defectively executed, sealed, verified, or acknowledged.

(b) A document is corrected:

- (1) By preparing articles of correction that
 - (i) Describe the document (including the date filed) or attach a copy of it to the articles,
 - (ii) Specify the incorrect statement and the reason it is incorrect of the manner in which the execution was defective, and
 - (iii) Correct the incorrect statement or defective execution; and
- (2) By delivering the articles of correction to the Registrar of Corporations for filing.

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

Modified 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

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Commission Comment: Bus. Corp. Reg. § 1.24 is codified at 4 CMC § 4265; see the general comment to this subchapter.

§ 20-50.1-035 Filing Duty of Registrar of Corporations

- (a) If a document delivered to the Registrar of Corporations for filing satisfies the requirements of § 20-50.1-010, the Registrar of Corporations shall file it.
- (b) The Registrar of Corporations files a document by stamping or otherwise endorsing “Filed,” together with his name and official title and the date and time of receipt, on both the original and the document copy. After filing the document, except as provided in §§ 20-50.1-410 and 20-50.1-1445, the Registrar of Corporations shall deliver the document copy to the domestic or foreign corporation or its representative.
- (c) If the Registrar of Corporations refuses to file a document, she or he shall return it to the domestic or foreign corporation or its representative within five days after the document was delivered, together with brief written explanation of the reason for its refusal.
- (d) The Registrar of Corporations’ duty to file documents under this section is ministerial. His or her filing or refusal to file a document does not:
- (1) Affect the validity or invalidity of the document in whole or part;
 - (2) Relate to the correctness or incorrectness of information contained in the document;
 - (3) Create a presumption that the document is correct or incorrect.

Modified 1 CMC § 3806(c), (f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 1.25 is codified at 4 CMC § 4266; see the general comment to this subchapter.

In subsection (b), the commission moved the comma after “Filed” inside the closing quotation mark. In subsection (d), the commission inserted the apostrophe in “Corporations.”

§ 20-50.1-040 Appeal from Registrar of Corporations Refusal to File Document

- (a) If the Registrar of Corporations refuses to file a document delivered to his office for filing, the domestic or foreign corporation may appeal the refusal within 30 days after the return of the document to the Commonwealth Superior Court. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Registrar of Corporations explanation of his or her refusal to file.
- (b) The court may summarily order the Registrar of Corporations to file the document or take other action the court considers appropriate.
- (c) The court’s final decision may be appealed as in other civil proceedings.

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

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Commission Comment: Bus. Corp. Reg. § 1.26 is codified at 4 CMC § 4267; see the general comment to this subchapter.

§ 20-50.1-045 Evidentiary Effect of Copy of Filed Document

A certificate attached to a copy of a document filed by the Registrar of Corporations, bearing his or her signature (which may be a facsimile) and the seal of the Commonwealth, is conclusive evidence that the original is on file with the Registrar of Corporations.

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 1.27 is codified at 4 CMC § 4268; see the general comment to this subchapter.

§ 20-50.1-050 Certificate of Existence

- (a) Anyone may apply to the Registrar of Corporations to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.
- (b) A certificate of existence or authorization sets forth:
- (1) The domestic corporation's name or the foreign corporation's name used in the Commonwealth;
 - (2)(i) That the domestic corporation is duly incorporated under the laws of the Commonwealth, the date of incorporation, and the period of its duration if less than perpetual; or
 - (ii) That the foreign corporation is authorized to transact business in the Commonwealth;
 - (3) That all corporation fees and penalties owed to the Commonwealth have been paid, if
 - (i) Payment is reflected in the records of the Registrar of Corporations and
 - (ii) Nonpayment affects the existence or authorization of the domestic or foreign corporation;
 - (4) That its most recent annual report required by § 20-50.1-1530 has been delivered to the Registrar of Corporations;
 - (5) That articles of dissolution have not been filed; and
 - (6) Other facts of record in the office of the Registrar of Corporations that may be requested by the applicant.
- (c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Registrar of Corporations may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in the Commonwealth.

Modified 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 1.28 is codified at 4 CMC § 4269; see the general comment to this subchapter.

§ 20-50.1-055 Penalty for Signing False Document

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

(b) An offense under this section is a civil offense punishable by a civil fine not to exceed \$1,000.

Modified 1 CMC § 3806(g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 1.29 is codified at 4 CMC § 4270; see the general comment to this subchapter.

In subsection (b), the commission corrected the spelling of “civil.”

Subpart C - Registrar of Corporations

§ 20-50.1-060 Powers

The Registrar of Corporations has the power reasonably necessary to perform the duties required by this subchapter and 4 CMC, division 4.

Modified 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 1.30 is codified at 4 CMC § 4281; see the general comment to this subchapter.

Subpart D - Definitions

§ 20-50.1-065 Regulation Definitions

As used in this subchapter:

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

(b) “Authorized shares” means the shares of all classes a domestic or foreign corporation is authorized to issue.

(c) “Commonwealth” means the Commonwealth of the Northern Mariana Islands.

(d) “Conspicuous” means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or bold face or contrasting color, or typing in capitals or underlined, is conspicuous.

(e) “Corporation” or “domestic corporation” means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this subchapter.

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- (f) “Deliver” includes mail.
- (g) “Distribution” means a direct or indirect transfer of money or other property (except its own shares) or incurrance of indebtedness by a 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 declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.
- (h) “Effective date of notice” is defined in § 20-50.1-070.
- (i) “Employee” includes an officer but not a director. A director may accept duties that make him also an employee.
- (j) “Entity” includes corporation and foreign corporation; non profit corporation; profit and non profit unincorporated associations; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States and foreign government.
- (k) “Foreign corporation” means a corporation for profit incorporated under a law other than the law of the Commonwealth.
- (l) “Governmental subdivision” includes authority, county, district, and municipality.
- (m) “Includes” denotes a partial definition.
- (n) “Individual” includes the estate of an incompetent or deceased individual.
- (o) “Means” denotes an exhaustive definition.
- (p) “Notice” is defined in § 20-50.1-070.
- (q) “Person” includes individual and entity.
- (r) “Principal office” means the office (in or out of the Commonwealth) so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.
- (s) “Proceeding” includes civil suit and criminal, administrative, and investigator action.
- (t) “Record date” means the date established under parts 500 and 600 on which a corporation determines the identity of its shareholders and their holdings for purpose of this subchapter.
- (u) “Secretary” means the corporate officer to whom the board of directors has delegated responsibility under § 20-50.1-742(c) for custody of the minutes of the board of directors and of the shareholders and for authenticating records of the corporation.

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- (v) “Share” means the unit into which the proprietary interest in a corporation are divided.
- (w) “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 a corporation.
- (x) “State” when referring to a part of the United States includes a state, commonwealth, territory and insular possession (and their agencies and governmental subdivisions) of the United States.
- (y) “Subscriber” means a person who subscribes for the shares in a corporation, whether before or after incorporation.
- (z) “United States” includes district, authority, commission, department and any other agency of the United States.
- (aa) “Voting group” means all shares of one or more classes or series that under the articles of incorporation or this subchapter 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 subchapter to vote generally on the matter are for that purpose a single voting group.

Modified 1 CMC § 3806(c), (d), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 1.40 is codified at 4 CMC § 4291; see the general comment to this subchapter.

In subsection (e), the commission added the closing quotation mark after Adomestic corporation.@ In subsection (u), the commission changed Aboard of director@ to Aboard of directors@ to correct a manifest error.

§ 20-50.1-070 Notice

- (a) Notice under this subchapter must be in writing unless oral notice is reasonable under the circumstances.
- (b) Notice may be communicated; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impractical, 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.
- (c) Written notice by a domestic or foreign corporation to its shareholders, if in a comprehensible form, is effective when mailed, if mailed postage paid and correctly addressed to the shareholder’s address shown in the corporation’s current record of shareholders.

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(d) Written notice to a domestic or foreign corporation authorized to transact business in the Commonwealth may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in the most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

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

- (1) When received;
 - (2) Five days after its deposit in the United States Mail, as evidenced by the postmark, if mailed postage paid and correctly addressed;
 - (3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and if the receipt is signed by or on behalf of the addressee.
- (f) Oral notice is effective when communicated if communicated in a comprehensible manner.

(g) If this subchapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of these regulations, those requirements govern.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 1.41 is codified at 4 CMC § 4292; see the general comment to this subchapter.

§ 20-50.1-075 Number of Shareholders

(a) For purposes of this subchapter the following identified as a shareholders in the 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 purposes of this subchapter, shareholders registered in substantially similar names constitute one shareholder if it is reasonable to believe that the name represents the same person.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 1.42 is codified at 4 CMC § 4293; see the general comment to this subchapter.

Part 100 - Incorporation

§ 20-50.1-101 Incorporators

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

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 2.01 is codified at 4 CMC § 4301; see the general comment to this subchapter.

§ 20-50.1-105 Articles of Incorporation

(a) The articles of incorporation must set forth:

- (1) A corporate name for the corporation that satisfies the requirements of § 20-50.1-301;
- (2) The number of shares that the corporation is authorized to issue;
- (3) The address of the corporation's initial registered office and the name of the initial registered agent at that office; and
- (4) The name and address of each incorporator.

(b) The articles of incorporation may set forth:

- (1) The names and addresses of the individuals who are to serve as the initial directors;
- (2) Provisions not inconsistent with law regarding:
 - (i) The purpose or purposes for which the corporation is organized;
 - (ii) Managing the business and regulating the affairs of the corporation;
 - (iii) Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;
 - (iv) A par value for authorized shares or classes of shares;
 - (v) The imposition of personal liability on shareholders for the debts of the corporation to a specific extent and upon specific conditions; and
- (3) Any provision that under this subchapter are required or permitted to be set forth in the bylaws.

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

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 2.02 is codified at 4 CMC § 4302; see the general comment to this subchapter.

§ 20-50.1-110 Incorporation

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

(b) The Registrar of Corporation's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding

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by the Commonwealth to cancel or revoke the incorporation or involuntary dissolve the corporation.

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 2.03 is codified at 4 CMC § 4303; see the general comment to this subchapter.

§ 20-50.1-115 Liability for Pre-incorporation Transactions

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

Modified, 1 CMC § 3806(d).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 2.04 is codified at 4 CMC § 4304; see the general comment to this subchapter.

§ 20-50.1-120 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 the majority of the incorporators:

(i) To elect directors and complete the organization of the corporation; or

(ii) To elect a board of directors who shall complete the organization of the corporation.

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

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

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 2.05 is codified at 4 CMC § 4305; see the general comment to this subchapter.

§ 20-50.1-125 Bylaws

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

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

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 2.06 is codified at 4 CMC § 4306; see the general comment to this subchapter.

§ 20-50.1-130 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). The emergency bylaws, which are 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;
- (3) Designation of additional or substitute directors.

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

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

- (1) Binds the corporation; and
- (2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purpose of this section if a quorum of the corporations directors cannot readily assembled because of some catastrophic event.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 2.07 is codified at 4 CMC § 4307; see the general comment to this subchapter.

Part 200 - Purpose and Powers

§ 20-50.1-201 Purpose

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

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

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Modified, 1 CMC § 3806(d).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 3.01 is codified at 4 CMC § 4311; see the general comment to this subchapter.

§ 20-50.1-205 General Powers

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

- (a) To sue and be sued, complain and defend in its corporate name;
- (b) To have a corporate seal, which may be altered at will, and to use it or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
- (c) To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the CNMI, for managing the business and regulating the affairs of the corporation;
- (d) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located, except as restricted by article XII of the Constitution of the Northern Mariana Islands;
- (e) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (f) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interest in, or obligations of, any other entity;
- (g) To make contract 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;
- (h) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment except as restricted by article XII of the Constitution of the Northern Mariana Islands;
- (i) To be a promoter, partner member associate, or manager of any partnership, joint venture, trust, or other entity;
- (j) To conduct its business, locate offices, and exercise the powers granted by the regulations in this subchapter within or without the Commonwealth;

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- (k) To elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;
- (l) To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;
- (m) To make donations for the public welfare or for charitable, scientific, or educational purposes;
- (n) To transact any lawful business that will aid governmental policy;
- (o) To make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 3.02 is codified at 4 CMC § 4312; see the general comment to this subchapter.

§ 20-50.1-210 Emergency Powers

- (a) In anticipation of or during an emergency defined in subsection (d), the board of directors of 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), 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 and radio; 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) May not be used to impose liability on a corporate director, officer, employee, or agent.
- (d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

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Modified, 1 CMC § 3806 (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 3.03 is codified at 4 CMC § 4313; see the general comment to this subchapter.

§ 20-50.1-215 Ultra Vires

- (a) Except as provided in subsection (b), 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:
- (1) In a proceeding by a shareholder against the corporation to enjoin the act;
 - (2) In a proceeding by 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) In a proceeding by the Attorney General under § 20-50.1-1355.
- (c) In a shareholder's proceeding under subsection (b)(1) to enjoin an unauthorized corporate act, the 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.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 3.04 is codified at 4 CMC § 4314; see the general comment to this subchapter.

Part 300 - Name

§ 20-50.1-301 Corporate Name

- (a) A corporate name:
- (1) Must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," or words or abbreviations of like import in another language; and
 - (2) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted by § 20-50.1-201 and its articles of incorporation.
- (b) Except as authorized by subsections (c) and (d), a corporate name must be distinguishable upon the records of the Registrar of Corporations from:
- (1) The corporate name of a corporation incorporated or authorized to transact business in the Commonwealth;
 - (2) A corporate name reserved or registered under § 20-50.1-305 or 20-50.1-310;
 - (3) The fictitious name adopted by a foreign corporation authorized to transact business in the Commonwealth because its real name is unavailable; and

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(4) The corporate name of a not for profit corporation incorporated or authorized to transact business in the Commonwealth.

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

(1) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Registrar of Corporations to change its name to a name that is distinguishable upon the records of the Registrar of Corporations from the name of the applying corporation; or

(2) The applicant delivers to the Registrar of Corporations a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in the Commonwealth.

(d) A corporation may use the name (including the fictitious name) of another domestic or foreign corporation in use in the Commonwealth if the other corporation is incorporated or authorized to transact business in the Commonwealth and the proposed user corporation:

(1) Has merged with the other corporation;

(2) Has been formed by reorganization of the other corporation; or

(3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

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

Modified, 1 CMC § 3806(c), (d), (f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 4.01 is codified at 4 CMC § 4321; see the general comment to this subchapter.

In subsection (d), the commission removed a space between the words "an other" to correct a manifest clerical error. The commission also changed "is use in" to "in use in."

§ 20-50.1-305 Reserved Name

(a) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the Registrar of Corporations for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the Registrar of Corporations finds that the corporate name applied for is available, he or she shall reserve the name for the applicant's exclusive use for a non renewable 120 day period.

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

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

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Commission Comment: Bus. Corp. Reg. § 4.02 is codified at 4 CMC § 4322; see the general comment to this subchapter.

§ 20-50.1-310 Registered Name

- (a) A foreign corporation may register its corporate name, or its corporate name with any addition required by § 20-50.1-1425, if the name is distinguishable upon the records of the Registrar of Corporations from the corporate names that are not available under § 20-50.1-301(b)(3).
- (b) A foreign corporation registers its corporate name, or its corporate name with any addition required by § 20-50.1-1425, by delivering to the Registrar of Corporations for filing an application:
- (1) Setting forth its corporate name, or its corporate name with any addition required by § 20-50.1-1425, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and
 - (2) Accompanied by a certificate of existence (or a document of similar import) from the state or country of incorporation.
- (c) The name is registered for the applicant's exclusive use upon the effective date of the application.
- (d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Registrar of Corporations for filing a renewal application, which complies with the requirements of subsection (b), between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.
- (e) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation thereafter incorporated under this subchapter or by another foreign corporation thereafter authorized to transact business in the Commonwealth. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 4.03 is codified at 4 CMC § 4323; see the general comment to this subchapter.

Part 400 - Office and Agent

§ 20-50.1-401 Registered Office and Registered Agent

Each corporation must continuously maintain in the Commonwealth:

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

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- (b) A registered agent, who may be:
- (1) An individual who resides in the Commonwealth and whose business office is identical with the registered office;
 - (2) A domestic corporation or not for profit domestic corporation whose business office is identical with the registered office; or
 - (3) A foreign corporation or not for profit foreign corporation authorized to transact business in the Commonwealth whose business office is identical with the registered office.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 5.01 is codified at 4 CMC § 4331; see the general comment to this subchapter.

§ 20-50.1-405 Change of Registered Office or Registered Agent

- (a) A corporation may change its registered office or registered agent by delivering to the Registrar of Corporations for filing a statement of change that sets forth:
- (1) The name of the corporation;
 - (2) The mailing address and location of its current registered office;
 - (3) If the current registered office is to be changed, the mailing address and location of the new registered office;
 - (4) The name of its current registered agent;
 - (5) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and
 - (6) That after the change or changes are made, the mailing addresses and locations of its registered office and the business office of its registered agent will be identical.
- (b) If a registered agent changes the mailing address or location of his business office, he may change the mailing address and location of the registered office of any corporation for which he is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Registrar of Corporations for filing a statement that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 5.02 is codified at 4 CMC § 4332; see the general comment to this subchapter.

§ 20-50.1-410 Resignation of Registered Agent

- (a) A registered agent may resign his agency appointment by signing and delivering to the Registrar of Corporations for filing the signed original and two exact or conformed copies of a

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statement of resignation. The statement may include a statement that the registered office is also discontinued.

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

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

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 5.03 is codified at 4 CMC § 4333; see the general comment to this subchapter.

§ 20-50.1-415 Service on Corporation

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

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

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

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

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 5.04 is codified at 4 CMC § 4334; see the general comment to this subchapter.

Part 500 - Shares and Distributions

Subpart A - Shares

§ 20-50.1-501 Authorized Shares

(a) The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and prior to the issuance of shares of a class the preferences, limitations, and relative rights of that class must be described in the articles of incorporation. All shares of a class must have

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preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by § 20-50.1-505.

- (b) The articles of incorporation must authorize
 - (1) One or more classes of shares that together have unlimited voting rights, and
 - (2) One or more classes 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 of shares that:
 - (1) Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this subchapter;
 - (2) Are redeemable or convertible as specified in the articles of incorporation
 - (i) At the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event;
 - (ii) For cash, indebtedness, securities, or other property;
 - (iii) In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;
 - (3) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, non-cumulative, or partially cumulative;
 - (4) Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

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

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 6.01 is codified at 4 CMC § 4341; see the general comment to this subchapter.

§ 20-50.1-505 Terms of Class or Series Determined by Board of Directors

- (a) If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, and relative rights (within the limits set forth in § 20-50.1-501) of
 - (1) Any class of shares before the issuance of any shares of that class or
 - (2) One or more series within a class before the issuance of any shares of that series.

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

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

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

- (1) The name of the corporation;
- (2) The text of the amendment determining the terms of the class or series of shares;
- (3) The date it was adopted; and
- (4) A statement that the amendment was duly adopted by the board of directors.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 6.02 is codified at 4 CMC § 4342; see the general comment to this subchapter.

§ 20-50.1-510 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 are outstanding shares until they are reacquired, redeemed, converted, or cancelled.

(b) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (c) of this section and to § 20-50.1-575.

(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.

Modified, 1 CMC § 3806(c).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 6.03 is codified at 4 CMC § 4343; see the general comment to this subchapter.

§ 20-50.1-515 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;
- (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 must be conspicuously labeled “scrip” and must contain the information required by § 20-50.1-545(b).

(c) The holder of a fractional share is 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

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upon liquidation. The holder of scrip is not 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:

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

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

Modified, 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 6.04 is codified at 4 CMC § 4344; see the general comment to this subchapter.

Subpart B - Issuance of Shares

§ 20-50.1-520 Subscription for Shares Before Incorporation

(a) A subscription for shares entered into before incorporation is irrevocable for six 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 subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must 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 are fully paid and non-assessable 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 more than 20 days after the corporation sends written demand for payments to the subscriber.

(e) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to § 20-50.1-525.

Modified, 1 CMC § 3806(c).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 6.20 is codified at 4 CMC § 4351; see the general comment to this subchapter.

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§ 20-50.1-525 Issuance of Shares

- (a) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.
- (b) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.
- (c) Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and non-assessable.
- (d) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and non-assessable.
- (e) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be cancelled in whole or part.

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 6.21 is codified at 4 CMC § 4352; see the general comment to this subchapter.

§ 20-50.1-530 Liability of Shareholders

- (a) A purchaser from a corporation of its own shares is not 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 (§ 20-50.1-525) or specified in the subscription agreement (§ 20-50.1-520).
- (b) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.

Modified, 1 CMC § 3806(c), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 6.22 is codified at 4 CMC § 4353; see the general comment to this subchapter.

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In subsection (a), the commission changed “in not liable” to “is not liable” to correct a manifest error.

§ 20-50.1-535 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 is a share dividend.

(b) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless

(1) The articles of incorporation so authorize,

(2) A majority of the votes entitled to be cast by the class or series to be issued approve the issue, or

(3) There are no outstanding shares of the class or series to be issued.

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

Modified, 1 CMC § 3806(f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 6.23 is codified at 4 CMC § 4354; see the general comment to this subchapter.

In subsection (c), the commission deleted a repeated sentence.

§ 20-50.1-540 Share Options

A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to issued.

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 6.24 is codified at 4 CMC § 4355; see the general comment to this subchapter.

