To amend and reenact R.S. 12:1501, 1502(A), 1601 through 1604, and 1701, R.S.
deemed to be references to this Chapter.

This Chapter shall be known and may be cited as the “Business Corporation
The legislature has power to amend or repeal all or part of this Chapter at
primarily on the business organization, the extent of its liability, or the
The Model Act language in Subsection (b) provided that “[this Act must
payments. Any required statement in a filed document of the date on which the
may not be made dependent on facts outside the plan or filed document:
(a) The registered agent of a corporate body in addition to the dates of

A. A document must satisfy the requirements of this Section, and of any

D. The document must be typewritten or printed or, if electronically

E. The document must be in the English language. A corporate name need

F. The document must be signed by one of the following:

E. The person executing the document shall sign it and state, beneath

G. The person executing the document shall sign it and state, beneath

H. Except as provided in R.S. 12:1701, the following documents shall be

I. If the secretary of state has prescribed a mandatory form for the
document pursuant to R.S. 12:1 - 121, the document must be in or on the
prescribed form.

J. The document must be delivered to the office of the secretary of state for

K. When the document is delivered to the office of the secretary of state for

L. Whenever a provision of this Chapter permits any of the terms of a plan

M. The filing of a document in the office of the secretary of state shall

N. Except as provided in Subparagraph (H) of this Section, the
corporation’s legal rights under any provision of this Chapter except R.S. 12:

O. The following provisions of a plan or filed document may not be made

to which they relate and may be filed by the corporation without

P. The filing of a plan or a filed document to be dependent on facts objectively ascertainable

Q. If a provision of a filed document is made dependent on a fact

R. The legislature has power to amend or repeal all or part of this Chapter at

S. The filing of a plan or a filed document, the following provisions apply:

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

U. If a provision of a filed document is made dependent on a fact

V. If a provision of a filed document is made dependent on a fact

W. The filing of a plan or a filed document, the following provisions apply:

X. A document must satisfy the requirements of this Section, and of any

Y. The filing of the document in the office of the secretary of state must be

Z. A determination or action by any person or body, including the
corporation or any other party to a plan or filed document.

aa. Any of the following that is available in a nationally recognized news or

bb. Any of the following but are not limited to:

cc. Any required statement in the filed document of the date on which the

dd. The number of authorized shares and designation of each class or

ee. The effective date of a filed document.

ff. Any required statement in a filed document of the date on which the

gg. Any required statement in the filed document of the date on which the

hh. The filing of a plan or a filed document, the following provisions apply:

ii. The manner in which the facts will operate upon the terms of the plan

jj. The facts may include any of the following but are not limited to:

kk. The manner in which the facts will operate upon the terms of the plan

ll. The facts may include any of the following but are not limited to:

mm. Any required statement in a filed document of the date on which the

nn. The manner in which the facts will operate upon the terms of the plan

oo. The effective date of a filed document.

pp. Any required statement in a filed document of the date on which the

qq. The manner in which the facts will operate upon the terms of the plan

rr. The facts may include any of the following but are not limited to:

ss. The filing of a plan or a filed document may not be made

tt. The filing of a plan or a filed document may not be made

uu. The filing of a plan or a filed document may not be made

vv. The filing of a plan or a filed document may not be made
the terms of Subsection B of this Section operated as one of the conditions to be satisfied to make a document eligible for filing under this Chapter, and not as a free-standing requirement that was to be imposed on the Chapter itself.

(b) The second sentence of Subsection D of this Section was added to preserve the eligibility for filing of typewritten or printed documents that contain handwritten entries or notations, which are commonly used to complete blank spaces or to modify printed provisions in form documents.

c) A new Subsection H of this Section was added, and the existing Model Act subsections (h) through (k) were redesignated as Subsections I through L of this Section, to retain the rule in prior law that required documents of incorporation to be acknowledged or executed by authentic act. As in prior law, this rule is subject to exceptions provided elsewhere in the law, currently in R.S. 12:1701. If the requirements of those exceptions are satisfied, they permit documents that are signed and filed electronically, or in person at the secretary of state’s office, to be filed without the acknowledgment or authentic act that would otherwise be required.

d) Subsection K of this Section requires the payment of the correct filing fee for a document. Those fees are set forth in R.S. 49:222.

§1-121. Forms

A (1) The secretary of state may prescribe and furnish on request forms for any of the following:
(a) An application for a certificate of existence and standing.
(b) A corporation’s application for a certificate of authority to do business in this state.
(c) A foreign corporation’s application for a certificate of withdrawal.
(d) The annual report.
(e) Filing of the secretary of state is required, use of these forms is mandatory.
(f) The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by this Chapter but their use is not mandatory.

Source: MBCA §1.21.

Comment - 2014 Version

The title of the “certificate of existence” in the Model Act was modified to add the phrase “and standing” to reflect the added content in the “certificate of existence and standing” as provided in R.S. 12:1-128.

§1-122. Effective time and date of document

A. Except as provided in Subsections B and C of this Section and in R.S. 12:1-124(C), a document accepted for filing is effective at one of the following:
(1) The date and time of its receipt for filing, as evidenced by such means as the secretary of state may use for the purpose of recording the date and time of receipt.
(2) A later time, on the date of receipt, specified in the document as its effective time.

B. Except as provided in Subsection C of this Section, a corporation’s original articles of incorporation become effective when signed if provided in R.S. 12:1-120 if all of the following conditions are met:
(1) The articles are received for filing by the secretary of state within five days, exclusive of legal holidays, after the date that the articles are signed.
(2) The articles are accepted for filing.
C. 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 date the document is filed or by the date that the document otherwise would have become effective under this Section or later than the ninetieth day after the date the document is received for filing by the secretary of state.
D. A document is accepted for filing when the secretary of state files the document as provided in R.S. 12:1-125(B).

Source: MBCA §1.23.

Comment - 2014 Revision

(a) The Model Act provision was modified to add a new Subsection B of this Section, and to redesignate Model Act Subsection (b) as Subsection C of this Section. The new Subsection B of this Section retains the five-day grace period provided under former Louisiana law for the filing of a corporation’s original articles of incorporation, making them effective when signed if they are delivered for filing within five days, exclusive of holidays. Prior law had applied the five-day grace period to several other documents, such as articles of amendment and articles of merger, but this Section drops those documents from the coverage of the five-day rule to avoid unfair surprise to those who use documents already on file in the secretary of state’s office.

(b) The grace period for a corporation’s original articles of incorporation does not pose that kind of risk but rather supports the reasonable expectations of those dealing with or on behalf of the new corporation.

(c) The term “original articles of incorporation” is used in this provision to distinguish a corporation’s initial articles of incorporation from other, later-filed documents that would be considered part of a corporation’s “articles of incorporation” as that term is defined in R.S. 12:1-140(1).

§1-124. Correcting filed document

A. A domestic or foreign corporation may correct a document filed with the secretary of state if any of the following apply:
(1) The document contains an incorrect or left blank.
(2) The document was defectively signed, attested, sealed, verified, or acknowledged.
(3) The electronic transmission was defective.
B. A document is corrected by all of the following:
(1) Preparing articles of correction that perform all of the following:
(a) Describe the document, including its filing date, or attach a copy of it to the articles.
(b) Specify the inaccuracy or defect to be corrected.
(c) Specify the inaccuracy or defect.
(2) Delivering the articles to the secretary of state.
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.

Source: MBCA §1.24.

§1-125. Filing duty of secretary of state

A. If a document delivered to the office of the secretary of state for filing satisfies the requirements of R.S. 12:1-120, the secretary of state shall file it.
B. The secretary of state files a document by recording it as filed on the date and time of receipt. After filing a document, except as provided in R.S. 12:1-153, the secretary of state shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgment of the date of filing.
C. If the secretary of state refuses to file a document, it shall be returned to the domestic or foreign corporation or its representative within five days and the document was delivered, together with a brief, written explanation of the reason for the refusal.
D. The secretary of state’s duty to file documents under this Section is ministerial. The secretary’s filing or refusing to file a document does not do any of the following:
(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 valid or invalid or that information contained in the document is correct or incorrect.

Source: MBCA §1.25

§1-126. Appeal from secretary of state’s refusal to file document

[Reserved.]

Comment - 2014 Revision

Section 1.26 of the Model Act, concerning the procedure for appealing a refusal by the secretary of state to file a document, was omitted from this Chapter to avoid any redundancy or conflict with the provisions of the Code of Civil Procedure concerning writs of mandamus. Under Article 3863 of the Code of Civil Procedure, a writ of mandamus may be directed to a public officer to compel the performance of a ministerial duty required by law. R.S. 12:1-125(A) imposes on the secretary of state a legal duty to file documents that satisfy the requirements of R.S. 12:1-120, and R.S. 12:1-125(D) states that the filing duty is ministerial. Hence, a writ of mandamus is available to compel the secretary of state to file a document that is submitted in compliance with this Chapter.

§1-127. Evidence of effect of copy of filed document

[Reserved.]
§1-129. Penalty for signing false document

Subject to any qualification stated in the certificate, a certificate of existence, or authorization, and standing shall set forth all of the following:

(A) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state.

(B) The corporation is duly incorporated under the law of this state.

(C) That either of the following apply:

(a) The domestic corporation is duly incorporated under the law of this state, along with the date of its incorporation and the period of its duration if less than perpetual.

(b) The foreign corporation is authorized to do business in this state.

(D) That its most recent annual report required by R.S. 12:1-1621 has been filed with the secretary of state and that the corporation is in good standing, or that its most recent annual report has not been filed as required by law.

(E) That the corporation is not dissolved or terminated.

Source: MBCA §1.28.

Comments - 2014 Revision

(a) Paragraph (b)(3) of the Model Act, concerning the secretary of state's records on the payment of taxes and fees that could affect a corporation's existence, was omitted from this Chapter because the secretary of state does not maintain records of taxes or fees owed by a corporation to the state, other than the filing fees for documents filed in the secretary of state's office.

(b) A corporation's existence or authority to do business in this state could be affected by its failure to file annual reports as required by R.S. 12:1-1621 or R.S. 12:309, but compliance with the annual report filing requirement is covered by a separate Paragraph (b)(4), which was retained in this Chapter in a modified form.

(c) Paragraph (b)(4) of the Model Act was modified to require the certificate of existence and standing to state either that the most recent annual report required by R.S. 12:1-1621 or R.S. 12:309 had been filed, and that the corporation was in good standing, or that the most recent annual report had not been filed. The change was made to allow the secretary of state to utilize a single certificate in the place of the multiple certificates used under prior law, including a certificate of incorporation, a certificate of existence and a certificate of good standing. Although most applicants for certificates concerning domestic corporations will wish to obtain a certificate stating that all three items are true, experience suggests that some certificate applicants may be satisfied with a certificate of existence even in the absence of a certificate of good standing. A statement of good standing is redundant of the statement that a corporation has filed its annual report and required, but the traditional terminology was added to the Model Act language to harmonize it with that commonly used in corporate transactional work.

(d) The rule in Model Act Subsection (c) concerning the conclusive effects of a certificate of incorporation, or authorization, and good standing was retained as a rule of substantive law similar to former R.S. 12:25(B) on the conclusive effects of a certificate of incorporation. The certificate of existence, or authorization, and good standing supplants the formerly separate certificates of incorporation or authorization, of existence, and of good standing.

(e) A reference to R.S. 12:309 was added to Paragraph (B)(4) of this Section to reflect the retention of existing Chapter 3 of Title 12, in place of Model Act Chapter 15, to govern the qualification of foreign corporations to do business in this state.

(f) Model Act Subsection (b)(5) was modified to reflect the distinction drawn in this Chapter between a dissolution and termination. See R.S. 12:1-1440 through 1-1445 and related comments.

§1-130. Powers

Powers

In this Chapter:

(1) "Articles of incorporation" means the original articles of incorporation, all amendments thereof, and any other documents permitted or required to be filed by a domestic business corporation with the secretary of state under any provision of this Chapter except R.S. 12:1-1621.

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

(3) "Beneficial shareholder" means a person who owns the beneficial interest in shares, including a person who is a shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

(4) "Certificate" means a direct or indirect transfer of money or other property, except its own shares, or incurrence 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 any of the following forms:

(a) A direct or indirect transfer of money or other property.

(b) A purchase, redemption, or other acquisition of shares.

(c) A distribution of indebtedness.

(d) Any other form.

(E) "Eligible interests" means interests or memberships.

(F) "Eligible entity" means a domestic or foreign unincorporated entity.

(G) "Entity" includes a domestic and foreign business corporation, a domestic and foreign nonprofit corporation, an estate, a trust, a domestic or foreign unincorporated entity, and a state, the United States, and a foreign government.

(H) "Filing entity" means an unincorporated entity that is required by law to file a public organic document for any of the purposes stated in the definition of that term.

(I) "Foreign corporation" means a corporation incorporated under a law other than the law of this state, that would be a business corporation if incorporated under the laws of this state.

(J) "Foreign nonprofit corporation" means a corporation incorporated under a law other than the law of this state, that would be a nonprofit corporation if incorporated under the laws of this state.

(K) "Governmental subdivision" includes parish, authority, county, district, municipality, and any other state or local political subdivision.

(L) "Incorporation" means the formation of a corporation.

(M) "Organic law" means the law of a jurisdiction by which a corporation is incorporated. This term includes any writing or written instrument.

(N) "Parties" means persons, partnerships, groups, and associations.

(O) "Person" includes a natural person, a legal entity, and any other person.

(P) "Property" means anything that is the subject of ownership, or in which an interest is held, security is provided, or a right is created, except that it does not include a right that is the subject of a writing or another writing.

(Q) "Public document" means a written document that is intended to be made available to the public, or a writing or another writing that is intended to make information available for any of the purposes stated in the definition of that term.

(R) "Secretary of state" means the secretary of state of this state or another officer performing similar duties.

(S) "Trust" means any writing or written instrument.

(T) "Unincorporated entity" means an unincorporated entity.

(U) "Unregistered interest in shares" includes a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

(V) "Unregistered interest in shares" means a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

(W) "Unregistered interest in shares" means a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

(X) "Unregistered interest in shares" means a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

(Y) "Unregistered interest in shares" means a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

(Z) "Unregistered interest in shares" means a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

AA. "Unregistered interest in shares" includes a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

BB. "Unregistered interest in shares" means a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

CC. "Unregistered interest in shares" means a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

DD. "Unregistered interest in shares" means a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

EE. "Unregistered interest in shares" means a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

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RR. "Unregistered interest in shares" means a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

SS. "Unregistered interest in shares" means a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

TT. "Unregistered interest in shares" means a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.
“Individual” means a natural person.

“Intangible property” means a thing that is classified as incorporeal, as distinguished from corporeal, or property that is classified as intangible, as distinguished from tangible, by the law of the jurisdiction that governs its ownership.

“Interest” means either or both of the following rights under the organic law of an unincorporated entity:

(a) The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs.

(b) The right to inspect or copy documents, records, and other information related to the entity.

“Determinations” means personal judgments, decisions, and actions of management, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs.

“Interest holder” means a person who owns an interest.

“Knowledge” means actual knowledge. “Know” has a corresponding meaning.

“Means” denotes an exhaustive definition.

“Membership” means the right to receive notice or receive a copy of any document required to be filed of public record to create an unincorporated entity, to allow it to own immovable property as to third persons, or to protect its shareholders, unincorporated entity that is imposed on a person by either of the following:

(a) Solely by reason of the person’s status as a shareholder, partner, member, or holder of record for or on behalf of the entity.

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

“Person” includes an individual and an entity.

“Personal property” means a thing that is classified as movable, as distinguished from immovable, or property that is classified as personal, as distinguished from real, by the law of the jurisdiction that governs its ownership.

“Principal office” means the office, in or out of this state, so designated in the most recent annual report or, until an annual report is filed, in the articles of incorporation, where the principal executive offices of a domestic or foreign corporation are located.

“Private organic document” means any document, other than the public organic document, if any, that determines the internal governance of an unincorporated entity and that is employed in that entity for a purpose other than as a filing entity under the laws of most states by the filing of articles or as a nonfiling entity under the Nonprofit Corporation Law.

“Public corporation” means a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained for the security or securities of a corporation, or an investment company registered under the Investment Company Act of 1940.

“Public organic document” means any public organic document that is not a filing entity or a nonfiling entity.

“Public record” means any document, other than a contract or agreement between the state, a state agency, its divisions, subdivisions, and commonwealth, and their agencies and governmental subdivisions, and nonfiling entity, that is filed of public record to create an unincorporated entity.

“Public record” means any document that is filed of public record to create an unincorporated entity.

“Public record” includes any information, including records, stored or maintained in an electronic transmission.

“Qualifying director” is defined in R.S. 12:1-143.

“Real property” means a thing that is classified as immovable, as distinguished from movable, or property that is classified as real, as distinguished from personal, by the law of the jurisdiction that governs its ownership.

“Record date” means the date established under Part 6 or 7 of this Chapter on which a corporation determines the identity of its shareholders and the shareholders of voting rights for purposes of this Chapter. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

“Record shareholder” means either of the following:

(a) The person in whose name shares are registered in the records of the corporation.

(b) The person identified as the beneficial owner of shares in a beneficial ownership certificate pursuant to R.S. 12:1-723 on file with the corporation to the extent of the rights granted by such certificate.

“Secretary” means any corporate officer responsible for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

“Shareholder” means, unless varied for purposes of a specific provision of this Chapter, a record shareholder.

“Shares” means the units into which the proprietary interests in a corporation are divided.

“Sign” or “signature” means, with present intent to authenticate or adopt a document, each of the following:

(a) To execute or adopt a tangible symbol in a document, and includes any manual, facsimile, or conformed signature.

(b) To attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature in an electronic transmission.

“State,” when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and nonfiling entity, that is filed of public record to create an unincorporated entity.

“Subscriber” means a person who subscribes for shares in a corporation, whether before or after incorporation.

“Tangible property” means a thing that is classified as corporeal, as distinguished from incorporeal, or property that is classified as tangible by the law of the jurisdiction that governs its ownership.

“Unincorporated entity” means an organization or juridical person that has a separate juridical personality and that is not any of the following: a domestic or foreign business or nonprofit corporation, an estate, a trust, the United States, a foreign government, or any agency or subdivision of a foreign government. In addition, the term includes a general partnership, limited liability company, limited partnership, partnership in commendam, registered limited liability partnership, business trust, joint stock association, and unincorporated nonprofit association, regardless of whether any of those included forms of organization is treated as a juridical person under the relevant organic law.

“Unincorporated entity” means an unincorporated entity that is imposed on a person by either of the following:

(a) Solely by reason of the person’s status as a shareholder, partner, member, or holder of record for or on behalf of the entity.

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

“Unrestricted voting trust beneficial owner” means the owner of an interest in shares of the corporation held in a voting trust established pursuant to R.S. 12:1-730(A).

“Unrestricted voting trust beneficial owner” means a person who is not an entity and who exercises the voting power over shares of the corporation held in a voting trust or other organizational structure established pursuant to R.S. 12:1-730.

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“Unrestricted voting trust beneficial owner” means a person who is not an entity and who exercises the voting power over shares of the corporation held in a voting trust or other organizational structure established pursuant to R.S. 12:1-730.
Still, in neither context - limited liability nor ownership of immovable property - is the filing required to create the partnership as a separate juridical entity.

Nevertheless, the purpose of the relevant Model Act rules on “filing entities” - that they be required to file the appropriate public documents in connection with an entity conversion - should apply to Louisiana partnerships in the same way they would apply to a limited partnership or a limited liability company forming a new partnership for Louisiana law. This Section, by retaining the Model Act’s listing of those organizations by name in the definition of “principal office” under the law of a state that has yet make the transition from an aggregate to a newly-invented form of business organization that lacked juridical personality, yet still possessed the capacity to own immovable property. But this Section chooses deliberately to leave for future consideration the rules that should apply in that type of transaction.

(i) The Model Act definition of “secretary” in Paragraph (20) of this Section has been modified in this Section to reflect the requirement imposed by this Section. The Model Act requires the election of someone with the minimum, statutorily-designated responsibilities of the person elected to the office of secretary.

(j) This Section modifies the Model Act definition of “unincorporated entity” in Paragraph (20) of this Section in two ways: First, it adds the Model Act references to an “artificial legal person” and to a “separate legal entity” with the equivalent Louisiana terminology, “juridical person” and “separate juridical personality.” See C.C. Art. 24. And, second, it deletes the Model Act references to an organization that has no capacity “own immovable property” in real property.

This list-by-name approach, when combined with the general juridical personality rule, provides a clear, simple rule for all of the currently-realistic possibilities for an entity conversion transaction, while also allowing for a corporation-like record holder rule, and that the unincorporated entities will maintain those records as required, may not be correct. In an informally-operated partnership or limited liability company, it is possible, even likely, that no partner or member will hold an interest of record in the usual sense of those words. Because the term “interest holder” is used in this Section to identify the persons whose approval is required to carry out a merger or entity conversion, limiting those persons to holders of record could mean that no one within an informally-operated partnership or limited liability company would have the power to approve those types of transactions. The “holds of record” phrase is omitted to avoid that problem.

However, the deletion of those words is not intended to deprive a record ownership rule, if one exists, of its normal effects. If the organic law of the state does not commit the recipient of a notice of delivery, except that electronic transmissions must be in accordance with this Section. If these methods of delivery are impracticable, a notice or other communication may be communicated by a newspaper of general circulation in the area where the notice is to be published.

C. Notice or other communication to a domestic or foreign corporation authorized to transact business in this state may be delivered to its registered agent or to the secretary of the corporation at its principal office shown in its 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.

D. Notice or other communications may be delivered by electronic transmission if consented to by the recipient or if authorized by Subsection 4 of Section 1-141.  Notices and other communications

A. Except as provided in R.S. 12:1-303, notice under this Chapter must be directed to a person in writing. Unless otherwise agreed between the sender and the recipient, electronic communication under this Chapter must be in English.

§1-141. Notices and other communications

1. Electronic acknowledgment

2. Proof of delivery

3. Provisions of this Chapter

4. Failure to receive or deliver a notice or other communication

5. Electronic transmissions

6. Provisions of this Section

7. Definitions

8. Miscellaneous

THE ADVOCATE
A shareholder’s address shown on the corporation’s record of shareholders maintained by the corporation under R.S. 12:1-160(C).

2. A director’s residence or usual place of business.

(3) The corporation or the owner of the stock.

(4) The corporation’s principal place of business.

(2) If mailed postage prepaid and correctly addressed to a shareholder, upon deposit in the United States mail.

(3) If mailed by United States mail postage prepaid and correctly addressed to a shareholder, the earliest of when it is actually received, or either of the following:

(a) If sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee.

(b) Five days after it is deposited in the United States mail.

(4) If an electronic transmission, when it is received as provided in Subsection F of this Section.

J. A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the receiver or the intended recipient unless it is replaced by a similar form of transmission that can be so reproduced.

K. If this Chapter prescribes requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications, not inconsistent with this Section or other provisions of this Chapter, those requirements govern.

The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

Source: MBCA §1.41.

Comment - 2014 Revision

This Section omits the phrase in Model Act Subsection (a) that would have permitted oral notice if “reasonable in the circumstances” and the rule in the Model Act Subsection (b) that would have treated an oral notice that is transmitted by electronic means in the same manner as an acceptable form of electronic notice but not affect any inference of knowledge that may be drawn from evidence that an oral notice was made to an individual.

§1.142. Number of shareholders

A. For purposes of this Chapter, the following identified as a shareholder in a corporation’s current record of shareholders constitutes one shareholder:

(1) Co-owners.

(2) The corporation, partnership or other entity.

(3) A trust or estate or the trustees, guardians, custodians, succession representatives, or other fiduciaries of a single trust, estate, succession, or account.

B. For purposes of this Chapter, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

Source: MBCA §1.42.

Comments - 2014 Revision

(a) Under Louisiana law, the heirs or legatees of a decedent succeed immediately to ownership of the decedent’s assets. See C.C. Arts. 871, 934, and 935. If specific shares owned by the decedent are not bequeathed to particular successors, the shares are co-owned by the decedent’s successors. See C.C. Art. 935. Only if the result intended by the Model Act’s treating an estate as one owner, this Section treats co-owners by succession, either of the shares or of the estate in which the shares are included, as one owner under Paragraph (A)(1) of this Section.

(b) The Model Act counts co-owners as a single shareholder only when the shares involved are owned by three or fewer co-owners. This Section counts all co-owners of the same shares as a single shareholder, regardless of the number of co-owners, so that direct co-ownership is treated for counting purposes in the same way as the various forms of indirect co-ownership that are counted as a single shareholder for counting purposes under Paragraph (A)(2) of this Section. The removal of the numerical limitation on the operation of the co-ownership rule also allows the rule on co-ownership by succession to operate as intended, regardless of the number of heirs or legal successors.

(c) The Model Act includes a trust or estate in the list of entities treated as a single shareholder under Paragraph (a)(2). Because Louisiana law does not treat a trust or estate as an entity, and because the entity status of an estate or trust is not relevant to the operation of the counting rule stated by Subsection A of this Section, this Section covers estates and trusts in Paragraph (A)(3) of this Section instead of (A)(2).

(d) As used in Paragraph (A)(3) of this Section, the term “estate” was retained as a means of applying the Model Act rule to estates existing under the Louisiana succession laws. The rule applicable under Louisiana law to shares held by the heirs or legatees of a deceased shareholder is not provided by the rule in Paragraph (A)(3) of this Section concerning estates, but rather by the rule in Paragraph (A)(1) of this Section concerning co-owners by succession. Therefore, the phrase “co-ownership by succession phrase in Paragraph (A)(1) of this Section is the more technically accurate source of the rule in the context of Louisiana succession law.

(e) This Section adds a reference to succession representatives of a succession in Paragraph (A)(3) of this Section, to supply the Louisiana analogues to the fiduciaries included in the Model Act.

(f) Under the Model Act, the rules in this Section are relevant only for purposes of two provisions, Model Act Section 13.02(b)(2), concerning the availability of appraisal rights, and Model Act Section 14.30(a)(2), concerning the availability of dissolution of the corporation on grounds of oppression. Under Louisiana law, the rules are relevant only for the first purpose. This Chapter does not require a counting of shareholders to determine whether the remedies it provides on grounds of oppression are available to a shareholder. See R.S. 12:1-1435(J).

§1.43. Qualified director

A. A “qualified director” is a director who meets the following criteria:

(1) At the time action is to be taken under R.S. 12:1-744, does not have any of the following conflicting interests:

(a) A material interest in the outcome of the proceeding.

(b) A material interest in a transaction in which a director had a material interest.

(c) A material interest as otherwise defined in Subsection B of this Section.

(2) A director who is not a qualified director with respect to the matter, or by any person that has a material relationship with that director, acting alone or participating with others.

(3) A director who is not a qualified director with respect to the matter, or any individual who has a material relationship with that director, or is also a director.

(4) A director who approved the conduct being challenged.

B. For purposes of this Section and R.S. 12:1-860:

(1) “Material relationship” means a familial, financial, professional, or other relationship that reasonably would be expected to impair the objectivity of the director’s judgment when participating in the action to be taken.

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

(3) “Conflict of interest transaction” means any act or transaction in which a director is involved, as a director against whom action is demanded, or as a director who approved the conduct being challenged, or as a director who, in the course of participating with others, was a director’s conflicting interest transaction.

Source: MBCA §1.43.

Comment - 2014 Revision

This Section makes the definitions in Subsection A of this Section and R.S. 12:1-860 applicable to all situations, as provided in the Model Act, but also for purposes of R.S. 12:1-860. As explained in the comments to that Section, this Section utilizes the definition of “material relationship” to broaden the definition of a director’s conflicting interest transaction.

§1.44. Householding

A. A corporation has delivered written notice or any other report or statement under this Chapter, the articles of incorporation, or the bylaws to all shareholders who share a common address if all of the following conditions are met:

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

(2) The corporation addresses the notice, report, or statement to the shareholders either as a group or to each of those shareholders individually in the bylaws or the principals rules in Section 13.02(b)(2).

(3) Each of those shareholders consents to delivery of a single copy of such notice, report, or statement to the shareholders’ common address. Any such consent will be revocable by the shareholder who receives a written notice of revocation to the corporation. If the written notice of revocation is delivered, the corporation shall begin providing individual notices, reports, or other statements to the revoking shareholder no later than thirty days after delivery of the written notice of revocation.

(4) Any shareholder who fails to object by written notice to the corporation, within sixty days of written notice by the corporation of its intention to send single copies of notices, reports or statements to shareholders who share a common address as permitted by Subsection A of this Section, shall be deemed to have consented to receiving such single copy at the common address.

Source: MBCA §1.44.
PART 2. INCORPORATION

§1-202. Incorporation

Corporations or natural persons capable of contracting may act as the incorporator or incorporators of a corporation by delivering to the secretary of state for filing articles of incorporation and the written consent of the registered agent required by R.S. 12:1-202(E).