§ 20-50.1-545 Form and Content of Certificates

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

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

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

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

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

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(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) must 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) Must be signed (either manually or in facsimile) by two officers designated in the bylaws or by the board if directors and

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

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

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 6.25 is codified at 4 CMC § 4356; see the general comment to this subchapter.

§ 20-50.1-550 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 does 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 § 20-50.1-545(b) and (c), and, if applicable, § 20-50.1-555.

Modified, 1 CMC § 3806(c).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 6.26 is codified at 4 CMC § 4357; see the general comment to this subchapter.

§ 20-50.1-555 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 does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

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- (b) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by § 20-50.1-550(b). Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.
- (c) A restriction on the transfer or registration of transfer of shares is authorized:
- (1) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;
 - (2) To preserve exemptions under federal, state or Commonwealth securities law;
 - (3) For any other reasonable purpose.
- (d) A restriction on the transfer or registration of transfer of shares may:
- (1) Obligate the shareholder first to offer the corporation or other persons (separately, consecutively, or simultaneously) an opportunity to acquire the restricted shares;
 - (2) Obligate the 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;
 - (4) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.
- (e) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

Modified, 1 CMC § 3806(c), (f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 6.27 is codified at 4 CMC § 4358; see the general comment to this subchapter.

In subsection (d)(4), the commission replaced a semicolon with a period to correct a manifest clerical error.

§ 20-50.1-560 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.

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 6.28 is codified at 4 CMC § 4359; see the general comment to this subchapter.

Subpart C - Subsequent Acquisition of Shares by Shareholders and Corporation

§ 20-50.1-565 Shareholder's Preemptive Rights

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- (a) The shareholders of a corporation do 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 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 by a writing is irrevocable even though it is not supported by consideration.
 - (3) There is no preemptive right with respect to:
 - (i) Shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;
 - (ii) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;
 - (iii) Shares authorized in articles of incorporation that are issued within six months from the effective date of incorporation;
 - (iv) Shares sold otherwise than for money.
 - (4) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets 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 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 is subject to the shareholder's preemptive rights.
- (c) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 6.30 is codified at 4 CMC § 4371; see the general comment to this subchapter.

In subsection (b)(1), the commission changed Athe acquire@ to Ato acquire@ to correct a manifest error.

§ 20-50.1-570 Corporation's Acquisition of its Own Shares

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- (a) A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares.
- (b) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.
- (c) The board of directors may adopt an amendment under this section without shareholder action, and deliver it to the Registrar of Corporations for filing. The articles must set forth:
- (1) The name of the corporation;
 - (2) The reduction in the number shares, itemized by class and series; and
 - (3) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 6.31 is codified at 4 CMC § 4372; see the general comment to this subchapter.

In subsection (c), the commission changed “adopt of an amendment” to “adopt an amendment” to correct a manifest error.

Subpart D - Distributions

20-50.1-575 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).
- (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 share), it is the date the board of directors authorizes the distribution.
- (c) No distribution may 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 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) either on financial statements prepared on the basis of accounting practices

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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 provided in subsection (g), the effect of a distribution under subsection (c) is measured:

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

(i) The date money or other property is transferred or debt incurred by the corporation or
(ii) The date 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

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

(ii) The date 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 is 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, is not considered a liability for purposes of determination under subsection (c) 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 then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 6.40 is codified at 4 CMC § 4381; see the general comment to this subchapter.

Part 600 - Shareholders

Subpart A - Meetings

§ 20-50.1-601 Annual Meeting

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

(b) Annual shareholders' meetings may be held in or out of the Commonwealth at the place stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

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

Modified, 1 CMC § 3806(g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 7.01 is codified at 4 CMC § 4391; see the general comment to this subchapter.

In subsection (c), the commission deleted a repeated phrase.

§ 20-50.1-605 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) If the holders of at least 10 percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(b) If not otherwise fixed under §§ 20-50.1-610 or 20-50.1-630, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(c) Special shareholders meetings may be held in or out of the Commonwealth at the place stated in or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(d) Only business within the purpose or purposes described in the meeting notice required by § 20-50.1-620(c) may be conducted at a special shareholders' meeting.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 7.02 is codified at 4 CMC § 4392; see the general comment to this subchapter.

§ 20-50.1-610 Court ordered Meeting

(a) The Commonwealth Superior Court may summarily order a meeting to be held:

(1) On application of any shareholder of the corporation entitled to participate in annual meeting if an annual meeting was not held 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) On application of a shareholder who signed a demand for a special meeting valid under § 20-50.1-605 if:

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- (i) Notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation's secretary; or
- (ii) The special meeting was not held in accordance with the notice.

(b) The 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.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 7.03 is codified at 4 CMC § 4393; see the general comment to this subchapter.

§ 20-50.1-615 Action Without Meeting

(a) Action required or permitted by this subchapter 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 must be evidenced by one or more written consents 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) If not otherwise determined under §§ 20-50.1-610 or 20-50.1-630, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (a).

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

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

Modified, 1 CMC § 3806(c), (d).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 7.04 is codified at 4 CMC § 4394; see the general comment to this subchapter.

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§ 20-50.1-620 Notice of Meeting

- (a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholder's meeting no fewer than 10 nor more than 60 days before the meeting date. Unless this subchapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.
- (b) Unless this subchapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.
- (c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.
- (d) If not otherwise fixed under §§ 20-50.1-610 or 20-50.1-630, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.
- (e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under § 20-50.1-630, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

Modified, 1 CMC § 3806(c), (d).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 7.05 is codified at 4 CMC § 4395; see the general comment to this subchapter.

§ 20-50.1-625 Waiver of Notice

- (a) A shareholder may waive any notice required by this subchapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must 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:
- (1) Waives objection to 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;
 - (2) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

Modified, 1 CMC § 3806(d), (f).

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History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 7.06 is codified at 4 CMC § 4396; see the general comment to this subchapter.

§ 20-50.1-630 Record Date

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

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

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

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

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 7.07 is codified at 4 CMC § 4397; see the general comment to this subchapter.

Subpart B - Voting

§ 20-50.1-635 Shareholders' List for Meeting

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

(b) The shareholders' list must be available for inspection by any shareholder, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, his agent, or attorney is entitled on written demand to inspect and, subject to the requirements of § 20-50.1-1505(c), to copy the list, during regular business hours and at his expense, during the period it is available for inspection.

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

(d) If the corporation refuses to allow a shareholder, his agent, or attorney to inspect the shareholders' list before or at the meeting (or copy the list as permitted by subsection (b)), the Commonwealth 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 does not affect the validity of action taken at the meeting.

Modified, 1 CMC § 3806(c).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 7.20 is codified at 4 CMC § 4401; see the general comment to this subchapter.

Subsection (b) cross-references § 20-50.1-1505(c) in error. The original Bus. Corp. Reg. § 16.02 did not contain a subsection (c). See 12 Com. Reg. at 6993 (May 15, 1990).

§ 20-50.1-640 Voting Entitlement of Shares

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

(b) Absent special circumstances, the shares of a corporation are not 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) does 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 are not 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.

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 7.21 is codified at 4 CMC § 4402; see the general comment to this subchapter.

§ 20-50.1-645 Proxies

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- (a) A shareholder may vote his shares in person or by proxy.
- (b) A shareholder may appoint a proxy to vote or otherwise act for him by signing an appointment form, either personally or by his attorney in fact.
- (c) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form.
- (d) An appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:
- (1) A pledgee;
 - (2) A person who purchased or agreed to purchase the shares;
 - (3) A creditor of the corporation who 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 § 20-50.1-685.
- (e) The death or incapacity of the shareholder appointing a proxy do 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 his authority under the appointment.
- (f) An appointment made irrevocable under subsection (d) is 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 he did not know of its existence when he acquired 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 § 20-50.1-655 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

Modified, 1 CMC § 3806(c), (f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 7.22 is codified at 4 CMC § 4403; see the general comment to this subchapter.

In subsection (d)(2), the commission changed the final period to a semicolon to correct a manifest error.

§ 20-50.1-650 Shares Held by Nominees

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(a) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognition may be determined in the procedure.*

*So in original.

(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.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 7.23 is codified at 4 CMC § 4404; see the general comment to this subchapter.

§ 20-50.1-655 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 is 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 do not correspond to the name of its shareholder, the corporation if acting in good faith is nevertheless entitled to 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;
- (5) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coowners and the person signing appears to be acting on behalf of all the co-owners.

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- (c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate 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 are not 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 is valid unless a court competent jurisdiction determines otherwise.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 7.24 is codified at 4 CMC § 4405; see the general comment to this subchapter.

§ 20-50.1-660 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 or this subchapter provide 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 is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of the 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 voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this subchapter 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 (b) or (c) is governed by § 20-50.1-670.
- (e) The election of directors is governed by § 20-50.1-675.

Modified, 1 CMC § 3806(c), (d).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 7.25 is codified at 4 CMC § 4406; see the general comment to this subchapter.

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§ 20-50.1-665 Action by Single and Multiple Voting Groups

(a) If the articles of incorporation or this subchapter 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 § 20-50.1-660.

(b) If the articles of incorporation or this subchapter provide for voting by two 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 § 20-50.1-660. 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.

Modified, 1 CMC § 3806(c), (d).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 7.26 is codified at 4 CMC § 4407; see the general comment to this subchapter.

§ 20-50.1-670 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 subchapter.

(b) An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement must 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.

Modified, 1 CMC § 3806(d).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 7.27 is codified at 4 CMC § 4408; see the general comment to this subchapter.

§ 20-50.1-675 Voting for Directors; Cumulative Voting

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

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

(c) A statement included in the articles of incorporation that “(all) (a designated voting group of) shareholders are entitled to cumulate their votes for directors” (or words of similar import) means that the shareholders designated are entitled to multiply the number of votes they are

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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 to two or more candidates.

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

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

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

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 7.28 is codified at 4 CMC § 4409; see the general comment to this subchapter.

Subpart C - Voting Trusts and Agreements

§20-50.1-680 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 becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than 10 years after its effective date unless extended under subsection (c).

(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 an extension agreement and obtaining the voting trustee's written consent to the extension. An extension is valid for 10 years from the date the first shareholder signs the extension agreement. The voting trustee must 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.

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 7.30 is codified at 4 CMC § 4421; see the general comment to this subchapter.

§ 20-50.1-685 Voting Agreements

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(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 is not subject to the provisions of § 20-50.1-680.

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

Modified, 1 CMC § 3806(c).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 7.31 is codified at 4 CMC § 4422; see the general comment to this subchapter.

Subpart D - Derivative Proceedings

§ 20-50.1-690 Procedure in Derivative Proceedings

(a) A person may not commence a proceeding in the right of a domestic or foreign corporation unless he was a shareholder of the corporation when the transaction complained of occurred or unless he became a shareholder through transfer by operation of law from one who was a shareholder at that time.

(b) A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity the demand made, if any, to obtain action by the board of directors and either that the demand was refused or ignored or why he did not make the demand. Whether or not a demand for action was made, if the corporation commences an investigation of the changes made in the demand or complaint, the court may stay any proceeding until the investigation is completed.

(c) A proceeding commenced under this section may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's shareholder or a class of shareholders, the court shall direct that notice be given the shareholders affected.

(d) On termination of the proceeding the court may require the plaintiff to pay any defendant's reasonable expenses (including counsel fees) incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.

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

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 7.40 is codified at 4 CMC § 4431; see the general comment to this subchapter.

Part 700 - Directors and Officers

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Subpart A - Board of Directors

§ 20-50.1-701 Requirement for and Duties of Board of Directors

- (a) Except as provided in subsection (c), each corporation must have a board of directors.
- (b) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation.
- (c) A corporation having 50 or fewer shareholders may dispense with or limit the authority of a board of directors by describing in its articles of incorporation who will perform some or all of the duties of a board of directors.

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.01 is codified at 4 CMC § 4441; see the general comment to this subchapter.

§ 20-50.1-702 Qualifications of Directors

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

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.02 is codified at 4 CMC § 4442; see the general comment to this subchapter.

§ 20-50.1-704 Number and Election of Directors

- (a) [Rescinded by statute.]
- (b) If a board of directors has power to fix or change the number of directors, the board may increase or decrease by 30 percent or less the number of directors last approved by the shareholders, but only the shareholders may increase or decrease by more than 30 percent the number of directors last approved by the shareholder.
- (c) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the shareholders or the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable range size board or vice versa.
- (d) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under § 20-50.1-710.

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Modified, 1 CMC § 3806(c).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.03 is codified at 4 CMC § 4443; see the general comment to this subchapter.

The original Bus. Corp. Reg. § 8.03(a), 12 Com. Reg. at 6947, was rescinded by PL 10-7 § (1)(b).

§ 20-50.1-706 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 is a separate voting group for purposes of the election of directors.

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.04 is codified at 4 CMC § 4444; see the general comment to this subchapter.

§ 20-50.1-708 Terms of Directors Generally

- (a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.
- (b) The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under § 20-50.1-710.
- (c) A decrease in the number of directors does not shorten an incumbent director's term.
- (d) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.
- (e) Despite the expiration of a director's term, he continues to serve until his successors is elected and qualifies or until there is a decrease in the number of directors.

Modified, 1 CMC § 3806(c), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.05 is codified at 4 CMC § 4445; see the general comment to this subchapter.

In subsection (c), the commission changed "do" to "does" to correct a manifest error. In subsection (e), the commission changed "successors" to the singular to correct a manifest error.

§ 20-50.1-710 Staggered Terms for Directors

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If there are nine or more directors, the articles of incorporation may provide for staggering their terms by dividing the total number of directors into two or three groups, with each group containing one half or one third of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

Modified, 1 CMC § 3806(g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.06 is codified at 4 CMC § 4446; see the general comment to this subchapter.

The commission corrected "shareholders's" to "shareholders'."

§ 20-50.1-712 Resignation of Directors

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

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

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.07 is codified at 4 CMC § 4447; see the general comment to this subchapter.

§ 20-50.1-714 Removal of Directors by Shareholders

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

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

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

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

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History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.08 is codified at 4 CMC § 4448; see the general comment to this subchapter.

§ 20-50.1-716 Removal of Directors by Judicial Proceeding

(a) The Commonwealth Superior Court may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least 10 percent of the outstanding shares of any class if the court finds that

- (1) The director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation and
- (2) Removal is in the best interest of the corporation.

(b) The court that removes a director may bar the directors from reelection for a period prescribed by the court.

(c) If the shareholders commence a proceeding under subsection (a), they shall make the corporation a party defendant.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.09 is codified at 4 CMC § 4449; see the general comment to this subchapter.

§ 20-50.1-718 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 fewer 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 are entitled to vote to fill the vacancy if it is filled by the shareholders.

(c) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under § 20-50.1-712(b) or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.10 is codified at 4 CMC § 4450; see the general comment to this subchapter.

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§ 20-50.1-720 Compensation of Directors

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

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.11 is codified at 4 CMC § 4451; see the general comment to this subchapter.

Subpart B - Meetings and Action of the Board

§ 20-50.1-722 Meetings

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

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

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.20 is codified at 4 CMC § 4461; see the general comment to this subchapter.

§ 20-50.1-724 Action Without Meeting

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this subchapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

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

Modified, 1 CMC § 3806(d), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.21 is codified at 4 CMC § 4462; see the general comment to this subchapter.

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In subsection (a), the commission changed “board of director’s” to “board of directors’.”

§ 20-50.1-726 Notice of Meeting

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

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

Modified, 1 CMC § 3806(g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.22 is codified at 4 CMC § 4463; see the general comment to this subchapter.

In subsection (b), the commission changed “two day’s notice” to “two days’ notice.”

§ 20-50.1-728 Waiver of Notice

(a) A director may waive any notice required by this subchapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (b), the waiver must 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 him of the meeting unless the director at the beginning of the meeting (or promptly upon his 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.

Modified, 1 CMC § 3806(d).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.23 is codified at 4 CMC § 4464; see the general comment to this subchapter.

§ 20-50.1-730 Quorum and Voting

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

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

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

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- (b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one third of the fixed or prescribed number of directors determined under subsection (a).
- (c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.
- (d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless:
- (1) He objects at the beginning of the meeting (or promptly upon his arrival) to holding it or transacting business at the meeting;
 - (2) His dissent or abstention from the action taken is entered in the minutes of the meeting; or
 - (3) He delivers written notice of his dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.24 is codified at 4 CMC § 4465; see the general comment to this subchapter.

§ 20-50.1-732 Committees

- (a) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee may have two or more members, who serve at the pleasure of the board of directors.
- (b) The creation of a committee and appointment of members to it must 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 § 20-50.1-730.
- (c) Sections 20-50.1-722 through 20-50.1-730, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.
- (d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under § 20-50.1-701.

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- (e) A committee may not, however:
- (1) Authorize distributions;
 - (2) Approve or propose to shareholders action that this subchapter requires be approved by shareholders;
 - (3) Fill vacancies on the board of directors or on any of its committees;
 - (4) Amend articles of incorporation pursuant to § 20-50.1-910;
 - (5) Adopt, amend, or repeal bylaws;
 - (6) Approve a plan of merger not requiring shareholder approval;
 - (7) Authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of the directors; or
 - (8) Authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee (or a senior executive officer of the corporation) to do so within limits specifically prescribed by the board of directors.
- (f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in § 20-50.1-734.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.25 is codified at 4 CMC § 4466; see the general comment to this subchapter.

Subpart C - Standards of Conduct

§ 20-50.1-734 General Standards for Directors

- (a) A director shall discharge his duties as a director, including his duties as a member of a committee:
- (1) In good faith;
 - (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
 - (3) In a manner he reasonably believes to be in the best interests of the corporation.
- (b) In discharging his duties a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
- (1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
 - (2) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or
 - (3) A committee of the board of directors of which he is not a member if the director reasonably believes the committee merits confidence.
- (c) A director is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

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

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.30 is codified at 4 CMC § 4471; see the general comment to this subchapter.

§ 20-50.1-736 Director Conflict of Interest

(a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:

- (1) The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved, or ratified the transaction;
- (2) The material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved, or ratified the transaction; or
- (3) The transaction was fair to the corporation.

(b) For purposes of this section, a director of the corporation has an indirect interest in a transaction if

- (1) Another entity in which he has a material financial interest or in which he is a general partner is a party to the transaction or
- (2) Another entity of which he is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.

(c) For purposes of subsection (a)(1), a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors (or on the committee) who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (a)(1) if the transaction is otherwise authorized, approved, or ratified as provided in that subsection.

(d) For purposes of subsection (a)(2), a conflict of interest transaction is authorized, approved, or ratified if it receives the vote of a majority of the shares entitled to be counted under this subsection. Shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and shares owned by or voted under the control of an entity described in subsection (b)(1), may not be counted in a vote of shareholders to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection (a)(2). The vote of those shares, however, is counted in determining whether the transaction is approved under other sections of this subchapter. A majority of the shares, whether or not present, that are

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entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

Modified, 1 CMC § 3806 (d), (f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.31 is codified at 4 CMC § 4472; see the general comment to this subchapter.

In subsection (c), the commission changed “director or indirect” to “direct or indirect” to correct a manifest error.

§ 20-50.1-738 Loans to Directors

(a) Except as provided by subsection (c), a corporation may not lend money to or guarantee the obligation of director of the corporation unless:

- (1) The particular loan or guarantee is approved by a majority of the votes represented by the outstanding voting shares of all classes, voting as a single voting group, except the votes of shares owned by or voted under the control of the benefited director; or
- (2) The corporation’s board of directors determines that the loan or guarantee benefits the corporation and either approves the specific loan or guarantee or a general plan authorizing loans and guarantees.

(b) The fact that a loan or guarantee is made in violation of this section does not affect the borrower’s liability on the loan.

(c) This section does not apply to loans and guarantees authorized by statute regulating any special class of corporations.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.32 is codified at 4 CMC § 4473; see the general comment to this subchapter.

§ 20-50.1-740 Liability for Unlawful Distributions

(a) A director who votes for or assents to a distribution made in violation of § 20-50.1-575 or the articles of incorporation is personally liable to the corporation for the amount of distribution that exceeds what could have been distributed without violating § 20-50.1-575 or the articles of incorporation if it is established that he did not perform his duties in compliance with § 20-50.1-734. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.

(b) A director held liable under section (a) for an unlawful distribution is entitled to contribution;

- (1) From every other director who could be liable under subsection (a) for the unlawful distribution; and

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(2) From each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of § 20-50.1-575 or the articles of incorporation.

(c) A proceeding under this section is barred unless it is commenced within two years after the date on which the effect of the distribution was measured under § 20-50.1-575(e) or (g).

Modified, 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 7.33 is codified at 4 CMC § 4474; see the general comment to this subchapter.

Subpart D - Officers

§ 20-50.1-742 Required Officers

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

(b) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and shareholders' meeting and for authenticating records of the corporation.

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

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.40 is codified at 4 CMC § 4481; see the general comment to this subchapter.

§ 20-50.1-744 Duties of Officers

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

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 7.41 is codified at 4 CMC § 4482; see the general comment to this subchapter.

§ 20-50.1-746 Standards of Conduct for Officers

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

(1) In good faith;

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(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

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

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

(1) One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(2) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

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

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

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.42 is codified at 4 CMC § 4483; see the general comment to this subchapter.

§ 20-50.1-748 Resignation and Removal of Officers

(a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors provides that the successor does not take office until the effective date.

(b) A board of directors may remove any officer at any time with or without cause.

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.43 is codified at 4 CMC § 4484; see the general comment to this subchapter.

§ 20-50.1-750 Contract Rights of Officers

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

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

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

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Commission Comment: Bus. Corp. Reg. § 8.44 is codified at 4 CMC § 4485; see the general comment to this subchapter.

Subpart E - Indemnification

§ 20-50.1-752 Subpart Definitions

- (a) “Corporation” includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor’s existence ceased upon consummation of the transaction.
- (b) “Director” means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation’s request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation’s request if his duties to the corporation also impose future on, or otherwise involve services by, him to the plan or to participants in or beneficiaries of the plan. “Director” includes, unless the context requires otherwise, the estate or personal representative of a director.
- (c) “Expenses” include counsel fees.
- (d) “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.
- (e) “Official capacity” means:
- (1) When used with respect to a director, the office of director in a corporation; and
 - (2) When used with respect to an individual other than a director, as contemplated in § 20-50.1-764, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. “Official capacity” does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.
- (f) “Party” includes an individual who was, is, or is threatened to be made a name defendant or respondent in a proceeding.
- (g) “Proceeding” means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

Modified, 1 CMC § 3806(c), (d), (f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.50 is codified at 4 CMC § 4491; see the general comment to this subchapter.

In subsection (g), the commission changed “proceeding mean” to “proceeding means” to correct a manifest error.

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§ 20-50.1-754 Authority to Indemnify

(a) Except as provided in subsection (d), a corporation may indemnify an individual made a party to a proceeding because he is or was a director against liability incurred in the proceeding if:

(1) He conducted himself in good faith; and

(2) He reasonably believed:

(i) In the case of conduct in his official capacity with the corporation, that his conduct was in its best interest; and

(ii) In all other cases, that his conduct was at least not opposed to its best interest; and

(3) In the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose he reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (a)(2)(ii).

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

(d) A corporation may not indemnify a director under this section.

(1) In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(2) In connection with any other proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

(e) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.51 is codified at 4 CMC § 4492; see the general comment to this subchapter.

§ 20-50.1-756 Mandatory Indemnification

Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he is or was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding.

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

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Commission Comment: Bus. Corp. Reg. § 8.52 is codified at 4 CMC § 4493; see the general comment to this subchapter.

§ 20-50.1-758 Advance for Expenses

- (a) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:
- (1) The director furnishes the corporation a written affirmation of his good faith belief that he has met the standard of conduct described in § 20-50.1-754.
 - (2) The director furnishes the corporation a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet the standard of conduct; and
 - (3) A determination is made that the facts then known to those making the determination would not preclude indemnification under this subchapter.
- (b) The undertaking required by subsection (a)(2) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.
- (c) Determinations and authorizations of payments under this section shall be made in the manner specified in § 20-50.1-762.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.53 is codified at 4 CMC § 4494; see the general comment to this subchapter.

§ 20-50.1-760 Court ordered Indemnification

Unless a corporation's articles of incorporation provide otherwise, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification if it determines:

- (a) The director is entitled to mandatory indemnification under § 20-50.1-756, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court ordered indemnification; or
- (b) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he met the standard of conduct set forth in § 20-50.1-754 or was adjudged liable as described in § 20-50.1-754(d), but if he was adjudged so liable his indemnification is limited to reasonable expenses incurred.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

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Commission Comment: Bus. Corp. Reg. § 8.54 is codified at 4 CMC § 4495; see the general comment to this subchapter.

§ 20-50.1-762 Determination and Authorization of Indemnification

- (a) A corporation may not indemnify a director under § 20-50.1-754 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because he has met the standard of conduct set forth in § 20-50.1-754.
- (b) The determination shall be made:
- (1) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;
 - (2) If a quorum cannot be obtained under subsection (b)(1), by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding;
 - (3) By special legal counsel:
 - (i) Selected by the board of directors or its committee in the manner prescribed in subsection (b)(1) or (2); or
 - (ii) If a quorum of the board of directors cannot be obtained under subsection (b)(1) and a committee cannot be designated under subsection (b)(2), selected by majority vote of the full board of directors (in which selection directors who are parties may participate); or
 - (4) By the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.
- (c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (b)(3) to select counsel.

Modified, 1 CMC § 3806(c), (d), (f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.55 is codified at 4 CMC § 4496; see the general comment to this subchapter.

In subsection (b)(3)(ii), the commission changed “board of director” to “board of directors.”

§ 20-50.1-764 Indemnification of Officers, Employees, and Agents

Unless a corporation’s articles of incorporation provide otherwise:

- (a) An officer of the corporation who is not a director is entitled to mandatory indemnification under § 20-50.1-756, and is entitled to apply for court ordered indemnification under § 20-50.1-760, in each case to the same extent as a director;

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(b) The corporation may indemnify and advance expenses under this subchapter to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and

(c) A corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.56 is codified at 4 CMC § 4497; see the general comment to this subchapter.

§ 20-50.1-766 Insurance

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify him against the same liability under § 20-50.1-754 or § 20-50.1-756.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 8.57 is codified at 4 CMC § 4498; see the general comment to this subchapter.

§ 20-50.1-768 Application of Subpart E

(a) A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, bylaws, a resolution of its shareholders or board of directors, or in a contract or otherwise, is valid only if and to the extent the provision is consistent with this subpart. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles.

(b) This subpart does not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with his appearance as a witness in a proceeding at a time when he has not been made a named defendant or respondent to the proceeding.

Modified, 1 CMC § 3806(d).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

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Commission Comment: Bus. Corp. Reg. § 8.58 is codified at 4 CMC § 4499; see the general comment to this subchapter.

Part 800

[Reserved]

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. Chapter 9 is codified at Title 4, Division 4, Chapter 9 of the Commonwealth Code; see the general comment to this subchapter.

Part 900 - Amendment of Articles of Incorporation and Bylaws

Subpart A - Amendment of Articles of Incorporation

§ 20-50.1-901 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 or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

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

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 10.01 is codified at 4 CMC § 4511; see the general comment to this subchapter.

§ 20-50.1-905 Amendment by Board of Directors

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action:

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

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

(c) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Registrar of Corporations;

(d) To change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding;

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(e) 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; or

(f) To make any other change expressly permitted by this subchapter to be made without shareholder action.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 10.02 is codified at 4 CMC § 4412; see the general comment to this subchapter.

§ 20-50.1-910 Amendment by Board of Directors and Shareholders

(a) A corporation’s board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(b) For the amendment to be adopted:

(1) The board of directors must recommend the amendment 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 with the amendment; and

(2) The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (e).

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

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders’ meeting in accordance with § 20-50.1-620. The notice of meeting must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) Unless this subchapter, the articles of incorporation, or the board of directors (acting pursuant to subsection (c)) require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:

(1) A majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters’ rights; and

(2) The votes required by §§ 20-50.1-660 and 20-50.1-665 by every other voting group entitled to vote on the amendment.

Modified, 1 CMC § 3806(c), (d), (f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

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Commission Comment: Bus. Corp. Reg. § 10.03 is codified at 4 CMC § 4513; see the general comment to this subchapter.

In subsection (e), the commission inserted a closing parenthesis.

§ 20-50.1-915 Voting on Amendments by Voting Groups

- (a) The holders of the outstanding shares of a class are entitled to vote as a separate voting group (if shareholder voting is otherwise required by this subchapter) on a proposed amendment if the amendment would:
- (1) Increase or decrease the aggregate number of authorized shares of the class;
 - (2) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;
 - (3) 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;
 - (4) Change the designation, rights, preferences, or limitations of all or part of the shares of the class;
 - (5) Change the shares of all or part of the class into a different number of shares of the same class;
 - (6) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;
 - (7) 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, superior, or substantially equal to the shares of the class;
 - (8) Limit or deny an existing preemptive right of all or part of the shares of the class; or
 - (9) Cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared 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), the shares of that series are entitled to vote as a separate voting group on the proposed amendment.
- (c) If a proposed amendment that entitles two or more series of shares to vote as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shares of all the series so affected must vote together as a single voting group on the proposed amendment.
- (d) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 10.04 is codified at 4 CMC § 4514; see the general comment to this subchapter.

§ 20-50.1-920 Amendment Before Issuance of Shares

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If a corporation has not yet issued shares, its incorporators or board of directors may adopt one or more amendments to the corporation's articles of incorporation.

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 10.05 is codified at 4 CMC § 4515; see the general comment to this subchapter.

§ 20-50.1-925 Articles of Amendment

A corporation amending its articles of incorporation shall deliver to the Registrar of Corporations for filing articles of amendment setting forth:

- (a) The name of the corporation;
- (b) The text of each amendment adopted;
- (c) If an amendment provides for an exchange, classification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;
- (d) The date of each amendment's adoption;
- (e) If an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required;
- (f) If an amendment was approved by the shareholders:
 - (1) The designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group indisputably represented at the meeting;
 - (2) Either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group was sufficient for approval by the voting group.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 10.06 is codified at 4 CMC § 4516; see the general comment to this subchapter.

§ 20-50.1-930 Restated Articles of Incorporation

- (a) A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder action.
- (b) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring shareholder approval, it must be adopted as provided in § 20-50.1-910.

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(c) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 20-50.1-620. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles.

(d) A corporation restating its articles of incorporation shall deliver to the Registrar of Corporations 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 setting forth:

(1) Whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement; or

(2) If the restatement contains an amendment to the articles requiring shareholder approval, the information required by § 20-50.1-925.

(e) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(f) The Registrar of Corporations may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (d).

Modified, 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 10.07 is codified at 4 CMC § 4517; see the general comment to this subchapter.

§ 20-50.1-935 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 federal statute if the articles of incorporation after amendment contain only provisions required or permitted by § 20-50.1-105.

(b) The individual or individuals designated by the court shall deliver to the Registrar of Corporations 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 statute.

(c) Shareholders of a corporation undergoing reorganization do not have dissenters' rights except as and to the extent provided in the reorganization plan.

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

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 10.08 is codified at 4 CMC § 4518; see the general comment to this subchapter.

§ 20-50.1-940 Effect of Amendment

An amendment to articles of incorporation does 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 does not abate a proceeding brought by or against the corporation in its former name.

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 10.09 is codified at 4 CMC § 4519; see the general comment to this subchapter.

Subpart B - Amendment of Bylaws

§ 20-50.1-945 Amendment by Board of Directors or Shareholders

(a) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

- (1) The articles of incorporation or this subchapter reserve this power exclusively to the shareholders in whole or part; or
- (2) The shareholders in amending or repealing a particular bylaw provide expressly that the board of directors may not amend or repeal that bylaw.

(b) A corporation's shareholders may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 10.20 is codified at 4 CMC § 4531; see the general comment to this subchapter.

§ 20-50.1-950 Bylaws Increasing Quorum or Voting Requirement for Shareholders

(a) If authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is required by this subchapter. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for shareholders must meet the same quorum requirement and be adopted by the same vote and voting groups required to take

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action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

(b) A bylaw that fixes a greater quorum or voting requirement for shareholders under subsection (a) may not be adopted, amended, or repealed by the board of directors.

Modified, 1 CMC § 3806(d), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 10.21 is codified at 4 CMC § 4532; see the general comment to this subchapter.

In subsection (a), the commission changed “a bylaws” to “a bylaw” to correct a manifest error.

§ 20-50.1-955 Bylaw Increasing Quorum or Voting Requirement for Directors

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

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

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 10.22 is codified at 4 CMC § 4533; see the general comment to this subchapter.

Part 1000 - Merger and Share Exchange

§ 20-50.1-1001 Merger

(a) One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders (if required by § 20-50.1-1010) approve a plan of merger.

(b) The plan of merger must set forth:

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- (1) The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;
 - (2) The terms and conditions of the merger; and
 - (3) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part.
- (c) The plan of merger may set forth:
- (1) Amendments to the articles of incorporation of the surviving corporation; and
 - (2) Other provisions relating to the merger.

Modified, 1 CMC § 3806(c), (f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 11.01 is codified at 4 CMC § 4541; see the general comment to this subchapter.

In subsection (a), the commission changed “board if directors” to “board of directors.”

§ 20-50.1-1005 Share Exchange

- (a) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders (if required by § 20-50.1-1010) approve the exchange.
- (b) The plan of exchange must set forth:
- (1) The name of the corporation whose shares will be acquired and the name of the acquiring corporation;
 - (2) The terms and conditions of the exchange;
 - (3) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part.
- (c) The plan of exchange may set forth other provisions relating to the exchange.
- (d) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 11.02 is codified at 4 CMC § 4542; see the general comment to this subchapter.

§ 20-50.1-1010 Action on Plan

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- (a) After adopting a plan of merger or share exchange, the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger (except as provided in subsection (g)) or share exchange for approval by its shareholders.
- (b) For a plan of merger or share exchange to be approved:
- (1) The board of directors must recommend the plan of merger or share exchange 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 with the plan; and
 - (2) The shareholders entitled to vote must approve the plan.
- (c) The board of directors may condition its submission of the proposed merger or share exchange on any basis.
- (d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 5-10.0-620. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.
- (e) Unless this subchapter, the articles of incorporation, or the board of directors (acting pursuant to subsection (c)) require a greater vote or a vote by voting groups, the plan of merger or share exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan groups is required.
- (f) Separate voting by voting groups is required:
- (1) On a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under § 5-10.0-915;
 - (2) On a plan of share exchange by each class or series included in the exchange, with each class or series constituting a separate voting group.
- (g) Action by the shareholders of the surviving corporation on a plan of merger is not required if:
- (1) The articles of incorporation of the surviving corporation will not differ (except for amendments enumerated in § 20-50.1-905) from its articles before the merger;
 - (2) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after;
 - (3) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than 20 percent the total number of voting of the surviving corporation outstanding immediately before the merger; and
 - (4) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger (either by the conversion of

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securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than 20 percent total number of participating shares outstanding immediately before the merger.

(h) As used in subsection (g):

(1) “Participating shares” means shares that entitle their holders to participate without limitation in distributions.

(2) “Voting shares” means shares that entitle their holders to vote unconditionally in elections of directors.

(i) After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned (subject to any contractual rights), without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

Modified, 1 CMC § 3806(c), (d), (f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 11.03 is codified at 4 CMC § 4543; see the general comment to this subchapter.

In subsection (a), the commission inserted a closing parenthesis.

In subsection (e), the commission inserted a closing parenthesis and changed the final semicolon to a period.

§ 20-50.1-1015 Merger of Subsidiary

(a) A parent corporation owning at least 90 percent of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent shall adopt a plan of merger that sets forth:

(1) The names of the parent and subsidiary; and

(2) The manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent or any other corporation or into cash or other property in whole or part.

(b) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

(c) The parent may not deliver articles of merger to the Registrar of Corporations for filing until at least 30 days after the date it mailed a copy of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.

(d) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation (except for amendments enumerated in § 20-50.1-905).

Modified, 1 CMC § 3806(c), (f).

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History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 11.04 is codified at 4 CMC § 4544; see the general comment to this subchapter.

§ 20-50.1-1020 Articles of Merger or Share Exchange

- (a) After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the Registrar of Corporations for filing articles of merger or share exchange setting forth:
- (1) The plan of merger or share exchange;
 - (2) If shareholder approval was not required, a statement to that effect;
 - (3) If approval of the shareholders of one or more corporations party to the merger or share exchange was required:
 - (i) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and
 - (ii) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.
- (b) A merger or share takes effect upon the effective date of the articles of merger or share exchange.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 11.05 is codified at 4 CMC § 4545; see the general comment to this subchapter.

§ 20-50.1-1025 Effect of Merger or Share Exchange

- (a) When a merger takes effect:
- (1) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;
 - (2) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment;
 - (3) The surviving corporation has all liabilities of each corporation party to the merger;
 - (4) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;
 - (5) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and
 - (6) The shares of each corporation party to the merger that are to be converted, into shares, obligations, or other securities of the surviving or any other corporation into cash or other property are converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under part 1200.

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(b) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights under part 1200.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 11.06 is codified at 4 CMC § 4546; see the general comment to this subchapter.

§ 20-50.1-1030 Merger or Share Exchange with Foreign Corporation

(a) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

(1) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(2) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(3) The foreign corporation complies with § 20-50.1-1020 if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(4) Each domestic corporation complies with the applicable provisions of '§ 20-50.1-1001 through 20-50.1-1015 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with § 20-50.1-1020.

(b) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:

(1) To appoint the Registrar of Corporations as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and

(2) To agree that it will promptly pay to the dissenting shareholder of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under part 1200.

(c) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

Modified, 1 CMC § 3806(c), (d), (f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 11.07 is codified at 4 CMC § 4547; see the general comment to this subchapter.

In subsection (a)(3), the commission changed the final comma to a semicolon.

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Part 1100 - Sale of Assets

§ 20-50.1-1101 Sale of Assets in Regular Course of Business and Mortgage of Assets

(a) A corporation may, on the terms and conditions and for the consideration determined by the board of directors:

- (1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property 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 its property whether or not in the usual and regular course of business; or
- (3) Transfer any or all of its property to a corporation all the shares of which are owned by the corporation.

(b) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (a) is not required.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 12.01 is codified at 4 CMC § 4551; see the general comment to this subchapter.

§ 20-50.1-1105 Sale of Assets Other Than in Regular Course of Business

(a) A corporation may sell, lease; exchange, or otherwise dispose of all, or substantially all, of its property (with or without the good will), otherwise that in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approved the proposed transaction.

(b) For a transaction to be authorized:

- (1) The board of directors must recommend the proposed transaction 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 with the submission of the proposed transaction; and
- (2) The shareholders entitled to vote must approve the transaction.

(c) The board of directors may condition its submission of the proposed transaction on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders meeting in accordance with § 20-50.1-620. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain of be accompanied by a description of the transaction.

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

(f) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned (subject to any contractual rights) without further shareholder action.

(g) A transaction that constitutes a distribution is governed by § 20-50.1-575 and not by this section.

Modified, 1 CMC § 3806(c), (f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 12.02 is codified at 4 CMC § 4552; see the general comment to this subchapter.

In subsection (e), the commission inserted a closing parenthesis.

Part 1200 – Dissenters’ Rights

Subpart A - Right to Dissent and Obtain Payment for Shares

§ 20-50.1-1201 Definitions

In part 1200:

(a) “Corporation” means the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.

(b) “Dissenter” means a shareholder who is entitled to dissent from corporate action under § 5-10.0-1205 and who exercises that right when and in the manner required by §§ 20-50.1-1215 through 20-50.1-1255.

(c) “Fair value,” with respect to a dissenter’s shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

(d) “Interest” means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

(e) “Record 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 a corporation.

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(f) “Beneficial shareholder” means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.

(g) “Shareholder” means the record shareholder or the beneficial shareholder.

Modified, 1 CMC § 3806(c), (d).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 13.01 is codified at 4 CMC § 4561; see the general comment to this subchapter.

§ 20-50.1-1205 Right to Dissent

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

(1) Consummation of a plan of merger to which the corporation is a party

(i) If shareholder approval is required for the merger by § 20-50.1-1010 or the articles of incorporation and the shareholder is entitled to vote on the merger or

(ii) If the corporation is a subsidiary that is merged with its parent under § 20-50.1-1015;

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

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

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

(i) Alters or abolishes a preferential right of the shares;

(ii) Creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares;

(iii) Alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;

(iv) Excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or

(v) Reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under § 20-50.1-515; or

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

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

Modified, 1 CMC § 3806(c), (f), (g).

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History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 13.02 is codified at 4 CMC § 4562; see the general comment to this subchapter.

In subsection (a)(3), the commission deleted a repeated phrase.

§ 20-50.1-1210 Dissent by Nominees and Beneficial Owners

(a) A record shareholder may assert dissenters' right as to fewer than all the shares registered in his name only if he dissents with respect to all shares beneficially owned by any one person and notifies the corporation in writing of the name and address of each person on whose behalf he asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which he dissents and his other shares were registered in the names of different shareholders.

(b) A beneficial shareholder may assert dissenters' rights as to shares held on his behalf only if:

(1) He submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(2) He does so with respect to all shares of which he is the beneficial shareholder or over which he has power to direct the vote.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 13.03 is codified at 4 CMC § 4563; see the general comment to this subchapter.

Subpart B - Procedure for Exercise of Dissenters' Rights

§ 20-50.1-1215 Notice of Dissenters' Rights

(a) If proposed corporate action creating dissenters' rights under § 20-50.1-1205 is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this part and be accompanied by a copy of this part.

(b) If corporate action creating dissenters' rights under § 20-50.1-1205 is taken without a vote of shareholders, the corporation shall notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send them the dissents= notice described in § 20-50.1-1225.

Modified, 1 CMC § 3806(c), (d).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 13.20 is codified at 4 CMC § 4571; see the general comment to this subchapter.

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§ 20-50.1-1220 Notice of Intent to Demand Payment

- (a) If proposed corporate action creating dissenters' rights under § 20-50.1-1205 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights
- (1) Must deliver to the corporation before the vote is taken written notice of his intent to demand payment for his shares if the proposed action is effectuated and
 - (2) Must not vote his shares in favor of the proposed action.
- (b) A shareholder who does not satisfy the requirements of subsection (a) is not entitled to payment for his shares under this part.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 13.21 is codified at 4 CMC § 4572; see the general comment to this subchapter.