Source: MBCA §2.02; R.S. 12:24

Comments - 2014 Revision

(a) The Model Act unifies the address of a corporation's registered agent with that of its registered office. That approach was rejected in this Section in favor of the traditional Louisiana approach of permitting the corporation to select its registered agent to be a single individual or to be incorporated independently of one another. The registered office of a Louisiana corporation may be relevant for purposes other than service of process on the registered agent. Venue, for example, is proper in the parish in which a corporation's registered office is located. See C.C. art. 3221(C)(2). The registered office of a Louisiana corporation is not to be the same as the corporation's domicile. See C.C. art. 3221(C)(1). The registered office of a Louisiana corporation is not to be the same as the corporation's place of business. See C.C. art. 3221(C)(1). The registered office of a Louisiana corporation is not to be the same as the corporation's place of business. See C.C. art. 3221(C)(1).

(b) The Model Act modified Paragraphs 2.02(b)(2)(v) and 2.02(b)(2)(vii), which would have permitted the articles of incorporation to impose personal liability on shareholders for corporate debts, was deleted from this Section because of the risks that it posed of subjecting shareholders to personal liability without their knowledge. The deletion of the Model Act provision does not affect the ability of shareholders to undertake personal liability through their own personal guarantees.

§1-203. Incorporation

A. The articles of incorporation must set forth all of the following:

1. A corporate name for the corporation that satisfies the requirements of R.S. 12:1-401.

2. The number of shares the corporation is authorized to issue.

3. Any provision that this Chapter requires or permits to be set forth in the bylaws.

4. A par value for authorized shares or classes of shares.

5. A provision permitting or making obligatory indemnification of a director for liability, as defined in R.S. 12:1-850(3), to any person for any action taken, or any failure to take any action, as a director, except liability for an intentional violation of criminal law.

6. A provision that cash, property or share dividends, shares issuable to shareholders in connection with a reclassification of stock, and the redemption price of redeemed shares, are not claimed by the shareholders entitled thereto within a reasonable time, not less than one year in any event, after the dividend or redemption price became payable or the shares became issuable, despite reasonable efforts by the corporation to pay the dividend or redemption price or deliver the certificates for the shares included in such class or series within such time, shall, at the expiration of such time, revert in full ownership to the corporation, and the corporation's obligation to pay such dividend or redemption price or issue such shares, as the case may be, shall thereupon cease; provided that the board of directors may, at any time, for any reason satisfactory to it, but need not, authorize either of the following:

(a) Payment of the amount of any cash or property dividend or redemption price.

(b) Issuance of any shares, ownership of which has reverted to the corporation pursuant to a provision of the articles authorized by this Section, to the person that would be entitled thereto had such reversion not occurred.

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

D. Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with R.S. 12:1-120(L).

E. A written consent to appointment, signed by the initial registered agent, shall be attached or appended to the articles of incorporation.

Source: MBCA §2.02; R.S. 12:24

Comments - 2014 Revision

(a) The Model Act Section in favor of the traditional Louisiana approach of permitting the corporation to select its registered agent to be a single individual or to be incorporated independently of one another. The registered office of a Louisiana corporation may be relevant for purposes other than service of process on the registered agent. Venue, for example, is proper in the parish in which a corporation's registered office is located. See C.C. art. 3221(C)(2). The registered office of a Louisiana corporation is not to be the same as the corporation's domicile. See C.C. art. 3221(C)(1). The registered office of a Louisiana corporation is not to be the same as the corporation's place of business. See C.C. art. 3221(C)(1). The registered office of a Louisiana corporation is not to be the same as the corporation's place of business. See C.C. art. 3221(C)(1).
§1-205. Organization of corporation

A. Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to the extent and subject to such procedures or conditions as are provided in the bylaws, provided that no bylaw so adopted shall apply to elections for which any record date precedes its adoption.

B. Notwithstanding R.S. 12:1-1020(B)(2), the shareholders in amending, repealing, or adopting a bylaw may amend the bylaw by a majority of the outstanding shares, and the shareholders may use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and use, and otherwise deal with real or personal property, or any interest in property, wherever located.

C. The bylaws of a corporation may contain any provision for managing the corporation during the emergency, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including any of the following:

(1) Procedures for calling a meeting of the board of directors.
(2) Quorum requirements for the meeting.
(3) Designation of additional or substitute directors.
(4) The reference to a delayed effective date in Section 2.03 of the Model Act.

D. The reference to a delayed effective date in Section 2.03 of the Model Act was modified in this Section: (1) to make the adoption of bylaws permissive rather than mandatory, and (2) not to grant authority to incorporators to adopt bylaws. Both changes were made to retain the existing Louisiana law on the subject.

§1-207. Emergency bylaws

The definition of emergency in R.S. 12:1-207(D) has been modified to harmonize it with the Louisiana-modified definition of the same term in R.S. 12:3-103(D), for the reasons explained in the Comments to that section.

§3.01. Purposes

A. Every corporation incorporated under this Chapter has the purpose of engaging in any lawful business or activity 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 any of the laws of this state may incorporate under this Chapter only if permitted by, and subject to all limitations of, the other statute.

Source: MBCA §3.01.

Comment - 2014 Revision

The phrase “or activity” was added to Subsection A of this Section to make it consistent with former Louisiana law, which permitted a business corporation to engage in “any lawful activity”, and to make it clear that business corporations may be used for purposes other than the operation of a business in the usual sense of the term. This Section also allows business corporations to be used, for example, to hold assets, to facilitate financial transactions, and to provide services to affiliated operating companies.

§3.02. General powers

Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and has the power to do all things necessary or convenient to carry out its business and purpose, including without limitation power to perform any of the following actions:

(1) Sue and be sued, complain and defend in its corporate name.
(2) Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it.
(3) Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation.
(4) Purchase, receive, lease, or otherwise acquire and own, hold, improve, use, and otherwise deal with real or personal property, or any interest in property, wherever located.
(5) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.
(6) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in with shares or other interests in, or obligations of, any other entity.

Source: MBCA §3.02.

Comment - 2014 Revision

The Model Act allows incorporators to engage in the post-incorporation acts that are typically carried out to complete the organization of a corporation, such as electing officers and issuing stock. This Section retains the approach taken under prior Louisiana law. It limits the role of incorporators to the signing and delivery of articles of incorporation for filing, and to the election of initial directors, if initial directors are not named in the articles, or if initial directors are named in the articles, to elect a board of directors who shall complete the organization of the corporation.

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agents of the corporation and its affiliated entities, and the dependents and families of those individuals.

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

(13) Transact any lawful business that will aid governmental policy.

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

Source: MBCA § 3.02.

Comments - 2014 Revision

(a) The introductory sentence of the Section was modified to eliminate the Model Act statement that corporations hold powers coextensive with those of individual citizens. While this Section does provide broad powers to business corporations, corporations still may not do such uniquely human things as adopt children, vote, or hold political office.

(b) The Model Act refers to “real or personal” property in Model Act Paragraphs (4) and (6), and to “legal or equitable” interests in Model Act Paragraphs (1) and (7). This Chapter defines the terms “real property” and “personal property” in Section 1-140 in a way that encompasses both the common law meaning of the terms and the analogous civil law concepts of “immoveable” and “moveable” things. That approach supports consistency between the language in this Chapter and in the Model Act, and also allows the references to those forms of property to apply as intended with respect to real and personal property owned by Louisiana corporations in other states. However, the Model Act terms “legal” and “equitable” interests in property, which appear only in this Section, were omitted because they could not be reconciled with any classification scheme under Louisiana law, and because they were not necessary to make the intended point of the provision: that corporations have the power to deal with all forms of interest in property. The Model Act makes the point by including only the two forms of property and interests that were recognized, with the necessary qualification, by the Louisiana Classification Act.

(c) The phrase “or security interests of any kind” was added to Paragraph (7), to avoid the conflict that the Subsection covered only the two particular types of security interests, mortgages and pledges, that it listed. Paragraph (7) was also modified to permit the corporation to provide security for “any obligation” and not merely “its” obligations as provided in the Model Act.

(d) The phrase “limited liability company” was added to Paragraph (9) of the Model Act to include explicit coverage for that widely-used form of business organization.

(e) The coverage of Model Act Paragraph (12) was broadened to include the power to provide pension and similar benefits for the families of the limited corporation workers and to provide those benefits to the workers and worker families of affiliated entities such as subsidiaries.

(f) Former law had included among a corporation’s listed powers the power to provide inter-corporate guarantees among a parent corporation and its wholly-owned subsidiaries. See former R.S. 12:41(C). That provision was omitted from this Chapter because it could have carried with it the unintended negative implication that similar guarantees might be ultra vires among affiliates without a common 100% parent. The issue of a corporation’s power to issue inter-corporate guarantees is covered fully by Paragraph (7) of this Section. Subject only to contrary provisions in a corporation’s articles, Paragraph (7) of this Section states without qualification that a corporation has the power to issue guarantees. Paragraph (7) of this Section does not attach conditions to the situations in which such guarantees may or may not be appropriate. Like other transactions in which a corporation has the power to engage, the power to issue guarantees may be exercised in many different factual contexts, either in accordance with or in violation of the legal duties owed to and by the corporation. If the guarantee power is exercised lawfully and properly, the resulting guarantee is enforceable in the usual way, without any ultra vires obstacle, while if the guarantee violates some legal duty owed to or by the corporation, the normal remedies for a breach of the relevant duty are available. The fact that the inter-corporate beneficiary of a guarantee is a 100% parent or affiliate may be relevant in evaluating whether the legal duties owed in connection with the guarantee have been satisfied. See, e.g., Trenwick America Litigation Trust v. Billet, 931 A.2d 438 (Del.2007) (en banc), affirming and adopting the rationale of Trenwick America Litigation Trust v. Billet, 11 A.3d 770 (Del.2007), cert. denied, L.L.P. 906 A.2d 168 (Del. Ch. 2006). But the propriety of such guarantees must be determined on the basis of those legal duties, not as an issue of corporate power. As a matter of corporate power, a corporation formed under this Chapter may issue guarantees without limitation.

§1-303. Emergency powers

A. In anticipation of or during an emergency defined in Subsection D of this Section, the board of directors of a corporation may do either of the following:

(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.

(2) A quorum of directors may be present, in a regular or special meeting of the board by, and the meeting may be conducted through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting.

(3) Unless the Articles of Incorporation in a manner by the means authorized in Paragraph (2) of this Subsection is deemed to be present in person at the meeting.

(4) Unless the application of Paragraphs (2) and (3) of this Subsection is so extraordinary as to make it impracticable, with all due regard to the circumstances of the particular case, to permit those forms of participation under R.S. 12.1-820(B), then Paragraphs (B)(2) and (B)(3) of this Section will operate to permit telephonic or similar form of participation in a meeting. If both of the following conditions are met:

(a) Reasonable efforts have been made to provide actual knowledge of the meeting to all directors.

(b) Business is conducted at a meeting of directors at which a quorum would be present other than by application of the rule in Paragraph (4) of this Subsection, a quorum of directors under Paragraph (4) of this Subsection is presumed to be present.

C. Corporate action taken in good faith during an emergency under this Section to further the ordinary business affairs of the corporation binds the corporation and 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 catastrophic event makes it impracticable, without applying the rules pursuant to Subsection B of this Section, to convene a quorum of directors for the purpose when and as necessary to carry out the functions of the board of directors.

Source: MBCA §3.03.

Comments - 2014 Revision

(a) The definition of emergency in Subsection (d) of the Model Act was modified in this Act to tie more closely together the extraordinary powers provided by this Section and the necessities that would justify the exercise of those powers. If the board is capable of achieving a quorum under normal rules, without application of the rules in Subsection B of this Section, then no emergency exists as that term is defined in Subsection D of this Section.

(b) The functions of the board are described in R.S. 12.1-801. To the extent that no action of the board was required during or in the aftermath of a catastrophic event that was not addressed by this Section, the board would not be authorized.

(c) R.S. 12.1-820(B) provides authority to a board of directors to permit participation in board meetings by communication devices that permit all participants in the meeting to hear each other simultaneously. Paragraphs (B)(2) and (B)(3) of this Section states that, if the board has taken action to approve of that form of participation. In many cases, the board could have taken action to permit this type of telephonic or other similar form of participation in a meeting. If so, the corporation may be able to attain a quorum of directors under its normal rules. In that event, the special quorum and participation rules of this Section would not be needed, so no “emergency” would exist within the meaning of Subsection D.

(d) During an emergency, Model Act Section 3.03(b)(2) allows officers to be substituted for absent directors as needed to achieve a quorum of the directors. This Section does not permit that form of substitution. Instead, it directs the corporation to permit those forms of participation under R.S. 12.1-820(B), then Paragraphs (B)(2) and (B)(3) of this Section will operate to permit telephonic or similar participation during the emergency. If application of those two Subsections is impossible by itself to resolve the quorum problem, then the number of directors required for a quorum may exceed the number normally required for a quorum. In that case, the normal number would control. In a typical corporation, in which a majority of directors would constitute a quorum, the effect of the rule in Paragraph (B)(4) of this Section would be to set a quorum at a majority of
§1-304. Ultra vires

In the absence of such evidence, the interests of the corporation are best served by allowing the directors to make decisions that are as reasonable as possible under the circumstances. The presumption is designed to give the benefit of doubt to directors who are exercising lawful authority during the emergency. For example, if emergency road closures or restrictions prevented a director from reaching the board meeting site, and downed telephone lines and cellular towers prevented telephonic participation, that director would not be able to participate in the meeting. Under such circumstances, the director's participation in the meeting would be excused and would not count toward the number needed to achieve a quorum, regardless of whether the closed roads were passable by any other means.

§1-303. Ultra vires

The assumption or use of a name in violation of this Section does not affect or vitiate the corporate existence. The name of a corporation may be changed or abandoned by the corporation or by the attorney general under R.S. 12:1-1430.

PART 4. NAME

§1-401. Corporate name

A.(1) A corporate name may include words in any language but must be written in English letters or characters.

B. A corporate name must contain the word “corporation,” “incorporated,” “company,” or “limited,” or the abbreviation, with or without punctuation, “corp.,” “inc.,” “co.,” or “ltd.”

C. A corporate name may not contain any of the following:

(a) Any language stating or implying that the corporation is organized for a purpose other than that permitted by R.S. 12:1-301 and its articles of incorporation.

(b) The phrase “doing business as” or any abbreviation of that phrase, such as “d/b/a”.

(c) Any words that deceptively or falsely suggest a charitable or nonprofit nature or that imply that the corporation is an administrative agency of the state, or a law enforcement agency, or any other governmental body.

D. Except as indicated, any of the following quoted words or phrases in any form:

(i) “Casualty”, “redevelopment corporation”, or “electrical cooperative”.

(ii) For a bank, a bank company, “bank”, “banker”, “building and loan”, “savings”, “safe deposit”, “trust”, “trustee”, “building and loan”, “homestead”, or “credit union”.

(iii) Except for an independent insurance agency or brokerage corporation, “insurance”.

(iv) Any word that includes “corp.”, “inc.”, “co.”, or “ltd.”

(v) Any form:

(a) “Insurance trust fund”.

(b) “Corporation”. (Suffixed by or immediately preceding the name of another word or words, that term shall be considered to be part of the corporate name.)

(c) “Corporation of the United States”.

(d) “Corporation of the Bank of the United States”.

(e) “Corporation of the Bank of the United States”.

(f) “Corporation”.

(g) Any word containing the term “bank” or “banking”.

(h) Any word containing the term “credit union” or any other word of similar import, the secretary of state or any of its political subdivisions or of the United States.

(i) “Insurance trust fund”.

(j) “Corporation of the United States”.

(k) “Corporation of the Bank of the United States”.

(l) “Corporation of the Bank of the United States”.

(m) “Corporation”.

D. As it appears in the enrolled bill

E. This Act does not control the use of fictitious, assumed, or trade names.

F. If the secretary of state receives for filing articles of incorporation that include in the corporate name the word “bank”, “banker”, “banking”, “savings”, “safe deposit”, “trust”, “trustee”, “building and loan”, “homestead”, “credit union”, or any other word of similar import, the secretary of state shall not file the articles of incorporation until the secretary of state receives satisfactory evidence that written notice of the proposed use of that name was delivered to the office of financial institutions at least ten days earlier.

G. If the secretary of state receives for filing articles of incorporation that include the corporate name the word “engineer”, “engineering”, “surveyor”, or “surveying,” the secretary of state shall not file the articles of incorporation until the secretary of state receives satisfactory evidence that written notice was delivered to the Louisiana Professional Engineering and Land Surveying Counsel at least ten days earlier.

H. If the secretary of state receives for filing articles of incorporation that include in the corporate name the word “architect”, “architectural”, “architecture”, or “architecture” and Land Surveying Board.

I. The assumption or use of a name in violation of this Section does not affect the corporate existence.

Source: MBCA §4.01, R.S. 12:23.

Comments - 2014 Revision

The Model Act language in Paragraph (a)(2) would have permitted thejoiner of “all affected persons” to a proceeding to enjoin an ultravires act. Because of concern about the potential breadth and vagueness of such joinder, this Section replaces it with the joinder requirement that was imposed under the former Louisiana law. As modified, Subsection (C) of this Section requires the joinder of a third person in an ultravires proceeding only if the proceeding is brought to enjoin the performance of a duty owed by the corporation under a contract to which that person is a party.

Source: MBCA §3.04.

Comments - 2014 Revision

The Model Act requires the joinder of “all affected persons” to a proceeding to enjoin an ultravires act. Because of concern about the potential breadth and vagueness of such joinder, this Section replaces it with the joinder requirement that was imposed under the former Louisiana law. As modified, Subsection (C) of this Section requires the joinder of a third person in an ultravires proceeding only if the proceeding is brought to enjoin the performance of a duty owed by the corporation under a contract to which that person is a party.

Source: MBCA §4.01, R.S. 12:23.
(d) Model Act Paragraph (b)(3) was modified in this Section to take account of the retention of existing Chapter 3 of Title 12 (in place of Model Act Chapter 15) to govern the qualification of foreign corporations to do business in this state.

(e) The Model Act standard for distinguishing corporate and other related names, i.e. “distinguishable upon the records of the secretary of state”, was modified in this Section to retain the standard in prior law that the names be “distinguishable within the records of the secretary of state”. That standard falls between the early standard of “deceptive similarity”, which both the Model Act and this Section reject, and the purely linguistic, on-the-records standard used in the Model Act. Except for a brief period in the late 1980s, standards for deception from which a new corporate name must be distinguishable under R.S. 12-1:401(B)(2), and so protects the name from adoption by another company during the period in which R.S. 12:1-1444 allows the terminated corporation to be reinstated. 

§1-403. Registered name

A. A foreign corporation may register its corporate name, or its corporate name with any addition authorized by R.S. 12-303(A)(3), if the name is distinguishable upon the records of the secretary of state from the corporate names that are not available under R.S. 12:1-401(B)(2).

B. A foreign corporation registers its corporate name, or its corporate name with any addition authorized by R.S. 12-303(A)(3), by delivering to the secretary of state for filing an application which does both of the following:

(1) Sets forth its corporate name, or its corporate name with any addition authorized by R.S. 12-303(A)(3), the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged.

(2) Is 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 secretary of state for filing a renewal notice at least thirty days before the end of the prior term.

E. A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under this Chapter between October first and December thirty-first of the preceding year. The renewal application when filed renews the registration for the following calendar year.

F. A corporate name whose registration is effective may thereafter qualify as a foreign corporation under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under this Chapter or by another foreign corporation thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies under this Chapter or by another foreign corporation thereafter authorized to transact business in this state. The registration terminates when the foreign corporation ceases to continuously maintain an office and agent in this state, and a brief description of the nature of the business in which it is engaged.

Source: MBCA §4.03.  

PART 5. OFFICE AND AGENT

§1-501. Registered office and registered agent

Each corporation must continuously maintain in this state both of the following:

(1) A registered office that may be, but need not be, the same as any of its places of business.

(2) A registered agent, who may be either of the following:

(a) An individual who resides in this state.

(b) A domestic or foreign corporation or other eligible entity that continuously maintains an office in this state and, in the case of a foreign corporation or foreign eligible entity, is authorized to transact business in this state.

Source: MBCA §5.01.

The Advocate

* As it appears in the enrolled bill

House Bills and underscored and boldfaced (Senate Bills) are additions.
A. A registered agent may change its street address on the records of the secretary of state for all corporations for which it serves as registered agent by delivering to the secretary of state a statement of change that sets forth all of the following information:

1. The name of the registered agent.
2. The name of the corporation for which it is registered agent.
3. Its current street address to be changed.
4. Its new street address.
5. A certification that the registered agent has notified all of the corporations for which it serves as registered agent of the change in its address to the new street address specified in the statement of change.

The registered agent may satisfy the requirements of Subsection B of this Section for multiple corporations through the delivery of a single statement of change that complies with Subsection B of this Section, provides the names of all of the corporations for which the statement is to be effective, and certifies that the registered agent has notified all of those corporations of the change in its address to the new street address specified in the statement of change.

Source: MBCA §5.02.

Comments - 2014 Revision
(a) The Model Act requires a corporation's registered office to be located at the street address of its registered agent. This Section permits a corporation to specify a street address for its registered office different from that of its registered agent. See Comment (a) to R.S. 12:1-202. This Section was modified to accommodate the possible distinction between those two addresses, and to delete the requirement in Model Act Subsection (b) that the two addresses be the same.

(b) This Section replaces Model Act Subsection (b) with new Subsections B and C. Subsection B lists the information and certification to be included in the statement required to change the registered agent's address in the records of the secretary of state. Subsection C permits the information required by Subsection B to be supplied in a single statement for multiple corporations.

§1-503. Resignation of registered agent
A. A registered agent may resign the agent's appointment by signing and delivering to the secretary of state for filing the signed original and two exact or conformed copies of a statement of resignation. If the office of the registered agent is also the registered office of the corporation, the statement may include a statement that the registered office is also discontinued.
B. After filing the statement the secretary of state shall mail one copy to the registered office, if not discontinued, and the other copy to the corporation at its principal office.
C. If the agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

Source: MBCA §5.03.

Comment - 2014 Revision
The Model Act requires a corporation's registered office to be located at the street address of its registered agent. This Section permits a corporation to specify a street address for its registered office different from that of its registered agent. See Comment (a) to R.S. 12:1-202. Subsection A of this Section was modified to limit the statements and about the discontinuation of a registered office upon resignation of the registered agent to those situations in which the addresses of the registered office and registered agent are the same.

§1-504. 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 the 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 the following:

1. The date the corporation receives the mail.
2. The date shown on the return receipt, if signed on behalf of the corporation.
3. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

C. This Section does not prescribe the only means, or necessarily the required means of serving a corporation.

Source: MBCA §5.04.

Comment - 2014 Revision
A corporation's principal office will ordinarily be stated in the corporation's most recent annual report. See R.S. 12:1-1621(A)(4). If a corporation has not yet filed an annual report, the initial principal office, if different from the registered office, will be stated in the corporation's articles of incorporation. If the corporation's principal office is not specified in the annual report or articles of incorporation, the corporation's principal office will be the same as its registered office. See R.S. 12:1-140(17) and 1-202(A)(3).

PART 6. SHARES AND DISTRIBUTIONS
SUBPART A. SHARES
§1-601. Authorized shares
A. The articles of incorporation must set forth any classes of shares and series of shares within a class, and the number of shares of each class and series, that the corporation is authorized to issue. If more than one class or series of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class or series and must describe, publicize, and issue information about of a class or series, the terms, including the preferences, rights, and limitations, of that class or series. Except to the extent varied as permitted by this Section, all shares of a class or series must have terms, including preferences, rights, and limitations that are identical with those of other shares of the same class or series.
B. The articles of incorporation must authorize both of the following:

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

C. The articles of incorporation may authorize one or more classes or series of shares that meet any of the following criteria:

1. Any term, including the right to vote.
2. Any other right.
3. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

Source: MBCA §6.01.

§1-602. Terms of class or series determined by board of directors
A. If the articles of incorporation so provide, the board of directors is authorized, without shareholder approval, to do any of the following:

1. Classify any unissued shares into one or more classes or into one or more series within a class.
2. Reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes.
3. Reclassify any unissued shares of any series into one or more classes or into one or more series within a class.
4. Reclassify any unissued shares of any series into one or more classes or into one or more series within one or more classes.
5. Reclassify any unissued shares of any classes or series into one or more classes or into one or more series within a class.
6. Alter the terms, including the preferences, rights, and limitations, of that class or series.

B. Terms of shares may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with R.S. 12:1-120(L).

C. The holder of any shares may vary among holders of the same class or series so long as such variations are expressly set forth in the articles of incorporation.

D. The description of the preferences, rights, and limitations of classes or series of shares in Subsection C of this Section is not exhaustive.

Source: MBCA §6.02.

§1-603. 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 R.S. 12:1-640.
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.

Source: MBCA §6.03.

§1-604. Fractional shares
A. A corporation may do any of the following:

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.
4. Each certificate representing scrip must be conspicuously labeled “scrip” and must contain the information required by R.S. 12:1-625(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 upon liquidation. The holder of a fractional share is entitled to any of these rights unless the corporation provides for them.

D. The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including either of the following:

1. That the scrip will become void if not exchanged for full shares before a specified date.

Source: MBCA §6.04.
(2) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scriptholders.
Source: MBCA §6.04.

SUBPART B. ISSUANCE OF SHARES
§6.20. Subscription for shares before incorporation
A. A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides for a longer or shorter period or all the subscribers agree to revocation.
B. The board of directors may determine the payment terms of subscription for shares that were entered into before incorporation, unless the subscription agreement provides otherwise. A clause in the subscription agreement by which the board of directors may rescind the agreement and may sell the shares if the debt remains unpaid for more than twenty days after the corporation sends written demand for payment to the subscriber.
C. A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to R.S. 12:1-621.
Source: MBCA §6.20.

§6.21. Issuance of shares
A. The powers granted in this Section to the board of directors may be exercised by 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, convertible scrip, convertible rights, or other securities of the corporation.
C. Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.
D. When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued thereto are deemed to have been issued.
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.
F. (1) An issuance of shares or other securities convertible into or rights exercisable for shares in a transaction or a series of integrated transactions requires approval of the shareholders, at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the matter exists, if both of the following conditions are satisfied:
   (i) The shareholders entitled to vote their rights are issued for consideration other than cash or cash equivalents.
   (ii) The voting power of the shares that would be outstanding after giving effect to the conversion of convertible shares and other securities and the exercise of rights to be issued pursuant to R.S. 12:1-620 will comprise more than twenty percent of the voting power of the shares of the corporation that were issuable as a result of a transaction or series of integrated transactions, the transaction or series of integrated transactions will comprise more than twenty percent of the voting power of the shares of the corporation that were outstanding immediately before the transaction.
   (2) In this Subsection, both of the following shall apply:
      (a) For purposes of determining the voting power of shares issued and issuable as a result of a transaction or series of integrated transactions, the voting power of shares shall be the greater of either of the following:
         (i) The voting power of the shares to be issued.
         (ii) The voting power of the shares that would be outstanding after giving effect to the conversion of convertible shares and other securities and the exercise of rights to be issued pursuant to R.S. 12:1-620.
      (b) A series of transactions is integrated if consummation of one transaction is made contingent on consummation of one or more of the other transactions.
Source: MBCA §6.21.

Comment - 2014 Revision
Subsection (b) of the Model Act authorizes the issuance of shares for, among other things, “tangible or intangible” property. R.S. 12:1-140 defines “tangible property” to include “corporate property” and “intangible property” and defines “incorporal property” to include “incorporeal property” as those terms are understood under Louisiana law. §1-622. Liability of shareholders
A. A purchaser from a corporation of its own shares is not liable to the corporation or its creditors on account of the shares except to pay the consideration for which the shares were authorized to be issued pursuant to R.S. 12:1-621 or specified in the subscription agreement pursuant to R.S. 12:1-620.

B. A shareholder of a corporation is not personally liable for the acts or debts of the corporation.
C. A shareholder who receives a distribution in excess of what may be authorized pursuant to R.S. 12:1-640(A) shall be personally liable to the corporation, or to creditors of the corporation, or both, for an amount not exceeding, in the aggregate, the excess amount received by that shareholder. A proceeding to enforce the liability of a shareholder under Subsection C of this Section is subject to a peremptive period of two years measured from the relevant date of either of the following:
   (1) The date on which the effect of the distribution was to be measured under Subsection (b) of the Model Act to determine that the distribution is alleged to have been unlawful under R.S. 12:1-640(C).
   (2) The date as of which the distribution first violated a restriction in the articles of incorporation, to the extent that the distribution is alleged to have been unlawful because it violated a restriction in the articles of incorporation.
Source: MBCA §6.22.