§ 20-50.1-1225 Dissenters' Notice

- (a) If proposed corporate action creating dissenters' rights under § 20-50.1-1205 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of § 20-50.1-1220.
- (b) The dissenters' notice must be sent no later than 10 days after the corporate action was taken, and must:
- (1) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;
 - (2) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;
 - (3) Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not he acquired beneficial ownership of the shares before that date;
 - (4) Set a date by which the corporation must receive the payment demand, which date may not be fewer than 30 nor more than 60 days after the date the subsection (a) notice is delivered; and
 - (5) Be accompanied by a copy of this part.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 13.22 is codified at 4 CMC § 4573; see the general comment to this subchapter.

§ 20-50.1-1230 Duty to Demand Payment

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(a) A shareholder sent a dissenters' notice described in § 20-50.1-1225 must demand payment, certify whether he acquired beneficial ownership of the shares before the date required to be set forth in the dissenters' notice pursuant to § 20-50.1-1225(b)(3), and deposit his certificates in accordance with the terms of the notice.

(b) The shareholder who demands payment and deposits his shares under subsection (a) retains all other rights of a shareholder until their rights are cancelled or modified by the taking of the proposed corporate action.

(c) A shareholder who does not demand payment or deposit his share certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for his shares under this part.

Modified, 1 CMC § 3806(c), (d), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 13.23 is codified at 4 CMC § 4574; see the general comment to this subchapter.

In subsection (b), the commission changed "there" to "their" to correct a manifest error.

§ 20-50.1-1235 Share Restrictions

(a) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions released under § 20-50.1-1245.

(b) The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until these rights are cancelled or modified by the taking of the proposed corporate action.

Modified, 1 CMC § 3806(c).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 13.24 is codified at 4 CMC § 4575; see the general comment to this subchapter.

§ 20-50.1-1240 Payment

(a) Except as provided in § 20-50.1-1250, as soon as the proposed corporate action is taken, or upon receipt of a payment demand, the corporation shall pay each dissenter who complied with § 20-50.1-1230 the amount the corporation estimates to be the fair value of his shares, plus accrued interest.

(b) The payment must be accompanied by:

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- (1) The corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that a year, a statement of changes in shareholders' equity for that year and the latest available interim financial statements, if any;
- (2) A statement of the corporation's estimate of the fair value of the shares;
- (3) An explanation of how the interest was calculated;
- (4) A statement of the dissenter's right to demand payment under § 20-50.1-1255; and
- (5) A copy of this part.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 13.25 is codified at 4 CMC § 4576; see the general comment to this subchapter.

§ 20-50.1-1245 Failure to Take Action

- (a) If the corporation does not take the proposed action within 60 days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.
- (b) If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it must send a new dissenters' notice under § 20-50.1-1225 and repeat the payment demand procedure.

Modified, 1 CMC § 3806(c).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 13.26 is codified at 4 CMC § 4577; see the general comment to this subchapter.

§ 20-50.1-1250 After acquired Shares

- (a) A corporation may elect to withhold payment required by § 20-50.1-1240 from a dissenter unless he was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.
- (b) To the extent the corporation elects to with payments under subsection (a), after taking the proposed corporate action, it shall estimate the fair value of the shares, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of his demand. The corporation shall send with its offer a statement of its estimate of the fair value of the share, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under § 20-50.1-1255.

Modified, 1 CMC § 3806(c).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

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Commission Comment: Bus. Corp. Reg. § 13.27 is codified at 4 CMC § 4578; see the general comment to this subchapter.

§ 20-50.1-1255 Procedure if Shareholder Dissatisfied with Payment of Offer

(a) A dissenter may notify the corporation in writing of his own estimate of the fair value of his shares and amount of interest due, and demand payment of his estimate (less any payment under § 20-50.1-1240), or reject the corporation's offer under § 20-50.1-1250 and demand payment of the fair value of his shares and interest due, if:

- (1) The dissenter believes that the amount paid under § 20-50.1-1240 or offered under § 20-50.1-1250 is less than the fair value of his shares or that the interest due is incorrectly calculated;
- (2) The corporation, fails to make payment under § 20-50.1-1240 within 60 days after the date set for demanding payment; or
- (3) The corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within 60 days after the date set for demanding payment.

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

Modified, 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 13.28 is codified at 4 CMC § 4579; see the general comment to this subchapter.

Subpart C - Judicial Appraisal of Shares

§ 20-50.1-1260 Court Action

(a) If a demand for payment under § 20-50.1-1255 remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the 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 each dissenter whose demand remains unsettled the amount demanded.

(b) The corporation shall commence the proceeding in the Commonwealth Superior Court.

(c) The corporation shall make all dissenters (whether or not residents of the Commonwealth) 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 court in which the proceeding is commenced under subsection (b) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers

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described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

- (e) Each dissenter made a party to the proceeding is entitled to judgment
- (1) For the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation or
- (2) For the fair value, elected to withhold payment under § 20-50.1-1250.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 13.30 is codified at 4 CMC § 4591; see the general comment to this subchapter.

§ 20-50.1-1265 Court Costs and Counsel Fees

(a) The court in an appraisal proceeding commenced under § 20-50.1-1260 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under § 20-50.1-1255.

(b) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

- (1) Against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of §§ 20-50.1-1215 through 20-50.1-1255; or
- (2) Against either the corporation or a dissenter in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

(c) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to these counsel reasonable fees to be paid out of the amounts awarded the dissenters who were benefitted.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 13.31 is codified at 4 CMC § 4592; see the general comment to this subchapter.

Part 1300 - Dissolution

Subpart A - Voluntary Dissolution

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§ 20-50.1-1301 **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 Registrar of Corporations for filing articles of dissolution that set forth:

- (a) The name of the corporation;
- (b) The date of its incorporation;
- (c) Either
 - (1) That none of the corporation's shares has been issued or
 - (2) That the corporation has not commenced business;
- (d) That no debt of the corporation remains unpaid;
- (e) That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and
- (f) That a majority of the incorporators or initial directors authorized the dissolution.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 14.01 is codified at 4 CMC § 4601; see the general comment to this subchapter.

§ 20-50.1-1305 **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 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 shareholder; and
 - (2) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (e).
- (c) The board of directors may condition its submission of the proposal for dissolution on any basis.
- (d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 20-50.1-620. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

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

Modified, 1 CMC § 3806(c), (f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 14.02 is codified at 4 CMC § 4602; see the general comment to this subchapter.

In subsection (e), the commission inserted a closing parenthesis.

§ 20-50.1-1310 Articles of Dissolution

(a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Registrar of Corporations for filing articles of dissolution setting forth:

- (1) The name of the corporation;
- (2) The date dissolution was authorized;
- (3) If dissolution was approved by the shareholders:
 - (i) The number of votes entitled to be cast on the proposal to dissolve; and
 - (ii) Either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.
- (4) If voting by voting groups was required, the information required by subsection (a)(3) must be separately provided for each voting group entitled to vote separately on the plan to dissolve.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 14.03 is codified at 4 CMC § 4603; see the general comment to this subchapter.

§ 20-50.1-1315 Revocation of Dissolution

(a) A corporation may revoke its dissolution within 120 days of its effective date.

(b) Revocation of dissolution must 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.

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- (c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Registrar of Corporations 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 § 20-50.1-1310(a)(3) or (4).
- (d) Revocation of dissolution is 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 this business as if dissolution had never occurred.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 14.04 is codified at 4 CMC § 4604; see the general comment to this subchapter.

§ 20-50.1-1320 Effect of Dissolution

- (a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:
- (1) Collecting its assets;
 - (2) Disposing of its properties that will not be distributed in kind to its shareholders;
 - (3) Discharging or making provision for discharging its liabilities;
 - (4) Distributing its remaining property among its shareholders according to their interests;
- and
- (5) Doing every other act necessary to wind up and liquidate its business and affairs.
- (b) Dissolution of a corporation does not:
- (1) Transfer title to the corporation's property;
 - (2) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;
 - (3) Subject its directors or officers to standards of conduct different from those prescribed in part 700;
 - (4) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;

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- (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.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 14.05 is codified at 4 CMC § 4605; see the general comment to this subchapter.

§ 20-50.1-1325 Known Claims Against Dissolved Corporation

- (a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.
- (b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:
 - (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 is barred:
 - (1) If a claimant who was given written notice under subsection (b) does not deliver claim to the dissolved corporation by the deadline;
 - (2) If a claimant 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, “claim” does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 14.06 is codified at 4 CMC § 4606; see the general comment to this subchapter.

In subsection (b)(4), the commission changed “in” to “if” to correct a manifest error.

§ 20-50.1-1330 Unknown Claims Against Dissolved Corporation

- (a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

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(b) The notice must:

- (1) Be published one time in a newspaper of general circulation in the Commonwealth;
- (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 corporation will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:

- (1) A claimant who did not receive written notice under § 20-50.1-1325;
- (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 may be enforced under this section:

- (1) Against the dissolved corporation, to the extent of its undistributed assets; or
- (2) If the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of his pro rata share of the claim or the corporate assets distribute to him in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to him.

Modified, 1 CMC § 3806(c), (f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 14.07 is codified at 4 CMC § 4607; see the general comment to this subchapter.

In subsection (b)(2), the commission changed "al" to "a" to correct a manifest error.

Subpart B - Administrative Dissolution

§ 20-50.1-1335 Grounds for Administrative Dissolution

The Registrar of Corporations may commence a proceeding under § 20-50.1-1340 to administratively dissolve a corporation if:

- (a) The corporation does not pay within 60 days after they are due any fees or penalties imposed by this subchapter or other law;
- (b) The corporation does not deliver its annual report to the Registrar of Corporations for 60 days or more;
- (c) The corporation is without a registered agent, or registered agent or registered office in the Commonwealth for 60 days or more;

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(d) The corporation does not notify the Registrar of Corporations within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(e) The corporation's period of duration stated in its articles of incorporation expires.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 14.20 is codified at 4 CMC § 4611; see the general comment to this subchapter.

§ 20-50.1-1340 Procedure for and Effect of Administrative Dissolution

(a) If the Registrar of Corporations one or more grounds exist* under § 20-50.1-1335 for dissolving a corporation, he shall serve the corporation with written notice of his determination by delivering a copy to the registered office of the corporation, or by mailing a copy by first class mail to the registered agent, or if the registered agent cannot be found, to the secretary of the corporation at its principal office, as disclosed in the records of the Registrar of Corporations.

*So in original; see the commission comment to this section.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Registrar of Corporations that each ground determined by the Registrar of Corporations does not exist within 60 days after service of the notice under subsection (a), the Registrar of Corporations shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Registrar of Corporations shall file the original of the certificate and serve a copy on the corporation as provided for in subsection (a).

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under § 20-50.1-1320 and notify claimants under '§ 20-50.1-1325 and 20-50.1-1330.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

Modified, 1 CMC § 3806(c).

History: Amdts Adopted 16 Com. Reg. 11886 (May 15, 1994); Amdts Emergency and Proposed 12 Com. Reg. 7401 (Oct. 15, 1990) (effective 120 days from Oct. 15, 1990); Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 14.21 is codified at 4 CMC § 4612; see the general comment to this subchapter.

The 1994 amendments, permanently effective May 25, 1994, amended subsections (a) and (b). The amendment left the words "determines that" out of the first sentence of subsection (a). Compare 12 Com. Reg. at 6981 and 12 Com. Reg. at 7403.

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§ 20-50.1-1345 Reinstatement Following Administrative Dissolution

- (a) A corporation administratively dissolved under § 20-50.1-1340 may apply to the Registrar of Corporations for reinstatement within two years after the effective date of dissolution. The application must:
- (1) Recite the name of the corporation and the effective date of its administrative dissolution;
 - (2) State that the grounds for dissolution either did not exist or have been eliminated;
 - (3) State that the corporation's name satisfies the requirements of § 20-50.1-301; and
 - (4) Contain a certificate from the Department of Finance reciting that all taxes owed by the corporation have been paid.
- (b) If the Registrar of Corporations determines that the application contains the information required by subsection (a) and that the information is correct, he shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under § 20-50.1-1340(a).
- (c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Adopted 16 Com. Reg. 11886 (May 15, 1994); Amdts Emergency and Proposed 12 Com. Reg. 7401 (Oct. 15, 1990) (effective 120 days from Oct. 15, 1990); Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 14.22 is codified at 4 CMC § 4613; see the general comment to this subchapter.

The 1994 amendments amended subsection (b).

§ 20-50.1-1350 Appeal from Denial of Reinstatement

- (a) If the Registrar of Corporations denies a corporation's application for reinstatement following administrative dissolution, he shall serve the corporation under § 20-50.1-1340(a) with a written notice that explains the reason or reasons for denial.
- (b) The corporation may appeal the denial of reinstatement to the Commonwealth Superior Court within 30 days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Registrar of Corporation's certificate of dissolution, the corporation's application for reinstatement, and the Registrar of Corporation's notice of denial.
- (c) The court may summarily order the Registrar of Corporations to reinstate the dissolved corporation or may take other action the court considers appropriate.

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(d) The court's final decision may be appealed as in other civil proceedings.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Adopted 16 Com. Reg. 11886 (May 15, 1994); Amdts Emergency and Proposed 12 Com. Reg. 7401 (Oct. 15, 1990) (effective 120 days from Oct. 15, 1990); Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 14.23 is codified at 4 CMC § 4614; see the general comment to this subchapter.

The 1994 amendments amended subsection (a).

Subpart C - Judicial Dissolution

§ 20-50.1-1355 Grounds for Judicial Dissolution

The Commonwealth Superior court may dissolve a corporation:

- (a) In a proceeding by the Attorney General if it is established that:
 - (1) The corporation obtained its articles of incorporation through fraud; or
 - (2) The corporation has continued to exceed or abuse the authority conferred upon it by law;

- (b) 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 the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;
 - (2) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is legal, oppressive, or fraudulent;
 - (3) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or
 - (4) The corporate assets are being misapplied or wasted;

- (c) In a proceeding by a creditor if it is established that:
 - (1) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or
 - (2) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

- (d) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 14.30 is codified at 4 CMC § 4621; see the general comment to this subchapter.

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In subsection (c)(2), the commission changed “claim’s” to “claim is” to correct a manifest error. The Commission corrected the spelling of “judgment” in subsection (c)(1) pursuant to 1 CMC § 3806(g).

§ 20-50.1-1360 Procedure for Judicial Dissolution

- (a) It is not necessary to make shareholders parties to proceeding to dissolve a corporation unless relief is sought against them individually.
- (b) A 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.

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 14.31 is codified at 4 CMC § 4622; see the general comment to this subchapter.

§ 20-50.1-1365 Receivership or Custodianship

- (a) The 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 exclusive jurisdiction over the corporation and all of its property wherever located.
- (b) The court may appoint an individual or a domestic or foreign corporation (authorized to transact business in the Commonwealth) 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 court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:
- (1) The receiver may
 - (i) 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
 - (ii) Sue and defend in his own name as receiver of the corporation in all courts of the Commonwealth;
 - (2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.
- (d) The 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 creditors.
- (e) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or

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custodian and his counsel from the assets of the corporation or proceeds from the sale of the assets.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 14.32 is codified at 4 CMC § 4623; see the general comment to this subchapter.

§ 20-50.1-1370 Decree of Dissolution

(a) If after a hearing the court determines that one or more grounds for judicial dissolution described in § 20-50.1-1355 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 Registrar of Corporations, who shall file it.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with § 20-50.1-1320 and the notification of claimants in accordance with §§ 20-50.1-1325 and 20-50.1-1330.

Modified, 1 CMC § 3806(c).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 14.33 is codified at 4 CMC § 4624; see the general comment to this subchapter.

Subpart D - Miscellaneous

§ 20-50.1-1375 Deposit with Director of the Department of Finance

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 Director of the Department of Finance or other appropriate Commonwealth official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the Director of the Department of Finance or other appropriate Commonwealth official shall pay him or his representative that amount.

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 14.40 is codified at 4 CMC § 4631; see the general comment to this subchapter.

With respect to the reference to the "Director of the Department of Finance," see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

Part 1400 - Foreign Corporations

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Subpart A - Certificate of Authority

§ 20-50.1-1401 Authority to Transact Business Required

- (a) A foreign corporation may not transact business in the Commonwealth until it obtains a certificate of authority from the Registrar of Corporations.
- (b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a):
- (1) Maintaining, defending, or settling, any proceeding;
 - (2) Holding meetings of the board of directors or shareholders or carrying on their activities concerning internal corporate affair;
 - (3) Maintaining bank accounts;
 - (4) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities;
 - (5) Selling through independent contractors;
 - (6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside the Commonwealth before they become contracts;
 - (7) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
 - (8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
 - (9) Owning, without more, real or personal property;
 - (10) Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature;
 - (11) Transacting business in interstate commerce.
- (c) The list of activities in subsection (b) is not exhaustive.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 15.01 is codified at 4 CMC § 4641; see the general comment to this subchapter.

In subsection (b)(4), the commission corrected the spelling of "depositories."

§ 20-50.1-1405 Consequences of Transacting Business Without Authority

- (a) A foreign corporation transacting business in the Commonwealth without a certificate of authority may not maintain a proceeding in any court in the Commonwealth until it obtains a certificate of authority.
- (b) The successor to a foreign corporation that transacted business in the Commonwealth without a certificate of authority and the assignee of a cause of action arising out of that business

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may not maintain a proceeding based on that cause of action in any court in the Commonwealth until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation is liable for a civil penalty of \$100 for each day, but not to exceed a total of \$5,000 for each year, it transacts business in the Commonwealth without a certificate of authority. The Attorney General may collect all penalties due under this subsection.

(e) Notwithstanding subsections (a) and (b), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in the Commonwealth.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 15.02 is codified at 4 CMC § 4642; see the general comment to this subchapter.

§ 20-50.1-1410 Application for Certificate of Authority

(a) A foreign corporation may apply for a certificate of authority to transact business in the Commonwealth by delivering an application to the Registrar of Corporations for filing. The application must set forth:

- (1) The name of the foreign corporation or, if its name is unavailable for use in the Commonwealth, a corporate name that satisfies the requirements of § 20-50.1-1425;
- (2) The name of the state or country under whose law it is incorporated;
- (3) Its date of incorporation and period of duration;
- (4) Its mailing address and location of its principal office;
- (5) The mailing address and location of its registered office in the Commonwealth and the name of its registered agent at that office; and
- (6) The names and usual business addresses of its current directors and officers.

(b) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the secretary of state or like official of the state or country under whose law it is incorporated.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 15.03 is codified at 4 CMC § 4643; see the general comment to this subchapter.

§ 20-50.1-1415 Amended Certificate of Authority

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(a) A foreign corporation authorized to transact business in the Commonwealth must obtain an amended certificate of authority from the Registrar of Corporations if it changes:

- (1) Its corporate name;
- (2) The period of its duration; or
- (3) The state or country of its incorporation.

(b) The requirements of § 20-50.1-1410 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 15.04 is codified at 4 CMC § 4644; see the general comment to this subchapter.

§ 20-50.1-1420 Effect of Certificate of Authority

(a) A certificate authorizes the foreign corporation to which it is issued to transact business in the Commonwealth subject, however, to the right of the Commonwealth to revoke the certificate as provided in this subchapter.

(b) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by this subchapter are subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

(c) This subchapter does not authorize the Commonwealth to regulate the organization or internal affairs of a foreign corporation authorized to transact business in the Commonwealth:

Modified, 1 CMC § 3806(d).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 15.05 is codified at 4 CMC § 4645; see the general comment to this subchapter.

§ 20-50.1-1425 Corporate Name of Foreign Corporation

(a) If the corporate name of a foreign corporation does not satisfy the requirements of § 20-50.1-301, the foreign corporation to obtain or maintain a certificate of authority to transact business in the Commonwealth:

- (1) May add the word “corporation,” “incorporated,” “company,” or “limited,” or the abbreviation “corp,” “inc.,” “inc.,” “co.,” or “ltd.,” to its corporate name for use in this; or
- (2) May use a fictitious name to transact business in the Commonwealth if its real name is unavailable and it delivers to the Registrar of Corporations for filing a copy of the resolution of its board of directors, certificated by its secretary, adopting the fictitious name.

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(b) Except as authorized by subsections (c) and (d), the corporate name (including a fictitious name) of a foreign corporation must be distinguishable upon the records of the Registrar of Corporations from:

- (1) The corporate name of a corporation incorporated or authorized to transact business in the Commonwealth;
- (2) A corporate name reserved or registered under § 20-50.1-305 or § 20-50.1-310;
- (3) The fictitious name of another foreign corporation authorized to transact business in the Commonwealth; and
- (4) The corporate name of a not for profit corporation incorporated or authorized to transact business in the Commonwealth.

(c) A foreign corporation may apply to the Registrar of Corporations for authorization to use in the Commonwealth the name of another corporation (incorporated or authorized to transact business in this) that is not distinguishable upon his records from the name applied for. The Registrar of Corporations shall authorize use of the name applied for if:

- (1) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Registrar of Corporations to change its name to a name of the applying corporation; or
- (2) The applicant delivers to the Registrar of Corporations a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in the Commonwealth.

(d) A foreign corporation may use in the Commonwealth the name (including the fictitious name) of another domestic or foreign corporation that is used in the Commonwealth if the other corporation is incorporated or authorized to transact business in the Commonwealth and the foreign corporation:

- (1) Has merged with the other corporation;
- (2) Has been formed by reorganization of the other corporation; or
- (3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) If a foreign corporation authorized to transact business in the Commonwealth changes its corporate name to one that does not satisfy the requirements of § 20-50.1-301, it may not transact business in the Commonwealth under the changed name until it adopts a name satisfying the requirements of § 20-50.1-301 and obtains an amended certificate of authority under § 20-50.1-1415.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 15.06 is codified at 4 CMC § 4646; see the general comment to this subchapter.

§ 20-50.1-1430 Registered Office and Registered Agent of Foreign Corporation

Each foreign corporation authorized to transact business in the Commonwealth must continuously maintain in the Commonwealth:

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- (a) A registered office that may be the same as any of its places of business; and
- (b) A registered agent, who may be:
 - (1) An individual who resides in the Commonwealth and whose business office is identical with the registered office;
 - (2) A domestic corporation or not for profit domestic corporation whose business office is identical with the registered office; or
 - (3) A foreign corporation or foreign not for profit corporation authorized to transact business in the Commonwealth whose business office is identical with the registered office.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 15.07 is codified at 4 CMC § 4647; see the general comment to this subchapter.

§ 20-50.1-1435 Change of Registered Office or Registered Agent of Foreign Corporation

- (a) A foreign corporation authorized to transact business in the Commonwealth may change its registered office or registered agent by delivering to the Registrar for filing a statement of change that sets forth:
 - (1) Its name;
 - (2) The mailing address and location of its current registered office;
 - (3) If the current registered office is to be changed, the mailing address and location of its new registered office;
 - (4) The name of its current registered agent;
 - (5) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and
 - (6) That after the change or changes are made, the mailing addresses and location of its registered office and the business office of its registered agent will be identical.
- (b) If a registered agent changes the mailing address or locations of his business office, he may change the mailing address or location of the registered office of any foreign corporation for which he is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Registrar of Corporations for filing a statement of change that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 15.08 is codified at 4 CMC § 4648; see the general comment to this subchapter.

§ 20-50.1-1440 Resignation of Registered Agent of Foreign Corporation

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- (a) The registered agent of a foreign corporation may resign his agency appointment by signing and delivering to the Registrar of Corporations for filing the original and two exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.
- (b) After filing the statement, the Registrar of Corporations shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if not discontinued. The Registrar of Corporations shall mail the other copy to the foreign corporation at its principal office address shown in its most recent annual report.
- (c) The agency appointment is terminated, and the registered office discontinued if so provided, on the 31st day after the date on which the statement was filed.

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 15.09 is codified at 4 CMC § 4649; see the general comment to this subchapter.

§ 20-50.1-1445 Service on Foreign Corporation

- (a) The registered agent of a foreign corporation authorized to transact business in the Commonwealth is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.
- (b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation:
- (1) Has no registered agent or its registered agent cannot with reasonable diligence be served;
 - (2) Has withdrawn from transacting business in the Commonwealth under § 20-50.1-1450; or
 - (3) Has had its certificate of authority revoked under § 20-50.1-1460.
- (c) Service is perfected under subsection (b) at the earliest of:
- (1) The date the foreign corporation receives the mail;
 - (2) The date shown on the return receipt, if signed on behalf of the foreign corporation; or
 - (3) Five days after its deposit in the United States mail, as evidenced by the postmark if mailed postpaid and correctly addressed.

Modified, 1 CMC § 3806(c), (f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 15.10 is codified at 4 CMC § 4650; see the general comment to this subchapter.

In subsection (c)(1), the commission replaced the final colon with a semicolon to correct a manifest error.

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Subpart B - Withdrawal

§ 20-50.1-1450 Withdrawal of Foreign Corporation

(a) A foreign corporation authorized to transact business in the Commonwealth may not withdraw from the Commonwealth until it obtains a certificate of withdrawal from the Registrar of Corporations.

(b) A foreign corporation authorized to transact business in the Commonwealth may apply for a certificate of withdrawal by delivering an application to the Registrar of Corporations for filing. The application must set forth:

- (1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;
- (2) That it is not transacting business in the Commonwealth and that it surrenders its authority to transact business in the Commonwealth;
- (3) That it revokes the authority of its registered agent to accept service on its behalf and appoints the Registrar of Corporations as its agent for service of process in any proceeding based on a cause of action during the time it was authorized to transact business in the Commonwealth;
- (4) A mailing address to which the Registrar of Corporations may mail a copy of any process served on him under subsection (b)(3); and
- (5) A commitment to notify the Registrar of Corporations in the future of any change in its mailing address.

(c) After the withdrawal of the corporation is effective, service of process on the Registrar of Corporations under this section is service on the foreign corporation. Upon receipt of process, the Registrar of Corporations shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (b).

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 15.20 is codified at 4 CMC § 4661; see the general comment to this subchapter.

Subpart C - Revocation of Certificate of Authority

§ 20-50.1-1455 Grounds for Revocation

The Registrar of Corporations may commence a proceeding under § 20-50.1-1460 to revoke the certificate of authority of a foreign corporation authorized to transact business in the Commonwealth if:

- (a) The foreign corporation does not deliver its annual report to the Registrar of Corporations within 60 days after it is due;
- (b) The foreign corporation does not pay within 60 days after they are due any fees or penalties imposed by this subchapter or other law;

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- (c) The foreign corporation is without a registered agent or registered office in the Commonwealth for 60 days or more;
- (d) The foreign corporation does not inform the Registrar of Corporations under § 20-50.1-1435 or § 20-50.1-1440 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, resignation, or discontinuance;
- (e) An incorporator, director, officer, or agent of the foreign corporation signed a document he knows to be false in any material respect with the intent that the document be delivered to the Registrar of Corporations for filing;
- (f) The Registrar of Corporations receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 15.30 is codified at 4 CMC § 4671; see the general comment to this subchapter.

§ 20-50.1-1460 Procedure for and Effect of Revocation

- (a) If the Registrar of Corporations determines that one or more grounds exist under § 20-50.1-1455 for revocation of a certificate of authority, he shall serve the foreign corporation with written notice of his determination under § 20-50.1-1445.
- (b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Registrar of Corporations that each ground determined by the Registrar of Corporations does not exist within 60 days after service of the notice is perfected under § 20-50.1-1445, the Registrar of Corporations may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Registrar of Corporations shall file the original of the certificate and serve a copy on the foreign corporation under § 20-50.1-1445.
- (c) The authority of a foreign corporation to transact business in the Commonwealth ceases on the date shown on the certificate revoking its certificate of authority.
- (d) The Registrar of Corporations' revocation of a foreign corporation's certificate of authority appoints the Registrar of Corporations the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in the Commonwealth. Service of process on the Registrar of Corporations under this subsection is service on the foreign corporation. Upon receipt of process, the Registrar of Corporations shall mail a copy of the process to the secretary

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of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

Modified, 1 CMC § 3806(c), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 15.31 is codified at 4 CMC § 4672; see the general comment to this subchapter.

In subsection (d), the commission changed "Registrar of Corporations's" to "Registrar of Corporations'" to correct a manifest error.

§ 20-50.1-1465 Appeal From Revocation

(a) A foreign corporation may appeal the Registrar of Corporations' revocation of its certificate of authority to the (name or describe)* court within 30 days after service of the certificate of revocation is perfected under § 20-50.1-1445. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the Registrar of Corporations' certificate of revocation.

*So in original.

(b) The court may summarily order the Registrar of Corporations to reinstate the certificate of authority or may take any other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

Modified, 1 CMC § 3806(c), (f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 15.32 is codified at 4 CMC § 4673; see the general comment to this subchapter.

In subsection (a), the commission changed "Registrar of Corporations's" to "Registrar of Corporations'" to correct a manifest clerical error.

Part 1500 - Records and Reports

Subpart A - Records

§ 20-50.1-1501 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

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without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

- (b) A corporation shall maintain appropriate accounting records.
- (c) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.
- (d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.
- (e) A corporation shall keep a copy of the following records at its principal office:
 - (1) Its articles or restated articles of incorporation and all amendments to them currently in effect;
 - (2) Its bylaws or restated bylaws and all amendments to them currently in effect;
 - (3) Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;
 - (4) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years;
 - (5) All written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under § 20-50.1-1520;
 - (6) A list of the names and business addresses of its current directors and officers; and
 - (7) Its most recent annual report delivered to the Registrar of Corporations under § 20-50.1-1530.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 16.01 is codified at 4 CMC § 4681; see the general comment to this subchapter.

§ 20-50.1-1505 Inspection of Records by Shareholders

- (a) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in § 20-50.1-1501(e) if he gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy.
- (b) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (c) and gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy;

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- (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 subsection (a);
 - (2) Accounting records of the corporation; and
 - (3) The records are directly connected with his purpose.
- (c) [Reserved.]
- (d) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.
- (e) This section does not affect:
- (1) The right of a shareholder to inspect records under § 20-50.1-635 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant;
 - (2) The power of a court, independently of this subchapter, to compel the production of corporate records for examination.
- (f) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by nominee on his behalf.

Modified, 1 CMC § 3806(c), (d), (f), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 16.02 is codified at 4 CMC § 4682; see the general comment to this subchapter.

Bus. Corp. Reg. § 16.02 did not specify a subsection (c). See 12 Com. Reg. at 6993. In order to be consistent with the codification at 4 CMC § 4682, the commission inserted "(c) [Reserved]."

§ 20-50.1-1510 Scope of Inspection Right

- (a) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder he represents.
- (b) The right to copy records under § 20-50.1-1505 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.
- (c) 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 may not exceed the estimated cost of production or reproduction of the records.
- (d) The corporation may comply with a shareholder's demand to inspect the record of shareholders under § 20-50.1-1505(b)(3) by providing him with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.

Modified, 1 CMC § 3806(c).

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History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 16.03 is codified at 4 CMC § 4683; see the general comment to this subchapter.

§ 20-50.1-1515 Court ordered Inspection

(a) If a corporation does not allow a shareholder who complies with § 20-50.1-1505(a) to inspect and copy any records required by that subsection to be available for inspection, the Commonwealth 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 who complies with § 20-50.1-1505(b) and (c) may apply to the Commonwealth 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 court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs (including reasonable counsel fees) 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 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.

Modified, 1 CMC § 3806(c), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 16.04 is codified at 4 CMC § 4684; see the general comment to this subchapter.

Subsection (b) cross-references 20-50.1-1505(c) in error. The original Bus. Corp. Reg. § 16.02 did not specify a subsection (c). See 12 Com. Reg. at 6993.

In subsection (d), the commission changed "if" to "it" to correct a manifest error.

Subpart B - Reports

§ 20-50.1-1520 Financial Statements for Shareholders

(a) A corporation shall furnish 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 must also be prepared on that basis.

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(b) If the annual financial statements are reported upon by a public accountant, his report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

- (1) Stating his 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 proceeding 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 who was not mailed the statements, the corporation shall mail him the latest financial statements.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 16.20 is codified at 4 CMC § 4691; see the general comment to this subchapter.

§ 20-50.1-1525 Other Reports to Shareholders

(a) If a corporation indemnifies or advances expenses to a director under §§ 20-50.1-754, 20-50.1-768, or 20-50.1-760 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting.

(b) If a corporation issues or authorizes the issuance of shares for promissory notes or for promises to render services in the future, the corporation shall report in writing to the shareholders the number of shares authorized or issued, and the consideration received by the corporation, with or before the notice of the next shareholders' meeting.

Modified, 1 CMC § 3806(c).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 16.21 is codified at 4 CMC § 4692; see the general comment to this subchapter.

§ 20-50.1-1530 Annual Report for Registrar of Corporations

(a) Each domestic corporation, and each foreign corporation authorized to transact business in the Commonwealth, shall deliver to the Registrar of Corporations for filing an annual report that sets forth:

- (1) The name of the corporation and the state or country under whose law it is incorporated;
- (2) The mailing address and location of its registered office and the name of its registered agent at that office in the Commonwealth;
- (3) The mailing address and location of its principal office;
- (4) The names, citizenship and business addresses of its directors and principal officers;

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- (5) A brief description of the nature of its business, including all lines of business and including the four digit codes for principal businesses and professional activity set forth on the latest schedule C of tax form 1040CM;
- (6) The total number of authorized shares, itemized by class and series, if any, within each class;
- (7) The total number of issued and outstanding shares, itemized by class and series, if any, within each class; and
- (8) If the corporation has less than 15 shareholders, for each shareholder state the name, citizenship, and the number and class or series of shares held.
- (b) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.
- (c) The first annual report must be delivered to the Registrar of Corporations within 60 days after a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the Registrar of Corporations between January 1 and March 1 of the following calendar years.
- (d) If an annual report does not contain the information required by this section, the Registrar of Corporations shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Registrar of Corporations within 30 days after the effective date of notice, it is deemed to be timely filed.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 16.22 is codified at 4 CMC § 4693; see the general comment to this subchapter.

Part 1600 - Transition Provisions

§ 20-50.1-1601 Application to Existing Domestic Corporations

This subchapter applies to all domestic corporations in existence on its effective date that were incorporated under any general statute of the Commonwealth providing for incorporation of corporations for profit.

Modified, 1 CMC § 3806(d).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 17.01 is codified at 4 CMC § 4701; see the general comment to this subchapter.

The reference to this subchapter's "effective date" originates in the 1990 Business Corporation Regulations, which became effective on July 25, 1990. See the commission comment to 4 CMC § 4701; see also 1 CMC § 9105(b), which provides that regulations take effect 10 days after compliance with the Administrative Procedure Act.

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§ 20-50.1-1605 Application to Qualified Foreign Corporations

A foreign corporation authorized to transact business in the Commonwealth on the effective date of this subchapter is subject to this subchapter but is not required to obtain a new certificate of authority to transact business under this subchapter.

Modified, 1 CMC § 3806(d).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 17.02 is codified at 4 CMC § 4702; see the general comment to this subchapter.

With respect to the “effective date of this subchapter,” see the commission comment to § 20-50.1-1601.

§ 20-50.1-1610 Saving Provisions

(a) Except as provided in subsection (b), the repeal of a regulation by this subchapter does not affect:

- (1) The operation of the regulation or any action taken under it before its repeal;
- (2) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the regulations before its repeal;
- (3) Any violation of the regulation, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;
- (4) Any proceeding, reorganization, or dissolution commenced under the regulation before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the regulation as if it had not been repealed.

(b) If a penalty or punishment imposed for violation of a regulation repealed by this subchapter is reduced by this subchapter, the penalty or punishment if not already imposed shall be imposed in accordance with this subchapter.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 17.03 is codified at 4 CMC § 4703; see the general comment to this subchapter.

§ 20-50.1-1615 Severability

If any provision of this subchapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of this subchapter that can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable.

Modified, 1 CMC § 3806(d), (g).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

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Commission Comment: Bus. Corp. Reg. § 17.04 is codified at 4 CMC § 4704; see the general comment to this subchapter.

The commission replaced several referenced to “the Act” with “this subchapter” to correct inconsistent references.

§ 20-50.1-1620 Repeal

The following regulations and parts of regulations are repealed: Trust Territory Regulations, title 37, chapter 1, sections 1.1 through 2.8, sections 2.11 through 7.2, chapter 2, parts 1 and 2, and chapter 3.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 17.05 is codified at 4 CMC § 4705; see the general comment to this subchapter.

The Trust Territory Regulations referred to in this section were published in the Territorial Register, volume 1, number 1 at pages 5-36 (July 15, 1974).

§ 20-50.1-1625 Effective Date

This subchapter takes effect upon adoption by the Registrar of Corporations and compliance with 1 CMC §§ 9101, et seq.

Modified, 1 CMC § 3806(d).

History: Adopted 12 Com. Reg. 7201 (July 15, 1990); Proposed 12 Com. Reg. 6907 (May 15, 1990).

Commission Comment: Bus. Corp. Reg. § 17.06 was not codified in the Commonwealth Code. The 1990 regulations took effect on July 25, 1990. Amendments to '§ 20-50.1-1340, 20-50.1-1345, and 20-50.1-1350 took effect on May 25, 1994. See 1 CMC § 9105(b).

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**CHAPTER 20-50
REGISTRAR OF CORPORATIONS**

**SUBCHAPTER 20-50.2
NON PROFIT CORPORATION REGULATIONS**

Part 001 [Reserved]	General Provisions	§ 20-50.2-235	Certificate of Registrar
Part 100 Corporation	Charter of Nonprofit Corporation	§ 20-50.2-240	Subpart 1.13 of Chapter 2 Applies
§ 20-50.2-101	Nonprofit Corporations; Charter Grant of	Part 300	Corporations Sole for Ecclesiastical Purposes
§ 20-50.2-105	Nonprofit Corporations; Petition for Charter	§ 20-50.2-301	Formation of Corporation Sole for Ecclesiastical Purposes
Part 200	Merger and Consolidation	§ 20-50.2-305	Application for Charter; Petition; Contents
§ 20-50.2-201	Nonprofit Corporation Defined	§ 20-50.2-310	Powers of Corporation Sole
§ 20-50.2-205	Merger and Consolidation	§ 20-50.2-315	Amendment of Charter
§ 20-50.2-210	Merger; Necessary Statement	§ 20-50.2-320	Name of Incumbent; Change in Incumbency
§ 20-50.2-215	Consolidation; Necessary Statement	§ 20-50.2-325	Distribution of Assets; Inspection of Books
§ 20-50.2-220	Agreement; Approval, Execution	§ 20-50.2-330	Extensions and Renewals
§ 20-50.2-225	Certificate of Approval	§ 20-50.2-335	Dissolution
§ 20-50.2-230	Agreement When Executed to be Filed with Registrar	§ 20-50.2-340	Corporations Sole Heretofore Formed; General Laws

Subchapter Authority: 37 TTC § 1; 37 TTC § 52; 4 CMC § 4705.

Subchapter History: Territorial Register, volume 1, number 1, pages 7; 26-27; and 29-31 (July 15, 1974).

Commission Comment: The Trust Territory of the Pacific Islands government originally published Non-profit Corporation Regulations applicable in the CNMI as a part of the Trust Territory Corporations, Partnerships and Associations Regulations. See Territorial Register, volume 1, number 1, pages 5-36 (July 15, 1974).

4 CMC § 4201 created a Registrar of Corporations within the Office of the Attorney General. Former 4 CMC § 4202 authorized the Registrar, with the approval of the Governor and Attorney General, to prescribe rules and regulations governing corporations, partnerships and associations.

The regulations promulgated by the Trust Territory of the Pacific Islands, as amended by the Registrar of Corporations, governed all corporations in the Commonwealth until July 1990. In July 1990, pursuant to the authority of former 4 CMC § 4202, the Registrar issued the 1990 Business Corporation Regulations and subsequent amendments. See NMIAC, title 20, chapter 50.1; see also 4 CMC § 4202 (1990).

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NMIAC § 20 50.1 1620 (Business Corporation Regulations § 17.05), codified at 4 CMC § 4705, repealed the parts of the Trust Territory Regulations regulating for profit corporations, effective July 25, 1990. However, the Trust Territory provisions regulating non-profit corporations were not repealed and remained in effect.

PL 10 7 (effective May 10, 1996), the “Commonwealth Business Corporation Regulation Act,” codified at 4 CMC §§ 4251 4705 enacted the 1990 Business Corporation Regulations (as amended in 1994) as statutory law. See PL 10 7 §§ 1 and 3; see also NMIAC, title 20, chapter 50.1.

Pursuant to 4 CMC § 4705, the provisions of the Trust Territory regulations governing non-profit corporations continued in effect in the CNMI. Specifically, 4 CMC § 4705 does not repeal Trust Territory Regulations, title 37, chapter 1, sections 2.9 and 2.10, chapter 2, part 3 (“Nonprofit Corporations”) and chapter 4 (“Corporations Sole for Ecclesiastical Purposes”). See Territorial Register, volume 1, number 1, pages 7; 26-27; and 29-31 (July 15, 1974).

In 1997, the Governor transferred the Registrar of Corporations and the remaining legal functions of that office in regards to corporations of the Commonwealth from the Office of the Attorney General to the Department of Commerce. See Executive Order 97-03 (November 13, 1997).

Attorney General Opinion No. 05-12 (August 12, 2005), 27 Com. Reg. 24812 (Aug. 22, 2005), addresses the status of the Trust Territory regulations for partnerships and non-profit corporations. The Attorney General concluded that because the Trust Territory’s 1974 regulations for partnerships and non-profit corporations have never been repealed or superceded, they remain in full force and effect pursuant to the transitional provisions of the CNMI Constitution and other laws. Attorney General Opinion No. 05-12 is reprinted in full below.

Attorney General Opinion No. 05 12

Date: August 12, 2005

Re: Trust Territory business regulations
Continuation in effect into new administrative code

Issue and Short Answer

Questions

Do the regulations for nonprofit corporations and partnerships survive from the Trust Territory Government’s legal framework? If so, should they be incorporated into the new CNMI Administrative Code?

Short Answer

Yes to both questions. The Transitional Provisions of the Constitution require the continuation of all laws which have not been repealed or superceded.