Comments - 2014 Revision
(a) Subsection (b) of the Model Act was modified by deleting the phrase, “Unless otherwise provided in the articles of incorporation,” at the beginning of the sentence and the phrase, “except that he may become personally liable by reason of his own acts or conduct,” at the end of the sentence.
(b) The first phrase was included in the Model Act to make the provision consistent with Model Act Section 2.02(b)(2)(v), which allowed provisions in the articles of incorporation to impose personal liability on shareholders for the debts of a corporation. That provision of the Model Act was deleted from this Section to avoid the risk that such a provision might result in a court approving the personal liability of shareholders. That provision of the Model Act was deleted from the Section to avoid the risk that such a provision might result in a court approving the personal liability of shareholders.
(c) The second phrase, to be performed an exception for personal liability arising out of personal conduct, was deleted from this Section because it could have been interpreted to provide an independent basis for personal liability based simply on a corporate actor’s having engaged in some kind of personal conduct in connection with the corporation’s operations. It is true that liability may attach to a corporate actor’s personal conduct if, for example, the conduct is tortious or amounts to an undertaking of personal contractual duties. But the grounds for such liability are determined by other bodies of law, not corporation law, and they do not impose liability on a corporate actor merely because the actor has engaged in personal conduct on behalf of a corporation. If a corporate actor does bear personal liability based on his personal acts or conduct in connection with the operation of the corporation, the actor is being held liable for his own acts or debts, not those of the corporation, so no need exists to state the exception contained in the Model Act.
(d) The Model Act does not impose liability on a shareholder for a wrongful distribution, except indirectly in an action under Section 8.33(b)(2) for recoupment by a director held liable for the unlawful distribution. This Section adds a new Subsection D to retain the existing Louisiana rule that a shareholder is liable to return to the corporation any unlawful distributions received by that shareholder. The liability imposed by Subsection C of this Section does not depend upon proof of any culpable conduct by the recipient, but merely on the fact of the receipt of an unlawful distribution. This Section adds a new Subsection D to retain the existing Louisiana rule that a shareholder is liable to return to the corporation any unlawful distributions received by that shareholder. The liability imposed by Subsection C of this Section does not depend upon proof of any culpable conduct by the recipient, but merely on the fact of the receipt of an unlawful distribution.
(e) Subsection D of this Section was added to retain the prior law’s two-year time limit on actions to enforce a shareholder’s liability for the receipt of an unlawful distribution. However, unlike the earlier law, Subsection D of this Section explicitly makes the two-year period peremptive rather than prescriptive. The two-year peremptive period begins on the date on which unlawfulness of the distribution would have been measured for purposes of R.S. 12:1-622. That provision of the Model Act was deleted from this Section to avoid the risk that such a provision might result in a court approving the personal liability of shareholders.

§1-623. Shareholderv
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. A series of transactions integrated if consummation of one transaction is made contingent on consummation of one or more of the other transactions.

(2) Unless the articles of incorporation provide otherwise, shares may be issued to restrict the transfer of the shares, and may credit distributions in respect of shares of another class or series unless one of the following conditions are satisfied:
   (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.
   (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.

Source: MBCA §6.23.

§1-624. Share options

A. A corporation may issue rights, options, or warrants for the purchase of shares or other securities of the corporation. The board of directors shall determine the terms and conditions under which the rights, options, or warrants are issued and the terms, including the consideration, for which the shares or other securities are to be issued. The authorization by the board of directors for the corporation to issue such rights, options, or warrants constitutes authorization for the issuance of the shares or other securities for which the rights, options, or warrants are exercisable.

B. The terms and conditions of such rights, options or warrants, including those outstanding on the effective date of this Section, may include, without limitation, restrictions or conditions that do either of the following:

(1) Invalid or void such rights, options, or warrants held by any such person or persons or any such transferee or transeree.

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

(3) Prohibit the transfer of the restricted shares to designated persons or other equity compensation awards and the terms thereof to be received by a person or persons or any such transferee or transferees.

(4) Obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares.

(5) To maintain the corporation's status when it is dependent on the continued identification or the corporation's status as a Depository Trust & Clearing Corporation or some similar system.

(6) To preserve exemptions under federal or state securities law.

Comment - 2014 Revision

This rule in Subsection B of this Section is consistent with the rule in Article 8 of the Uniform Commercial Code concerning the enforceability of transfer restrictions on particular securities generally. Under both the UCC and this Section, a transfer restriction that is not noted as required on the certificate of a certificated security, or in a required notification statement for an uncertificated security, is unenforceable except against a person with “knowledge” of the restriction. See R.S. 10:8-204. As used in this Section, the term “knowledge” means actual knowledge. The terms “knowledge” and “know” are defined in R.S. 12:1-140 in the same way as in R.S. 10:1-202, Louisiana’s enactment of the UCC.

§1-626. Shares without certificates

A. If a corporation is eligible to issue shares without certificates, the board of directors of the corporation may authorize the issue of some or all of the shares, or the rights to acquire such shares, or to issue such rights, options, or warrants without certificates, except to the extent that its articles of incorporation or bylaws provide otherwise. 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 R.S. 12:1-625(B) and (C), and, if applicable, R.S. 12:1-627.


Comment - 2014 Revision

This Section limits the application of the rule in Subsection A of this Section to those corporations that are eligible to issue uncertificated shares. Under R.S. 12:1-625(A), a corporation is eligible to issue uncertificated shares only if all of the shares of the corporation are issuable without certificates, except to the extent that its articles of incorporation or bylaws provide otherwise. Most Louisiana corporations are not participants in that kind of system, and so would not be eligible either to issue uncertificated shares or to utilize the rule in Subsection A of this Section.

§1-627. 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 a restriction on the transfer of shares or other securities of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

B. A restriction on the transfer or registration of transfer of shares is void if it would not be reasonable to enforce such restriction against a person without knowledge of the restriction.

C. A restriction on the transfer or registration of transfer of shares is authorized for any of the following:

(1) To maintain the corporation’s status when it is dependent on the continued identification of the corporation or the corporation’s status as a Depository Trust & Clearing Corporation or some similar system.

(2) To preserve exemptions under federal or state securities law.

(3) For any other reasonable purpose.

D. A restriction on the transfer or registration of transfer of shares may do any of the following:

(1) Obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares.

(2) Oblige 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) Restrict 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.

Source: MBCA §6.27.

Comment - 2014 Revision

This rule in Subsection B of this Section is consistent with the rule in Article 8 of the Uniform Commercial Code concerning the enforceability of transfer restrictions on particular securities generally. Under both the UCC and this Section, a transfer restriction that is not noted as required on the certificate of a certificated security, or in a required notification statement for an uncertificated security, is unenforceable except against a person with “knowledge” of the restriction. See R.S. 10:8-204. As used in this Section, the term “knowledge” means actual knowledge. The terms “knowledge” and “know” are defined in R.S. 12:1-140 in the same way as in R.S. 10:1-202, Louisiana’s enactment of the UCC.

§1-628. Expense of issue

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

Source: MBCA §6.28.
SUBPART C. SUBSEQUENT ACQUISITION OF SHARES BY SHAREHOLDERS AND CORPORATION

§1-630. Shareholders' preemptive rights
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. The articles of incorporation of a corporation that was incorporated before January 1, 1969, shall be deemed to contain a statement that “the corporation has preemptive rights” unless the articles of incorporation contain a specific provision enlarging, limiting, or denying preemptive rights.
B. A statement included in the articles of incorporation that “the corporation has 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 shares if they are given at least forty-five days to purchase the shares after notice to them of that right, but shorter periods of time may be fair and reasonable under the circumstances in which the shares are being issued.
(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 any of the following:
(a) Shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or affiliates.
(b) 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.
(c) Shares authorized in articles of incorporation that are issued within sixty months from the effective date of incorporation.
(d) Shares authorized in the articles of incorporation that are issuable without consideration.
(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) At a lower or 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) Holders of preemptive rights by the corporation have no preemptive rights 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 shareholders’ preemptive rights.
C. For purposes of this Section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.
D. On or after January 1, 2016, no action to enforce a preemptive right shall be brought more than one hundred and twenty days after the date of the issuance of the shares to which the shareholder had the preemptive right, or within one year of the date that the issuance of the shares is discovered or should have been discovered. An action to enforce a preemptive right is preempted three years after the date of the issuance of the share.

Source: MBCA §6.31.

SUBPART D. DISTRIBUTIONS

§1-640. Distributions to shareholders
A. A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in Subsection C of this Section.
B. If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation’s shares, it is the date the board of directors authorizes the distribution.
C. No distribution may be made if, after giving it effect, either of the following conditions would exist:
(1) The corporation would not be able to pay its debts as they become due in the usual course of business.
(2) The corporation’s total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to pay its debts as they become due in the usual course of business.
D. The board of directors may base a determination that a distribution is not prohibited by this Section on statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.
E. Except as provided in Subsection G of this Section, the effect of a distribution made in accordance with this Section is at parity with the distribution of the share to which the shareholder had the preemptive right, or within one hundred and twenty days after the date of authorization if the distribution is made in accordance with this Section is at parity with the distribution under Subsection C of this Section.
F. No distribution may be made if, after giving it effect, it results in the shareholder ceasing to be a shareholder with respect to the acquired shares.
G. In all other cases, as of the date the distribution is authorized if the payment occurs within one hundred and twenty days after the date of authorization or the date the payment is made if it occurs more than one hundred and twenty days after the date of authorization.
H. A corporation’s indebtedness to a shareholder incurred by reason of a distribution made in accordance with this Section is at parity with the distribution under Subsection C of this Section. If its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could 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.

This Section shall not apply to distributions in liquidation under Part 14 of this Chapter.

Source: MBCA §6.40.

PART 7. SHAREHOLDERS

SUBPART A. MEETINGS

§1-701. Annual meeting
A. Unless directors are elected by written consent in lieu of an annual meeting as permitted by R.S. 12:1-704, a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws or, if not so stated or fixed, as stated or fixed in accordance with the bylaws in the articles of incorporation. If a corporation’s articles of incorporation authorize shareholders to cumulate their votes when electing directors pursuant to R.S. 12:1-728, directors may not be elected by written consent unless the written consent is unanimous.

Annual shareholders’ meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws or, if not so stated or fixed, as stated or fixed in accordance with the bylaws of the corporation. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation’s principal office.
C. The failure to hold an annual meeting at the time stated in or fixed in accordance with Subsection A of this Section does not affect the validity of any corporate action taken at such meeting.

D. If no date for the shareholders’ meeting is held for a period of eighteen months, and directors are not elected by written consent in lieu of an annual meeting during that period, any shareholder may by notice to the secretary demand that the secretary call such a meeting, to be held at the corporation’s principal office or such other place as the directors shall designate with a resolution of the board of directors if the corporation has not adopted a bylaw that controls the matter.

(b) This Section changes the Model Act wording in the second sentence of Subsection A of this Section to make it clear that the effect of cumulative voting on the election of directors under Subsection A is to require the election of directors at a meeting, and not through written consents in lieu of a meeting, unless the written consent is unanimous. The Model Act wording could have been interpreted to require directors to be elected by unanimous consent whenever shareholders had the right to vote cumulatively.

(c) This Section adds a new Subsection D to retain a modified version of the provision in prior law that allowed any shareholder to call an annual meeting for the election of directors if no such meeting had been held for a period of six months. As modified, the new Subsection D does not empower the shareholder actually to call the meeting, but rather to demand that the secretary do so. The secretary, unlike the shareholder, has the ability to arrange for the meeting and to provide the notice of the meeting required by R.S. 12:1-705. Subsection D of this Section requires the meeting be called and that the required notice be provided within thirty days of the notice to the secretary of the shareholder’s demand for a meeting. The secretary has the discretion, acting consistently with the secretary’s duties, to choose the date of the meeting, provided that the date chosen permits the secretary to provide notice of the meeting no fewer than ten and no more than sixty days before the date of the meeting. The duties of the secretary under Subsection D are subject to enforcement through a writ of mandamus. See C.C.P. Art. 3864.

§1-703. Court-ordered meeting

A. The district court of the parish where a corporation’s principal office or, if none in this state, its registered office, is located may in a summary proceeding require a corporation to hold a special meeting valid under R.S. 12:1-702, if either of the following conditions exist:

(1) On application of any shareholder of the corporation if an annual meeting was not held or action by written consent in lieu thereof did not become effective within the earlier of six months after the end of the corporation’s fiscal year or fifteen months after its last annual meeting.

(b) This Section changes the Model Act wording in the second sentence of Subsection A of this Section to make it clear that the effect of cumulative voting on the election of directors under Subsection A is to require the election of directors at a meeting, and not through written consents in lieu of a meeting, unless the written consent is unanimous. The Model Act wording could have been interpreted to require directors to be elected by unanimous consent whenever shareholders had the right to vote cumulatively.

3. The failure to hold an annual meeting at the time stated in or fixed in accordance with Subsection A of this Section does not affect the validity of any corporate action taken at such meeting.

D. Only business within the purpose or purposes described in the meeting notice required by R.S. 12:1-705(c) may be conducted at a special shareholders’ meeting.

E. If an earlier date has not been fixed under R.S. 12:1-707 and if prior board action is not required respecting the action to be taken without a meeting, the record date for determining shareholders entitled to vote on the action shall be the date the demand was delivered to the corporation’s secretary.

F. 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.

Comment - 2014 Revision

Subsection B of this Section authorizes a court to enter orders as necessary “to accomplish the purpose or purposes of the meeting.” As used in that Subsection the phrase “purpose or purposes of the meeting” refers to the purpose or purposes of the meeting of which a written demand was the basis, and not to the subsequent implementation of the votes that may be taken at the meeting. The effects of the votes taken, and the remedies available for their implementation, are issues that are governed by other principles of law, not by this Section.

§1-704. Special meeting

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

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

C. If an earlier date has not been fixed under R.S. 12:1-707 and if prior board action is not required respecting the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting shall be the date on which a signed written consent is delivered to the corporation. If not otherwise fixed under R.S. 12:1-707 and if prior board action is required respecting the action to be taken without a meeting, the record date shall be the close of business on the day the resolution of the board taking such prior action is adopted. No corporate action will be effective as to nonconsenting shareholders unless, within sixty days of the earliest date on which a consent delivered to the corporation as required by this Section was signed, written consents signed by sufficient shareholders to take the action have been delivered to the corporation evidencing their consent to that effect delivered to the corporation before unrevoked written consents sufficient in number to take the corporate action are delivered to the corporation.

Comment - 2014 Revision

Subsection C of this Section permits a special shareholders’ meeting to be held at any place, whether inside or outside Louisiana, fixed by or in accordance with the corporation’s bylaws. The power to choose the place for a shareholders’ meeting, like the power to determine other details concerning the meeting, must be exercised in accordance with the fiduciary duties of the board of directors. The choice of the place of the meeting cannot be designed to interfere with the ability of shareholders to participate in the meeting or to exercise their voting power. Cf., Schnell v. Chris Craft Industries, 285 A.2d 437 (Del. 1971) (management may not use its power to fix the date of a shareholders’ meeting for purposes of interfering with the right of dissident shareholders to engage in a proxy contest against management); Blasius Industries, Inc. v. Atlas Corp., 564 A.2d 651 (Del. Ch. 1988) (business judgment rule does not apply to board actions taken with the primary purpose of interfering with the shareholders’ exercising their voting power, even if the action is taken advisedly and in a good faith effort to thwart a transaction that the directors believe not to be in the best interests of the corporation, such a course of action bears a heavy burden of demonstrating a compelling justification for the (im)probable outcome).
shareholders written notice of the action not more than ten days after written consents sufficient to take the action have been delivered to the corporation, or such later date that tabulation of consents is completed pursuant to an authorization under Subsection D of this Section. The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this Chapter, would have been required to be sent to voting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

F. If action is taken by less than unanimous written consent of the voting shareholders, the corporation must give its nonconsenting voting shareholders written notice of the action not more than ten days after written consents sufficient to take the action have been delivered to the corporation, or such later date that tabulation of consents is completed pursuant to an authorization under Subsection D of this Section. The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this Chapter, would have been required to be sent to voting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

G. The notice requirements in Subsections E and F of this Section shall not delay the effectiveness of actions taken by written consent, and a failure to comply with such notice requirements shall not invalidate actions taken by written consent, provided that this Subsection shall not be deemed to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice within the required time period.

Source: MBCA §7.04.

Comment - 2014 Revision

Model Act Subsection (c) was added in this Section to allow a record date established under R.S. 12:1-707 to control over the date fixed by Subsection C of this Section itself only if the R.S. 12:1-707 date is earlier than that established by Subsection C of this Section. Subsection C of this Section fixes the record date as the first date on which a signed shareholder’s consent is delivered to the directors of the corporation. If the shareholders of the corporation were permitted to select a record date occurring after the Subsection C date, they could invalidate written consents already delivered to the corporation. Under this Section, the persons who are soliciting the shareholders’ consent are entitled to rely upon the date fixed in Subsection C unless an earlier record date had been established under R.S. 12:1-707.

$1-705. Notice of meeting

A. A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders’ meeting no fewer than ten nor more than thirty days before the meeting. In the case of a virtual shareholders’ meeting, the notice shall be sent to shareholders by any means capable of reasonably accomplishing such notice. The corporation may deliver to the shareholders a notice of a shareholders’ meeting sent by mail, delivery service, facsimile transmission, email, access to a corporation’s website, or by any other means permitted by law. The notice shall include the purpose or purposes for which the meeting is called.

B. The shareholders’ list must be available for inspection by any shareholder, or the shareholder’s agent or attorney, is entitled on written demand to inspect and, subject to the requirements of R.S. 12:1-602(C) other than the required percentage and duration of ownership of shares, to copy the list, during regular business hours and at the shareholder’s expense, during the period it is available for inspection.

Source: MBCA §7.05.

Comments - 2014 Revision

(a) The second sentence of Subsection B of this Section was added in this Section as a corollary to the Model Act rule that no notice is required of the purpose of a virtual shareholders’ meeting.

(b) The default rule in Subsection D of this Section on fixing of the record date for the meeting was modified in this Section to refer to the day on which the first notice to shareholders is effective, rather than the day on which the notice is delivered. The “effective” standard was chosen over that of “delivery” to allow the corporation to rely on the rules in R.S. 12:1-141 concerning the date on which a notice becomes effective.

$1-706. Waiver of notice

A. A shareholder may waive any notice required by this Chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver 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. Acceptance of a shareholder’s attendance at a meeting does not comport with waiver of notice in the following:

(1) Waivers 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 properly before the meeting.

C. A shareholder attends a meeting if the shareholder is present at the meeting in person or by proxy. If a shareholder attends a meeting by proxy, then for purposes of Subsection B of this Section, an objection by the shareholder as to the proxy has the same effect as an objection by the shareholder. Source: MBCA §7.06.

Comment - 2014 Revision

A new Subsection C was added in this Section to provide in support of the submission of a proxy, if the shareholder so requests an attorney in fact or a corporate representative at the meeting. A shareholder who proxies voting shares for a meeting is called a “proxy.” If the corporation’s bylaws permit, a shareholder, or the shareholder’s agent or attorney, may attend the meeting in person or by proxy and vote at the meeting.

$1-707. Record date

A. A corporation 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 seventy 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 one hundred and twenty days after the date fixed for the original meeting.

D. If a court orders a meeting adjourned to a date more than one hundred and twenty 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.

E. The corporation shall fix or provide the manner of fixing the record date.

F. Unless the bylaws require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

G. The corporation may fix or provide the manner of fixing the record date.

H. The chair, unless the articles of incorporation or bylaws provide otherwise, shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.

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

J. The chair of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed at the final adjournment of the meeting.

K. After the polls close, no ballots, proxies, or votes nor any revocations or changes thereto may be accepted.

Source: MBCA §7.08.

SUBPART B. VOTING

$1-720. 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 in alphabetical order 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 pursuant to Subsection C of this Section, no later than 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 R.S. 12:1-707, however, notice of the adjourned meeting must be given under this Section to persons who are shareholders as of the new record date.

Source: MBCA §7.20.

Comments - 2014 Revision

A. As excepted provided in Subsections B and D of this Section, 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 issued by a corporation are not entitled to vote if they are owned, directly or indirectly, by a subsidiary.

C. Subsection B of this Section does not limit the power of a corporation or its transferee 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 the stock transfer agent of the corporation or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

E. For purposes of Subsections B and C of this Section, the following authorities may exercise the right to vote shares:

(1) The term "subsidiary" means a domestic or foreign corporation, limited liability company, partnership, or other jurisdictional entity that is subject to at least majority control by the issuer of the shares, but does not include the issuer itself.

(2) "Majority control" means ownership, direct or indirect, of a majority of the following:
   (a) The shares entitled to vote for the directors of a corporation.
   (b) The membership, partnership, or other interests in an unincorporated entity that are entitled either to vote for those who hold the general managerial authority in the unincorporated entity or to exercise that authority directly.

Source: MBCA §7.21.

Comments - 2014 Revision

(a) Model Act Subsection (b) provides an explicit statutory rule against "circular" voting only where the circular voting is occurring through a subsidiary that is organized as a corporation. The Model Act leaves other forms of circular voting to common law principles, as noted in Model Act Comment 3. Because Louisiana’s commercial code does not adopt common law principles, this Section extends the express statutory rule against circular voting to all subsidiaries generally, whether incorporated or unincorporated.

Subsection B of this Section provides the rule against the voting of shares held by a “subsidiary,” and Subsection E of this Section provides the definition of that term.

(b) The rule in this Section against circular voting prohibits only a subsidiary's voting the shares that it owns in its direct or indirect parent company. Louisiana law permits the formation of holding companies or the exercise of "downstream" voting power by a parent company over the shares that it owns in a subsidiary.

§1-722. Proxies

A. A shareholder may vote the shareholder’s shares in person or by proxy.

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

C. An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election, the secretary, or other officer or agent of the corporation authorized or directed by the board of directors to tabulate votes before the proxy exercises authority for the appointment.

D. The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment is not liable in damages to the shareholder for making an error in good faith in accepting or rejecting a vote, consent, waiver, or proxy appointment if the error is not caused by the corporation's knowing failure to comply with R.S. 12:1-722(B) or by the corporation's knowing failure to comply with R.S. 12:1-722(E). A shareholder's objection is timely under this Subsection only if the objection is made before the end of the shareholders' meeting at which the objection was filed.

E. The corporation’s acceptance or rejection of a vote, consent, waiver, or proxy appointment and, if the corporation requests, evidence of fiduciary status and authority acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

F. The name signed purports to be that of an officer or agent of the entity.

G. Unless it otherwise provides, an appointment made irrevocable under Subsection D of this Section continues in effect after a transfer of the shares to the extent it applies to the shares in the new owner's name.

H. Subject to Section 1-724 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

Source: MBCA §7.22.
(a) The phrase, “curator, tutor, or judicially authorized representative,” was added to the list of fiduciaries in Paragraph (B)(2) of this Section, and the parenthetical phrase “or representative through mandate or procuration” was added to Paragraph (B)(4) of this Section to reflect the appropriate Louisiana terminology. The phrase, “or another person having a security interest in the shares” was added to Paragraph (B)(4) to reflect the fact that security interests in shares are not limited to those held by a pledgee.

(b) The Official Comment to the Model Act states that the doctrine of laches may bar a challenge to a corporate action that is not brought promptly. But Louisiana law does not recognize the doctrine of laches. Fishbein v. State ex rel. Louisiana State University Center, So.2d 1200 (La. 2005). Accordingly, Subsection (e) of the Model Act has been modified in this Section to provide a statutory rule similar to laches, and similar to the rule in prior law that a proxy regular on its face was valid unless it was challenged before it was exercised. See former R.S. 12:75(C)(4). Under Subsection (e) of this Section, and the analogous provisions of the vote of a proxy or other similar item is treated as conclusive unless a shareholder objects to the corporation’s treatment of the item before the end of the meeting at which the item is relevant or, if the action is being taken without a meeting, before the corporation incurs a legal obligation in good faith reliance on that treatment. If the shareholder’s objection is timely, and the corporation rejects the objection, then the corporation’s decision is conclusive unless the shareholder commences a summary proceeding within ten days of the date the corporation’s notice to the shareholder becomes effective under R.S. 12:1-141 and proves in that proceeding that the corporation’s decision concerning the validity of the challenged item was incorrect.

§7-25. Quorum and voting requirements for voting groups
A. Shares entitled to vote as a separate voting group may take action on a matter only as provided in the articles of incorporation or bylaws governing such a separate voting group. The votes of more than one voting group may be combined to form a quorum or voting requirement for any matter. Unless the articles of incorporation require 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. If the articles of incorporation or this Chapter provide for voting by two or more voters on a matter, action on that matter is taken when or before the votes in opposition to the director’s resolution are cast and the votes in favor of the director’s resolution are equal to or exceed the quorum or voting requirement of the voting group to which both votes belong. The votes of two or more separate voting groups may be combined to form a quorum or voting requirement for any matter.
C. If a quorum exists, action on a matter, other than the election of directors, to that matter. Unless the articles of incorporation 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.
D. An amendment of articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in Subsection A or C of this Section is governed by R.S. 12:1-727.
E. Limitations set forth in the articles of incorporation, or bylaws, or other agreements of the parties to a voting trust that 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 voting trust beneficial owners, 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.

§7-26. Greater quorum or voting requirements
A. The articles of incorporation may provide for a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is provided for by this Chapter.
B. An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement 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.

§7-27. Voting for directors; cumulative voting
A. Unless otherwise provided in the articles of incorporation, directors are elected by the shareholders at a meeting of the shareholders, and the directors, and the corporation, or among any of them.
B. Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.
C. A statement included in the articles of incorporation that shareholders, or a designated group of shareholders, are entitled to cumulate their votes for directors, or words of similar import, means that the shareholders designated are entitled to multiply the number of votes they are entitled to vote and cast the votes for a single candidate or distribute the product among two or more candidates.

§7-28. Comments - 2014 Revision
A. This Section deleted Subsection (d) of the Model Act, and its related comments, which would have conditioned the exercise of cumulative voting rights on whether the shareholder was entitled to vote for a particular candidate or distribute the product among two or more candidates.
B. Nothing in this Section prevents an individual shareholder from voting a greater number of votes for a single candidate.
C. This Section also deleted the comments which would have conditioned the exercise of cumulative voting rights on whether the shareholder was entitled to vote for a particular candidate or distribute the product among two or more candidates.
D. If cumulative voting is authorized in the articles of incorporation, a director may not be removed if the votes in opposition to the director’s removal are sufficient to meet the cumulative voting requirement. See R.S. 12:1-808(C).
(2) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in R.S. 12:1-640.

(3) Establishing who shall be directors or officers of the corporation, or the duties or powers of or removal or reappointment of directors or officers.

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

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

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

(7) Establishes the existence or performance of a unanimous governance agreement and the existence of the agreement if its existence is noted on the certificate for the shares in compliance with this Subsection.

(8) Otherwise changes, in a manner not contrary to public policy, the result that would be reached under other provisions of this Chapter.

(1) The existence of a unanimous governance agreement shall be noted conspicuously on the front or back of each certificate for outstanding shares.

If, at the time of the agreement, the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this Subsection.

The failure to note the existence of the agreement on the certificate shall not affect the validity of the agreement or any action taken pursuant to it.

(2) Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase, if the purchase price is not excessive.

The purchaser has the burden of establishing the existence of the agreement if its existence is noted on the certificate for the shares in compliance with this Subsection.

(3) An action to enforce the right of rescission authorized by this Subsection must be brought no later than the earlier of ninety days after discovery of the existence of the agreement or two years after the time of purchase of the shares.

D. The provisions of a unanimous governance agreement shall cease to be effective when the corporation becomes a public corporation or when the agreement ceases to be effective for any reason, the board of directors may adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete any references to it.

E. A unanimous governance agreement that limits the discretion or powers of directors or transfer to one or more shareholders or other persons all or part of such discretion or powers may be held liable for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement. A person shall be subject to liability under this Subsection only to the extent that a director vested with the same discretion or powers could be held liable, and is entitled to indemnity under R.S. 12:1-850 through 1-859, and to protection against liability under R.S. 12:1-632, to the same extent as a director vested with the same discretion or powers.

F. A unanimous governance agreement shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the separate existence of the corporation, as defined in Subsection A of this Section.

G. Incorporators or subscribers for shares may act as shareholders with respect to a unanimous governance agreement if no shares have been issued when the agreement is made.

H. If the shareholders have approved more than one unanimous governance agreement, all of the agreements shall, to the extent reasonable, be construed together as one agreement in which all provisions are given effect.

To the extent that conflicting provisions cannot be reconciled through that rule of construction, the more recently-approved provision controls.

I. Except as otherwise provided in the agreement, a unanimous governance agreement shall have all of the following characteristics:

1. Has an initial term of twenty years.

2. May be amended or terminated only by a unanimous vote of all shareholders of the corporation, or in accordance with an agreement authorized by this Section.

3. May be amended or terminated during its initial or any subsequent term by means of one or more written consents to the amendment or termination, signed by all persons who are shareholders at the time of the termination or amendment, and delivered to the corporation in accordance with R.S. 12:1-704(C).

4. Continues in effect even after the expiration of its term, as renewed, until one or more written consents to its termination, signed by the shareholders of at least twenty-five percent of the issued shares of any class are delivered to the corporation in accordance with Subsection A of this Section.

J. The corporation shall send notice of any renewal, amendment, or termination of a unanimous governance agreement to all shareholders within ten days after the date of the renewal, amendment, or termination, but the renewal, amendment, or termination is effective even if the notice is not sent.

K. This Section shall not affect the enforceability of any agreement among shareholders or the power of a shareholder to amend a unanimous governance agreement under Subsection A of this Section.

Source: MBCA §7.32.

Comments - 2014 Revision

(a) Model Act Section 7.32 is revised in this Section in several respects:

(1) A new term, “unanimous governance agreement,” with definition, is used in place of the Model Act phrases, “agreement among shareholders that complies with this provision” and “agreement authorized by this Section”. The new term is required to be in writing, to be effective when the corporation becomes a public corporation. If the existence of the agreement or two years after the time of purchase of the shares, then the agreement is void.

(2) Written consent is required to establish, renew, terminate early, or amend a unanimous governance agreement.

(3) Articles of incorporation or bylaws may not operate as unanimous governance agreements, and an otherwise qualifying written agreement may operate as a unanimous governance agreement only if the agreement states that it is a unanimous governance agreement or that it is governed by R.S. 12:1-732.

(4) A rule of construction is provided to deal with multiple unanimous written operating agreements, requiring that the multiple agreements be interpreted together as one document to the extent reasonable, and otherwise resolving inconsistencies in provisions by allowing the more recent provision to control.

(5) Unless otherwise provided, the agreement has an initial term of twenty, subject to renewals, and the unanimous governance agreement remains in effect even after the expiration of its term until shareholders of at least twenty-five percent of the issued shares of any class deliver to the corporation written consents to termination of the agreement.

(6) A new Subsection K is added as a savings provision to preserve the corporeal freedom that shareholders had before the enactment of R.S. 12:1-732.

(b) A unanimous governance agreement is not the only mechanism under this Section through which shareholders may modify the governance rules of the corporation. Corporations are subject to modification through appropriate provisions in the articles of incorporation or bylaws, and shareholders may enter into lawful agreements with one another, such as voting agreements, that do not satisfy the requirements of a unanimous governance agreement, and also require an otherwise qualifying agreement to state that it is a unanimous governance agreement or that it is governed by R.S. 12:1-732. Subsection K provides that R.S. 12:1-732 has no effect on the enforceability of a shareholders' agreement that does not meet the requirements of Subsection A of this Section. Through a combination of the two Subsections, this Section preserves the freedom that shareholders had before the enactment of R.S. 12:1-732 to modify the governance rules in their corporation by means of customized terms in the articles or bylaws, or through contracts among the shareholders. The combination of R.S. 12:1-732 forms of agreement is governed by ordinary principles of corporation and contract law, without regard to the special rules in R.S. 12:1-732.

(c) This Section provides three rules to prevent the inadvertent triggering of the special provisions in R.S. 12:1-732, two in Subsection A of this Section and the one in Subsection K of this Section. Subsection A excludes the articles and bylaws as forms of a unanimous governance agreement, and also requires an otherwise qualifying agreement to state that it is a unanimous governance agreement or that it is governed by R.S. 12:1-732. Subsection K provides that R.S. 12:1-732 has no effect on the enforceability of a shareholders' agreement that does not meet the requirements of Subsection A of this Section. Through a combination of the two Subsections, this Section preserves the freedom that shareholders had before the enactment of R.S. 12:1-732 to modify the governance rules in their corporation by means of customized terms in the articles or bylaws, or through contracts among the shareholders. The combination of R.S. 12:1-732 forms of agreement is governed by ordinary principles of corporation and contract law, without regard to the special rules in R.S. 12:1-732.

(d) Provisions concerning corporate governance usually remain in effect indefinitely as long as the shareholders continue to rely on them and do not renegotiate them. As a new generation of investors is introduced, they may wish to renegotiate or terminate the unanimous governance agreements, and to prevent the automatic and perhaps unexpected termination of governance terms with which shareholders may continue to be satisfied, and on which they may be continuing to rely, this Section provides that a unanimous governance agreement remains in effect indefinitely even after the expiration of its term. Still, because of the extraordinary power of a unanimous governance agreement to override statutory provisions that would otherwise be considered mandatory, this Section does provide a default term for a unanimous governance agreement and does allow the shareholders to amend the type of provision involved, but also wish to make special rules in R.S. 12:1-732, two in Subsection A of this Section and the one in Subsection K of this Section. The combination of R.S. 12:1-732 forms of agreement is governed by ordinary principles of corporation and contract law, without regard to the special rules in R.S. 12:1-732.

(e) If the shareholders wish for some of their agreed modifications to be governed by the usual rules, e.g. to be subject to amendment by less than unanimous consent, but to apply indefinitely until amended as required by the amendment of the type of provision involved, but also wish to make special rules in R.S. 12:1-732, two in Subsection A of this Section and the one in Subsection K of this Section. The combination of R.S. 12:1-732 forms of agreement is governed by ordinary principles of corporation and contract law, without regard to the special rules in R.S. 12:1-732.
In this Subpart, the following meanings shall apply:

(1) “Derivative proceeding” means a civil suit in the right of a domestic corporation or, to the extent provided in R.S. 12:1-741, in the right of a foreign corporation to which the Louisiana courts have subject matter jurisdiction, to compel corporate actors to take corrective action that is not inconsistent with the best interests of the corporation, but only after the shareholder satisfies the requirements of R.S. 12:1-742.

(2) “Shareholder” means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

A. A shareholder may not commence or maintain a derivative proceeding unless the shareholder satisfies all of the following conditions:

(1) Was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time.

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

B. A shareholder who meets the requirements of R.S. 12:1-741(A) may file a derivative proceeding in the right of the corporation, but only after the shareholder satisfies the requirements of R.S. 12:1-742.

Source: MBCA §7.41.

Comment - 2014 Revision

This section designated the original Model Act provision as Subsection A of this Section and added a new Subsection B of this Section. The new Subsection B states explicitly what the Model Act provisions imply: that a shareholder may file a derivative proceeding to enforce a right of the corporation if the shareholder complies with the requirements of R.S. 12:1-741 and 1-742. Prior law had stated a similar rule in Art. 611 of the Code of Civil Procedure, but that article was amended in connection with the adoption of this Section to exempt derivative proceedings governed by this Section from the coverage of the class and derivative action provisions of the Code of Civil Procedure. Subsection 5 of Book I, Title 2, Subsection B of this Section now provides an authorization of derivative proceedings on behalf of business corporations that replaces the authorization formerly provided by Art. 611.

§1-743. Stay of proceedings

No shareholder may commence a derivative proceeding until the following conditions are satisfied:

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

(2) Ninety days have expired from the date the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the ninety-day period.

Source: MBCA §7.42.

Comment - 2014 Revision

This Section, like the Model Act, rejects the approach taken by the Delaware courts to determining whether demand in a derivative action is required or, instead, is excused as futile. The Delaware law on demand futility is expressed through a complicated body of decisions that began in the 1984 decision of the Delaware Supreme Court in Aronson v. Lewis, 473 A.2d 805 (Del. 1984). The Aronson court has been criticized on grounds that it requires a court to determine hypothetically - at the complaint stage - whether the directors of a corporation are facing enough prospect of personal liability in the case to disqualify them from responding disinterestedly if the plaintiff, contrary to fact, were to make a demand on the board. The Delaware courts have interpreted the Aronson decision to allow a plaintiff virtually unfettered power to evade the demand rule, thus giving a plaintiff virtually unfettered power to evade the demand rule, thus allowing the corporation to determine whether the maintenance of the derivative proceeding is not in the best interests of the corporation.

This Section, like the Model Act, adopts what is known as a “universal demand” requirement. Under this approach, demand is always required. A court is never required to determine whether a board of directors or other corporate actors have responded appropriately to a hypothetical demand that has not really been made. Instead, because demand always must be made, the court is able to evaluate, in accordance with R.S. 12:1-744, what the board or other appropriate corporate officials have actually done in response to the required demand.

Before the adoption of this Section, Louisiana courts had rejected the Aronson approach to demand, preferring instead the traditional, pre-Aronson rule that allowed demand to be excused as futile in any case in which a majority of the corporation’s directors were themselves named as defendants in the suit. See, e.g., In re 490 So.2d 1107 (La. App. 4th Cir. 1986); Robinson v. Snell’s Limbs and Branches of New Orleans, Inc., 538 So.2d 1045 (La. App. 4th Cir. 1989). While this traditional rule avoided the problems posed by Aronson, it posed a serious problem of its own: it gave a plaintiff virtually unfettered power to evade the demand rule, simply by naming a majority of the directors as defendants.

This Section abrogates the demand and demand-futility rules in Smith and Robinson. Demand is always required, and so never is excused as futile. But the making of demand under this Section does not mean that unfettered control over the suit is being transferred to the demandor. The right to control the defense may be dismissed as against the best interests of the corporation only if the persons rejecting the demand, or recommending dismissal of the suit, are sufficiently interested to be “qualified” as defined in R.S. 12:1-143, and only if the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation shareholders or a class of shareholders.

§1-742.1. Petition in derivative proceeding

The petition in derivative proceeding shall do all of the following:

(1) Allege that the plaintiff meets the standing requirements of R.S. 12:1-741.

(2) Allege either that the plaintiff made demand upon the corporation at least ninety days before the filing of the petition as required by R.S. 12:1-742 or that the plaintiff made the demand and, for reasons alleged in the petition, the filing of the petition before the expiration of the ninety-day period complies with R.S. 12:1-742.

(3) Join as defendant the corporation and the obligor on the obligation sought to be enforced.

(4) Include a prayer for judgment in favor of the corporation and against the obligor on the obligation sought to be enforced.

Source: MBCA §7.42.1.
B. This Section does not affect the plaintiff’s right under Article 1671 of the Code of Civil Procedure to obtain a judgment of dismissal without prejudice if the application for dismissal is made before any defendant, including the corporation in its capacity as a defendant, makes any appearance of record in the proceeding.

Source: MBCA §745.

Comments - 2014 Revision
(a) This Section adds a provision that permits a derivative action to be settled or discontinued without court approval if the settlement or discontinuation is approved unanimously by the shareholders of the corporation. The rule that requires judicial approval of the settlement of derivative suits is based on the theory that the named plaintiff in the suit may agree to settlement terms that are satisfactory to the parties who are participating in the settlement negotiations - the defendants, the named plaintiff and the named plaintiff’s lawyers - but that produce little or no benefit for the other shareholders of the corporation. But if all shareholders actually agree to the settlement, a realistic concern is that the court need only consider whether the corporation, in which shareholder is able to decide personally whether the settlement is acceptable. Under those circumstances, the parties should be free to settle the case on the terms they consider appropriate.
(b) This Section also adds a sentence to make it clear that this Section does not affect a plaintiff’s ability to obtain a judgment of dismissal without prejudice as provided in Art. 1671 of the Code of Civil Procedure. The plaintiff is entitled to that form of judgment only if he pays all costs of the proceeding and if he applies for the dismissal before the defendant makes any appearance of record in the proceeding. Id. Because the corporation in a derivative action participates in the suit both as a plaintiff, represented by the plaintiff shareholder, and as a defendant, represented by management-authorized agents, the last sentence of this Section makes the point that the plaintiff’s right to a dismissal without prejudice under Art. 1671 is cut off by the corporation’s appearance in the suit only if the corporation is appealing of record in its capacity as a defendant. The requirement in Art. 1671 that the plaintiff pay the costs of the proceeding as a condition to the dismissal applies in the normal way.

§1-746. Payment of expenses

On termination of the derivative proceeding the court may do any of the following:
(1) Order the corporation to pay the plaintiff’s expenses incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation.
(2) Order the plaintiff to pay any defendant’s expenses incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose.
(3) Order a party to pay an opposing party’s expenses incurred because of the filing of a pleading, motion, or other paper, if it finds that the pleading, motion, or other paper was not well grounded in fact, after reasonable inquiry, or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and was interposed for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

§1-747. Applicability to foreign corporations

In any derivative proceeding in the right of a foreign corporation, the matters covered by this Subpart shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for R.S. 12-743, 1-745, and 1-746.

Source: MBCA §747.

SUBPART E. PROCEEDING TO APPOINT RECEIVER

§1-748. Shareholder action to appoint receiver

A. The district court of the parish in which the registered office of the corporation is located may appoint one or more to be receivers, of and for a corporation in a proceeding by a shareholder where it is established that either of the following conditions exist:
(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.
(2) The directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

B. If the court may issue injunctions, appoint a temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing is held.

C. The court shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver.

D. The court shall have jurisdiction over the corporation and all of its property, wherever located.

E. The court may appoint an individual or domestic or foreign corporation, authorized to transact business in this state, as a receiver and may require the receiver to post bond, with or without sureties, in an amount the court directs.

D. The court shall describe the powers and duties of the receiver in its appointing order, which may be amended from time to time. Among other powers, a receiver may do any of the following:
(1) Exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation.
(2) 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.
(3) Sue and defend in the receiver’s own name as receiver in all courts of this state.

E. [Reserved.]

F. The court from time to time during the receivership may order compensation paid and expense disbursements or reimbursements made to the receiver from the assets of the corporation or proceeds from the sale of its assets.

G. In this Section, “shareholder” means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

Source: MBCA §748.

Comment - 2014 Revision
The Model Act distinction between the appointment of custodians for solvent companies and receivers for insolvent ones is omitted from this Section to retain the prior law that authorized the appointment of receivers for both solvent and insolvent companies. Model Act Subsection (e), which authorized a court to redesignate a custodian as a receiver and a receiver as a custodian, was omitted as irrelevant to the receiver-only scheme adopted in this Section.

PART 8. DIRECTORS AND OFFICERS

SUBPART A. BOARD OF DIRECTORS

§1-801. Requirement for and functions of board of directors

A. Except as provided in R.S. 12.1-732, each corporation must have a board of directors.

B. The corporate powers shall be exercised by or under the authority of the board of directors of the corporation, and the business and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of its board of directors, subject to any limitation set forth in the articles of incorporation or any agreement authorized under R.S. 12.1-722.

C. In the case of a public corporation, the board’s oversight responsibilities include attention to all of the following:
(1) Business performance and plans.
(2) Major risks to which the corporation is or may be exposed.
(3) The performance and compensation of senior officers.
(4) Policies and practices to foster the corporation’s compliance with law and ethical conduct.
(5) Preparations of the corporation’s financial statements.
(6) The integrity of the corporation’s internal controls.
(7) Arrangements for providing adequate and timely information to directors.
(8) The composition of the board and its committees, taking into account the important role of independent directors.

Source: MBCA §8.01.

§1-802. Qualifications of directors

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

Source: MBCA §8.02.

§1-803. Number and election of directors

A. A board of directors must consist of one or more individuals. The number of directors shall be fixed by or in accordance with the articles of incorporation or, if not so fixed, shall be the number fixed by or in accordance with the bylaws. If not fixed by or in accordance with the articles or the bylaws, the number of directors shall be the number elected from time to time by the shareholders and, if directors have not been elected by the shareholders, the number of directors named as initial directors in the articles of incorporation.

B. The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws.

C. Directors are elected at the first annual shareholders’ meeting and at each annual meeting thereafter unless their terms are staggered under R.S. 12.1-806.

Source: MBCA §8.03.

Comment - 2014 Revision
(a) This Section modifies the language of Model Act Subsection (a) to retain the former Louisiana law concerning the determination of the number of directors to be elected.
(b) Former R.S. 12.81A(A) provided that an incumbent director’s term could not be shortened by means of an amendment to the articles or bylaws that reduced the number of directors. The substance of that rule is retained in R.S. 12.1-803.

§1-804. 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.

Source: MBCA §8.04.

§1-805. Terms of directors generally

Comments - 2014 Revision
The best practices for a board of directors include attention to all of the following:
(1) Business performance and plans.
(2) Major risks to which the corporation is or may be exposed.
(3) The performance and compensation of senior officers.
(4) Policies and practices to foster the corporation’s compliance with law and ethical conduct.
(5) Preparations of the corporation’s financial statements.
(6) The integrity of the corporation’s internal controls.
(7) Arrangements for providing adequate and timely information to directors.
(8) The composition of the board and its committees, taking into account the important role of independent directors.

Source: MBCA §8.05.
A. The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected. If the corporation is organized by subscription, or if their terms are staggered, at such times as provided in the articles of incorporation. If the terms of the directors do not expire at the same time, the terms of the directors shall be apportioned among the directors as nearly as possible to equal periods of time, to be determined by majority vote of the directors.

B. The terms of all other directors shall expire at such time as is fixed by the directors by majority vote of the directors, or if their terms are staggered, at such times as provided in the articles of incorporation. If the terms of the directors do not expire at the same time, the terms of the directors shall be apportioned among the directors as nearly as possible to equal periods of time, to be determined by majority vote of the directors.

C. If the number of directors is to be increased, and if that number is greater than the number of directors of the corporation at the time of organization, the directors are authorized to fill the vacancies that may occur from the failure of any director to qualify or for any other cause, subject to the provisions of this Section. The filling of any vacancy in the office of director shall be made by majority vote of the directors, or if the number of directors is less than the authorized number, then the appointment shall be made by the shareholders at a special meeting called for the purpose, which meeting shall be held within a reasonable time after the occurrence of the vacancy.

D. If the number of directors is to be decreased, and if that number is greater than the number of directors of the corporation at the time of organization, the directors are authorized to decrease the number of directors to the number provided in the articles of incorporation. If the number of directors is to be decreased and if the number of directors of the corporation is less than the number authorized by the articles of incorporation, the number of directors shall be increased to the number provided in the articles of incorporation by the affirmative vote of a majority of the directors that remain in office.

E. Except to the extent otherwise provided in the articles of incorporation, the directors shall have the power to fill any vacancies occurring at such times and in such manner as provided by the corporation in its articles of incorporation. If the number of directors is to be decreased, and if the number of directors of the corporation is less than the number authorized by the articles of incorporation, the number of directors shall be increased to the number provided in the articles of incorporation by the affirmative vote of a majority of the directors that remain in office.

F. 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 fill the vacancy if it is filled by the shareholders, and only the holders of shares of that voting group are entitled to fill the vacancy if it is filled by the directors.

G. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under R.S. 12:1-807(b), or otherwise, may be filled until the vacancy occurs but the new director may not take office until the vacancy occurs.

Source: MBCA §8.10.

Comment - 2014 Revision

This section adds the phrase “or bylaws” to Model Act Subsection (a). It also changes “terms of office” to “term of a director”.

$1-811. Compensation of directors

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

Source: MBCA §8.11.

Comment - 2014 Revision

This section clarifies that the compensation of directors is determined by the board of directors and may be changed by the board of directors from time to time.

$1-812. Vacancy in office

Subject to exceptions for cumulative voting and for directors elected by particular voting groups, the Model Act permits the removal of a director by a majority of the votes cast on the issue. This Section requires the removal to be approved by a majority of the votes entitled to be cast in an election of directors.

Source: MBCA §8.08.

Comment - 2014 Revision

This section adds a new Subsection C to the Model Act to retain the prior law concerning the rights of persons entitled to call a meeting of the board of directors, while updating the titles used in prior law. As used in the new Subsection, the term “chief executive officer” is used descriptively, not as a title, to refer to the highest ranking executive officer in the corporation. In many corporations, that officer will indeed be called the chief executive officer or CEO, but it is the nature of the office, not the title, that is controlling for purposes of Subsection C of this Section. A corporation that used more traditional titles for its officers, for example, might call this person the “president” or “chairman”.

$1-820. Action without meeting

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

B. Action taken under this Section is the act of the board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify the time at which the action is to be taken.
thereunder is to be effective. A director's consent may be withdrawn by a
revocation signed by the director and delivered to the corporation prior to
delivery to the corporation of unrevoked written consents signed by all the
directors on the record date. Accordingly, it also rejects the statement in the Model Act's Official Comment
that a director's consent may be withdrawn only by a letter signed by the director.
(b) This Section rejects the rule in Model Act Section 1.4(b) that a notice required by this Section may be oral if reasonable under the circumstances.

1-822, 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, and place of the meeting. Except as otherwise provided in the articles of incorporation or bylaws, the notice shall describe the purpose or purposes of the regular 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 forty-eight-hour notice of the date, time, and place of the meeting. Except as otherwise provided in the articles of incorporation or bylaws, the notice shall describe the purpose or purposes of the special meeting.

Source: MBCA §8.22.

Comments - 2014 Revision
(a) This Section modifies Model Act Subsection (b) to require notice of at least forty-eight hours, rather than two days, for a special meeting, and to change the default rule concerning a statement of purpose in the notice from one that requires no such statement to one that does require a statement of purpose.
(b) This Section rejects the rule in Model Act Section 1.4(a) that a notice required by this Section may be oral if reasonable under the circumstances. Accordingly, it also rejects the statement in the Model Act's Official Comment to this Section that notice of a board meeting may be provided orally; all notices required by this Section must be in "writing," as that term is defined in the Model Act. Therefore, if a director's attendance at a meeting of the board operates as a waiver of notice by the director under R.S. 12:1-823(b), so, as a practical matter, oral notice that results in actual attendance at a meeting by all directors, something that is fairly easy to accomplish in many closely held corporations, waived the notice requirement -- not by legally-sufficient notice, but by waiver.

1-823, Waiver of notice
A. A director may waive any notice required by this Subpart, the articles of incorporation or bylaws before or after the date of the meeting for which the notice is given, or the minutes or corporate records, or a director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless one of the following occurs:

1. The director at the beginning of the meeting, or promptly upon arrival, objects to holding the meeting or transacting business at the meeting.
2. The director objects in accordance with Subsection B of this Section, or the director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.


Comments - 2014 Revision
(a) This Section simplifies Model Act Subsection (a) by deleting its references to a variable range size board, and by defining a quorum by reference to the number of directors established under R.S. 12:1-803. A similar change was made in Model Act Subsection (b), linking it to R.S. 12:1-803 rather than to the formerly more complex rules in Subsection (a).
(b) This Section modifies Model Act Subsection (c) by introducing a new defined term, “required majority of directors” to facilitate the statement of the minimum number of affirmative votes required to establish an act of the board of directors. Ordinarily, assuming that the quorum requirement is satisfied, the required majority of directors is a majority of the directors present at the meeting. But that figure may be increased in the articles of incorporation or bylaws, and that greater number controls over the statutory minimum.
(c) Subsection (c) also is modified to retain the rule in prior law that a board of directors may in some cases continue to conduct business at a meeting at which a quorum is not present. The rule is designed to prevent directors from blocking action by the majority through a withdrawal from the meeting that causes the quorum to be lost. But, at the same time, the rule respects the basic purpose of the quorum and majority approval rules; it applies only when a meeting was convened with a quorum, and it recognizes as acts of the board only those acts that are supported by the number of directors that would have been required to approve the action had the quorum not been lost. (d) As an example of the operation of the anti-quorum-loss rule in Subsection (c), consider a nine-member board of directors. Under the default statutory rules, the presence of five of those directors at a meeting would be required to establish a quorum, and the affirmative votes of a majority of the five directors present, three, would be required to establish an act of the board. But if the director votes for or assents to any action taken at the meeting after the director's initial objection, that approach treats an objection to inadequate notice as an always-universal objection, unrelated to the nature of the particular action at the meeting. In some cases, a director may be perfectly willing to cooperate with other directors in approving obviously beneficial or appropriate agenda items, even without the required notice, while still wishing to preserve his notice-related objection concerning the items that the director considers more difficult or controversial. The Model Act rule fails to acknowledge the possibility of that kind of legitimate, but limited, objection. Hence, the rule may cause a director who does not know the consequences of cooperating in routine business but is sensitive to an inaccurate notice of a meeting that the director does not know about to obstruct action even on routine items that no one objects to taking up. To avoid results of that kind, this Section reverses the Model Act rule. Under new Subsection C of this Section, the affirmative votes of a majority of the remaining four directors would remain sufficient to constitute an act of the board of directors because a majority of four is three, and the majority vote required for an act of the remaining four directors would be two. If, on the other hand, two directors withdrew from the meeting, the affirmative vote of a bare majority of the three directors still present would not constitute an act of the board of directors because two votes is not a majority of the minimal quorum of
five. If only three directors remained at the meeting, they could take action only by unanimous vote. If fewer than three remained, no further action could be taken at the meeting.

§1-825. Committees

A. Unless this Chapter, the articles of incorporation, or the bylaws provide otherwise, the board of directors may create one or more committees and appoint one or more members of the board of directors to serve on any such committee. If the board of directors appoints a person who is not a director, that person may serve only in an advisory capacity and shall not be a member of the committee for purposes of any reference by this Chapter to a committee or to one or more members of a committee.

B. This Chapter otherwise provides the creation of a committee and appointment of members to it must be approved by the greater of the following:

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

(2) The number of directors required by the articles of incorporation or bylaws.

C. R.S. 12:1-820 through 1-824 apply both to committees of the board and to their members.

D. To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the powers of the board of directors under R.S. 12:1-801.

E. A committee may not do any of the following:

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

(2) Approve or propose to shareholders action that this Chapter requires to be approved by shareholders.

(3) Fill vacancies on the board of directors or, subject to Subsection G of this Section, on any of its committees.

(4) Adopt, amend, or repeal bylaws.

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 R.S. 12:1-830.

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

Source: MBCA §8.25.

Comment - 2014 Revision

This Section adds a second sentence to Model Act Subsection (a) to address the question whether the membership of a committee of the board of directors may include persons who are not members of the board itself. In some cases, the board of directors may wish to appoint one or more non-director staff members who have knowledge or experience that would be helpful to the committee’s work. The added sentence recognizes that possibility, but permits the non-director appointees to the committee to act only in an advisory capacity. Appointees of that kind are not considered members of the board for purposes of any of the statutory rules concerning committees or members of committees. So, for example, the rules concerning the required quorum and vote for committee action would apply only with respect to the directors who were members of the committee. If a committee consists of three directors and five non-director staff members, a quorum of the committee could be established only if a majority of the three directors were present at a meeting, and only the vote of a majority of the directors present at the committee meeting would constitute the act of the committee.

§1-826. Submission of matters for shareholder vote

A corporation may agree to submit a matter to a vote of its shareholders even if, after approving the matter, the board of directors determines it no longer recommends the matter.


SUBPART C. DIRECTORS

§1-830. Standards of conduct for directors

A. Each member of the board of directors, when discharging the duties of a director, shall act in good faith and in a manner the director reasonably believes to be in the best interests of the corporation.

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

C. In discharging board or committee duties a director shall disclose, or cause to be disclosed, to the other board or committee members information not already known by them but known by the director to be material to the discharge of their decision-making or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that the information disclosure would not be required by a legally enforceable obligation of confidentiality, or a professional ethics rule.

D. In discharging board or committee duties a director who does not have knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the persons specified in Paragraph (F)(3) of this Section to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board’s functions that are delegable under applicable law.

E. A director is not liable to the corporation or its shareholders for any decision taken to comply with any information, opinions, reports, or statements provided.

F. A director is entitled to rely, in accordance with Subsection D or E of this Section, on any of the following:

(1) One or more officers or employees of the corporation whom the director reasonably believes have knowledge or experience that would reasonably support the information, opinions, reports, or statements provided.

(2) Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters within the particular person’s professional or business competence or under this Chapter the corporation may reasonably believe the person to have competence.

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

(4) Any other persons whose decision to take or not to take action, or any failure to take any action, as a director, unless the party asserting liability in a proceeding establishes both of the following:

(a) Action not in good faith.

(b) That the director did not reasonably believe to be in the best interests of the corporation or otherwise to be in the best interests of the corporation, or as to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances.

(5) A director is entitled to rely, in accordance with Subsection E of this Section, on any of the following:

(a) Advice of counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters within the particular person’s professional or business competence or under this Chapter the person to have competence.

(b) The harm suffered was proximately caused by the director’s challenged conduct.

(6) A director is entitled to rely, in accordance with Subsection E of this Section, on any of the following:

(a) The challenged conduct consisted or was the result of one of the following:

(1) An unlawful or illegal act.

(2) A breach of fiduciary duty.

(3) A decision that the director did not reasonably believe to be in the best interests of the corporation or otherwise to be in the best interests of the corporation.

(4) A decision that the director did not reasonably believe to be fair in light of the best interests of the corporation or other interests involved.

(b) Reckless disregard for the corporation’s or its shareholders’ best interests.

(c) Breach of a duty to preserve corporate assets.

(d) The party seeking to hold the director liable for other money payment under another provision of this Chapter, such as the provisions governing the consequences of an unlawful distribution under R.S. 12:1-833 or a transactional interest under R.S. 12:1-861, shall also have whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(7) A director is entitled to rely, in accordance with Subsection E of this Section, on any of the following:

(a) Advice of counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters within the particular person’s professional or business competence or under this Chapter the person to have competence.

(b) The harm suffered was proximately caused by the director’s challenged conduct.

(c) A director is entitled to rely, in accordance with Subsection E of this Section, on any of the following:

(a) Advice of counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters within the particular person’s professional or business competence or under this Chapter the person to have competence.

(b) The party seeking to hold the director liable for other money payment under another provision of this Chapter, such as the provisions governing the consequences of an unlawful distribution under R.S. 12:1-833 or a transactional interest under R.S. 12:1-861, shall also have whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

C. Nothing contained in this Section shall be construed to do any of the following:

(1) Alter the fact or lack of liability of a director under another provision of this Chapter, such as the provisions governing the consequences of an unlawful distribution under R.S. 12:1-833 or a transactional interest under R.S. 12:1-861.