Summary

The Commonwealth Constitution’s transitional provision provides that TT laws will continue in effect unless repealed or superceded. The Trust Territory’s 1974 regulations for partnerships and nonprofit corporations were never repealed or superceded. While the new Commonwealth Legislature did supercede the TT’s for profit corporation regulations with comprehensive new ones, it never addressed the partnership or nonprofit corporation regulations.

Under well settled principles of statutory construction, the two sets of old regulations survive, and are still in full force and effect. The LRC should include the partnership and nonprofit regulations in its upcoming codification, the Commonwealth’s Administrative Code.

Discussion

In order to determine whether the partnership and nonprofit regulations from TT days are still in effect, it was necessary to review the TT’s authority and power to promulgate them. This required a review of the source documents for TT law.

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Then, in order to determine how the TT regulations were adopted for use in the CNMI it was necessary to examine the relevant transitional documents. While the nonprofit regulations' history is relatively straightforward, the history of the partnership regulations is more complex.

1. Background and relevant facts

During the Trust Territory's management of the NMI's legal affairs a number of sets of regulations were adopted. Among these were the regulations for partnerships and nonprofit corporations. It appears that, since the adoption of the CNMI Constitution other sets of such business regulations have either been adopted to supercede TT regulations or TT regulations have been repealed.

a. Corporations

The CNMI Registrar looks to TT regulations for the oversight of nonprofit corporations. The explicit and immediate authority for the Trust Territory's nonprofit corporation regulations lay in TT Code Title 37, § 52 (Registrar's authority to promulgate regulations) and the TT's Business Code. The Code gave the High Commissioner the authority to grant for and nonprofit corporation charters. 37 TTC § 1. The chapter, consisting of §§ 1-6, applied to every private profit and nonprofit corporation.

This corporation language was adopted into the CNMI Code, giving the power to grant charters to the CNMI Governor. 4 CMC § 4101-02; PL 3-11. Then, by Executive Order 94-3, the Governor's role was replaced by that of the Attorney General. By subsequent Executive Order the power to grant charters was moved with the Registrar to the CNMI Department of Commerce. Executive Order 97-03 (Nov. 13, 1997).¹

¹The Department of Commerce and the Attorney General recognized that the functions of the Commonwealth Register were to remain with the Attorney General's Office. MOU of May 29, 2003.

i. Source of TT power and authority for corporations

The source of the power of the TT Government to promulgate nonprofit corporation regulations is the UN Charter, the trust documents based thereon, and the President and the Congress' related enactments:

Members of the United Nations which have or assume responsibilities for the administration of territories...accept as a sacred trust the obligation to promote to the utmost...the well being of the inhabitants of these territories, and, to this end:

- a. to ensure...their political, economic...advancement....
- b. to promote constructive measures of development

Charter of the United Nations, Ch. XI, Art. 73. The basic objectives of the trusteeship system included promoting the economic advancement of the inhabitants Id. Art. 76. The United States was designated as the administering authority of the Trust Territory that included the Northern Mariana Islands. Trusteeship Agreement for the Former Japanese Mandated Islands (Approved by the Security Council, Apr. 2, 1947; Ratified by US, Jul 18, 1947 [61 stat. 397]), art. 2.

The US had full powers of legislation and could apply such of the laws of the US as it deemed appropriate. Id., art. 3. The US was to promote the economic advancement of the inhabitants. Id., art. 6 § 2. Congress provided that all executive, judicial and legislative authority was to vest in the persons designated by the President. 48 USC § 1681 (68 stat. 330) (Jun. 30, 1954). The President

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provided for TT administration by executive order. Executive Orders Nos. 9875 (Jul. 18, 1947), 10265 (Jun. 29, 1951), 10408 (Nov. 10, 1952) and 10470 (Jul. 17, 1953).

The President moved civil administration of the TT to the Secretary of the Interior. Executive Order No. 11021 (May 8, 1962), amended by 11944 (Oct. 25, 1976). This included all executive, legislative and judicial authority. Id., § 1. The Secretary could, in turn, delegate this authority. Id., § 2.

TT laws were to remain in force and effect until they expired by their own limitation or until or unless repealed by the NMI Legislature. Secretarial Order No. 2989 (Mar. 24, 1976), Part iv. § 1. Therein lies the basis for the continuation of the corporation regulations in effect through the birth of the CNMI.

ii. The TT nonprofit corporation regulations

The TT nonprofit corporation regulations provide generally: that the Registrar may grant a charter for a nonprofit corporation to persons who have filed petitions which state the corporation's name, address, purpose, period and initial officers and directors, the provisions for internal governance and dissolution, and that the corporation is neither organized for profit nor will deliver profits to its members. TT Regulations, Title 37, "Corporations, Partnerships and Associations", Ch. 1, "Corporations Generally", Part 2, "Organization; Powers", §§ 2.9 and 2.10. Territorial Register, Vol. 1, No. 1 (Jul. 15, 1974), p. 7.

The merger or consolidation of nonprofit corporations is addressed in Title 37, Ch. 2, "Consolidation and Merger of Corporations", Part 3, "Nonprofit Corporations", §§ 3.1 - 3.9. Territorial Register, Vol. 1, No. 1 (Jul. 15, 1974), pp 26 27.

A special chapter is provided for ecclesiastical corporations. Title 37, Chapter 4 "Corporations Sole [sic] for Ecclesiastical Purposes", Part 1, §§ 1.1 - 1.9. Territorial Register, Vol. 1, No. 1 (Jul. 15, 1974), pp 29 31.

iii. CNMI use of TT nonprofit corporation materials

The CNMI Registrar maintains forms on which petitioners may file for a nonprofit charter, and the instructions therefore. (Instructions for preparing and filing petition for a charter for articles of incorporation for a non profit, tax exempt corporation, the form Petition, the form Charter [rev'd 5/21/99], form Bylaws; and, for a foreign nonprofit corporation, requirement for filing a foreign non profit corporation, form application for certificate of authority).²

² Fax fr Remy C. Mafnas, Registrar, to A Barak (2/7/05).

b. Partnerships

There is no TT organic act that explicitly supports the promulgation of partnership regulations. There has been no statute in the Marianas which specifically addresses partnership law.

Almost all states have such a statute. All but three states have adopted the Uniform Partnership Act. Uniform Partnership Act (1997), Refs and Annos, Table of Jurisdictions Wherein Act Has Been Adopted (Westlaw). The first state to adopt it was Pennsylvania, in 1914. In re Safady Bros., 228 F. 538, 539 (D.C.Wis. 1915). A more recent version of the UPA was published for adoption in 1997. (Uniform Partnership Act (1997)).³ Our Legislature has before it a proposal to adopt the UPA, but it has not acted on the proposal. See HB 14 73.

³ The original UPA "was drawn by William Draper Lewis for the Conference, based on the incomplete work of the late James Barr Ames, Dean of the Harvard Law School, and on the English Partnership Act, drawn by Sir Frederick Pollock. It is an attempt to codify the existing

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common law on the subject, rather than to change that system; but where the rules are conflicting it chooses the one supposed to be the better.” In re Safady Bros., 228 F. 538, 539 40 (D.C.Wis. 1915).

i. Source of authority for the partnership regulations

But there is ample substantive law on partnerships, because the business organization form of partnerships evolved through the common law. See, e.g., *Seafirst Center Ltd. Partnership v. Erickson*, 127 Wash.2d 355, 361 fn. 4, 898 P.2d 299, 301 fn. 4 (Wash.1995), for a reference to the “ancient common law.”⁴ This means that the substance of the TT Registrar’s regulations for partnerships sprang from the common law rather than from a specific statute.⁵

There was also ample authority for the TT Government to promulgate partnership regulations. Since the source documents created a TT government with full executive and legislative power, as discussed supra, the TT Registrar had full executive and legislative power to promulgate regulations relating to partnerships. The power and authority of the TT Government to issue these regulations originated with Congress’ above cited provision that all executive, judicial and legislative authority was to vest in the persons designated by the President. 48 USC § 1681 (68 stat. 330) (Jun. 30, 1954).

⁴ One treatise traces the rule that discharge of one partner discharges all partners “to the 14th century.” Glanville L. Williams, *Joint Obligations* 106 (1949). With respect to partnerships specifically, Story cites ancient case law for the proposition that “[a] release to one partner is a release to all, whether the claim released arise ex contractu or ex delicto.” Joseph Story, *Partnership* 287 n. 3 (7th ed. 1881). *Seafirst Center Ltd. Partnership v. Erickson*, 127 Wash.2d 355, 361 fn. 4, 898 P.2d 299, 301 fn. 4 (Wash.1995.)

⁵ When CNMI jurisprudence has not articulated a principle of common law, the courts look to the Restatements of the Law. In all proceedings, the rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed as generally understood and applied in the United States, shall be the rules of decision in the courts of the Commonwealth, in the absence of written law or local customary law to the contrary. 7 CMC § 3401. *Ada v. Sablan*, 1 NMI 415, 427 (1990). A review of the Restatements reveals no Restatement on “partnerships”. Rather, pronouncements regarding the obligations of partners appear in the Restatement of Contracts and the Restatement of Torts.

ii. The TT partnership regulations

The TT Registrar’s partnership regulations provide for both general and limited partnerships. TT Regulations, Title 37, “Corporations, Partnerships and Associations”, Ch. 5, “Partnerships”, Part 1, “Partnerships in General”, §§ 1.1 - 1.14, and Part 2, “Limited Partnership”, §§ 2.1 - 2.28, Territorial Register, Vol. 1 No. 1 (Jul. 15, 1974), pp. 31 36.

iii. The CNMI’s use of the partnership regulations

The CNMI Registrar uses the five pages of partnership regulations, and provides a form on which petitioners may register a partnership (Partnership registration form).⁶

⁶ Fax fr Remy C. Mafnas, Registrar, to A Barak (2/7/05).

c. Continuation of both sets of regulations

A review of the Commonwealth Register shows that no regulations have been adopted during the CNMI for partnerships and nonprofit corporations. The Registrar of Corporations and practitioners have been using the TT partnership regulations as though they were still in effect.⁷ By contrast, in serving for profit corporations, the Registrar has been using the comprehensive Corporation

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Regulations, adopted in 1990. (12 Com. Reg. 5 (May 15, 1990), p. 6907 (proposed), 12 Com. Reg. 7, (Jul. 15, 1990), p. 7201 (adopted); enacted into law by PL 10 7 (effective May 10, 1996), codified at 4 CMC 4251 4705.⁸

This regulatory scheme presents a practical issue for the Law Revision's Commission's codification of the administrative code B are the old TT regulations for partnerships and nonprofit corporations "in" or "out"?

⁷ Phone interview with B Mailman by A Barak (1/31/05). Phone interview with Remy C. Mafnas, Registrar, by A Barak (2/7/05).

⁸ According to PL 10 7, § 1 most of the regulations were codified in the new statute:

Section 1. Regulations Enacted as Statute.

(a) Except as provided by subsection (b), the rules and regulations governing business corporations in the Commonwealth, the Business Corporation Regulations, adopted July 15, 1990 in the Commonwealth Register, Volume 12, No. 7, pages 7201 6997 [sic], as amended on May 15, 1994 in the Commonwealth Register, Volume 16, Number 5, page 11888, are hereby incorporated by reference and enacted as statute law. The Commonwealth Law Revision Commission shall codify these former rules and regulations in the appropriate Commonwealth Code statutory format.

(b) Sections 1.02 and 8.03(a) of the Business Corporation Regulations are not incorporated by reference, are not enacted as statute law, and are hereby rescinded.

PL 10 7 § 1, quoted at 4 CMC § 4251, Comment.

2. Applicable law

The supreme laws of the CNMI are the CNMI Constitution, the US Constitution, and the Covenant between the CNMI and the USA. The CNMI Constitution is a "paramount" source of Commonwealth law. *Ada v. Sablan*, 1 NMI 415, 427 (1990). Its transitional sections govern the survival of the partnership and nonprofit corporation regulations.

The CNMI Constitution's schedule on transitional matters provides that certain laws and corporations in existence should remain in effect until the terms of the relevant transitional provision have been executed. CNMI Const. Schedule on Transitional Matters, §§ 2, 6:

Section 2: Continuity of Laws. **Laws in force** in the Northern Mariana Islands on the day preceding the effective date of the Constitution that are consistent with the Constitution and the Covenant **shall continue in force until they expire or are amended or repealed.**

CNMI Const. Schedule on Transitional Matters, § 2. (Emphasis added)

Section 6: Continuity of Corporations and Licenses. **Corporations incorporated or qualified to do business** in the Northern Marian Islands [sic] on the effective date of the Constitution **shall continue to be incorporated or qualified until provided otherwise by law.** Licenses in effect in the Northern Marian Islands on the effective date of the Constitution shall continue in effect until provided otherwise by law except that no license possessed by a land surveyor, ship officer, health professional or a practicing trial assistant may be amended or revoked except for incompetence or unethical conduct.

CNMI Const. Schedule on Transitional Matters, § 6. (Emphasis added) Neither section has been certified as executed. The Trust Territory Code was incorporated into the CNMI Code in 1991 by PL 3 90 § 2.

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The TT regulations in question were “laws”. A regulation has the full force and effect of the law, if it has been properly promulgated. E.g., *Garnes v. Barnhart*, F.Supp.2d , 2004 WL 3118992, (N.D.Cal. 2004), citing *Chevron USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984); *State of Hawai’i v. Kotis*, 91 Hawai’i 319, 330; 984 P.2d 78, 90 (Hawai’i 1999). Also, *United States of America v. Alameda Gateway, Ltd.*, 213 F.3d 1161, 1168 (9th Cir 2000).

We must look to the Commonwealth Register to see whether the CNMI has superceded or repealed the partnership and nonprofit regulations. The Commonwealth Register is the successor to the Territorial Register and shall contain the text of all laws, official rules and regulations. Executive Order 1 (Jan. 12, 1978) (Camacho, C. Governor).⁹

The Commonwealth Registrar of Corporations, by permanent regulation, repealed TT corporate regulations governing for profit corporations, but not for nonprofit corporations or partnerships. Corporation Regulations, 17.05 (Repeal).¹⁰ The Legislature replaced the for profit statute with a new for profit corporation law, and new regulations, but did not provide a similar nonprofit statute or nonprofit regulations. *Taitano v. Northern Marianas Softball Ass’n*, No. 93 0356 (Superior Ct. 1994) (Castro, J).¹¹

⁹ The first executive order of the Governor specified the role of the Commonwealth Register:

Commonwealth of the Northern Mariana Islands
Executive Order of the Governor

Executive Order Number One
January 12, 1978

Northern Marianas Register

1. There is established the Commonwealth of the Northern Marianas Register, which is the successor to the Territorial Register. It shall be published daily, Sundays and Holidays excepted.
2. The Commonwealth Register shall contain the text of all laws, executive orders, proclamations, official rules and regulations, official notices, and related matters.
3. The Attorney General shall be responsible for publication of the Commonwealth Register. Copies shall be distributed to all elected officials, the senior officers of each branch, department head, and independent agencies.
4. Copies shall be available in one or more public places for public scrutiny and copies shall be available for public distribution.

Carlos S. Camacho, Governor.

Executive Order 1 (Jan. 12, 1978) (Camacho, C. Governor). (Emphasis added)

¹⁰ The 1990 Corporation Regulations repealed some of the TT Corporation Regulations B Title 37, Ch. 1, § § 1.1 2.8, 2.11 7.2, Ch. 2, Parts 1 and 2, and Chapter 3. Corporation Regulations 17.05, 12 Com Reg. No. 5 (May 15, 1990), p. 6997 (adopted 12 Com. Reg. 7 (Jul. 15, 1990), p. 7201).

¹¹ The Taitano Court held that, given there were no regulations to govern the particular dispute, it would resort to common law to determine what bylaws were proper for the challenged nonprofit corporation:

In order to address the plaintiff’s allegations concerning NMIASA bylaw violations, the court first turns to Title 4, Division 4 of the Commonwealth Code entitled Corporations, Partnerships and Associations. Title 4 empowers the Governor to grant charters of incorporation for the establishment of private nonprofit corporations but offers no guidance with respect to alleged by law violations occurring in nonprofit corporations. 4 CMC § 4101 et seq. On August 13, 1990, the

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legislature enacted the Commonwealth Business Corporation Regulations (CBRC). Although Section 10.20 and 10.22 of the CBRC offer some guidance for amendment to bylaws, the drafters of CBRC effectively limited the scope of the corporate regulations to profit making corporations by defining “corporation” as “domestic corporations. . .for profit.” 12 Com. Reg. at 6918 (1990) (emphasis added). Thus, the CBRC does not offer the court any guidance with respect to the actions of the nonprofit corporation, NMIASA. In the absence of CNMI written or [pg. 8] customary law to the contrary, the court resorts to the common law. 7 CMC § 3401.

Taitano v. Northern Marianas Softball Ass’n., No. 93 0356 (N.M.I. Super. Ct. 1994) (Castro, J). The TT regulations were silent on amendments to nonprofit corporate bylaws.

3. Analysis

Absent any repealer, the CNMI Constitution’s Transitional Section requires that Trust Territory laws continue in effect. A properly promulgated regulation has the full force and effect of the law.

As a principle of judicial construction, when a legislature acts on a matter in part only, the balance of the matter is said to be excluded - *inclusio unius est exclusio alterius*. E.g., *US v. Terrence*, 132 F.3d 1291, 1294 (9th Cir. 1997) (In construing US Palau Compact of Free Association, and applying the doctrine of “*inclusio unius est exclusio alterius*,” (“the inclusion of one is the exclusion of the other”) a statute’s limiting a thing to be done in a particular mode, in this case providing three immigration exemptions, includes a negative of any other mode, in this case preserving the obligation to register with the Attorney General). See *Aldan Pierce v. Mafnas*, 2 N.M.I. 122, 161 (1991), *rev’d on other grounds*, 31 F.3d 756 (9th Cir. 1994), *cert. denied*, 513 U.S. 1116, 115 S. Ct. 913, 130 L. Ed. 2d 794 (1995) (“For purposes of constitutional interpretation, the express mention of one thing implies the exclusion of another which might logically have been considered at the same time.”)

Another applicable principle of judicial construction is that an enactment should be read, if at all possible, according to its plain meaning. See, *Northern Marianas Housing Corp. v. Northern Marianas Land Trust*, 5 N.M.I. 150, 1998 MP 1, 1998 WL 34073630 (CNMI 1998) (The basic principle of statutory construction is that language must be given its plain meaning); *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362 (CNMI 1990) (Plain meaning rule of statutory construction applies to constitutions, to give plain meaning to provisions).

The Constitution is unambiguous, providing that TT law should continue in place unless CNMI law comes to provide otherwise. The Commonwealth Register is the only proper place to look to determine whether TT regulations have been repealed or replaced.

With respect to the instant issue the Registrar repealed only the for profit business regulations. The Register offers no changes or repealers for the other regulations in question. The Registrar deliberately left in place the unrepealed provisions and, indeed, relies on them daily. The distinction between the repealed and preserved regulations was clear and simple. This distinction has operated to preserve, as law, the partnership and nonprofit business corporation regulations.

This conclusion, that the partnership and nonprofit regulations continue in force, is consistent with the second quoted transitional section. The framers sought to continue smoothly the operations of business during the political transition from Trust to Commonwealth status. Interpreting the Registrar’s actions as a preservation of the partnership and nonprofit regulations enhances the transition.

Thus, the provisions left in place are the nonprofit corporation regulations and the partnership regulations, identified *supra*. These provisions are valid and in full force and effect.

Conclusion

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The old TT partnership and nonprofit regulations are in force and effect, and should be compiled into the LRC=s new Administrative Code.

/s/ Alan J. Barak, Asst. AG, Civil Division

/s/ Pam Brown, Attorney General

Attorney General Opinion 05-12 (August 12, 2005), 27 Com. Reg. 24812 (Aug. 22, 2005).

Part 001 - General Provisions

[Reserved.]

Part 100 - Charter of Nonprofit Corporation

§ 20-50.2-101 Nonprofit Corporations; Charter Grant of

The Registrar may grant to all applicants who file petitions in conformity with § 20-50.2-105, charters of incorporation for the establishment and conduct of any lawful purpose, except the carrying on of a business, trade, avocation, or profession for profit. Any charter granted or corporation created under authority of this part shall be subject to all general laws enacted in regard to corporations, and shall file with the Registrar from time to time, whenever changes occur, the name and addresses of the officers of the corporation.

Modified, 1 CMC § 3806(c), (g).

History: Territorial Register, volume 1, number 1, pages 7; 26-27 (July 15, 1974).

Commission Comment: The commission corrected the spelling of “from.”

§ 20-50.2-105 Nonprofit Corporations Petition for Charter

Any number of persons not less than three, a majority of whom are residents of the Territory, desiring to obtain a charter of incorporation for the purposes set forth in § 20-50.2-101 shall sign, verify, and file a petition with the Registrar. The petition shall be accompanied by the proposed form of charter of incorporation which shall contain the following particulars:

- (a) The name of the corporation;
- (b) The location of the proposed corporation and the specific address of its initial office;
- (c) The purpose or purposes for which the corporation is organized;
- (d) The period of duration, which may be perpetual;
- (e) The number, names, citizenship, and residence addresses of the initial officers and directors, or similar officers;

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(f) Any provision, not inconsistent with law, which the petitioners elect to set forth in the charter of incorporation for the regulation of the internal affairs of the corporation including any provisions for the distribution of assets on dissolution or final liquidation;

(g) That the corporation is not organized for profit and that it will not issue any stock, and no part of its assets, income, or earnings shall be distributed to its members, directors, or officers, except for services actually rendered to the corporation, and except upon liquidation of its property in case of corporate dissolution.