(2) Alter the fact or lack of liability of a director under another provision of this Chapter, such as the provisions governing the consequences of an unlawful distribution under R.S. 12:1-833 or a transactional interest under R.S. 12:1-861.

Source: MBCA §8.31.

Comments - 2014 Revision

(a) The Model Act language in Subparagraph (A)(1)(a) was modified to substitute the debit. In subsection (B), R.S. 12:1-830, for the reference to the Model Act’s optional exculpation provision. Under the Model Act, exculpation is an opt-in provision that may be placed in the articles of incorporation. Under the Model Act, exculpation is provided by statute except to the extent that it is rejected or limited by the articles of incorporation.
If R.S. 12:1-832 protects a director or officer against liability for the conduct that is being challenged in a lawsuit, that Section and Subparagraph (A) of that Section preclude the imposition of liability regardless of whether the plaintiff can satisfy the remainder of the requirements imposed by R.S. 12:1-831.

§1-832. Protection against monetary liability

A. Except to the extent that the Arthur Andersen Inc. incorporation limit or reject the protection against liability provided by this Section, no director or officer shall be liable to the corporation or its shareholders for money damages for any action taken, or any failure to take action, as a director or officer, except for one of the following:

1. A breach of the director’s or officer’s duty of loyalty to the corporation or its shareholders.

2. An intentional infliction of harm on the corporation or the shareholders.


4. An intentional violation of criminal law.

5. The executive officer for conduct described in Paragraphs (A)(1) through (4) of this Section may not be limited or eliminated, but the corporation may purchase insurance against that liability as provided in R.S. 12:1-837.

C. For purposes of this Section, the duty of loyalty does not include any duty to act with any degree of care in the exercise of the director's or officer’s responsibilities to the corporation or its shareholders.

Comments - 2014 Revision

Paragraph 2.04(b)(4) of the Model Act authorizes the excusal of directors against liability to the corporation or its shareholders through an optional provision in a corporation’s articles of incorporation. Because articles that are prepared with the benefit of legal advice nearly always provide excusal “to the fullest extent allowed by law,” this Section retains that language. If the corporation prefers not to have automatic excusal of that type, it may adopt a different rule. To prevent unfair surprise, R.S. 12:1-202(A) requires the articles of incorporation to state whether the corporation accepts, rejects or limits the default rule under this Section.

If the articles of incorporation contain a statement to the effect that the protection against liability provided by Subsection A of this Section is rejected, the liability of a director or officer is not affected by Subsection A of this Section. If the articles of incorporation contain a limitation on the protection against liability provided by Subsection A of this Section, the limitation applies even if the articles of incorporation do not otherwise say that they limit the protection. If the articles of incorporation contain a statement to the effect that they limit the protection against liability provided by Subsection A of this Section, but fail to state the nature of the limitation, it is presumed that the limitation will be of the same nature as that provided by Subsection A of this Section applies without limitation.

The limitations on excusal provided by this Section are the same as those provided by Model Act Section 2.02(b)(4), with one exception. This Section prohibits the excusal of a director from liability for damages caused by the director's breaching the duty of loyalty owed by the director to the corporation or its shareholders. The comparable Model Act provision is narrower, prohibiting excusal only for the amount of an improper financial benefit received by a director. The broader exception was adopted in Louisiana to avoid the exculpation of a director who caused more harm to the corporation through disloyalty than the director received in the form of a personal financial benefit. Under the broader Louisiana exception, for example, a director who received a kickback of only a portion of a corporate overpayment for the entire amount of the overpayment, not merely the amount of the kickback.

This Section does not provide or permit the excusal of a director or officer from liability for disloyalty. But it does provide protection against liability for carelessness. Delaware courts have suggested that some egregiously forms of carelessness may be tantamount to disloyalty, and so be nonexcusable under a “breach of loyalty” exception like the one in this Section. See, e.g., Stone v. Ritter, 911 A.2d 362 (Del. 2006). Subsection C of this Section rejects that view. No level of carelessness may be treated as a breach of the duty of loyalty for purposes of the default form of excusal provided by this Section. If shareholders wish to adopt the Delaware approach, or any other limitation on the excusal provided by this Section, they may do so by adding appropriate language to the articles of incorporation.

§1-833. Directors’ liability for unlawful distributions

A. A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to R.S. 12:1-640(A) or 1409(A) is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating R.S. 12:1-640(A) or 1409(A), if the party asserting liability establishes that when taking the action the director did not comply with R.S. 12:1-830.

B. A director held liable under Subsection A of this Section for an unlawful distribution is entitled to both of the following:

1. Contribution from every other director who could be held liable under Subsection A of this Section for the unlawful distribution.

2. Indemnity from each shareholder, for the pro-rata portion of the amount of the distribution that was in excess of those permitted by law.

C. A proceeding to enforce the liability of a director under Subsection A of this Section is barred unless it is commenced within two years after of one of the following:

(a) The date on which the effect of the distribution was measured under R.S. 12:1-640(E) or (G).

(b) The date on which the violation of R.S. 12:1-640(A) occurred as the consequence of disregard of a restriction in the articles of incorporation.

(c) The date on which the distribution of assets to shareholders under R.S. 12:1-1409(A) was made.

D. The time limits provided in Subsection C of this Section are peremptive.

Source: MBCA §8.33.

Comments - 2014 Revision

(a) Model Act Subsection (b)(2) is modified in this Section to make it consistent with the rule in R.S. 12:1-622(C), also added, that makes a shareholder liable without fault to return the amount of an unlawful distribution in whole or in part.

(b) The Model Act reference to recoupment was replaced in this Section by a reference to indemnity, to retain the prior law on the subject.

C. The Section adds a new Subsection D to the Model Act to make it clear that the time periods provided in Subsection C of this Section are peremptive.

SUBPART D. OFFICERS

§1-840. Officers

A. A corporation shall have a secretary and such other officers as described in its bylaws or appointed by the board of directors in a manner not inconsistent with any bylaws.

B. The board of directors may elect individuals to fill one or more offices of the corporation for the full term of office, and to reelect or appoint one or more officers if authorized by the board of directors.

C. The secretary shall have the authority and responsibility for preparing the minutes of the directors’ and shareholders’ meetings and for maintaining the records of the corporation required to be kept under R.S. 12:1-1601(A) and 1-1601(E).

D. The same individual may simultaneously hold more than one office in a corporation.

Source: MBCA §8.40.

Comments - 2014 Version

(a) The Model Act does not require the appointment of an officer called the “secretary,” but it does require the corporation to appoint an officer who is given a secretary’s responsibilities. See Model Act Section 8.40(c). The Model Act uses the term “secretary” as a defined term that means the person who is given a secretary’s usual recordkeeping responsibilities under Section 7.40(c) (see Model Act Section 1.40(20)). It also names the secretary in several places as the appropriate recipient on the corporation’s behalf of some legally-relevant notification. See, e.g., Sections 7.03 (shareholder demand for shareholder meeting), 7.04 (delivery of shareholder written consents), 8.07 (resignation of a director), and 8.63 (notice of a director’s conflicting interest).

(b) This Section requires a corporation to appoint an officer with the title “secretary” and then gives to that named officer the responsibility for preparing the corporation’s minutes and for maintaining and authenticating the corporation’s records as provided in R.S. 12:1-840(C). The required use of the usual “secretary” terminology is designed to facilitate the efforts that corporations and third parties (such as banks) have been required to make in understanding the corporation’s preferences concerning officer titles, to contact the person who has the authority provided by this Section to the corporation’s secretary. The person designated as secretary may hold other offices and titles in and out of this Corporation.

(c) The reference to “the” bylaws in Subsection A of this Section changes to “any” bylaws, to reflect the optional nature of bylaws under this Chapter. Nevertheless, if the corporation has adopted bylaws concerning the functions of officers, the board of directors must comply with those bylaws. Although the board of directors ordinarily has the power to adopt, amend and repeal bylaws, the shareholders of the corporation do have the power under R.S. 12:1-1020(B) to adopt a bylaw that may not be amended or repealed by the board of directors. Moreover, even if the board of directors determines that an amendment of the bylaw is necessary, the board must comply with the bylaw until the amendment or repeal takes effect.

§1-841. Functions of officers

In addition to the corporation’s authority under R.S. 12:1-840, each officer has the authority and shall perform the functions set forth in the bylaws or, to the extent consistent with any bylaws, the authority and functions prescribed by the board of directors or by direction of an officer authorized by the board of directors.

Source: MBCA §8.41.

Comment - 2014 Revision

This Section modifies the Model Act Section in three respects: (1) it adds a reference to the corporation’s authority to the effect that bylaws or by the board of directors or by an officer authorized by the board of directors may prescribe the authority and functions of other officers;}
§1-842. Standards of conduct for officers

A. An officer, when performing in such capacity, has the duty to act in all of the following manners:

(1) In good faith.

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

B. (Reserved.)

C. [Reserved.]

D. Discharging his or her duties, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on either of the following:

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

(2) Opinions, reports, statements, including financial statements and other financial data, prepared or presented by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented or by legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters within the particular person's professional or expert competence or as to which the particular person merits confidence.

E. Whether an officer who does not comply with this Section shall have which the particular person merits confidence.

F. Whether certain information, and of any actual or probable material violation of law or breach of duty to the corporation that the officer believes has occurred or is likely to occur. This Section deletes Model Act Subsection (b) as being ill-suited to many of the informally-managed, closely-held corporations that are common in Louisiana corporate practice. The deletion of Subsection (b) does not mean that an officer never owes the duties described in Subsection (b), but rather that the extent of an officer's duty to inform others of information in the officer's possession should be judged based on the standards stated in Subsection (b).

Source: MBCA §8.42.

Comment - 2014 Revision

Model Act Subsection (b) states that an officer's duty includes the obligation to inform the officer's superiors or other appropriate persons of certain information, and of any actual or probable material violation of law or breach of duty to the corporation that the officer believes has occurred or is likely to occur. This Section deletes Model Act Subsection (b) as being ill-suited to many of the informally-managed, closely-held corporations that are common in Louisiana corporate practice. The deletion of Subsection (b) does not mean that an officer never owes the duties described in Subsection (b), but rather that the extent of an officer's duty to inform others of information in the officer's possession should be judged based on the standards stated in Subsection (b).

§1-843. 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 effective unless the notice specifies a later effective time. If a resignation is made effective at a later time and the board or the appointing officer accepts the future effective time, the board or the appointing officer may fill the pending vacancy before the effective time if the board or the appointing officer provides that the successor does not take office until the effective time.

B. An officer may be removed at any time with or without cause by any of the following:

(1) The board of directors.

(2) The appointing officer, unless the bylaws or the board of directors provide otherwise.

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

C. In this Section, “appointing officer” means the officer, including any successor to that officer, who appointed the officer resigning or being removed.

Source: MBCA §8.43.

$1-844. 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.

Source: MBCA §8.44.

SUBPART E. INDEMNIFICATION AND ADVANCE FOR EXPENSES

§1-850. Subpart definitions

In this Subpart, the following meanings shall apply:

(1) “Corporation” includes any domestic or foreign predecessor entity of a corporation.

(2) “Director” or “officer” means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, manager, partner, trustee, employee, or agent of another entity of or for the corporation. A director or officer is considered to be serving an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan.

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

(4) “Official capacity” means, when used with respect to a director, the office of director in a corporation. “Official capacity” means, when used with respect to an officer, as contemplated in R.S. 12: 1-834, the office in a capacity that is similar to the capacity of an officer in a corporation. “Official capacity” does not include litigation for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan, or other entity.

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

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

Source: MBCA §8.50.

Comment - 2014 Revision

The Model Act language in Paragraph (A)(2) of this Section was modified to add a reference to the exemption provided by R.S. 12:1-832. Under this Section, a corporation may indemnify a director for liability that arises from conduct for which the director is not liable under R.S. 12:1-832. Of course, if the director is not liable under R.S. 12:1-832, the corporation may indemnify the director for the expenses incurred in connection with the proceeding.

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

Source: MBCA §8.51.

$1-852. Mandatory indemnification

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

Source: MBCA §8.52.

Comment - 2014 Revision

This Chapter, like the Model Act, covers the indemnification of directors separately from the indemnification of officers because a decision by directors concerning their own indemnification poses conflicting interest problems that are not present in the case of non-director officers. This Section provides for mandatory indemnification only of directors simply because it is one of the director-indemnity provisions. However, officers actually are covered by one of the officer-indemnity provisions, R.S. 12:1-856(C), which provides that an officer is entitled, among other things, to mandatory indemnification to the same extent as a director.

Source: MBCA §8.53.

Comment - 2014 Revision

$1-854. Advance for expenses

A. A corporation may, before final disposition of a proceeding, advance for expenses. The corporation may advance the reasonable expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a member of the board of directors if the director delivers to the corporation both of the following:

(1) A written affirmation of the director's good faith belief that the proceeding is necessary and proper, and that the relief to be sought is proper and that the proceedings involves, or is threatened to involve, a claim, issue, or matter in which the director has a material interest which is different from the corporation.

(2) A written statement that, if the director prevails in the proceeding, the director will reimburse the corporation for the expenses incurred in connection with the proceeding if it is determined that the director did not meet the relevant standard of conduct described in this Section.

B. Unless ordered by a court under R.S. 12:1-854(A)(3), a corporation may not indemnify a director in connection with either of the following:

(1) A proceeding by or in the right of the corporation, except for expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct described in Subsection A of this Section.

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

Source: MBCA §8.54.

Comment - 2014 Revision

The Model Act language in Paragraph (A)(2) of this Section was modified to add a reference to the exemption provided by R.S. 12:1-832. Under this Section, a corporation may indemnify a director for liability that arises from conduct for which the director is not liable under R.S. 12:1-832. Of course, if the director is not liable under R.S. 12:1-832, the corporation may indemnify the director for the expenses incurred in connection with the proceeding.

The Model Act language in Paragraph (A)(2) of this Section was modified to add a reference to the exemption provided by R.S. 12:1-832. Under this Section, a corporation may indemnify a director for liability that arises from conduct for which the director is not liable under R.S. 12:1-832. Of course, if the director is not liable under R.S. 12:1-832, the corporation may indemnify the director for the expenses incurred in connection with the proceeding.

(1) A proceeding by or in the right of the corporation, except for expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct described in Subsection A of this Section.

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

Source: MBCA §8.54.
(2) A written undertaking of the director to repay any funds advanced if the director is not entitled to mandatory indemnification under R.S. 12:1-832 and it is ultimately determined under R.S. 12:1-851 that the director has not met the relevant standard of conduct described in R.S. 12:1-851.

B. The undertaking required by Paragraph (A)(2) of this Section shall be an unconditional obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

C. Authorization under this Section shall be made by one of the following:

(1) By the board of directors in either of the following manners:
   (a) If there are two or more qualified directors, by a majority vote of all the qualified directors, a majority of whom shall have such purpose constitute a quorum, or by a majority of the members of a committee of two or more qualified directors appointed by such a vote.
   (b) If there are fewer than two qualified directors, by the vote necessary for action by the board in accordance with R.S. 12:1-832(C), in which case the vote of the member of the board having the majority of the shares voting for or against the proposal shall constitute the required vote.

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

Source: MBCA §8.53.

Comment - 2014 Revision

The Model Act language in Paragraph (A)(1) of this Section was modified to substitute the reference to R.S. 12:1-832 for the Model Act's optional exculpatory provision.

§1-854. Court-ordered indemnification and advance for expenses

A. A director who is a party to a proceeding because he or she is a director or officer of the corporation, a director or officer of a subsidiary or other entity, or a special legal counsel, authorization of indemnification shall be made by one of the following:

(1) If there are two or more qualified directors, by a majority vote of all the qualified directors, a majority of whom shall have such purpose constitute a quorum, or by a majority of the members of a committee of two or more qualified directors appointed by such a vote.

(2) By special legal counsel selected according to the following: (a) elected to serve as counsel by the board of directors, in which case a majority of the directors, a majority of whom shall have such purpose constitute a quorum, or by a majority of the members of a committee of two or more qualified directors appointed by such a vote.

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

C. Authorization under this Section shall be made in the same manner as the determination that indemnification is permissible except that if there are fewer than two qualified directors, or if the determination is made by special legal counsel, authorization of indemnification shall be made by the following:

(1) By the shareholders, except that shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the authorization.

Source: MBCA §8.55.

§1-856. Indemnification of officers

A. A breach of the officer's duty of loyalty to the corporation or its shareholders.

B. An intentional infliction of harm on the corporation or the shareholders.

C. An intentional violation of criminal law.

§1-857. Insurance

A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by the individual in that capacity or arising from his or her status as a director or officer of the corporation, whether or not the individual could be held personally liable under R.S. 12:1-832 and whether or not the corporation would have power to indemnify or advance expenses to the individual against the same liability under this Subpart.

Source: MBCA §8.57.

Comment - 2014 Revision

(a) A reference to R.S. 12:1-832 was added to the Model Act language to permit the corporation to purchase insurance against liability even if that liability could not be indemnified under R.S. 12:1-832. The rationale for allowing a corporation to purchase insurance to cover liability that it could not exculpate is the same as that for insuring against a liability that could not be indemnified. The insurer will provide an outside source of funds to cover the liability, and will have the incentive to exclude from its coverage types of non-accidental risks of loss that pose serious risks of moral hazard.

(b) Under former R.S. 12:833(F), a corporation could “self insure” liability that could not be indemnified. This Section has repealed that provision and allows a corporation to maintain a self-insurance plan, licensed and regulated by the appropriate jurisdictions, even if they are affiliated companies. And self-insurance may still be used to fund a corporation's indemnity and advance-of-expense payments. But self-insurance, not purchased from a regulated insurance company, may not

THE ADVOCATE

* As it appears in the enrolled bill

CODING: Words in square type are deletions from existing law; words underscored (House Bills) and boldfaced (Senate Bills) are additions.
be used to avoid the limitations imposed by this Subpart on indemnification and exculpation.

§1-852. Variation by corporate action: application of Subpart

A. A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to the proceeding to provide indemnification in accordance with R.S. 12:1-853 or advance funds to pay or reimburse expenses in accordance with R.S. 12:1-853. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in R.S. 12:1-853(C) and 1-855(C). Any such provision that obligates the corporation to indemnify or to advance expenses for conduct that is covered by R.S. 12:1-832 shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with R.S. 12:1-853 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

B. A right of indemnification or to advance for expenses created by this Subpart or under Subsection A of this Section and in effect at the time of an act or omission shall not be eliminated or impaired with respect to such act or omission by an amendment of the articles of incorporation or bylaws or a resolution of the directors or shareholders, adopted after the occurrence of such act or omission, unless in the case of a right created under Subsection A of this Section, the provision creating such right and in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such act or omission has occurred.

C. Any provision pursuant to Subsection A of this Section shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or in a resolution of the board of directors or shareholders, adopted after the occurrence of such act or omission, unless in the case of a right created under Subsection A of this Section, the provision creating such right and in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such act or omission has occurred.

D. This Subpart does not limit a corporation's power to pay or reimburse expenses for or indemnify a director or director's predecessor only as permitted by this Subpart.

E. This Subpart does not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

Source: MBCA §8.58.

Comment - 2014 Revision

Under R.S. 12:1-851(A)(1), a corporation may indemnify any liability that may be made the subject of exoneration under R.S. 12:1-832. As a result, under this Section, a corporation that obligates itself in advance to indemnify a director or officer “to the fullest extent permitted by law” also obligates itself both to indemnify and to advance expenses for any liability that is exculpated under R.S. 12:1-832. However, unlike R.S. 12:1-832 itself, which provides indemnification or advance for expenses in the articles of incorporation, bylaws, or in a resolution of the board of directors or shareholders, adopted after the occurrence of such act or omission, unless in the case of a right created under Subsection A of this Section, the provision creating such right and in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such act or omission has occurred.

A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by this Subpart.

Source: MBCA §8.59.

SUBPART F. DIRECTORS' CONFLICTING INTEREST TRANSACTIONS

§1-860. Subpart definitions

In this Subpart, the following meanings shall apply:

(1) “Director’s conflicting interest transaction” means any of the following:

(a) A transaction effected or proposed to be effected by the corporation, or by an entity controlled by the corporation, to which, at the relevant time, the director had knowledge and a material financial interest known to the director.

(b) A transaction effected or proposed to be effected by the corporation, or by an entity controlled by the corporation, respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

(2) “Control”, including the term “controlled by”, means either of the following:

(a) Having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract, or otherwise.

(b) Subject to a majority of the risk of loss from the entity’s activities or entitled to receive a majority of the entity’s residual returns.

(3) “Relevant time” means the time at which directors’ action respecting the transaction is taken in compliance with R.S. 12:1-862, or if the transaction is not brought before the board of directors of the corporation or its committee for action, the time at which the transaction was consummated. The corporation or an entity controlled by the corporation, becomes legally obligated to consummate the transaction.

(4) “Material financial interest” means a financial interest in a transaction that could reasonably be expected to impair the objectivity of the director’s judgment when participating in action on the authorization of the transaction.

(5) “Related person” means, at the relevant time, one of the following:

(a) The director's spouse.

(b) A child, stepchild, grandchild, parent, stepparent, grandparent, sibling, stepibling, half sibling, aunt, uncle, niece or nephew, or spouse of any thereof of the director or of the director's spouse.

(c) An individual living in the same home as the director.

(d) An entity other than the corporation or an entity controlled by the corporation, controlled by the director or any person specified above in this Paragraph.

(e) A domestic or foreign business or nonprofit corporation, other than the corporation or an entity controlled by the corporation, of which the director is a director, a domestic or foreign unincorporated entity of which the director is a general partner or a member of the governing body, or a domestic or foreign individual, trust, or estate for whom or of which the director is a trustee, guardian, personal representative, or like fiduciary.

(f) A person that is, or an entity that is controlled by, an employer of the director.

(g) A person with whom the director has a material relationship.

(6) “Fair” to the “company” means, for purposes of R.S. 12:1-861(P)(3), that the transaction as a whole is as beneficial to the corporation, taking into appropriate account whether it was fair in terms of the director’s dealings with the corporation, and comparable to what might have been obtainable in an arm’s length transaction, given the consideration paid or received by the corporation.

(7) “Required disclosure” means disclosure of the existence and nature of the director’s conflicting interest, and all facts known to the director respecting the subject matter of the transaction that a director free of such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

Source: MBCA §8.60.

Comments - 2014 Revision

(a) This Section modifies the Model Act definition of “related person” in Paragraph 8.60(3) to add as a new Subparagraph (5)(g) of this Section the phrase, “person with whom the director has a material relationship.” The purpose of the added language is to broaden the description of the persons whose financial interests in a transaction would cause the transaction to be treated as a conflicting interest transaction for a director.

(b) The Model Act definition of “related persons” does capture the more common kinds of relationships, such as those among spouses and immediate family members, that would cause a reasonable person to perceive a serious conflict of interest on the part of a director. But left out of the list are other types of relationships that one might think of as being related. For example, the director was having an adulterous affair, that would cause a reasonable person to question the objectivity of the director’s judgment in approving a transaction. Those types of relationships would be covered by the reference to “related persons” in R.S. 12:1-143(B)(1). The reference in Subsection A of this Section to a “material relationship,” which is defined in R.S. 12:1-143 to mean any form of relationship “that would reasonably be expected to impair the objectivity of the director’s judgment when participating in the action to be taken.” R.S. 12:1-143(B)(1).

(c) This Section also adds the phrase “at the relevant time” to the introductory clause in R.S. 12:1-860(5). The relationships listed in R.S. 12:1-860(5) are to be determined as of the “relevant time” as defined in R.S. 12:1-860(3). A transaction would not fit the definition of a director’s conflicting interest transaction if the listed relationship arose only after the relevant time, or had been terminated before the relevant time.

§1-861. Judicial action

A. A transaction effected or proposed to be effected by the corporation, or by an entity controlled by the corporation, may not be the subject of any form of relief or requiem or any award of damages or other relief against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, on the ground that the director has an interest respecting the transaction, if it is not a director’s conflicting interest transaction.

B. A director’s conflicting interest transaction may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, on the ground that the director has an interest respecting the transaction, if any of the following conditions are satisfied:

(1) Directors’ action respecting the transaction was taken in compliance with R.S. 12:1-862 at any time.
Shareholders' action respecting the transaction was taken in compliance with R.S. 12:1-866 at any time.

The transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation.

Source: MBCA §8.61.

Comments - 2014 Revision

(a) As the Model Act Official Comments explain, the current Model Act protects a transaction between a corporation and a director from any form of judicial remedy based on the director's conflicting interest in the transaction unless the transaction first fits the statutory definition of a "director's conflicting interest transaction" and then, if it does so, also fails to satisfy any of the statutory grounds for upholding the transaction against any challenge that is based on the conflicting interest.

The current approach differs sharply from that taken in earlier versions of the Model Act (those before 1989) and under prior Louisiana law. Under the earlier approach, compliance with the statutory rules concerning what were then called self-dealing transactions did not wholly protect a transaction from a challenge based on the conflicting interest, it merely prevented application of the early corporation law rule that a self-dealing transaction was automatically voidable by the corporation without regard to the fairness of the transaction. See former R.S. 12:9.

(b) This Section adopts the Model Act approach. This Section differs from the Model Act in one respect, however. It adds a residual category of relationships, called a "material relationship," to the definition of "related person" in R.S. 12:1-860(5). The effect of that addition is to broaden the types of relationships between a director and another person that could cause the other person's financial interest in the transaction to be treated as a conflicting interest in the transaction on the part of the director.

§1-862. Directors' action respecting a director's conflicting interest transaction is effective for purposes of R.S. 12:1-861(B)(1) if the transaction has been authorized by the affirmative vote of a majority, but no fewer than two, of the qualified directors who voted on the transaction, after required disclosure to the board of directors or a committee, in which action directors were appointed by the affirmative vote of a majority of the qualified directors, or after modified disclosure in compliance with Subsection B of this Section, provided that both of the following criteria are satisfied:

1. The qualified directors have deliberated and voted outside the presence of an interested director.
2. Where the action has been taken by a committee, all members of the committee were qualified directors, and either of the following occurs:
   a. All the qualified directors on the board of directors or the members of the committee were appointed by the affirmative vote of a majority of the qualified directors.
   b. Notwithstanding Subsection A of this Section, when a transaction is a director's conflicting interest transaction only because a related person described in R.S. 12:1-860(5)(a), (1), (2), or (3) is a party to or has a material financial interest in the transaction, the conflicted director is not obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule, provided that the conflicted director discloses to the qualified directors voting on the transaction all of the following:
      i. All information required to be disclosed that is not so violative.
      ii. The existence and nature of the director's conflicting interest.
      iii. The nature of the conflicted director's duty not to disclose the confidential information.

C. A majority, but no fewer than two, of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this Section.

D. Where the action has been taken by a committee, all members of the committee were qualified directors, or after modified disclosure in compliance with Subsection B of this Section, provided that both of the following criteria are satisfied:

1. The qualified directors have deliberated and voted outside the presence of an interested director.
2. Where the action has been taken by a committee, all members of the committee were qualified directors, and either of the following occurs:
   a. All the qualified directors on the board of directors or the members of the committee were appointed by the affirmative vote of a majority of the qualified directors.
   b. Notwithstanding Subsection A of this Section, when a transaction is a director's conflicting interest transaction only because a related person described in R.S. 12:1-860(5)(a), (1), (2), or (3) is a party to or has a material financial interest in the transaction, the conflicted director is not obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule, provided that the conflicted director discloses to the qualified directors voting on the transaction all of the following:
      i. All information required to be disclosed that is not so violative.
      ii. The existence and nature of the director's conflicting interest.
      iii. The nature of the conflicted director's duty not to disclose the confidential information.

E. A director's taking advantage, directly or indirectly, of a business opportunity may not be the subject of any form of relief, or give rise to an award of damages or other sanctions against the director, in a proceeding brought by or in the right of the corporation, or that the corporation might have first been offered to the corporation, if before becoming legally obligated respecting the opportunity the director brings it to the attention of the corporation, and either of the following occur:

1. The act of the qualified directors of issuing the opportunity is taken in compliance with the procedures set forth in R.S. 12:1-862, as if the decision being made concerned a director's conflicting interest transaction.
2. The act of the director's action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in R.S. 12:1-863, as if the decision being made concerned a director's conflicting interest transaction, except that, other than making "required disclosure" as defined in R.S. 12:1-860, in each case the director shall have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity that are then known to the director.

F. In any proceeding seeking equitable relief or other remedies based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ the procedures described in subsection A of this Section before taking advantage of the opportunity shall not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation.

Source: MBCA §8.63.