Modified, 1 CMC § 3806(c).

History: Territorial Register, volume 1, number 1, pages 7; 26-27 (July 15, 1974).

Part 200 - Merger and Consolidation

§ 20-50.2-201 Nonprofit Corporation Defined

“Nonprofit corporation” as used in this part means a corporation created under § 20-50.2-101 and § 20-50.2-105.

Modified, 1 CMC § 3806(c).

History: Territorial Register, volume 1, number 1, pages 7; 26-27 (July 15, 1974).

§ 20-50.2-205 Merger and Consolidation

(a) Any two or more domestic nonprofit corporations may be:

- (1) Merged into one of such domestic nonprofit corporations, which is designated in this part as “the surviving nonprofit corporation” or,
- (2) Consolidated into a new domestic nonprofit corporation to be formed by means of such merger or consolidation as is specified in the agreement hereinafter provided which is designated in this part as “the consolidated nonprofit corporation.”

(b) The board of directors, trustees, or other governing body of such nonprofit corporations as desire to merge or consolidate may enter into an agreement prescribing the terms and conditions of the merger or consolidation, the mode of carrying the same into effect, the names and addresses of the first officers and directors of the surviving or consolidated nonprofit corporation and their respective terms of office, and setting forth such other provisions as may be deemed necessary.

Modified, 1 CMC § 3806(g).

History: Territorial Register, volume 1, number 1, pages 7; 26-27 (July 15, 1974).

Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) and (b).

In subsection (a), the commission inserted the colon. In subsection (b), the commission moved the period after “corporation” inside the closing quotation mark.

§ 20-50.2-210 Merger; Necessary Statement

If the agreement is for a merger, it shall state any matters in respect of which the charter of incorporation of the surviving nonprofit corporation is proposed to be amended, and shall set forth or incorporate as part thereof the proposed charter of incorporation as amended, and the charter of incorporation shall be deemed to be the amended charter of incorporation of the surviving nonprofit corporation upon the allowance of the merger agreement by the Registrar with the consent of the High Commissioner. The amended charter of incorporation of the surviving nonprofit corporation may provide for the extension of the term of its corporate existence, and may contain all the powers and privileges that could lawfully be conferred or obtained in an original charter of incorporation.

Modified, 1 CMC § 3806(g).

History: Territorial Register, volume 1, number 1, pages 7; 26-27 (July 15, 1974).

Commission Comment: The commission changed “charter of the incorporation” to “charter of incorporation” to correct a manifest error.

§ 20-50.2-215 Consolidation; Necessary Statement

If the agreement is for a consolidation, it shall state therein or incorporate as part thereof a complete charter of incorporation as is required by chapter 1* in the formation of a new nonprofit corporation. The charter of incorporation shall be deemed to be the charter of incorporation of the consolidated nonprofit corporation upon the allowance of the consolidation agreement by the Registrar with the consent of the High Commissioner. The charter of incorporation of the consolidated nonprofit corporation may contain all the powers and privileges that could be lawfully conferred or obtained in an original charter of incorporation of a nonprofit corporation.

History: Territorial Register, volume 1, number 1, pages 7; 26-27 (July 15, 1974).

Commission Comment: The starred citation in this section references portions of the Trust Territory Corporations, Partnerships and Associations Regulations that are no longer in effect. See 4 CMC § 4705; see also Territorial Register, volume 1, number 1, pages 5-36 (July 15, 1974).

§ 20-50.2-220 Agreement; Approval, Execution

(a) The agreement shall be approved by the board of directors of trustees of each constituent nonprofit corporation and shall also be approved separately by each constituent nonprofit corporation, at a meeting duly called and held for the purpose, at which a quorum is present, by not less than two-thirds of the members of each constituent nonprofit corporation present at the meeting.

(b) The agreement shall be executed as provided in subpart 1.5 of chapter 2.*

History: Territorial Register, volume 1, number 1, pages 7; 26-27 (July 15, 1974).

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Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) and (b).

The starred citation in subsection (b) references portions of the Trust Territory Corporations, Partnerships and Associations Regulations that are no longer in effect. See 4 CMC § 4705; see also Territorial Register, volume 1, number 1, pages 5-36 (July 15, 1974).

Trust Territory Corporations Regulations, chapter 2, subpart 1.5 provided:

1.5. Execution of Agreement by Officers. After approval by the directors, and approval or authorization by the stockholders, the agreement shall be executed by the president or vice-president and the secretary or assistant secretary of each constituent corporation, and acknowledged by the officers executing the same on behalf of their respective corporations.

Territorial Register, volume 1, number 1, page 22 (July 15, 1974).

§ 20-50.2-225 Certificate of Approval

There shall be executed and signed by the presiding officer and secretary of each of the membership meetings, or by any other officers present at the meeting, a certificate which shall be verified by their oath and shall set forth:

- (a) The time and place of the meeting of the board of directors or trustees, and a copy of the resolution adopted thereat;
- (b) The vote in favor of the resolution;
- (c) The time and place of the meeting of the membership, and a copy of the resolution adopted thereat;
- (d) The vote in favor of the resolution;
- (e) Facts as to the notification of the members of the time, place, and purpose of the meeting of the members.

Modified, 1 CMC § 3806(g).

History: Territorial Register, volume 1, number 1, pages 7; 26-27 (July 15, 1974).

Commission Comment: In subsection (c), the commission replaced the final period with a semi-colon.

§ 20-50.2-230 Agreement When Executed to be Filed with Registrar

The agreement so approved, executed, and acknowledged, and the certificates of its approval by each constituent nonprofit corporation in accordance with this part, shall be filed in the office of the Registrar, and the merger or consolidation shall become effective upon the allowance of the merger or consolidation by the Registrar. A copy of the agreement, certified to by the Registrar shall have the same force in evidence as the original and, except as against the Territory, shall be conclusive evidence of the performance of all things precedent to the merger or consolidation, and the creation or existence of the surviving or consolidated nonprofit corporation.

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History: Territorial Register, volume 1, number 1, pages 7; 26-27 (July 15, 1974).

§ 20-50.2-235 Certificate of Registrar

Upon the allowance of the agreement, the Registrar shall make and seal with the seal of his office, his certificate of merger or consolidation, which shall set forth the following:

- (a) The name of each constituent nonprofit corporation;
- (b) The name of the surviving or consolidated nonprofit corporation;
- (c) The date and time of allowance of the merger or consolidation agreement;
- (d) The names of the officers and directors or trustees of the surviving or consolidated nonprofit corporation at the time of allowance of the agreement.

History: Territorial Register, volume 1, number 1, pages 7; 26-27 (July 15, 1974).

§ 20-50.2-240 Subpart 1.13 of Chapter 2 Applies

Subpart 1.13 of chapter 2* shall apply to the merger or consolidation of nonprofit corporations.

History: Territorial Register, volume 1, number 1, pages 7; 26-27 (July 15, 1974).

Commission Comment: The starred citation in this section references portions of the Trust Territory Corporations, Partnerships and Associations Regulations that are no longer in effect. See 4 CMC § 4705; see also Territorial Register, volume 1, number 1, pages 5-36 (July 15, 1974).

Trust Territory Corporations Regulations, chapter 2, subpart 1.13 provided:

1.13. Property and Corporate Existence. Upon merger or consolidation as provided herein, the separate existence of the constituent corporations shall cease, except that of the surviving corporation in case of merger. All and singular the rights, privileges, franchises, and property of each of the constituent corporations, and all debts and liabilities due or to become due to any constituent corporation, including subscriptions for shares and things in action and every interest or asset of conceivable value or benefit, shall be deemed fully and finally and without any right of revision transferred to and vested in the surviving or consolidated corporation without further act or deed, and the surviving or consolidated corporation shall have and hold the same in its own right as fully as the same was possessed and held by the constituent corporation from which it was, by operation of the provisions of this part, transferred.

All debts, liabilities, and obligations due or to become due of and all claims or demands for any cause existing against each constituent corporation shall, upon merger or consolidation, be and become the debts, liabilities, or obligation of, and the claims and demands against the surviving or consolidated corporation in the same manner as if the surviving or consolidated corporation had itself incurred or otherwise become liable for them.

All rights of creditors and all liens upon the property of each of the constituent corporations shall be preserved unimpaired, limited in lien to the property affected by the liens immediately prior to the time of the merger or consolidation.

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Any action or proceedings pending by or against any of the constituent corporations shall not be deemed to have abated or been discontinued, but may be prosecuted to judgment with the right to appeal or review as in other cases as if the merger or consolidation had not taken place or the surviving or consolidated corporation may be substituted for the constituent corporation.

Territorial Register, volume 1, number 1, pages 22-23 (July 15, 1974).

Part 300 - Corporations Sole for Ecclesiastical Purposes

§ 20-50.2-301 Formation of Corporation Sole for Ecclesiastical Purposes

A nonprofit corporation sole may be formed hereunder by the bishop, chief priest, presiding elder, or other presiding officer of any church, for the purposes of administering and managing the affairs, property, and temporalities of the church, in the district within which the bishop, chief priest, presiding elder, or other presiding officer has ecclesiastical jurisdiction.

History: Territorial Register, volume 1, number 1, pages 29-31 (July 15, 1974).

§ 20-50.2-305 Application for Charter; Petition; Contents

(a) Application to the Registrar for a charter of incorporation under this part shall be made by a written petition, verified by the bishop, chief priest, presiding elder, or other presiding officer forming the corporation sole. The petition shall set forth:

- (1) The name of the corporation;
- (2) The name citizenship and address of the officer forming the corporation, the office which he holds in the church, and that his duly authorized by the rules, regulations, or discipline of the church to take the action;
- (3) The boundaries of the district subject to the ecclesiastical jurisdiction of the officer forming the corporation sole, in accordance with the rules, regulations or discipline of the church;
- (4) The place of the principal office of the corporation sole, which shall be in the Territory;
- (5) The term for which the corporation sole is organized, which may be perpetual;
- (6) The manner in which any vacancy occurring in the office of the bishop, chief priest, presiding elder, or other presiding officer forming the corporation sole is required to be filled by the rules, regulations or constitution of the church;
- (7) Additional powers to be set forth in its charter, in accordance with subpart 2.14, chapter 1 of this title;*
- (8) Any lawful provision for the regulations of the affairs of the corporation sole, including restrictions upon the power to amend all or any part of the charter;
- (9) That the corporation is not organized for profit.

(b) If any petition for a charter of incorporation presented to the Registrar under this part is not in conformity with the requirements of this part the Registrar shall, within fifteen days, return the same to the petitioner specifying wherein the same fails to conform with this part and the petitioner may amend the petition and present it so amended. A proposed form of the charter of incorporation shall accompany the petition. The Registrar may require additional proofs from the petitioner. If the petition or amended petition and the proposed charter are in conformity with

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law, the Registrar shall present the petition or amended petition, proposed charger, and accompanying proofs to the High Commissioner for approval.

Modified, 1 CMC § 3806(d), (f).

History: Territorial Register, volume 1, number 1, pages 29-31 (July 15, 1974).

Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) and (b). The Commission corrected the spelling of “petition” in subsection (b) pursuant to 1 CMC § 3806(g).

The starred citation in subsection (a)(7) references portions of the Trust Territory Corporations, Partnerships and Associations Regulations that are no longer in effect. See 4 CMC § 4705; see also Territorial Register, volume 1, number 1, pages 5-36 (July 15, 1974).

Trust Territory Corporations Regulations, chapter 1, subpart 2.14 provided:

2.14 Implied Powers. Every corporation created under this chapter may possess and exerci[se] any and all powers, not inconsistent with any existing law, set forth in its articles of incorporation or charter or reasonably incidental to the fulfillment [sic] of its purpose or purposes as set forth in its articles of incorporation or charter or reasonably incidental to the exercise of its powers as set forth therein.

Territorial Register, volume 1, number 1, page 8 (July 15, 1974).

§ 20-50.2-310 Powers of Corporation Sole

(a) Every corporation sole formed under this chapter shall have the powers set forth in subpart 2.14, chapter 1* and be subject to part 2.17, chapter 1* of this title.

(b) Every such corporation shall have continuity of existence, notwithstanding vacancies in the incumbency thereof, and during the period of any vacancy, shall have the same capacity and right to receive and take any gift, bequest, devise, or conveyance of property, either as grantee for its own use, or as a trustee (where the trusteeship is within its corporate purposes and subject to removal from such trusteeship as provided by law), and to be or be made the beneficiary of a trust, as though there were no vacancies.

(c) No agency created y a corporation sole by a written instrument which, in express terms, provides that the agency thereby created shall not be terminated by a vacancy in the incumbency of the corporation, shall be terminated or affected by the death of the incumbent of the corporation or by a vacancy in the incumbency thereof, however caused.

Modified, 1 CMC § 3806(f), (g).

History: Territorial Register, volume 1, number 1, pages 29-31 (July 15, 1974).

Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) through (c).

In subsection (b), the commission corrected the spelling of “incumbency.”

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The starred citations in subsection (a) reference portions of the Trust Territory Corporations, Partnerships and Associations Regulations that are no longer in effect. See 4 CMC § 4705; see also Territorial Register, volume 1, number 1, pages 5-36 (July 15, 1974).

Trust Territory Corporations Regulations, chapter 1, subparts 2.14 and 2.17 provided:

2.14 Implied Powers. Every corporation created under this chapter may possess and exerci[se] any and all powers, not inconsistent with any existing law, set forth in its articles of incorporation or charter or reasonably incidental to the fulfillment [sic] of its purpose or purposes as set forth in its articles of incorporation or charter or reasonably incidental to the exercise of its powers as set forth therein.

2.17 Except as otherwise provided, no corporation shall be deemed to possess the power of discounting bills, notes, or other evidence of debt, or receiving deposits, or buying gold, silver, bullion, or foreign coin, buying and selling exchange, or issuing notes or other evidence of debt, except so far as the exigencies of the particular business for which it was incorporated require. Nor shall any corporation, unless authorized by express enactment of law, issue bills or other evidence of debt for circulation as money.

Territorial Register, volume 1, number 1, page 8 (July 15, 1974).

§ 20-50.2-315 Amendment of Charter

(a) Subject to the provisos set forth in this section, and subject to any lawful restrictions upon the power to amend the charter of a corporation sole, set forth in its petition filed under § 20-50.2-305, the incumbent of the corporation may at any time amend the charter of the corporation by changing its name, the term of its existence, the boundaries of the district subject to its jurisdiction, the place of its principal office, the manner of filing any vacancy in the incumbency thereof, its powers, or any provision of the charter for the regulation of the affairs of the corporation (except restrictions upon the power to amend the charter), and may, by amendment of the charter, make provision for any act or thing for which provisions is authorized in original charters of corporations sole formed under this part.

(b) The incumbent of the corporation sole shall subscribe and verify a certificate which shall set forth the amendment either by stating that the charter has been amended to read as set forth in the certificate in full or by stating that any provision or provisions of the charter, which shall be identified by the numerical or other designation or designations thereof in the charter or by stating the wording thereof, has or have been amended to read as set forth in the certificate. The certificate shall further state that the amendment has been duly authorized by the rules, regulations, or discipline of the church of which the incumbent is an officer; provided, the no amendment shall confer any other or greater powers or privileges than could lawfully be conferred or obtained in an original charter; provided, further, that no amendment shall become effective unless the same is allowed by the Registrar by and with the consent of the High Commissioner.

Modified, 1 CMC § 3806(c), (d), (g).

History: Territorial Register, volume 1, number 1, pages 29-31 (July 15, 1974).

Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) and (b).

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In subsection (b), the commission changed “be” to “by” to correct a manifest error.

§ 20-50.2-320 Name of Incumbent; Change in Incumbency

There shall be filed, with petition for a charter, a certificate duly signed and acknowledged, which shall state the name, citizenship, and address of the person who is to be its incumbent, to which shall be appended a duly attested copy of the certificate of appointment or other document through which he became entitled to be the incumbent of the corporation sole. Whenever a change in the incumbency of the corporation occurs, the new incumbent, within thirty days after he has become an incumbent, shall file with the Registrar a like certificate with like proof of his title to the office.

History: Territorial Register, volume 1, number 1, pages 29-31 (July 15, 1974).

§ 20-50.2-325 Distribution of Assets; Inspection of Books

(a) Except upon liquidation of the property of the corporation in case of dissolution, no part of the assets, income, or earnings of the corporation shall be withdrawn from or sent out of the Territory, unless the remaining assets of the corporation shall then equal in value twice the amount of the indebtedness of the corporation.

(b) The Registrar shall at all times have access to the books of the corporation.

History: Territorial Register, volume 1, number 1, pages 29-31 (July 15, 1974).

Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) and (b).

§ 20-50.2-330 Extensions and Renewals

The duration of the corporation, if not perpetual, may be extended by amendment of its charter, and at any time not more than two years after the expiration of a charter it may be renewed upon application to the Registrar for that purpose; provided that no renewal shall become effective until it is allowed by the Registrar by and with the consent of the High Commissioner.

History: Territorial Register, volume 1, number 1, pages 29-31 (July 15, 1974).

§ 20-50.2-335 Dissolution

A corporation formed under this part may be dissolved, voluntarily or involuntarily, in the manner provided in part 6 of chapter 1* denominated “dissolution,” save that:

(a) In lieu of the certificate and vote therein required for a voluntary dissolution, the incumbent of the corporation sole shall execute, subscribe and verify a declaration of dissolution which shall set forth the name of the corporation, the reason for its dissolution or winding up, and that the dissolution has been duly authorized by the church, to administer the affairs,

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property, and temporalities of which the corporation was organized, and the registrar shall be satisfied that the dissolution has been duly authorized.

(b) In lieu of the certificate of an officer, director or manager of the corporation, therein, required for the involuntary dissolution of a corporation which has ceased to have any assets and has failed to function, the certificate may be made by any authorized officer of the church, to administer the affairs, property, and temporalities of which the corporation was organized.

(c) In lieu of the directors or managers of the corporation the incumbent shall be a trustee to wind up the corporation, unless some other person or persons are appointed as therein provided.

(d) The church, to administer the affairs, property and temporalities of which the corporation was organized, shall stand in the place and stead of the stockholders, and may be represented in court by any authorized officer thereof or trustee acting in its behalf; the remaining assets shall be distributed to such church or to a trustee or trustees in its behalf, or in such other manner as may be decreed by the High Court judge at chambers; and the trustee or trustees in dissolution, the Registrar, the Attorney General, or any person connected with the church, may file a petition for the determination of the manner of distribution of the remaining assets, or for the appointment of a trustee or trustees to act in behalf of the church.

(e) In lieu of the officers of the corporation the incumbent shall represent the corporation with respect to the required tax clearance.

Modified, 1 CMC § 3806(d), (g).

History: Territorial Register, volume 1, number 1, pages 29-31 (July 15, 1974).

Commission Comment: In the opening paragraph, the commission moved the comma after “dissolution” inside of the closing quotation mark to correct a manifest error.

The starred citation in the opening paragraph references portions of the Trust Territory Corporations, Partnerships and Associations Regulations that are no longer in effect. See 4 CMC § 4705; see also Territorial Register, volume 1, number 1, pages 5-36 (July 15, 1974). Trust Territory Corporations Regulations, chapter 1, part 6 provided for the dissolution of corporations in the Commonwealth. See Territorial Register, volume 1, number 1, pages 17-20 (July 15, 1974).

§ 20-50.2-340 Corporations Sole Heretofore Formed; General Laws

(a) Any corporation sole heretofore formed and existing under the laws of this Territory for ecclesiastical purposes may elect to continue its existence under this part by filing an application for amendment of its charter in the manner and form provided for an application for an original charter,* together with the required certificates as to the incumbency of the corporation. If such amendment is allowed by the Registrar by and with the consent of the High Commissioner, this part thereupon shall apply to such corporations sole the same as to corporations under this part.

(b) Any charter or amended charter granted or corporation created or existing under the authority of this part shall be subject to all general laws enacted in regard to corporations.

Modified, 1 CMC § 3806(d).

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History: Territorial Register, volume 1, number 1, pages 29-31 (July 15, 1974).

Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) and (b).

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CHAPTER 20-50 REGISTRAR OF CORPORATIONS

SUBCHAPTER 20-50.3 PARTNERSHIP REGULATIONS

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§ 20-50.3-202	Formation	§ 20-50.3-250 Parties to Actions
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§ 20-50.3-208	Partnership Name	
§ 20-50.3-210	Liability for False Statements in Certificate	
§ 20-50.3-212	Limited Partner not Liable to Creditors	

Subchapter Authority: 37 TTC § 52; 4 CMC § 4705.

Subchapter History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

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Commission Comment: The Trust Territory of the Pacific Islands government originally published Partnership Regulations applicable in the CNMI as a part of the Trust Territory Corporations, Partnerships and Associations Regulations. See Territorial Register, volume 1, number 1, pages 5-36 (July 15, 1974).

4 CMC § 4201 created a Registrar of Corporations within the Office of the Attorney General. Former 4 CMC § 4202 authorized the Registrar, with the approval of the Governor and Attorney General, to prescribe rules and regulations governing corporations, partnerships and associations.