SUBPART G. BUSINESS OPPORTUNITIES

§1-870. Business opportunities

A. A director's taking advantage, directly or indirectly, of a business opportunity may not be the subject of any form of relief, or give rise to an award of damages or other sanctions against the director, in a proceeding brought by or in the right of the corporation, or that the corporation might have first been offered to the corporation, if before becoming legally obligated respecting the opportunity the director brings it to the attention of the corporation, and either of the following occur:

1. The act of the qualified directors of issuing the opportunity is taken in compliance with the procedures set forth in R.S. 12:1-862, as if the decision being made concerned a director's conflicting interest transaction.
2. The act of the director's action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in R.S. 12:1-863, as if the decision being made concerned a director's conflicting interest transaction, except that, other than making "required disclosure" as defined in R.S. 12:1-860, in each case the director shall have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity that are then known to the director.

B. In any proceeding seeking equitable relief or other remedies based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ the procedures described in subsection A of this Section before taking advantage of the opportunity shall not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation.

Source: MBCA §8.70.

PART 9. DOMESTICATION AND CONVERSION

SUBPART A. PRELIMINARY PROVISIONS

§1-901. Excluded transactions

A. This Part may not be used to effect a transaction that causes an eligible entity or domestic or foreign corporation to hold any right, privilege, license, or charter or carry on a business or engage in a business enterprise.

B. Property received through a conditional donation, grant, or devise, or held in trust or for charitable purposes pursuant to the laws of this state by a person to a transaction under this Part shall not be diverted by that transaction from the objects for which it was donated, granted, or devised, except to the extent authorized by a court judgment based upon principles of cy pres or approximation.

C. A person who is a member, interest holder, or an affiliate of an eligible entity with a charitable purpose may not receive a direct or indirect financial benefit in connection with a transaction under this Part.

D. The fact that the eligible entity is a party unless the person is itself an eligible entity with a charitable purpose. This Subsection does not apply to the receipt or use of reasonable compensation for services rendered.

Source: MBCA §9.01.

Comments - 2014 Revision

(a) Louisiana law does not permit the use of an ordinary business corporation for the operation of an insurance company, bank or other financial institution. Separate statutes govern the creation and operation of those forms of corporation. A domestication by a foreign corporation or eligible entity to hold any right or license under the laws of this state that the corporation or entity is ineligible to hold.

Source: MBCA §8.61.
§1-920. Domestication

A. A foreign business corporation may become a domestic business corporation if the domestication is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be approved by the adoption by the corporation of a plan of domestication in the manner provided in this Subpart.

B. The plan of domestication must include all of the following:

1. A statement of the jurisdiction in which the corporation is to be domesticated.

2. The manner and basis of reclassifying the shares of the corporation following its domestication into shares or other securities, obligations, rights to acquire shares or other securities, or into cash, other property, or any combination of the foregoing. Any desired amendments to the articles of incorporation of the corporation following its domestication.

3. Any required or permitted amendments to the articles of incorporation of the corporation following its domestication.

4. Any desired amendments to the articles of incorporation of the corporation following its domestication.

D. The plan of domestication may also include a provision that the plan may not be adopted prior to filing the document required by the laws of this state or the other jurisdiction to consummate the domestication, except that such provision shall not be applicable to a domestication of the corporation if the plan is not presented to the shareholders for their approval.

E. Terms of a plan of domestication may be made dependent upon facts objectively ascertainable outside the plan in accordance with R.S. 12:1-120(I).

F. If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a domestic business corporation before January 1, 2015, containing provisions applicable to a merger or other combination of the corporation and the document does not refer to a domestication of the corporation, the provision shall be deemed to apply to a domestication of the corporation until such time as the provision is amended subsequent to that date.

Source: MBCA §9.20.

§1-921. Action on a plan of domestication

In the case of a domestication of a domestic business corporation in a foreign jurisdiction, all of the following shall apply:

1. The plan of domestication must be adopted by the board of directors.

2. After adopting the plan of domestication, the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation or R.S. 12:1-826 applies. If either the board of directors makes such a determination or R.S. 12:1-826 applies, the board of directors must transmit to the shareholders the basis for such proceeding.

3. The board of directors may condition its submission of the plan of domestication to the shareholders on any basis.

4. If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan of domestication is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the articles of incorporation as they will be in effect immediately after the domestication.

5. Unless the articles of incorporation, or the board of directors acting pursuant to Paragraph (3) of this Section, requires a greater vote, approval of the plan of domestication requires the affirmative vote of the votes entitled to be cast on the plan, and if any class or series of shares entitled to vote as a separate group on the plan, the approval of each such separate voting group by at least a majority of the votes entitled to be cast on the domestication by that voting group.


§1-922. Articles of domestication

A. After the domestication of a foreign business corporation has been authorized as required by the laws of the foreign jurisdiction, articles of domestication may be filed with the secretary of state or the other jurisdiction to effect the domestication of the corporation. The articles shall set forth all of the following:

1. The name of the corporation immediately before the filing of the articles of incorporation, and, if that name is unavailable for use in this state, or the name that the corporation proposes to assume

2. If the corporation was incorporated in a foreign jurisdiction, articles of incorporation and any other required or permitted amendments to the articles of incorporation of the corporation following its domestication.

3. The domestication was duly authorized as required by the laws of the jurisdiction in which the corporation was incorporated immediately before its domestication in this state.

4. The articles of incorporation shall contain all of the provisions that R.S. 12:1-202(A) requires to be set forth in articles of incorporation and any other desired provisions that R.S. 12:1-202(B) permits to be included in articles of incorporation, or shall have attached articles of incorporation. In either case, provisions that would not be included in restated articles of incorporation may be omitted.

5. The articles of incorporation shall be delivered to the secretary of state for filing, and shall take effect at the effective time provided in R.S. 12:1-123.

6. If the foreign corporation is authorized to transact business in this state under chapter 3 of title 12, its corporate authority shall be cancelled automatically on the effective date of its domestication.

7. Within thirty days after the date that articles of domestication take effect, a certificate of the articles of incorporation shall be filed in the records of the secretary of state for each parish in this state in which the corporation owns immovable property.

Source: MBCA §9.22.

§1-923. Surrender of charter upon domestication

A. Whenever a domestic business corporation has adopted and approved, in the manner required by this Subpart, a plan of domestication providing for the corporation to be domesticated in a foreign jurisdiction, articles of charter surrender shall be signed on behalf of the corporation by any officer or other duly authorized representative. The articles of charter surrender shall set forth all of the following:

1. The name of the corporation.

2. A statement that the articles of charter surrender are being filed in connection with the domestication of the corporation in a foreign jurisdiction.

3. That the domestication was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by this Subpart and the articles of incorporation.

4. A copy or summary of the articles of incorporation.

B. The articles of charter surrender shall be delivered by the corporation to the secretary of state for filing. The articles of charter surrender shall take effect at the effective time provided in R.S. 12:1-123.

-source: MBCA §9.23.

§1-924. Effect of domestication

A. When a domestication becomes effective, all of the following shall apply:

1. Subject to Paragraph (7) of this Section, separate voting by voting groups is required by each class or series of shares that are any of the following:

   a. To be reclassified under the plan of domestication into other securities, obligations, rights to acquire shares or other securities, or into cash, other property, or any combination of the foregoing.

   b. Entitled to vote as a separate group on a provision of the plan that, if contained in a proposed amendment to articles of incorporation, would require action by a separate group of the voting shareholders under R.S. 12:1-1004.

   c. Entitled under the articles of incorporation to vote as a voting group to approve an amendment of the articles.

   d. The articles of incorporation may expressly limit or eliminate the separate voting rights provided for in Subparagraph (3)(a) of this Section.

   e. If any provision of the articles of incorporation, bylaws or an agreement to which any of the directors or shareholders are parties, adopted or entered into before January 1, 2015, applies to a merger of the corporation, and that document does not refer to a domestication of the corporation, the provision applies to a domestication of the corporation until such time as the provision is amended subsequent to that date.

(1) The title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without any transfer, assignment, reversion, or impairment.

(2) The liabilities of the corporation remain the liabilities of the corporation.

(3) An action or proceeding pending against the corporation continues against the corporation as if the domestication had not occurred.

(4) The articles of domestication, or the articles of incorporation attached to the articles of domestication, constitute the articles of incorporation of a foreign corporation domesticating in this state.

(5) The shares of the corporation are reclassified into shares, other securities, obligations, and rights to acquire shares or other securities, or into cash or other property in accordance with the terms of the domestication, and the shareholders are entitled only to the rights provided by those terms and to any appraisal rights they may have under the organic law of the domesticating corporation.

(6) A corporation is deemed to be all of the following:
(a) Incorporated under and subject to the organic law of the domesticated corporation for all purposes.
(b) The same corporation without interruption as the domesticating corporation.
(c) Incorporated on the date the domesticating corporation was originally incorporated.

B. When a domestication of a domestic business corporation in a foreign jurisdiction becomes effective, the foreign business corporation remains both of the following:

(1) Obligated under the laws of this state to pay promptly the amount, if any, to which shareholders who exercise appraisal rights in connection with the domestication are entitled under Part 1 of this Chapter.

(2) Subject to the personal jurisdiction of the courts of this state in accordance with R.S. 13:3201, and to service of process in accordance with law.

C. The owner liability of a shareholder in a foreign corporation that is domesticated in this state shall be as follows:

(1) The domestication does not discharge any owner liability under the laws of the foreign jurisdiction to the extent any such owner liability arose before the effective time of the articles of domestication.

(2) The shareholder shall not have owner liability under the laws of the foreign jurisdiction for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of domestication.

(3) The provisions of the laws of the foreign jurisdiction shall continue to apply to the collection or discharge of any owner liability preserved by Paragraph (2) of this Section, as if the domestication had not occurred.

(4) The shareholder shall have whatever rights of contribution from other shareholders are provided by the laws of the foreign jurisdiction with respect to any owner liability preserved by Paragraph (C)(2) of this Section, as if the domestication had not occurred.

Source: MBCA §9.54.

Comments - 2014 Revision
(a) Model Act Subsection (b) uses legal fictons to state the legal obligations of an “outbound” domesticating corporation, deeming the corporation to “agree” to pay appraisal rights and to appoint the secretary of state as its agent for service of process in connection with appraisal rights suits. This Section modifies Subsection (b) to state the outbound corporation’s legal obligations in a more straightforward fashion. The corporation remains liable under the terms of this bill, whether or not any appraisal rights when due, but not for the purposes of this Section, as if the domestication had not occurred.

(b) This Section omits Model Act Subsection (d), which deals with transition issues associated with a shareholder’s becoming subject to owner liability as a result of a domestication of that corporation in Louisiana. Those issues cannot arise under this Act because this Act omits the Model Act provision under which owner liability, as defined in R.S. 12:1-140(15C), could be imposed. See Comment (a).


A. Unless otherwise provided in a plan of domestication of a domestic business corporation, after the plan has been adopted and approved as required by this Subpart, and at any time before the domestication has become effective, a domestication may be abandoned by the board of directors without action by the shareholders.

B. If a domestication is abandoned under Subsection A of this Section after articles of charter surrender have been filed with the secretary of state in accordance with the laws of this state, the domestication has been abandoned in accordance with this Section, signed by an officer or other duly authorized representative, shall be delivered to the secretary of state for filing prior to the effective date of the domestication. This statement shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

C. If the domestication of a foreign business corporation in this state is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication have been filed with the secretary of state, a statement that the domestication has been abandoned, signed by an officer or other duly authorized representative, shall be delivered to the secretary of state for filing. The statement shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

Source: MBCA §9.25.

SUBPART C. NONPROFIT CONVERSION

§1-930. Nonprofit conversion

A. A domestic business corporation may become a domestic nonprofit corporation pursuant to a plan of nonprofit conversion.

B. A domestic business corporation may become a foreign nonprofit corporation if the nonprofit conversion is permitted by the laws of the foreign jurisdiction.

C. A nonprofit conversion shall be approved by the adoption of a plan of nonprofit conversion, in the manner provided in this Subpart.

D. A nonprofit conversion shall include all of the following:
(1) The terms and conditions of the conversion.
(2) The manner and basis of reclassifying the shares of the corporation following its conversion, into memberships or securities, or into cash, other property, or any combination of the foregoing.
(3) Any desired amendments to the articles of incorporation of the corporation following its conversion.
(4) If the domestication is required by this Subpart, and at any time before the domestication becomes effective, it may be abandoned by the board of directors without the approval of the shareholders.

E. Terms of a plan of nonprofit conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with R.S. 12:1-120(B).

F. If any right, security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a nonprofit corporation, a statement of the jurisdiction in which the nonprofit corporation following its conversion.

§1-931. Action on a plan of nonprofit conversion

A. In the case of a conversion of a domestic business corporation to a domestic nonprofit corporation, a statement of the jurisdiction in which the corporation will be incorporated after the conversion.

B. The plan of nonprofit conversion may also include a provision that the plan may be amended prior to filing articles of nonprofit conversion, except as otherwise provided by law.

C. The provisions of the laws of the foreign jurisdiction do not apply to the collection or discharge of any owner liability preserved by Paragraph (2) of this Section.

D. The articles of incorporation as they will be in effect immediately following the conversion, except for changes permitted by R.S. 12:1-1005.

E. Any of the other terms or conditions of the plan if the change would adversely affect any of the property to be acquired, memberships or securities, or the cash or other property to be received by the shareholders under the plan.

F. E. Terms of a plan of nonprofit conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with R.S. 12:1-120(B).

G. If any right, security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a nonprofit corporation, a statement of the jurisdiction in which the nonprofit corporation.

H. If any provision of the articles of incorporation, bylaws, or an agreement to acquire memberships or securities, or the cash or other property to be received by the shareholders under the plan.

I. E. Terms of a plan of nonprofit conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with R.S. 12:1-120(B).

J. If any right, security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a nonprofit corporation, a statement of the jurisdiction in which the nonprofit corporation.

K. If any provision of the articles of incorporation, bylaws, or an agreement to acquire memberships or securities, or the cash or other property to be received by the shareholders under the plan.

L. E. Terms of a plan of nonprofit conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with R.S. 12:1-120(B).

M. If any right, security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a nonprofit corporation, a statement of the jurisdiction in which the nonprofit corporation.

N. If any provision of the articles of incorporation, bylaws, or an agreement to acquire memberships or securities, or the cash or other property to be received by the shareholders under the plan.

O. E. Terms of a plan of nonprofit conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with R.S. 12:1-120(B).

P. If any right, security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a nonprofit corporation, a statement of the jurisdiction in which the nonprofit corporation.

Q. If any provision of the articles of incorporation, bylaws, or an agreement to acquire memberships or securities, or the cash or other property to be received by the shareholders under the plan.

R. E. Terms of a plan of nonprofit conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with R.S. 12:1-120(B).

S. If any right, security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a nonprofit corporation, a statement of the jurisdiction in which the nonprofit corporation.

T. If any provision of the articles of incorporation, bylaws, or an agreement to acquire memberships or securities, or the cash or other property to be received by the shareholders under the plan.

U. E. Terms of a plan of nonprofit conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with R.S. 12:1-120(B).

V. If any right, security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a nonprofit corporation, a statement of the jurisdiction in which the nonprofit corporation.

W. If any provision of the articles of incorporation, bylaws, or an agreement to acquire memberships or securities, or the cash or other property to be received by the shareholders under the plan.

X. E. Terms of a plan of nonprofit conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with R.S. 12:1-120(B).

Y. If any right, security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a nonprofit corporation, a statement of the jurisdiction in which the nonprofit corporation.

Z. If any provision of the articles of incorporation, bylaws, or an agreement to acquire memberships or securities, or the cash or other property to be received by the shareholders under the plan.
to apply to a nonprofit conversion of the corporation until such time as the provision is amended subsequent to that date.

Source: MBCA §9.31.

Comments - 2014 Revision

This Section changes Model Act paragraph (5) to require that a plan of nonprofit conversion be approved by a majority of the votes entitled to be cast on the plan and, if applicable, a majority of the votes of each class or series of shares entitled to vote as a separate group on the plan. The Model Act would have permitted a plan to be approved by each voting group by a majority of votes cast at a meeting at which a majority quorum existed.

$1-932. Articles of nonprofit conversion

A. A plan of nonprofit conversion providing for the conversion of a domestic business corporation to a domestic nonprofit corporation has been adopted and approved as required by this Subpart, articles of nonprofit conversion shall be signed on behalf of the corporation by any officer or other duly authorized representative. The articles shall set forth both of the following:

(1) The name of the corporation immediately before the filing of the articles of nonprofit conversion and if that name does not satisfy the requirements of the Nonprofit Corporation Law, or the corporation desires to change its name in connection with the conversion, a name that satisfies the requirements of the Nonprofit Corporation Law.

(2) A statement that the plan of nonprofit conversion was duly approved by the shareholders in the manner required by this Subpart and the articles of incorporation.

B. The articles of nonprofit conversion shall either contain all of the provisions that the Nonprofit Corporation Law requires to be set forth in articles of incorporation of a domestic nonprofit corporation and any other desired provisions permitted by the Nonprofit Corporation Law, or shall have been approved at a meeting of the shareholders of the domestic or foreign nonprofit corporation that satisfies the requirements of the Nonprofit Corporation Law. In either case, provisions that would not be required to be included in restated articles of incorporation of a domestic nonprofit corporation may be omitted.

C. The articles of nonprofit conversion shall be delivered to the secretary of state for filing, and shall take effect at the effective time provided in R.S. 12:1-123.

Source: MBCA §9.32.

$1-933. Articles of charter upon foreign nonprofit conversion

1. A plan of nonprofit conversion under foreign nonprofit conversion

A. Whenever a domestic business corporation has adopted and approved, in the manner required by this Subpart, a plan of nonprofit conversion providing for the corporation to be converted to a foreign nonprofit corporation, articles of charter surrender shall be signed on behalf of the corporation by any officer or other duly authorized representative. The articles of charter surrender shall set forth all of the following:

(1) The name of the corporation.

(2) A statement that the articles of charter surrender are being filed in connection with the conversion of the corporation to a foreign nonprofit corporation.

(3) A statement that the foreign nonprofit conversion was duly approved by the shareholders in the manner required by this Act and the articles of incorporation.

(4) The articles of charter surrender shall be delivered to the secretary of state for filing. The articles of charter surrender shall take effect at the effective time provided in R.S. 12:1-123.

Source: MBCA §9.33.

$1-934. Effect of nonprofit conversion

A. When a conversion of a domestic business corporation to a domestic nonprofit corporation becomes effective, all of the following shall apply:

(1) The title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without any transfer, assignment, reversion, or impairment.

(2) The liabilities of the corporation remain the liabilities of the corporation.

(3) An action or proceeding pending against the corporation continues against the corporation as if the conversion had not occurred.

(4) The articles of incorporation of the domestic or foreign nonprofit corporation become effective.

(5) The assets of the corporation are reclassified into memberships, securities, obligations, rights to acquire memberships or securities, or into cash or other property in accordance with the plan of conversion, and the shareholders are entitled only to the rights provided in the plan of nonprofit conversion in connection to any right that the shareholders may have under Part 12 of this Chapter.

(6) The corporation is deemed to be all of the following:

(a) A domestic nonprofit corporation for all purposes.

(b) The same corporation without interruption as the corporation that existed prior to the conversion.

(7) Incorporated on the date that it was originally incorporated as a domestic business corporation.

(8) When a conversion of a domestic business corporation to a foreign nonprofit corporation becomes effective, the foreign nonprofit corporation remains both of the following:

(a) Having the same name as the corporation that it is converting.

(b) Obligated under the laws of this state to pay promptly the amount, if any, to which shareholders who exercise appraisal rights in connection with the conversion are entitled under Part 13 of this Chapter.

(2) Subject to the personal jurisdiction of the courts of this state in accordance with R.S. 13:3201, and to service of process in accordance with law.

C. [Reserved.]

D. A shareholder who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of the nonprofit corporation shall have owner liability only for those debts, obligations, or liabilities of the nonprofit corporation that arise after the effective time of the articles of nonprofit conversion.

Source: MBCA §9.34.

Comments - 2014 Revision

(a) Model Act Subsection (c) was omitted from this Section because it deals transition issues associated with the nonprofit conversion of a domestic business corporation in which a shareholder is made subject to owner liability, as defined in R.S. 12:1-140(15C), because the Subsection could exist. This Section, by imposing the required by law for appropriate forms of service of process.

(b) Model Act Subsection (d) was omitted from this Section because it deals with transition issues associated with the nonprofit conversion of a domestic business corporation in which a shareholder is made subject to owner liability, as defined in R.S. 12:1-140(15C), because the Subsection could exist. This Section, by imposing the required by law for appropriate forms of service of process.

1. A plan of nonprofit conversion under foreign nonprofit conversion

A. A plan of nonprofit conversion providing for the conversion of a domestic business corporation to a foreign nonprofit corporation, deeming that the resulting foreign corporation has agreed to pay appraisal rights and to appoint the secretary of state as its agent for service of process in connection with the conversion, then the Subsection could exist. This Section, by imposing the required by law for appropriate forms of service of process.

1. A plan of nonprofit conversion under foreign nonprofit conversion

A. A plan of nonprofit conversion providing for the conversion of a domestic business corporation to a foreign nonprofit corporation, deeming that the resulting foreign corporation has agreed to pay appraisal rights and to appoint the secretary of state as its agent for service of process in connection with the conversion, then the Subsection could exist. This Section, by imposing the required by law for appropriate forms of service of process.

$1-935. Abandonment of a nonprofit conversion

A. Unless otherwise provided in a plan of nonprofit conversion of a domestic business corporation, after the plan has been adopted and approved as required by this Subpart, if a nonprofit conversion has become effective, it may be abandoned by the board of directors without action by the shareholders.

B. If a nonprofit conversion is abandoned under Subsection A of this Section after articles of nonprofit conversion or articles of charter surrender have been filed with the secretary of state but before the nonprofit conversion has become effective, a statement that the nonprofit conversion has been abandoned in accordance with this Section, signed by an officer or other duly authorized representative, shall be delivered to the secretary of state and the nonprofit conversion shall take effect upon filing and the nonprofit conversion shall be deemed abandoned and shall not become effective.

Source: MBCA §9.35.

SUBPART D. FOREIGN NONPROFIT DOMESTICATION AND CONVERSION

$1-940. Foreign nonprofit domestication and conversion

A. After the conversion of a foreign nonprofit corporation to a domestic nonprofit corporation, the organic law of the foreign nonprofit corporation does not impose owner liability.

$1-941. Articles of nonprofit domestication and conversion

A. After the conversion of a foreign nonprofit corporation to a domestic nonprofit corporation, the organic law of the foreign nonprofit corporation does not impose owner liability.
§1-942. Effect of foreign nonprofit domestication and conversion

A. A domestic business corporation may become a domestic unincorporated entity pursuant to a plan of entity conversion. If the domestication and conversion has been abandoned, signed by an officer duly authorized, it shall be delivered to the secretary of state, a statement that the domestication and conversion have been filed with the secretary of state, an officer duly authorized, shall be delivered to the secretary of state for filing. The statement shall take effect upon filing and the domestication and conversion shall be deemed abandoned and shall not become effective.

Source: MBCA §9.42.

SUBPART E. ENTITY CONVERSION

§1-950. Entity conversion authorized; definitions

A. A domestic business corporation may become a domestic unincorporated entity pursuant to a plan of entity conversion. The full text, as they will be in effect immediately after consummation of an entity conversion, shall apply to an entity conversion of the corporation until such time as the provision is amended subsequent to that date.

Source: MBCA §9.50.

Comments - 2014 Revision

(a) This Section changes the term “entity” from the Model Act Paragraph (a)(1) to an “other entity” to “entity.” The term “other entity” was defined in an earlier version of the Model Act that has since been eliminated as a defined term. The term “entity” is used in this Section to refer to whatever form of entity survives an entity conversion. Because the survivor of an entity conversion may be a domestic or foreign unincorporated entity, the term “entity” in Subsection A of this Section is limited in meaning to one of those forms of entity.

(b) This Section adds a new Paragraph (A)(4) of this Section, and modifies Model Act Paragraph (a)(6) to take account of conversions not only of domestic corporations into unincorporated entities but also of unincorporated entities into domestic corporations or other forms of domestic unincorporated entities.
In the case of an entity conversion of a domestic business corporation to a domestic or foreign unincorporated entity, all of the following shall apply:

1. The plan of entity conversion must be adopted by the board of directors. The board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that it is in the best interest of the corporation, any interested persons, or any other special circumstances it should not make such a recommendation or R.S. 12:1-826 applies. If the board of directors makes such a determination or R.S. 12:1-626 applies, the board must transmit to the shareholders the basis for so doing.

2. The board of directors may condition its submission of the plan of entity conversion to the shareholders on any basis.

3. If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder of the right to attend the meeting and to cast a vote at the meeting. The notice shall include or be accompanied by a copy or summary of the plan. The notice shall state that the purpose of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the organic documents as they will be in effect immediately after the entity conversion.

4. Unless the articles of incorporation, or the board of directors acting pursuant to Paragraph (3) of this Section, requires a greater vote, approval of the plan of entity conversion requires the approval of each class or series of shares of the corporation voting as a separate voting group by at least a majority of the votes entitled to be cast on the conversion by that voting group.

5. Any provision of the articles of incorporation, bylaws, or an agreement to which any of the directors or shareholders are parties, adopted, or entered into before January 1, 2015, applies to a merger of the corporation, other than a provision that limits or eliminates voting or appraisal rights, and the document does not refer to an entity conversion of the corporation, the provision applies only to an entity conversion of the corporation until such time as the provision is subsequently amended.

6. If a result of the conversion one or more shareholders of the corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of conversion shall be deemed to apply to an entity conversion of the corporation by any officer or other duly authorized representative. The articles shall require or have attached such a provision that R.S. 12:1-202(A) permits to be included in articles of incorporation, or have attached articles of incorporation, except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

7. If the surviving entity is a foreign unincorporated entity that is authorized to transact business in this state under a provision of law similar to Chapter 3 of this Title, its certificate of authority or other type of foreign qualification shall be cancelled automatically on the effective date of its conversion.

THE ADVOCATE

(As it appears in the enrolled bill)

In the case of an entity conversion of a domestic business corporation to a domestic or foreign unincorporated entity, all of the following shall apply:

1. The plan of entity conversion must be adopted by the board of directors. The board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that it is in the best interest of the corporation, any interested persons, or any other special circumstances it should not make such a recommendation or R.S. 12:1-826 applies. If the board of directors makes such a determination or R.S. 12:1-626 applies, the board must transmit to the shareholders the basis for so doing.

2. The board of directors may condition its submission of the plan of entity conversion to the shareholders on any basis.

3. If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder of the right to attend the meeting and to cast a vote at the meeting. The notice shall include or be accompanied by a copy or summary of the plan. The notice shall state that the purpose of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the organic documents as they will be in effect immediately after the entity conversion.

4. Unless the articles of incorporation, or the board of directors acting pursuant to Paragraph (3) of this Section, requires a greater vote, approval of the plan of entity conversion requires the approval of each class or series of shares of the corporation voting as a separate voting group by at least a majority of the votes entitled to be cast on the conversion by that voting group.

5. Any provision of the articles of incorporation, bylaws, or an agreement to which any of the directors or shareholders are parties, adopted, or entered into before January 1, 2015, applies to a merger of the corporation, other than a provision that limits or eliminates voting or appraisal rights, and the document does not refer to an entity conversion of the corporation, the provision applies only to an entity conversion of the corporation until such time as the provision is subsequently amended.

6. If a result of the conversion one or more shareholders of the corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of conversion shall be deemed to apply to an entity conversion of the corporation by any officer or other duly authorized representative. The articles shall require or have attached such a provision that R.S. 12:1-202(A) permits to be included in articles of incorporation, or have attached articles of incorporation, except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

7. If the surviving entity is a foreign unincorporated entity that is authorized to transact business in this state under a provision of law similar to Chapter 3 of this Title, its certificate of authority or other type of foreign qualification shall be cancelled automatically on the effective date of its conversion.

F. If the other person or entity approves the plan of conversion, the surviving entity’s public or document consists of both the articles of incorporation, or have attached articles of incorporation; except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

E. If the surviving entity is a foreign unincorporated entity that is authorized to transact business in this state under a provision of law similar to Chapter 3 of this Title, its certificate of authority or other type of foreign qualification shall be cancelled automatically on the effective date of its conversion.