The regulations promulgated by the Trust Territory of the Pacific Islands, as amended by the Registrar of Corporations, governed all corporations and partnerships in the Commonwealth until July 1990. In July 1990, pursuant to the authority of former 4 CMC § 4202, the Registrar issued the 1990 Business Corporation Regulations and subsequent amendments. See NMIAC, title 20, chapter 50.1; see also 4 CMC § 4202 (1990).

NMIAC § 20 50.1 1620 (Business Corporation Regulations § 17.05), codified at 4 CMC § 4705, repealed the parts of the Trust Territory Regulations regulating for profit corporations, effective July 25, 1990. However, the Trust Territory provisions regulating partnerships were not repealed and remained in effect.

PL 10-7 (effective May 10, 1996), the “Commonwealth Business Corporation Regulation Act,” codified at 4 CMC §§ 4251-4705, enacted the 1990 Business Corporation Regulations (as amended in 1994) as statutory law. See PL 10-7 §§ 1 and 3; see also NMIAC, title 20, chapter 50.1. Pursuant to 4 CMC § 4705, the provisions of the Trust Territory regulations governing partnerships continued in effect in the CNMI. Specifically, 4 CMC § 4705 does not repeal Trust Territory Regulations, title 37, chapter 5. See Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

In 1997, the Governor transferred the Registrar of Corporations and the remaining legal functions of that office in regards to corporations of the Commonwealth from the Office of the Attorney General to the Department of Commerce. See Executive Order 97-03 (November 13, 1997).

Attorney General Opinion No. 05-12 (August 12, 2005), 27 Com. Reg. 24812 (Aug. 22, 2005), addresses the status of the Trust Territory regulations for partnerships and non-profit corporations. The Attorney General concluded that because the Trust Territory’s 1974 regulations for partnerships and non-profit corporations have never been repealed or superceded, they remain in full force and effect pursuant to the transitional provisions of the CNMI Constitution and other laws. Attorney General Opinion No. 05-12 is reprinted in full in chapter 20-50.2.

Part 001 - General Provisions

[Reserved.]

Part 100 - Partnerships in General

§ 20-50.3-101 Registration and Annual Statements

(a) Whenever any general or limited partnership is formed under the laws of the Territory to do business in the Territory, or any partnership formed under the laws of any other jurisdiction shall do business in the Territory, the partnership shall file in the office of the Registrar the registration and annual statements hereinafter provided. Every partnership now existing under the laws of the Territory shall also file the annual statements hereinafter provided. A registration statement shall be filed by any partnership formed under the laws of the Territory within thirty days after the partnership is formed and by a partnership formed under the laws of any other jurisdiction within thirty days after the commencement of business in the Territory. An annual statement shall be filed on or before March 31 of each year, as of December 31 of the preceding year. Every registration statement shall contain the following termination:

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- (1) The name of the partnership;
 - (2) The nature of the partnership (whether general, limited, special, or other);
 - (3) The name, citizenship, and residence of each partner, and whether he is a general, limited, special, or other kind of partner;
 - (4) The nature of the partnership business;
 - (5) The location of the principal place of business of the partnership in the Territory and, if the partnership is one formed under the laws of any other jurisdiction, the name of the jurisdiction and the location of the principal place of business of the partnership;
 - (6) The date the partnership was formed and, if the partnership is one formed under the laws of any other jurisdiction, the date the partnership commenced business in the Territory;
 - (7) The fact that none of the partners is either a minor or an incompetent person.
- (b) Every annual statement shall contain the information specified in subsections (a)(1), (3), (4), (5), and (7) above.
- (c) The registration statement shall be acknowledged by each partner. Each annual statement shall be certified as correct by any general partner. A registration statement need not be filed by any limited partnership which has complied with § 20-50.3-202.

Modified, 1 CMC 3806(c), (d), (g).

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) through (c).

In subsection (a)(7), the commission replaced the final semi-colon with a period to correct a manifest error.

§ 20-50.3-105 Forms to be Furnished by Registrar; Acknowledgments

The registration, annual, and other statements required by this part shall be filed on forms to be furnished by the Registrar. Statements required to be acknowledged shall be acknowledged before a notary public or other officers in the manner provided by law for acknowledgment of deeds.

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

§ 20-50.3-110 Partnership Name

No partnership shall take or use a name which is identical with any name registered in the office of the Registrar under any statute, or which is so nearly similar to any such name as to lead to confusion or uncertainty. No statement or certificate of any partnership showing a name in violation of the provisions hereof shall be recorded by the Registrar.

Modified, 1 CMC § 3806(g).

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

Commission Comment: The commission deleted the repeated word “any” to correct a manifest error.

§ 20-50.3-115 Partnership Name; Change of

(a) Whenever any partnership changes its partnership name, it shall within thirty days thereafter file in the office of the Registrar a statement showing:

- (1) The registered name of the partnership, and
- (2) The new name of the partnership.

(b) Provided, that the statement need not be filed by a limited partnership which has filed a writing to amend its certificate pursuant to § 20-50.3-248. The statement shall be signed and certified as correct by any general partner.

Modified, 1 CMC 3806(c), (g).

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) and (b).

In subsection (a)(2), the commission replaced the final semi-colon with a period to correct a manifest error.

§ 20-50.3-120 Foreign Partnerships, Powers and Liabilities

A partnership formed under the laws of any other jurisdiction, shall, on filing a registration statement as required by subpart

§ 20-50.3-101 and subject to continuing compliance with the other provisions of this part, have the same powers and privileges, and be subject to the same disabilities as are by law conferred upon partnerships formed under the laws of the Territory, provided always that the purposes for which the partnership is formed are not repugnant to or in conflict with any law of the Territory.

Modified, 1 CMC § 3806(c).

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

§ 20-50.3-125 Admission, Withdrawal or Death of a Partner

Whenever a new partner is admitted to any partnership, or a partner withdraws from any partnership, or whenever any partner dies, a statement of the admission, withdrawal, or death shall be filed in the office of the Registrar, within thirty days after the addition, withdrawal, or death; provided that the statement need not be filed by a limited partnership which has filed a writing to amend its certificate pursuant to § 20-50.3-248. The statement shall be acknowledged by each partner added or withdrawn, except as hereinafter provided, and by all other remaining partners. If a partner withdraws and cannot be located, the statement shall set forth those facts and need not be signed or acknowledged by the partner.

Modified, 1 CMC § 3806(c), (g).

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

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Commission Comment: The commission corrected the spelling of “except.”

§ 20-50.3-130 Statement of Dissolution

Whenever any partnership is dissolved, a statement thereof showing the cause of the dissolution shall be filed in the office of the Registrar within thirty days after dissolution; provided, that the statement need not be filed by a limited partnership which has filed a writing to cancel its certificate pursuant to § 20-50.3-248. The statement shall be acknowledged by all partners except in such cases as the circumstances make it obviously impossible to secure the signature of one of more partners, which circumstances shall be set forth in the statement.

Modified, 1 CMC 3806(c).

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

§ 20-50.3-135 Taxes, etc., a Prior Lien on Partnership Property on Dissolution

Upon dissolution of a partnership, any lawful taxes, imposts, license fees, or assessments for which the partnership, or any partner in respect thereof, is liable shall constitute a prior lien upon the assets of the partnership but not as against the interest of those creditors who have prior recorded liens.

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

§ 20-50.3-140 Record of Statements

The Registrar shall cause books or files to be kept in his office, in which shall be recorded the several particulars required by this part to be filed in his office.

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

§ 20-50.3-145 Cancellation of Registration

If any partnership, whether general, limited, special, or other, fails or neglects for a period of two years to file any annual statement as required by this part, the Registrar may cancel the registration or the certificate, as the case may be, of the partnership. The cancellation of the registration or certificate shall not relieve the partners of liability for the penalties for the failure to file any statement or certificate required by this part.

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

§ 20-50.3-150 Partnership Between Husband and Wife: Prima Facie Proof

If any business tax return is filed by, or license to do business is issued in the names of, both husband and wife, the tax return or license shall constitute prima facie proof, insofar as the Territory or any of its political subdivisions is concerned, that a partnership in the business exists between husband and wife in respect of the business. If the business tax return is filed by, or

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license is issued in the name of, one of them only, it shall constitute like proof that the husband and wife are not partners in respect of the business.

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

§ 20-50.3-155 Minors and Incompetent Persons

A minor or incompetent person may not be a partner, but may have a beneficial interest in a partnership through a trustee or duly appointed guardian. The trustee or guardian may be a limited partner only.

Modified, 1 CMC § 3806(g).

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

Commission Comment: The commission changed the word “persons” to “person” to correct a manifest error.

§ 20-50.3-160 Not Applicable to Corporations

Nothing in this part shall apply to corporations or incorporated companies.

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

§ 20-50.3-165 Partnerships Heretofore Formed

Any partnership heretofore formed and existing under the laws of this Territory may elect to continue its existence under this chapter by complying with the provisions set forth in this chapter, whereupon this chapter shall apply to such partnerships the same as to partnerships formed under this chapter.

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

Part 200 - Limited Partnerships

§ 20-50.3-201 Limited Partnerships Defined

A limited partnership is a partnership formed by two or more persons under § 20-50.3-202, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership.

Modified, 1 CMC 3806(c).

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

§ 20-50.3-202 Formation

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(a) Two or more persons, each of whom may be an individual or a corporation and any of whom may be acting in a fiduciary capacity, desirous of forming a limited partnership, shall sign, acknowledge, and file a certificate, as follows:

(1) The certificate shall state:

(i) The name of the partnership;

(ii) The character of the business;

(iii) The location of the principal place of business;

(iv) The name, citizenship, and place of residence of each member, general and limited partners being respectively designated;

(v) The term for which the partnership is to exist;

(vi) The amount of cash and a description of and the agreed value of the other property contributed by each limited partner;

(vii) The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they are to be made;

(viii) The time, if agreed upon, when the contribution of each limited partner is to be returned;

(ix) The share of the profits or the other compensation by way of income which each limited partner is to receive by reason of his contributions;

(x) The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution;

(xi) The right, if given, of the partners to admit additional limited partners;

(xii) The right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income and the nature of the priority;

(xiii) The right, if given, of the remaining general partner or partners to continue the business on the death, retirement, or insanity of a general partner; and

(xiv) The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

(2) The certificate shall be acknowledged by each of the persons before some officer authorized to take acknowledgments of deeds, and shall be filed in the office of the Registrar.

(b) The Registrar shall preserve the certificate and keep a record of the same, which shall be duly indexed.

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) and (b).

§ 20-50.3-204 Business Which May Be Carried on

A limited partnership may carry on any lawful business.

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

§ 20-50.3-206 Character of Limited Partner's Contribution

The contributions of a limited partner may be cash or other property, but not services.

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History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

§ 20-50.3-208 Partnership Name

- (a) The surname of a limited partner shall not appear in the partnership name, unless
 - (1) It is also the surname of a general partner, or
 - (2) Prior to the time when the limited partner became such the business had been carried on under a name in which his surname appeared.

- (b) A limited partner whose name appears in a partnership name contrary to the foregoing provisions is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner.

Modified, 1 CMC § 3806(f).

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) and (b).

§ 20-50.3-210 Liability for False Statements in Certificate

If the certificate contains a false statement, one who suffers loss by reliance on the statement may hold liable any party to the certificate who knew the statement to be false,

- (a) At the time he signed the certificate, or

- (b) Subsequently, but within a sufficient time before the statement was relied upon to enable him to cancel or amend the certificate, or to file a petition for its cancellation or amendment as provided in § 20-50.3-248(c).

Modified, 1 CMC 3806(c), (f).

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

§ 20-50.3-212 Limited Partner not Liable to Creditors

A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business.

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

§ 20-50.3-214 Admission of Additional Limited Partners

After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of § 20-50.3-248.

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Modified, 1 CMC 3806(c).

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

§ 20-50.3-216 Rights, Powers, and Liabilities of a General Partner

A general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority to:

- (a) Do any act in contravention of the certificates;
- (b) Do any act which would make it impossible to carry on the ordinary business of the partnership;
- (c) Confess a judgment against the partnership;
- (d) Posses partnership property, or assign their rights in specific partnership property, for other than a partnership purpose;
- (e) Admit a person as a general partner;
- (f) Admit a person as a limited partner, unless the right so to do is given in the certificate;
- (g) Continue the business with partnership property on the death, retirement, or insanity of a general partner, unless the right so to do is given in the certificate.

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

§ 20-50.3-218 Rights of a Limited Partner

- (a) A limited partner shall have the same rights as a general partner to:
 - (1) Have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them;
 - (2) Have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable; and
 - (3) Have dissolution and winding up by decree of court.
- (b) A limited partner shall have the right to receive a share of the profits or other compensation by way of income, and to the return of his contribution as provided in § 20-50.3-228 and § 20-50.3-230.

Modified, 1 CMC § 3806(c), (g).

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

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Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) and (b).

In subsection (a)(2), the commission corrected the spelling of “full” to correct a manifest error.

§ 20-50.3-220 Status of a Person Erroneously Believing Himself a Limited Partner

A person who has contributed to the capital of a business conducted by a person or partnership, erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of that person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income.

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

§ 20-50.3-222 One Person Both General and Limited Partner

(a) A person may be a general partner and a limited partner in the same partnership at the same time.

(b) A person who is a general, and also at the same time a limited partner shall have all the rights and powers and be subject to all the restrictions of a general partner; except that, in respect to his contribution, he shall have the rights against the other members which he would have had if he were not also a general partner.

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) and (b).

§ 20-50.3-224 Loans and Other Business Transactions With Limited Partner

(a) A limited partner also may loan money to and transact other business with the partnership, and, unless he is also a general partner, receive on account of resulting claims against the partnership, with general creditors, a pro rata share of the assets. No limited partner shall in respect to any such claim

(1) Receive or hold as collateral security any partnership property, or

(2) Receive from a general partner or the partnership any payment, conveyance, or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.

(b) The receiving of collateral security, or a payment, conveyance, or release in violation of this subpart is a fraud on the creditors of the partnership.

Modified, 1 CMC § 3806(f).

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

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Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) and (b).

§ 20-50.3-226 Relation of Limited Partners Inter Se

Where there are several limited partners the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income, or as to any other matter. If such an agreement is made it shall be stated in the certificate, and in the absence of the statement all the limited partners shall stand upon equal footing.

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

§ 20-50.3-228 Compensation of Limited Partner

A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated for in the certificate; provided that, after the payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership except liabilities to limited partners on account of their contributions and to general partner.

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

§ 20-50.3-230 Withdrawal or Reduction of Limited Partner's Contributions

- (a) A limited partner shall not receive from a general partner or out of partnership property any part of his contribution until
- (1) All liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them;
 - (2) The consent of all members is had, unless the return of the contribution may be rightfully demanded under subsection (b); and
 - (3) The certificate is cancelled or so amended as to set forth the withdrawal or reduction.
- (b) Subject to subsection (a) a limited partner may rightfully demand the return of his contribution
- (1) On the dissolution of a partnership; or
 - (2) When the date specified in the certificate for its return has arrived; or
 - (3) After he has given six months' notice in writing to all other members if no time is specified in the certificate either for the return of the contribution or for the dissolution of the partnership.
- (c) In the absence of any statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution.
- (d) A limited partner may have the partnership dissolved and its affairs wound up when

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- (1) He rightfully but unsuccessfully demands the return of his contribution, or
- (2) The other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment as required by subsection (a) and the limited partner would otherwise be entitled to the return of his contribution.

Modified, 1 CMC § 3806(f).

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

§ 20-50.3-232 Liability of Limited Partner to Partnership

- (a) A limited partner is liable to the partnership
 - (1) For the difference between his contribution as actually made and that stated in the certificate as having been made, and
 - (2) For any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.
- (b) A limited partner holds as trustee for the partnership
 - (1) Specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned, and
 - (2) Money or other property wrongfully paid or conveyed to him on account of his contribution.
- (c) The liabilities of a limited partner as set forth in this section can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of a partnership, who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities.
- (d) When a contributor has rightfully received the return in whole or in part of the capital of his contribution, he is nevertheless liable to the partnership for any sum, not in excess of the return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before the return.

Modified, 1 CMC § 3806(f), (g).

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) through (d).

In subsection (c), the commission changed the word “of” to “or” to correct a manifest error.

§ 20-50.3-234 Nature of Limited Partner’s Interest in Partnership

A limited partner’s interest in the partnership is personal property and is assignable.

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

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§ 20-50.3-236 Assignment of

- (a) A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership.
- (b) An assignee, who does not become a substituted limited partner, has no right to require any information or account of the partnership transactions or to inspect the partnership books; he is only entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution, to which his assignor would otherwise be entitled.
- (c) An assignee may become a substituted limited partner if all the members (except the assignor) consent thereto or if the assignor, being thereunto empowered by the certificate gives the assignee that right.
- (d) An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with § 20-50.3-248.
- (e) The substituted limited partner has all the rights and powers, and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.
- (f) The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under § 20-50.3-210 and § 20-50.3-232.

Modified, 1 CMC 3806(c).

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) through (f).

§ 20-50.3-238 Effect of Retirement, Death, or Insanity of a General Partner

The retirement, death, or insanity of a general partner dissolves the partnership, unless the business is continued by the remaining general partners under a right so to do stated in the certificate, or with the consent of all members.

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

§ 20-50.3-240 Death of Limited Partner

- (a) On the death of a limited partner his executor or administrator shall have all the rights of a limited partner for the purpose of settling his estate, and such power as the deceased had to constitute his assignee a substituted limited partner.

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(b) The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner.

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) and (b).

§ 20-50.3-242 Rights of Creditors of Limited Partner

(a) On due application to a court of competent jurisdiction by any creditors of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of such claim; and may appoint a receiver, and make all other orders, directions, and inquiries which the circumstances of the case may require.

(b) The interest may be redeemed with the separate property of any general partner, but may not be redeemed with partnership property.

(c) The remedies conferred by subsection (a) shall not be deemed exclusive of others which may exist.

(d) Nothing in this part shall be held to deprive a limited partner of his statutory exemption.

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

§ 20-50.3-244 Distribution of Assets

(a) In settling accounts after dissolution the liabilities of the partnership shall be entitled to payment in the following order:

- (1) Those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions, and to general partners;
- (2) Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions;
- (3) Those to limited partners in respect to the capital of their contributions;
- (4) Those to general partners other than for capital and profits;
- (5) Those to general partners in respect to profits;
- (6) Those to general partners in respect to capital.

(b) Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to their claims for capital and in respect to their claims for profits or for compensation by way of income on their contributions respectively in proportion to the respective amounts of their claims.

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) and (b).

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§ 20-50.3-246 When Certificate Shall Be Cancelled or Amended

- (a) The certificate shall be cancelled when the partnership is dissolved or all limited partners cease to be such.
- (b) A certificate shall be amended when:
 - (1) There is a change in the name of partnership or in the amount or character of the contribution of any limited partner;
 - (2) A person is substituting as a limited partner;
 - (3) An additional limited partner is admitted;
 - (4) A person is admitted as a general partner;
 - (5) A general partner retires, dies, or becomes insane, and the business is continued under § 20-50.3-238;
 - (6) There is a change in the character of the business of the partnership;
 - (7) There is a false or erroneous statement in the certificate;
 - (8) There is a change in the time as stated in the certificate, for the dissolution of the partnership or for the return of a contribution;
 - (9) A time is fixed for the dissolution of the partnership, or the return of a contribution, no time having been specified in the certificate; or
 - (10) The members desire to make a change in any other statement in the certificate to represent accurately the agreement between them.

Modified, 1 CMC 3806(c).

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

Commission Comment: The original paragraphs were not designated. The commission designated subsections (a) and (b).

§ 20-50.3-248 Requirements for Amendment and for Cancellation of Certificate

- (a) The writing to amend a certificate shall
 - (1) Conform to the requirements of § 20-50.3-202(a)(1) as far as necessary to set forth clearly the change in the certificate which it is desired to make; and
 - (2) Be signed and acknowledged by all members. An amended substituting a limited partner, or adding a limited or general partner, shall be signed and acknowledged also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed and acknowledged by the assigning limited partner.
- (b) The writing to cancel a certificate shall be signed and acknowledged by all members.
- (c) A person desiring the cancellation or amendment of a certificate, if any person designated above as a person who must execute the writing refuses to do so, may bring a suit in equity in the High Court for an order directing the cancellation or amendment thereof.
- (d) If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so it shall order the Registrar to record the cancellation or amendment of the

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certificate; and where the certificate is to be amended, the court shall also cause to be filed in the office of the Registrar a certified copy of its decree setting forth the amendment.

- (e) A certificate is amended or cancelled when there is filed in the office of the Registrar
 - (1) A writing in accordance with subsection (a) or (b), or
 - (2) A certified copy of the order of court in accordance with subsection (d).

(f) After the certificate is duly amended in accordance with this section, the amended certificate shall thereafter be for all purposes the certificate provided for by this part.

Modified, 1 CMC § 3806(c), (f).

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

§ 20-50.3-250 Parties to Actions

A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership.

Modified, 1 CMC § 3806(g).

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

Commission Comment: The commission corrected the spelling of "partner's."

§ 20-50.3-252 Rules of Construction

The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this part.

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).

§ 20-50.3-254 Rules for Cases Not Provided for

In any case not provided for in this part the rules of law and equity, including the law merchant, shall govern.

History: Territorial Register, volume 1, number 1, pages 31-36 (July 15, 1974).