D. If the other person or entity approves the plan of conversion, the surviving entity’s public or document consists of both the articles of incorporation, or have attached articles of incorporation; except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

C. If the surviving entity is a domestic business corporation and the other person or entity approves the plan of conversion, the surviving entity’s public or document consists of both the articles of incorporation, or have attached articles of incorporation; except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

B. If the surviving entity is a foreign unincorporated entity, either contain all of the provisions required to be set forth in its public organic document and any other desired provisions that are permitted, or have attached articles of incorporation, except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

A. If the surviving entity is a domestic business corporation and the other person or entity approves the plan of conversion, the surviving entity’s public or document consists of both the articles of incorporation, or have attached articles of incorporation; except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

D. If the other person or entity approves the plan of conversion, the surviving entity’s public or document consists of both the articles of incorporation, or have attached articles of incorporation; except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

C. If the surviving entity is a domestic business corporation and the other person or entity approves the plan of conversion, the surviving entity’s public or document consists of both the articles of incorporation, or have attached articles of incorporation; except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

B. If the surviving entity is a foreign unincorporated entity, either contain all of the provisions required to be set forth in its public organic document and any other desired provisions that are permitted, or have attached such a provision that R.S. 12:1-202(A) permits to be included in articles of incorporation, or have attached articles of incorporation, except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

A. If the surviving entity is a domestic business corporation and the other person or entity approves the plan of conversion, the surviving entity’s public or document consists of both the articles of incorporation, or have attached articles of incorporation; except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

D. If the other person or entity approves the plan of conversion, the surviving entity’s public or document consists of both the articles of incorporation, or have attached articles of incorporation; except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

C. If the surviving entity is a domestic business corporation and the other person or entity approves the plan of conversion, the surviving entity’s public or document consists of both the articles of incorporation, or have attached articles of incorporation; except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

B. If the surviving entity is a foreign unincorporated entity, either contain all of the provisions required to be set forth in its public organic document and any other desired provisions that are permitted, or have attached such a provision that R.S. 12:1-202(A) permits to be included in articles of incorporation, or have attached articles of incorporation, except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.
B. The articles of charter surrender shall be delivered by the corporation to the secretary of state for filing. The articles of charter surrender shall take effect on the effective time provided in R.S. 12:1-129.

Source: MBCA §9.54.

$1-955. Effect of entity conversion

A. When a conversion under this Subpart becomes effective, all of the following shall apply:

(1) The title to all real and personal property, both tangible and intangible, of the converting entity remains in the surviving entity without transfer, assignment, reversion or impairment.

(2) The liabilities of the converting entity remain the liabilities of the surviving entity.

(3) A pending action or proceeding by or against the surviving entity continues by or against the surviving entity as if the conversion had not occurred without any need for substitution of parties.

(4) The provisions included in or attached to the articles of entity conversion became effective as of the incorporation, articles of organization, initial report, registered contract of partnership, or registered application for registry of a registered limited liability partnership, as appropriate for the surviving entity.

(5) In the case of a surviving entity that is a nonfilting entity, its private organic document becomes effective.

(6) The shares or interests of the converting entity are reclassified into shares, interests, other securities, obligations, rights to acquire shares, interests, or other securities, or into cash in or other property in accordance with the plan of conversion, and the shareholders or interest holders of the converting entity are entitled only to the rights provided to them under the terms of the conversion and to any appraisal rights they may have under the law.

(7) The surviving entity is deemed to be all of the following:

(a) Incorporated or organized under and subject to the organic law of the surviving entity for all purposes.

(b) The same corporation or unincorporated entity without interruption as the converting entity was originally incorporated or organized.

(c) Incorporated or otherwise organized on the date that the converting entity was originally incorporated or organized.

B. When a conversion of a domestic business corporation to a foreign unincorporated entity becomes effective, the surviving entity remains both the same corporation or unincorporated entity without interruption as the converting entity was originally incorporated or organized, and in accordance with the plan of conversion, the converting entity becomes a foreign unincorporated entity.

Source: MBCA §9.55.

Comments - 2014 Revision

(a) This Section modifies Model Act Paragraph (a)(4) to name the particulars of public organic documents most likely to be relevant in an entity conversion transaction.

(b) Model Act Subsection (b) uses legal fictions to state the legal obligations of an “outbound” surviving entity in an entity conversion, deeming the surviving entity to “agree” to pay appraisal rights and to appoint the secretary of state as its agent for service of process with respect to a surviving entity that is a domestic business corporation or domestic unincorporated entity.

§1-956. Abandonment of an entity conversion

A. An entity conversion is abandoned after articles of entity conversion or articles of charter surrender have been filed with the secretary of state before the effective date of the entity conversion becomes effective, a statement that the entity conversion has been abandoned in accordance with this Section, signed by an officer or other duly authorized representative, shall be delivered to the secretary of state for filing prior to the effective date of the entity conversion. Upon filing, the statement shall take effect and the entity conversion shall be deemed abandoned and shall not become effective.

Source: MBCA §9.56.

PART 10. AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

SUBPART A. AMENDMENT OF ARTICLES OF INCORPORATION

§1-1001. Authority to amend

A. A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation as of the effective date of the amendment or to delete a provision that is required or permitted to be contained in the articles of incorporation.

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 earnings, profits, capital gains, or any other matter, that is required or permitted by the organic law of the converting entity.

C. An amendment that extends the duration of a corporation may be adopted even after that duration expires unless one of the following conditions exist:

(1) Articles of termination or a certificate of termination has been filed and the duration of the corporation has not been reinstated.

(2) Articles of dissolution have been delivered to the secretary of state and have not been revoked.

(3) A judgment ordering dissolution has become final.

D. If the duration of a corporation has expired and the adoption of an amendment extending that duration is permissible under Subsection C of this Section, then the following shall apply:

(1) The amendment may be adopted in the same manner as if the corporation’s duration had not expired.

(2) The amendment shall have the same effect as if it had been adopted before the duration expired.

Source: MBCA §10.01, R.S. 12:31.

Comments - 2014 Revision

(a) The authority of a business corporation to amend its articles of incorporation in accordance with Subsection A of this Section is not limited by the principles that were applied to an amendment of the articles of a charitable, nonprofit corporation in New Orleans Opera Ass’n, Inc. v. Southern Regional Opera Endowment Fund, 993 So.2d 791(La. App. 4th Cir. 8/27/08), writ denied, 996 So.2d 1114 (11/21/08).

(b) Subsections C and D of this Section were added to the Model Act provision to retain the effect of former R.S. 12:31(D). Under the former provision, the duration of a corporation could be extended through an amendment to its articles that was adopted even after the expiration of the corporation’s duration, but before liquidation procedures had begun, and the amendment was given retroactive effect. This Section retains the rule against duration-extension amendments while a dissolution process is ongoing through Paragraph (C)(2) of this Section. But it adds a new Paragraph (C)(1) to take account of the availability of reinstatement for a terminated corporation under R.S. 12:1444.

§1-1002. Amendment before issuance of shares

A. If the converting entity has not yet issued shares, its board of directors, or its incorporators if it has no board of directors, may adopt one or more amendments to the corporation’s articles of incorporation.

Source: MBCA §10.02.

Comments - 2014 Revision

(a) Subsection A has issued shares, but is not a public corporation, an amendment to the articles of incorporation shall be adopted in the following manner:

(1) Except as provided in R.S. 12:1-1005, 1-1007, and 1-1008, the amendment shall be approved by the shareholders.

(2) If the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting

THE ADVOCATE  As it appears in the enrolled bill
is to consider the amendment and must contain or be accompanied by a
copy of the amendment. If Paragraph (A)(3) of this Section requires the
approval of one or more separate voting groups, in addition to the approval
of all or part of the shares of another class, shareholders entitled to vote as a
separate group on the amendment, the notice must also identify each class or
series of shares that the corporation plans to treat as part of each separate voting
group.

(3) Unless the articles of incorporation require a greater vote, approval
of the amendment by the shareholders requires the approval of at least a
majority of the votes entitled to be cast on the amendment, and, if any class
or series of shares is entitled to vote as a separate group on the amendment,
except as provided in R.S. 12:1-1004(C)(2), the approval of at least a major-
ity of the votes entitled to be cast on the amendment by each such separate voting
group.

B. An amendment to the articles of incorporation of a public corporation
shall be adopted in the following manner:

(1) The proposed amendment must be adopted by the board of directors.

(2) Each amendment provided for in Subpart A of this Section shall
be submitted for approval. The notice must state that the purpose, or one of the
purposes, of the meeting is to consider the amendment and must contain or be
accompanied by a copy of the amendment. If Paragraph (B)(5) of this Section requires the approval
of all or part of the shares of another class, shareholders entitled to vote as a
separate group on the amendment, the notice must also identify each class or
series of shares that the corporation plans to treat as part of each separate voting
group.

(3) Unless the articles of incorporation provide otherwise, a corporation’s
board of directors may adopt amendments to the corporation’s articles of
incorporation without shareholder approval to do any of the following:

(a) Extend the duration of the corporation if it was incorporated at a time
when limited duration was required by law.

(b) Delete the names and addresses of the initial directors.

(c) Delete a class of shares from the articles of incorporation, as a result of
the operation of R.S. 12:1-631(B), when there are no remaining shares of the
class.

(d) 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 that are prior or superior to the shares of the
class that were so increased.

(4) Limit or deny an existing preemptive right of all or part of the shares
of the class.

(5) Carve out or otherwise affect rights to distributions that have accumulated
but not yet been authorized on all or part of the shares of the class.

(6) Require an amendment to be approved by at least a majority of the
votes of any class of shares entitled to vote separately on the
amendment; and (2) require an amendment to be approved by at least
a majority of the votes entitled to be cast on the amendment by each such separate voting
group.

B. An amendment to the articles of incorporation of a public corporation
shall be adopted in the following manner:

(1) The proposed amendment must be adopted by the board of directors.

(2) Each amendment provided for in Subpart A of this Section shall
be submitted for approval. The notice must state that the purpose, or one of the
purposes, of the meeting is to consider the amendment and must contain or be
accompanied by a copy of the amendment. If Paragraph (B)(5) of this Section requires the approval
of all or part of the shares of another class, shareholders entitled to vote as a
separate group on the amendment, the notice must also identify each class or
series of shares that the corporation plans to treat as part of each separate voting
group.

(3) Unless the articles of incorporation provide otherwise, a corporation’s
board of directors may adopt amendments to the corporation’s articles of
incorporation without shareholder approval to do any of the following:

(a) Extend the duration of the corporation if it was incorporated at a time
when limited duration was required by law.

(b) Delete the names and addresses of the initial directors.

(c) Delete a class of shares from the articles of incorporation, as a result of
the operation of R.S. 12:1-631(B), when there are no remaining shares of the
class.

(d) 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 that are prior or superior to the shares of the
class that were so increased.

(6) Increase the rights, preferences, or number of authorized shares of any
class that, after giving effect to the amendment, have rights or preferences
with respect to distributions that are prior or superior to the shares of the
class that were so increased.

(7) Limit or deny an existing preemptive right of all or part of the shares
of the class.

(8) Require an amendment to be approved by at least a majority of the
votes of any class of shares entitled to vote separately on the
amendment; and (2) require an amendment to be approved by at least
a majority of the votes entitled to be cast on the amendment by each such separate voting
group.

B. An amendment to the articles of incorporation of a public corporation
shall be adopted in the following manner:

(1) The proposed amendment must be adopted by the board of directors.

(2) Each amendment provided for in Subpart A of this Section shall
be submitted for approval. The notice must state that the purpose, or one of the
purposes, of the meeting is to consider the amendment and must contain or be
accompanied by a copy of the amendment. If Paragraph (B)(5) of this Section requires the approval
of all or part of the shares of another class, shareholders entitled to vote as a
separate group on the amendment, the notice must also identify each class or
series of shares that the corporation plans to treat as part of each separate voting
group.

(3) Unless the articles of incorporation provide otherwise, a corporation’s
board of directors may adopt amendments to the corporation’s articles of
incorporation without shareholder approval to do any of the following:

(a) Extend the duration of the corporation if it was incorporated at a time
when limited duration was required by law.

(b) Delete the names and addresses of the initial directors.

(c) Delete a class of shares from the articles of incorporation, as a result of
the operation of R.S. 12:1-631(B), when there are no remaining shares of the
class.

(d) 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 that are prior or superior to the shares of the
class that were so increased.

(6) Increase the rights, preferences, or number of authorized shares of any
class that, after giving effect to the amendment, have rights or preferences
with respect to distributions that are prior or superior to the shares of the
class that were so increased.

(7) Limit or deny an existing preemptive right of all or part of the shares
of the class.

(8) Require an amendment to be approved by at least a majority of the
votes of any class of shares entitled to vote separately on the
amendment; and (2) require an amendment to be approved by at least
a majority of the votes entitled to be cast on the amendment by each such separate voting
group.

B. An amendment to the articles of incorporation of a public corporation
shall be adopted in the following manner:

(1) The proposed amendment must be adopted by the board of directors.

(2) Each amendment provided for in Subpart A of this Section shall
be submitted for approval. The notice must state that the purpose, or one of the
purposes, of the meeting is to consider the amendment and must contain or be
accompanied by a copy of the amendment. If Paragraph (B)(5) of this Section requires the approval
of all or part of the shares of another class, shareholders entitled to vote as a
separate group on the amendment, the notice must also identify each class or
series of shares that the corporation plans to treat as part of each separate voting
group.

(3) Unless the articles of incorporation provide otherwise, a corporation’s
board of directors may adopt amendments to the corporation’s articles of
incorporation without shareholder approval to do any of the following:

(a) Extend the duration of the corporation if it was incorporated at a time
when limited duration was required by law.

(b) Delete the names and addresses of the initial directors.

(c) Delete a class of shares from the articles of incorporation, as a result of
the operation of R.S. 12:1-631(B), when there are no remaining shares of the
class.

(d) 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 that are prior or superior to the shares of the
class that were so increased.

(6) Increase the rights, preferences, or number of authorized shares of any
class that, after giving effect to the amendment, have rights or preferences
with respect to distributions that are prior or superior to the shares of the
class that were so increased.

(7) Limit or deny an existing preemptive right of all or part of the shares
of the class.

(8) Require an amendment to be approved by at least a majority of the
votes of any class of shares entitled to vote separately on the
amendment; and (2) require an amendment to be approved by at least
a majority of the votes entitled to be cast on the amendment by each such separate voting
group.

B. An amendment to the articles of incorporation of a public corporation
shall be adopted in the following manner:

(1) The proposed amendment must be adopted by the board of directors.

(2) Each amendment provided for in Subpart A of this Section shall
be submitted for approval. The notice must state that the purpose, or one of the
purposes, of the meeting is to consider the amendment and must contain or be
accompanied by a copy of the amendment. If Paragraph (B)(5) of this Section requires the approval
of all or part of the shares of another class, shareholders entitled to vote as a
separate group on the amendment, the notice must also identify each class or
series of shares that the corporation plans to treat as part of each separate voting
group.

(3) Unless the articles of incorporation provide otherwise, a corporation’s
board of directors may adopt amendments to the corporation’s articles of
incorporation without shareholder approval to do any of the following:

(a) Extend the duration of the corporation if it was incorporated at a time
when limited duration was required by law.

(b) Delete the names and addresses of the initial directors.

(c) Delete a class of shares from the articles of incorporation, as a result of
the operation of R.S. 12:1-631(B), when there are no remaining shares of the
class.

(d) 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 that are prior or superior to the shares of the
class that were so increased.

(6) Increase the rights, preferences, or number of authorized shares of any
class that, after giving effect to the amendment, have rights or preferences
with respect to distributions that are prior or superior to the shares of the
class that were so increased.

(7) Limit or deny an existing preemptive right of all or part of the shares
of the class.

(8) Require an amendment to be approved by at least a majority of the
votes of any class of shares entitled to vote separately on the
amendment; and (2) require an amendment to be approved by at least
a majority of the votes entitled to be cast on the amendment by each such separate voting
group.
B. If the restated articles include one or more new amendments that require shareholder approval, the amendments must be adopted and approved by the shareholders in accordance with the articles of incorporation.

C. A corporation that restates its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate which states that the restated articles consolidate all amendments in a single document and if a new amendment is included in the restated articles, which also includes the statements required under R.S. 12:1-1006.

D. Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

E. The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect, without including the certificate information required by Subsection C of this Section.

Source: MBCA §10.07.

$1-1008. Amendment pursuant to reorganization

A. A corporation’s articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States.

B. The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth all of the following:

(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.
(5) A statement that the court had jurisdiction of the proceeding under federal statute.

C. 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 purposes unrelated to consummation of the reorganization plan.

Source: MBCA §10.08.

$1-1009. Effect of amendment

A. An amendment to the 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 extinguish a proceeding brought by or against the corporation in its former name.

Source: MBCA §10.09.

SUBPART B. AMENDMENT OF BYLAWS

§1-1020. Amendment by board of directors or shareholders

A. A corporation’s shareholders may amend or repeal the corporation’s bylaws.

B. A corporation’s board of directors may adopt, amend, or repeal the corporation’s bylaws, unless either of the following conditions exist:

(1) The articles of incorporation, R.S. 12:1-1022, or, if applicable, R.S. 12:1-1022 reserve that power exclusively to the shareholders in whole or part.
(2) The shareholders in amending, amending, or adopting a bylaw expressly provide that the board of directors may not amend, repeal, or reinstate that bylaw.

Source: MBCA §10.20.

§1-1021. Bylaw increasing quorum or voting requirement for directors

A. This Section increases a quorum or voting requirement for the board of directors may be amended or repealed under either of the following circumstances:

(1) If originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides.
(2) If adopted by the board of directors, either by the shareholders or by the board of directors.

B. A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the board of directors may provide that it can be amended or repealed only by a specified vote of either the shareholders or the board of directors.

C. Action by the board of directors under Subsection A of this Section to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors must adopt 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.

Source: MBCA §10.21.

§1-1022. Public corporation bylaw provisions relating to the election of directors

A. Unless the articles of incorporation specifically prohibit the adoption of a bylaw pursuant to this Section, after the vote specified in R.S. 12:1-728(A), or specified by the bylaws in the election of directors as follows:

(1) Each vote entitled to be cast may be voted for or against up to that number of candidates that is equal to the number of directors to be elected, or a shareholder may indicate an abstention, but without cumulating the votes.

To be elected, a nominee must have received a plurality of the votes cast by holders of shares entitled to vote in the election at a meeting at which a quorum is present, provided that a nominee who is elected but receives more votes against than for election shall serve as a director for a term that shall terminate on the date that is the earlier of ninety days from the date on which the vote results are determined pursuant to R.S. 12:1-726(E) or the date on which an individual is selected by the board of directors to fill the office held by such director, which selection shall be deemed to constitute the filling of a vacancy by the board to which R.S. 12:1-810 applies. Subject to the provisions of this Subsection if the board of directors determines before the notice of meeting is given that such individual’s candidacy does not create a bona fide election contest.

(3) The board of directors may select any qualified individual to fill the office held by a director who received more votes against than for election.

(4) The plan of merger, or a plan of reorganization, may provide that one or more of whom are properly proposed by shareholders. An individual shall not be considered a candidate for purposes of this Subsection if the board of directors determines before the notice of meeting is given that such individual’s candidacy does not create a bona fide election contest.

C. A bylaw electing to be governed by this Section may be repealed by either of the following:

(1) If originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides.
(2) If adopted by the board of directors, by the board of directors or the shareholders.

Source: MBCA §10.22.

PART 11. MERGERS AND SHARE EXCHANGES

§1-1101. Definitions

As used in this Part, the following meanings shall apply:

A. “Merger” means a business combination pursuant to R.S. 12:1-1102.

B. “Party to a merger” or “party to a share exchange” means any domestic or foreign corporation or eligible entity that will do any of the following:

(1) Merge under a plan of merger.
(2) Acquire shares or eligible interests of another corporation or an eligible entity in a share exchange.
(3) Have all of its shares or eligible interests or all of one or more classes or series of its shares or eligible interests acquired in a share exchange.

C. “Share exchange” means a business combination pursuant to R.S. 12:1-1103.

D. “Survivor” in a merger means the corporation or eligible entity into which one or more other corporations or eligible entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

Source: MBCA §11.01.

Comment - 2014 Revision

Model Act Comment 4, concerning the meaning of the term “other entity” is irrelevant under this Section. Comment 4 covered a defined term in Model Act Section 11.01 that was changed before final adoption. Compare, 56 Bus.Law. 1633 (2001) (proposed amendments) with 58 Bus.Law. 219 (2002) (final adoption). As adopted in its final form, the term used in the Model Act to express the “other entity” concept is “eligible entity.” See Paragraph 1.40 (7D). At the time that this Section was enacted, the Model Act used the older term in some provisions and the newer terms in other provisions. This Section uses the term “eligible entity” consistently throughout its provisions to identify the types of entities that may enter with a business corporation into a merger, share exchange, domestication, nonprofit conversion, or entity conversion transaction.

§1-1102. Merger

A. One or more domestic business corporations may merge with one or more domestic or foreign business corporations or eligible entities pursuant to a plan of merger. Two or more eligible entities or foreign business corporations may merge into a new domestic business corporation to be created in the merger in the manner provided in this Part.

B. A foreign business corporation, or a foreign eligible entity, may be a party to a merger with a domestic business corporation, or may be created in the merger in the manner provided in this Part.

C. The plan of merger must include all of the following:

(1) The name of each domestic or foreign business corporation or eligible entity that will merge and the name of the domestic or foreign business corporation or eligible entity that will be the survivor of the merger.
(2) The terms and conditions of the merger.
(3) The manner and basis of converting the shares of each merging domestic or foreign business corporation and eligible interests of each merging eligible entity into shares or other securities, eligible interests, or other assets.

Source: MBCA §11.02.

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* As it appears in the enrolled bill
obligations, rights to acquire shares or other securities or eligible interests, or in cash, other property, or any combination of the foregoing.

(4) Any other provisions required by the laws under which any party to the share exchange has been corrected to eliminate the redundancy. References to “foreign eligible entities” or “domestic eligible entities” have been retained where appropriate to indicate the narrower category of eligible entity intended. §11.03.

A. Through a share exchange, either of the following may occur:

(1) A domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation, or the assets of another domestic or foreign corporation or nonprofit corporation or unincorporated entity, to be created by the merger, or if a new domestic or foreign business or nonprofit corporation or unincorporated entity is not to be created by the merger, any amendments to the survivor’s articles of incorporation or organic documents.

(2) All of the shares of one or more classes or series of shares of a domestic corporation may be acquired by another domestic or foreign corporation or eligible entity, in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities, or for cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange.

B. A foreign corporation or foreign eligible entity may be a party to a share exchange only if the share exchange is permitted by the organic law governing the foreign corporation or foreign eligible entity and only if the requirements of that law concerning the share exchange have been satisfied.

C. The plan of share exchange must include all of the following:

(1) The name of each corporation or eligible entity whose shares or interests will be acquired and the name of the corporation or eligible entity that will acquire those shares or interests.

(2) The terms and conditions of the share exchange.

(3) The manner and basis of exchanging shares of a corporation or eligible entity whose shares or interests will be acquired by the plan of share exchange.

(4) Any other provisions required by the laws under which any party to the share exchange is chartered, organized, or governed.

D. Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with R.S. 12:1-120(L).

E. The plan of share exchange may also include a provision that the plan may be amended prior to filing articles of merger, but if the shareholders of a domestic corporation that is a party to the share exchange are required or permitted to vote on the plan, the plan must provide that such shareholders shall not be required or permitted to vote on the amendment of the plan.

F. This Section does not limit the power of any person to acquire shares of a corporation or eligible entity in a transaction other than a share exchange.

Source: MBCA §11.03.

Comments - 2014 Revision

(a) In an apparent error of terminology, the Model Act uses the term “other entity” (instead of “eligible entity”) in this Section and its comments to refer to unincorporated business organizations and nonprofit corporations.

(b) The error appears due to a change in terminology between the text originally proposed and the text adopted by the Louisiana Legislature, with sections §11.01, §11.02, §11.03, §11.04, and §11.10. The text as proposed in Senate Bills 219 and 220 relates to unincorporated business organizations and nonprofit corporations.

(c) This Section modifies the anti-diversion rule in Model Act Subsection (f) slightly by replacing its reference to a particular cy pres or anti-diversion statute with a reference to the legal principles of cy pres more generally, whether those principles are expressed in particular statutes, such as R.S. 9:2531, or the civil-law doctrine of approximation. See, e.g., Succession of Mizell, 468 So.2d 1371 (La. App. 1st Cir. 1985), rev’d on other grounds, 475 So.2d 765 (La. 1985); Ada C. Pollock-Blundon Ass’n, Inc. v. Evans’ Heirs, 273 So.2d 552 (La. App. 1st Cir. 1973). Because Subsection D of this Section is designed merely to incorporate the pro prs pers or other legal principles of cy pres or anti-diversion in the narrow context of the controlling rules, it does not limit itself to any particular statutory or jurisprudential formulation of the controlling rules.

(d) Subsection F of this Section is based on Section 9.03 of the Model Nonprofit Corporation Act and was added to this Section as a complement to Subsection F of this Section to prevent the misuse of assets held for charitable purposes. The term “charitable” means the same thing in both Subsections F of this Section as it does under federal income tax law.

(e) Subsection H of this Section and Subsection D of Section 11.02 of the Model Act Official Comments make several references to an “other entity,” a term used in an earlier draft of the Model Act that was changed before final adoption to the term “eligible entity.” Compare, §11.03 (2001) (proposed amendment) with §58 Bus.Law. 219 (2002) (final adoption). The term “eligible entity” is sometimes the newer term. This Section consistently uses the newer term “eligible entity” in place of the older one. Also, because the term “eligible entity” is sometimes used to mean both domestic and foreign entities, Model Act references to “domestic or foreign, eligible entity” have been corrected to eliminate the redundancy. References to “foreign eligible entities” or “domestic eligible entities” have been retained where appropriate to indicate the narrower category of eligible entity intended. §11.03. See Section 9.03 of the Model Nonprofit Corporation Act.

(f) A Through a share exchange, either of the following may occur:

(1) A domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation, or the assets of another domestic or foreign corporation or nonprofit corporation or unincorporated entity, to be created by the merger, or if a new domestic or foreign business or nonprofit corporation or unincorporated entity is not to be created by the merger, any amendments to the survivor’s articles of incorporation or organic documents.

(2) All of the shares of one or more classes or series of shares of a domestic corporation may be acquired by another domestic or foreign corporation or eligible entity, in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares or other securities, or for cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange.

B. A foreign corporation or foreign eligible entity may be a party to a share exchange only if the share exchange is permitted by the organic law governing the foreign corporation or foreign eligible entity and only if the requirements of that law concerning the share exchange have been satisfied.

C. The plan of share exchange must include all of the following:

(1) The name of each corporation or eligible entity whose shares or interests will be acquired and the name of the corporation or eligible entity that will acquire those shares or interests.

(2) The terms and conditions of the share exchange.

(3) The manner and basis of exchanging shares of a corporation or eligible entity whose shares or interests will be acquired by the plan of share exchange.

(4) Any other provisions required by the laws under which any party to the share exchange is chartered, organized, or governed.

D. Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with R.S. 12:1-120(L).

E. The plan of share exchange may also include a provision that the plan may be amended prior to filing articles of merger, but if the shareholders of a domestic corporation that is a party to the share exchange are required or permitted to vote on the plan, the plan must provide that such shareholders shall not be required or permitted to vote on the amendment of the plan.

F. This Section does not limit the power of any person to acquire shares of a corporation or eligible entity in a transaction other than a share exchange.

Source: MBCA §11.03.

Comments - 2014 Revision

(a) In an apparent error of terminology, the Model Act uses the term “other entity” (instead of “eligible entity”) in this Section and its comments to refer to unincorporated business organizations and nonprofit corporations. Nevertheless, to avoid the unintended negative implication that Section 11.03 might affect acquisitions by persons other than a domestic corporation, the Model Act provides in Subsection (f) that Section 11.03 does not affect the power of a domestic corporation to acquire shares or interests outside of a share exchange. The limitation of the statement to domestic corporations avoids the potential scope of Section 11.03 itself, which reaches only share exchanges that involve a domestic corporation. Nevertheless, to avoid the unintended negative implication that Section 11.03 might affect acquisitions by persons other than a domestic corporation,
this Section broadens the statement in Subsection (f) to make it applicable to acquisitions outside a share exchange by any person.

§1-1104. Action on a plan of merger or share exchange

In the case of a domestic corporation that is a party to a merger or share exchange, all of the following shall apply:

(1) The plan of merger or share exchange must be adopted by the board of directors or shareholders in accordance with the requirements of this Subpart.

(2) Except as provided in Paragraph (8) of this Section and in R.S. 12:1-1105, the plan of merger or share exchange must be submitted to the shareholders for their approval. The board of directors must submit the plan to the shareholders for their approval. The board of directors must notify shareholders of the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation or R.S. 12:1-826 applies. If the board of directors makes such a determination or R.S. 12:1-826 applies, the board must transmit to the shareholders the basis for so proceeding.

(3) The board of directors may condition its submission of the plan of merger or share exchange to the shareholders on any basis.

(4) If the plan of merger or share exchange is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or eligible entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organizational documents of that corporation or eligible entity. If the corporation is to be formed as a new corporation or eligible entity, the notice shall include or be accompanied by a copy or summary of the articles of incorporation or organizational documents of the new corporation or eligible entity.

(5) If the plan of merger or share exchange, a plan of share exchange, or an amendment to the plan of merger or share exchange requires the approval of a majority of the votes entitled to be cast on the plan, and, if any class or series of shares is to be converted into or rights exercisable for shares does not require separate voting by voting group, the approval of each such separate voting group at a meeting by at least a majority of the votes entitled to be cast on the merger or share exchange by that voting group.

(6) Subject to Paragraph (7) of this Section, separate voting by voting group is required on all of the following:

(a) A plan of merger, by each class or series of shares that is either of the following:

(1) To be converted under the plan of merger into other securities, interests, obligations, rights to acquire shares, other securities, or interests, or into cash, other property, or any combination of the foregoing.

(2) To vote as a separate group on a provision in the plan that constitutes a proposed amendment to articles of incorporation of a surviving corporation and that requires action by separate voting groups under R.S. 12:1-1105.

(b) A plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

(c) A plan of merger or share exchange, if the voting group is entitled to vote as a voting group to approve a plan of merger or share exchange.

(7) The articles of incorporation may expressly limit or eliminate the separate voting rights provided in Item (6)(a)(1) and Subparagraph (6)(b) of this Section as to any class or series of shares, except for a transaction that includes what is or would be, if the corporation were the surviving corporation, an amendment subject to Item (6)(a)(ii) of this Section, and that will effect no significant change in the assets of the resulting entity, including all parents and subsidiaries on a consolidated basis.

(8) Unless the articles of incorporation otherwise provide, approval by the corporation’s shareholders of a plan of merger or share exchange is not required if all of the following criteria are satisfied:

(a) The corporation will survive the merger or be acquiring the acquiring corporation.

(b) Except for amendments permitted by R.S. 12:1-1005, its articles of incorporation will not be changed.

(c) Each shareholder of the corporation whose shares were outstanding in substantially the same form immediately before the effective date of the merger or share exchange will hold the same number of shares, with identical preferences, limitations, and relative rights, immediately after the effective date of change.

(d) The issuance in the merger or share exchange of shares or other securities for any class or series of shares, except for a transaction that includes what is or would be, if the corporation were the surviving corporation, an amendment subject to Item (6)(a)(ii) of this Section, and that will effect no significant change in the assets of the resulting entity, including all parents and subsidiaries on a consolidated basis.

(e) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the merger or share exchange shall require the execution, by each such shareholder, of a separate written consent to become subject to such owner liability.

Source: MBCA §11.04.

### Comment - 2014 Revision

Model Act Subsection (f) requires that shareholders approve a plan of merger or share exchange by a majority of votes cast at a meeting at which at least a majority of the votes cast to a majority of the shares entitled to vote on the plan is present in person or by proxy, plus separate approvals by voting groups that are entitled to vote separately on the plan using the same quorum and majority-of-votes-cast standards. This Section increases the vote required for approval of a plan of merger from a majority of votes cast to a majority of the shares entitled to vote. Because the higher voting standard can be achieved only if the quorum requirement of the Model Act is also satisfied, the Model Act’s separate reference to a required quorum is eliminated.

4.104.1 Merger between parent and subsidiary or between subsidiaries

A. A domestic parent corporation that owns shares of a domestic or foreign subsidiary corporation that carry at least ninety percent of the voting power of each class and series of the outstanding shares of the subsidiary that have voting power may merge the subsidiary into itself or into another such corporation. A domestic parent corporation may also merge a subsidiary into itself or into the subsidiary, without the approval of shareholders, if the board of directors or shareholders of the subsidiary, unless the articles of incorporation of any of the corporations otherwise provide, or unless, in the case of a foreign subsidiary, approval by the subsidiary’s board of directors or shareholders is required by the laws under which the subsidiary is organized.

B. If under Subsection A of this Section approval of a merger by the subsidiary’s shareholders is not required, the parent corporation shall, within ten days after the effective date of the merger, notify each of the subsidiary’s shareholders that the merger has become effective.

C. Except as provided in Subsections A and B of this Section, a merger between a parent and a subsidiary shall be governed by the provisions of Part 11 of this Chapter applicable to mergers generally.

Source: MBCA §11.06.

### Articles of merger or share exchange

A. After a plan of merger or share exchange has been adopted and approved as required by this Subpart, articles of merger or share exchange shall be submitted, in accordance with the provisions of this Subpart, to the shareholders of the parent and any shareholders that will be shareholders in the resulting entity if the plan of merger or share exchange is approved.

B. Articles of merger or share exchange shall be delivered to the secretary of the parent or any other duly authorized representative of the parent, to the secretary or registered office of the subsidiary or any other duly authorized representative of the subsidiary or foreign corporation, and to the secretary or registered office of the acquiring corporation, if any, in the manner required by this Subpart and the articles of incorporation.

C. If a plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by this Subpart and the articles of incorporation.

D. If the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement to that effect.

E. As to each eligible entity or foreign corporation that was a party to the merger or share exchange, a statement that the participation of the eligible entity or foreign corporation was duly authorized as required by the organic law of the eligible entity or corporation.

F. Articles of merger or share exchange shall be submitted to the secretary of the parent or any other duly authorized representative of the parent, to the secretary or registered office of the subsidiary or any other duly authorized representative of the subsidiary or foreign corporation, and to the acquiring corporation, in a share exchange, and shall take effect at the effective time provided in R.S. 12:1-123. Articles of merger or share exchange filed under this Section may be combined with any filing required under the organic law of any domestic eligible entity involved in the transaction if the combined filing satisfies the requirements of both this Section and the other organic law.

G. Within thirty days of the date that articles of merger take effect, a duplicate original or certified copy of the articles shall be filed in the conveyance records of each parish in that state in which any of the parties to the merger has immovable property.

Source: MBCA §11.06.

### Comments - 2014 Revision

A. This Section adds a new Subsection C to the Model Act provision, to retain the rule in prior law that requiring a parish-level filing of the articles of incorporation documents in those parishes in which one or more parties to the merger owned immovable property. The earlier requirement that the merger documents also be filed in any parish in which any of the merger parties had its registered office has been deleted.

B. The duplicate filing requirement in Subsection C of this Section does not apply to articles of share exchange because a share exchange does not change the ownership of immovable property by the parties to the share exchange.

§1-1106. Articles of merger or share exchange

(1) The names of the parties to the merger or share exchange.

(2) The plan of merger or share exchange, a plan of share exchange, or an amendment to the plan.

(3) If the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group.

(4) If the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement to that effect.

(5) As to each eligible entity or foreign corporation that was a party to the merger or share exchange, a statement that the participation of the eligible entity or foreign corporation was duly authorized as required by the organic law of the eligible entity or corporation.

(6) Articles of merger or share exchange shall be submitted to the secretary of the parent or any other duly authorized representative of the parent, to the secretary or registered office of the subsidiary or any other duly authorized representative of the subsidiary or foreign corporation, and to the acquiring corporation, if any, in the manner required by this Subpart and the articles of incorporation.

(7) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the merger or share exchange shall require the execution, by each such shareholder, of a separate written consent to become subject to such owner liability.

Source: MBCA §11.06.

### Typical Merger of Domestic Corporations

A. When a merger becomes effective, all of the following shall apply:

(1) The corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be.

(2) The separate existence of every corporation or eligible entity that is merged into the survivor ceases.
(3) All property owned by, and every contract right possessed by, each corporation or eligible entity that merges into the survivor are vested in the survivor without any transfer, assignment, reversion or impairment.

(4) All members or manager-managed limited liability company stockholders, if any, or any combination of the foregoing, that are to retain the rule in prior law that the survivor becomes a party to the merger

(5) The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger.

(6) The articles of incorporation or organic documents of the surviving and the merging entities are amended to the extent provided in the plan of merger.

(7) The articles of incorporation or organic documents of a survivor that is a domestic business corporation as if both of the following conditions exist:

a) The person who had owner liability for some or all of the debts, obligations, or liabilities of any entity as a result of a merger, share exchange, or other efforts, by service on the secretary of state.

b) The survivor possesses all the rights, licenses, privileges, and franchises possessed by each of the parties to the merger, except that the survivor does not possess any right, license, privilege, or franchise that meets either of the following conditions:

(i) The survivor is ineligible to possess or to exercise.

(ii) Does not survive a merger because of a provision to that effect in the law or administrative rules under which the right, license, privilege, or franchise is held or permitted to be held.

(8) The shares of each corporation that is a party to the merger, and the interests in an eligible entity that is a party to a merger, are to be converted under the plan of merger into shares, eligible interests, obligations, rights to acquire securities, other securities, or eligible interests, or any combination of the foregoing, and the former holders of the converted shares or eligible interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under Part 13 of this Chapter or the organic law of the entity in which the person was a shareholder or interest holder prior to the effective time of the articles of merger or share exchange.

(9) The liabilities of a party to the merger or share exchange shall be as follows:

(a) All liabilities of each corporation or eligible entity that is merged into the survivor are vested in the survivor.

(b) This Section adds a new Paragraph (9) to Subsection A of this Section to retain the rule in prior law that the survivor holds all of the rights, privileges and franchises held by each of the parties to the merger.

(c) The Code of Civil Procedure may be amended to the extent provided in the plan of merger.

(d) Upon a merger becoming effective, a foreign corporation, or a foreign eligible entity, that is the survivor of a merger holds all of the rights, privileges and franchises held by each of the parties to the merger.

(e) Prior law, under Louisiana law, this Section modifies Paragraph (d)(1) to say simply that a foreign corporation is deemed to appoint the secretary of state as its agent for service of process, and to yield to more specific provisions on the subject that may exist in a particular form of license or franchise to acquire one through a merger (as is a merger between a bank and an eligible business corporation in which the business corporation survived and claimed the right to operate a bank), and to yield to more specific provisions on the subject that may exist in a given licensing or regulatory scheme.

(f) Model Act Paragraph (d)(1) provides that a foreign survivor of a merger is deemed to appoint the secretary of state as its agent for service of process, and to yield to more specific provisions on the subject that may exist in a particular form of license or franchise to acquire one through a merger (as is a merger between a bank and an eligible business corporation in which the business corporation survived and claimed the right to operate a bank), and to yield to more specific provisions on the subject that may exist in a given licensing or regulatory scheme.

(g) The Code of Civil Procedure for service of process on foreign entities are well-developed and similar with respect to corporations and limited liability companies. The partnership and unincorporated associations, however, are more abbreviated and may not apply work as well as the corporate rules would work in dealing with foreign partnerships and other foreign entities that do not fit well into any of the listed categories of organizations. This Section addresses those problems in the context of appraisal rights suits by adding a new Subsection F to Subsection P, Subsection A for domestic and foreign limited liability companies in Arts. 1266 and 1267.

(h) Subsection F of this Section provides that, for purposes of service under Paragraph (D)(1) of this Section, all foreign entities are deemed to be foreign survivors of a merger, and those who hold managerial authority in a foreign entity comparable to that of a corporate officer or director are treated as directors. Moreover, are more abbreviated and may not apply as well as the corporate rules would work in dealing with foreign partnerships and other foreign entities that do not fit well into any of the listed categories of organizations. This Section addresses those problems in the context of appraisal rights suits by adding a new Subsection F to Subsection P, Subsection A for domestic and foreign limited liability companies in Arts. 1266 and 1267.

(i) 1-1108. Abandonment of a merger or share exchange

A. Unless otherwise provided in a plan of merger or share exchange or in the laws under which an eligible entity or foreign business corporation that is a party to a merger or share exchange is organized or by which it is governed, and the merger or share exchange has been abandoned in accordance with this Section, a foreign entity may be abandoned.

B. If a merger or share exchange is abandoned under Subsection A of this Section after articles of merger or share exchange have been filed with the secretary of state but before the merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this Section, such file of articles of merger or share exchange by an officer or other duly authorized representative, shall be delivered to the secretary of state for filing prior to the effective date of the merger or share exchange. Upon filing, the statement shall take effect and all rights, privileges and franchises held by the parties to the merger or share exchange shall be deemed abandoned and shall not become effective.

Source: MBCA §1108.
PART 12. DISPOSITION OF ASSETS

§1-1201. Disposition of assets not requiring shareholder approval

No approval of the shareholders of a corporation is required in any of the following cases, unless the articles of incorporation otherwise provide:

(1) To sell, lease, exchange, or otherwise dispose of any or all of the corporation’s assets in the usual and regular course of business.

(2) To mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of the corporation’s assets, whether or not in the usual and regular course of business.

(3) To transfer any or all of the corporation’s assets to one or more consolidated subsidiaries, or to any of the other activities all of the shares or interests of which are owned by the corporation.

(4) To distribute assets pro rata to the holders of one or more classes or series of the corporation’s shares, provided that the distribution does not violate the rights of any class or series of shares.

Source: MBCA §12.01.

Comment - 2014 Revision

This Section adds a requirement to the rule in Model Act Paragraph (4) that the distribution be made without violating the rights of any class or series of shares.

§1-1202. Shareholder approval of certain dispositions

A. Sale, lease, exchange, or other disposition of assets, other than a disposition described in R.S. 12:1-1201, requires approval of the corporation’s shareholders if the disposition would leave the corporation without a significant continuing business activity. If a corporation retains a business activity that represents at least twenty-five percent of total assets at the end of the most recently completed fiscal year, and twenty-five percent of either income from continuing operations before taxes or revenues from continuing operations for that year, whichever is less, and its subsidiaries on a consolidated basis, the corporation will conclusively be deemed to have retained a significant continuing business activity.

B. A disposition that requires approval of the shareholders under the provisions of Subsection A of this Section shall be initiated by a resolution of the board of directors authorizing the disposition. After adoption of such a resolution, the board of directors shall submit the proposed disposition to the shareholders for their approval. The board of directors shall also transmit to the shareholders the basis for so proceeding. If the board of directors makes such a determination or R.S. 12:1-826 applies, the board of directors shall transmit to the shareholders the basis for so proceeding.

C. The board of directors may condition its submission of a disposition to the shareholders under Subsection B of this Section on any basis.

D. If a disposition is required to be approved by the shareholders under Subsection A of this Section, and the approval is to be given at a meeting of the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the disposition is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the disposition and shall contain a description of the disposition and the terms and conditions thereof and the consideration to be received by the corporation.

E. Unless the articles of incorporation or the board of directors acting pursuant to Subsection C of this Section requires a greater vote, the approval of the shareholders shall be given by a majority of the votes entitled to be cast at the meeting.

F. After a disposition has been approved by the shareholders under Subsection B of this Section, and at any time before the disposition has been consummated, it may be abandoned by the corporation without action by the shareholders subject to any contractual rights or other parties to the disposition.

G. A disposition of assets in the course of dissolution under Part 14 of this Chapter is not governed by this Section.

H. The assets of a direct or indirect consolidated subsidiary shall be deemed the assets of the parent corporation for the purposes of this Section.

Source: MBCA §12.02.

Comment - 2014 Revision

This Section modifies Model Act Subsection (e) to increase the vote required to approve a covered disposition of assets from a majority of the votes cast at a meeting with at least a majority quorum to a majority of all votes entitled to be cast.

PART 13. APPRAISAL RIGHTS

SUBPART A. RIGHT TO APPRAISAL AND PAYMENT FOR SHARES

§1-1301. Definitions

In this Part, the following meanings shall apply:

A. “Interested transaction” means a transaction in which any of the shares or assets of the corporation are being acquired or converted.

B. “Preferred shares” means a class or series of shares whose holders have preference over any other class or series with respect to dividends.

C. “Senior executive” means the chief executive officer, chief operating officer, chief financial officer, and anyone in charge of a principal business unit or function.

D. “Shareholder” means a record shareholder, a beneficial shareholder, and a voting trust beneficial owner.

Comment - 2014 Revision

The Model Act excludes so-called “short form mergers” from its definition of “interested transaction” in Paragraph (5) of this Section. A short form merger is a merger that is carried out between a ninety percent or greater parent company and one or more of its subsidiaries, or among one or more ninety-percent-or-greater subsidiaries of the same parent. See Subsection D of this Section. The Model Act excludes so-called “short form mergers” because it may be carried out without the approval of either the board or shareholders of the subsidiary. Id. The purpose of the “interested transaction” definition is to prevent the defined transaction from qualifying for the so-called “market out” exception that makes appraisal rights unavailable in transactions in which they would otherwise be provided.

This Section removes the exclusion of short form mergers from the definition of “interested transaction” so that short form mergers may be treated as “interested transactions” in the same way as ordinary mergers if they otherwise qualify as a so-called “short form.” This Section is one of the clearest examples imaginable of a conflicting-interest transaction. It allows a parent company to dictate unilaterally to a ninety-percent subsidiary the terms under which a merger with the subsidiary will occur, without even the formality of an approving vote by the subsidiary’s board or shareholders.
The only setting in which a market-out exception for a short-term merger or, indeed, for any parent-subsidiary merger, is justified is in a two-step cash, or all-shares, transaction in which the terms are set by market forces in the first step, and then carried through to the second step short-form merger as well. A typical example would be an unrelated acquirer making an all-shares cash tender offer that resulted in the acquisition of at least a majority of the target’s shares, followed soon thereafter by a second-step merger at the same price, paid in the tender offer. In that kind of transaction, the usual justifications for the market-out exception, i.e., liquidity and a market-set price, are met.

But the Model Act deals with that form of transaction elsewhere, through more narrowly-tailored provisions. The general rule for short form mergers that this Section rejects, a parent company is an interested person because it owns twenty percent or more of the subsidiary's shares. See Model Act Item 13.01(3)(i)(A). However, in calculating the percentage of shares owned by the parent, so-called “excluded shares” are not included in the calculation of interest. Excluded shares are those beneficially owned by the shareholder, or any class of shares of the corporation that is one of the following classes or series of shares which is one of the following:

A.  A shareholder is entitled to appraisal rights and to obtain payment of the fair value of that shareholder’s shares, in the event of any of the following corporate actions:

(1) Consummation of a merger to which the corporation is a party if either of the following is true:

a) Shareholder approval is required for the merger as provided in R.S. 12:1-1104, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger.

b) The corporation is a subsidiary and the merger is governed by R.S. 12:1-1105.

(2) Consummation of a share exchange to which the corporation is a party as the exchange of its shares for cash, and not as the exchange of any class or series of shares of the corporation with respect to any class or series of shares of the corporation that is not exchanged.

(3) Consummation of a disposition of assets pursuant to R.S. 12:1-1202, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series if, under the terms of the corporate action approved by the shareholders, there is to be distributed to shareholders in cash their net assets in excess of a reasonable amount reserved to meet claims of the type described in R.S. 12:1-1406 and 1407, within one year after the shareholders’ approval of the action and in the proportion that the shareholders entitled to vote then held as holders of the shares of the class or series entitled to such rights determined at the time of disposition, and the disposition of assets is not an interested transaction.

(4) An amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation with respect to any class or series of shares of the corporation that is not exchanged.

Any other amendment to the articles of incorporation, merger, share exchange, or disposition of assets to the extent provided by the articles of incorporation, bylaws, or a resolution of the board of directors.

(6) Acquisition of a domestic corporation by merger if the shareholder does not receive shares in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder in all material respects, and represent at least the same percentage interest of the total voting rights of the class or series of shares of the corporation, as the shares held by the shareholder before the domestication.

(7) Consummation of a conversion of the corporation to a non-profit status pursuant to Subpart 9C of this Part.

(8) Conversion of the corporation to an unincorporated entity pursuant to Subpart 9E of this Part.

B.  Notwithstanding Subsection A of this Section, the availability of appraisal rights under Subparts (A)(1), (2), (3), (4), (6), and (8) of this Section shall be limited in accordance with the following provisions:

(a) A covered security under Section 18(b)(1)(A) or (B) of the Securities Act of 1933, as amended.

(b) Issued by a non-profit organization on an organized market and has at least two thousand shareholders and a market value of at least twenty million dollars, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, and directors and by beneficial shareholders and voting trust beneficial owners owning more than ten percent of such shares.

(c) Issued by an open end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and may be redeemed at the option of the holder at net asset value.
to the corporation at their fair value, paid in cash. To retain the right to assert appraisal rights, a shareholder is required by law: (1) to deliver to the corporation, before the date is taken, a written notice to the corporation of the shareholder’s intent to assert appraisal rights with respect to any class or series of shares, which notice must be delivered to the corporation as of the date the corporate action described in R.S. 12:1-1302(A) is submitted to a vote, (2) to deliver to the corporation their appraisal rights only by completing and returning an appraisal form that the corporation must complete, and a copy of Part 13 of the Business Corporation Act, governing appraisal rights. If a shareholder complies with the requirement and the corporation waives the requirements of R.S. 12:1-1321(A)(1), “Appraisal rights allow a shareholder to avoid the effects of the proposed corporate action described in this notice by selling the shareholder’s shares to the corporation at their fair value, paid in cash. To retain the right to assert appraisal rights, a shareholder is required by law not to vote, or cause or permit to be voted, in favor of the proposed corporate action any shares of the class or series for which the shareholder intends to assert appraisal rights. If a shareholder complies with the requirement and the action proposed in this notice take effect, the law requires the corporation to send to the shareholder an appraisal form that the shareholder must complete and return, a copy of Part 13 of the Business Corporation Act, governing appraisal rights.”

B. If a merger pursuant to R.S. 12:1-1105, the parent corporation must notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice must be sent within ten days after the corporate action became effective and include the materials described in R.S. 12:1-1302(A). C. A shareholder who fails to satisfy the requirements of Subsection A or B of this Section is not entitled to appraisal under this Part.

§1321. Notice of intent to demand appraisal and consequent vote or consent

A. If a corporate action specified in R.S. 12:1-1302(A) is submitted to a vote at a shareholders’ meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares must do both of the following:

(1) Deliver to the corporation, before the vote is taken, written notice of the shareholder’s intent to demand appraisal if the proposed action is effectuated.

(2) Not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed action.

B. If a corporate action specified in R.S. 12:1-1302(A) is to be approved by written consent of the shareholders, a shareholder may assert appraisal rights with respect to a class or series of shares only if the shareholder does not sign a consent in favor of the proposed action with respect to that class or series of shares. C. A shareholder who fails to satisfy the requirements of Subsection A or B of this Section is not entitled to appraisal under this Part.

Source: MBCA §13.21.

Comments - 2014 Revision

(a) The Model Act references to “payment” in the caption of this Section and in Paragraph (A)(1) and Subsection C of this Section have been replaced with the term “appraisal” to avoid possible confusion between the payment that may be available through appraisal rights and the payment being offered under the terms of the transaction at which they receive the notice. See R.S. 12:1-1322(B)(3) and 1-1320(C)(2).

(b) This Section adds a sentence to Subsection E of this Section that imposes a duty on a shareholder who receives the financial information specified in Subsection D of this Section to use that information for proper purposes only.

§1322. Appraisal notice and form

A. If a corporate action requiring appraisal rights under R.S. 12:1-1302(A) becomes effective, the shareholder corporation must send a written appraisal notice and the form required by Paragraph (B)(1) of this Section to all shareholders who satisfy the requirements of R.S. 12:1-1321(A) or R.S. 12:1-1321(B). In the case of a merger under R.S. 12:1-1105, the parent corporation must deliver an appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

B. The appraisal notice must be delivered no earlier than the date the corporate action specified in R.S. 12:1-1302(A) became effective, and no later than ten days after such date, and must do all of the following:

(1) Supply a form that requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date.

(2) Be accompanied by a copy of this Part.

C. A corporation may elect to withhold payment as permitted by R.S. 12:1-1322 only if the form required by Subsection B of this Section does both of the following:

(1) Supply a form that requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date.

(2) Be accompanied by a copy of this Part.

D. Where corporate action described in R.S. 12:1-1302(A) is proposed, or a merger pursuant to R.S. 12:1-1105 is effected, the notice referred to in Subsection A or C of this Section, if the corporation concludes that appraisal rights are or may be available, and in Subsection B of this Section shall be accompanied by both of the following:

(1) The annual financial statements specified in R.S. 12:1-1620(B) of the corporation that issued the shares that may be subject to appraisal, which shall be as of a date ending not more than sixteen months before the date of delivery of the notice and the appraisal form required by Paragraph (A)(1) and Subsection C of this Section. If such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information.

(2) The latest available quarterly financial statements of such corporation, if any.

E. The right to receive the information described in Subsection D of this Section may be waived in writing by a shareholder before or after the corporate action. If the information described in Subsection D of this Section is not publicly available, the shareholder who receives it owes a duty to the corporation to use the information only for purposes of determining whether to exercise appraisal rights and for other proper purposes.

Source: MBCA §13.22.

Comments - 2014 Revision

(a) The Model Act requires the corporation to send a copy of Part 13 of the Business Corporation Act along with the initial notice of a meeting or other shareholder action that may give rise to appraisal rights. This Section replaces that requirement with a shorter, statutorily specified form of notice that apprises the shareholders of the information most relevant to the stage of the transaction at which they receive the notice. This Section requires the sending of the complete Part only when the corporation sends the appraisal form under R.S. 12:1-1302 or when it is sending a notice to nonconsenting and nonvoting shareholders under R.S. 12:1-704 that an appraisal right under this Part has already been approved by the written consent of shareholders. See R.S. 12:1-1322(B)(3) and 1-1320(C)(2).

(b) This Section adds a sentence to Subsection E of this Section that imposes a duty on a shareholder who receives the financial information specified in Subsection D of this Section to use that information for proper purposes only.

(1) Supply a form that requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date.

(2) Be accompanied by a copy of this Part.

C. A corporation may elect to withhold payment as permitted by R.S. 12:1-1322 only if the form required by Subsection B of this Section does both of the following:

(1) Supply a form that requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date.

(2) Be accompanied by a copy of this Part.

D. Where corporate action described in R.S. 12:1-1302(A) is proposed, or a merger pursuant to R.S. 12:1-1105 is effected, the notice referred to in Subsection A or C of this Section, if the corporation concludes that appraisal rights are or may be available, and in Subsection B of this Section shall be accompanied by both of the following:

(1) The annual financial statements specified in R.S. 12:1-1620(B) of the corporation that issued the shares that may be subject to appraisal, which shall be as of a date ending not more than sixteen months before the date of delivery of the notice and the appraisal form required by Paragraph (A)(1) and Subsection C of this Section. If such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information.

(2) The latest available quarterly financial statements of such corporation, if any.

E. The right to receive the information described in Subsection D of this Section may be waived in writing by a shareholder before or after the corporate action. If the information described in Subsection D of this Section is not publicly available, the shareholder who receives it owes a duty to the corporation to use the information only for purposes of determining whether to exercise appraisal rights and for other proper purposes.

Source: MBCA §13.20.
Comment - 2014 Revision

Model Act Paragraph (b)(1) requires all notices of appraisal to include “announcement date” information concerning the transaction with respect to which the shareholder is entitled to receive appraisal rights. This requirement is intended to require certifications from the shareholder that the relevant shares were acquired before that date. Those items are relevant only where the corporation wishes to exercise its right not to make an immediate payment for so-called “after-acquired” shares. Under the amended statute, a shareholder is entitled to receive appraisal rights with respect to such shares acquired after the “announcement date”. Because the after-acquired shares issue is irrelevant to most closely-held corporations, this Section moves the announcement and acquisition date items from the general rules in Paragraph (b)(1) of this Section to a new Subsection C of this Section. Subsection C eliminates the announcement and acquisition date items and includes the items covered by new Subsection C of this Section unless the corporation wishes to preserve its right to withold an immediate payment for after-acquired shares, something that is likely to be relevant only where an active trading market exists for the corporation’s shares.

§1-1324. Procedure if shareholder dissatisfied with payment or offer

A. A shareholder paid pursuant to R.S. 12:1-1324 who is dissatisfied with the amount of the payment must notify the corporation in writing of that dissatisfaction within thirty days after receiving the corporation’s offer. If the shareholder does not so notify the corporation within that period, it shall pay in cash the amount it offered under Paragraph (B)(2) of this Section to each shareholder described in Paragraph (B)(1) of this Section who is not paid under R.S. 12:1-1324. A shareholder offered payment under R.S. 12:1-1325 who is dissatisfied with that offer must reject the offer and demand payment of the shareholder’s stated estimate of the fair value of the shares plus interest.

B. A shareholder who fails to notify the corporation in writing that shareholder’s demand to be paid the shareholder’s stated estimate of the fair value plus interest, less any payment under R.S. 12:1-1324. A shareholder offered payment under R.S. 12:1-1325 who is dissatisfied with that offer that must reject the offer and demand payment of the shareholder’s stated estimate of the fair value of the shares plus interest.

C. A shareholder who does not sign and return the form and, in the case of uncertificated shares, returns the signed forms, that shareholder loses all rights to appraisal under R.S. 12:1-1325. Because the corporation must deposit shares with the corporation to tender them for appraisal, the corporation may elect to treat the shareholder’s deposit of the shares as a demand for appraisal under R.S. 12:1-1325.

D. Within ten days after receiving the offer, the corporation shall make all shareholders, whether or not residents of this state, whose demands remain unsettled parties to the proceeding. Those shareholders shall be deemed to have accepted the corporation’s offer within thirty days after receiving the offer, unless the corporation shall cause the earlier-delivered financial statements no longer to meet the requirement that they be stated as of a date ending not more than sixteen months before the date of the payment.

E. Each shareholder made a party to the proceeding is entitled to judgment for either of the following:

1. The elimination of the duplicate delivery requirement does not affect the discovery rights of a shareholder in an action to enforce the shareholder’s appraisal rights.

§1-1325. After-acquired shares

A. A corporation may elect to withhold payment required by R.S. 12:1-1324 from any shareholder who was required to, but did not, certify that beneficial ownership of all of the shareholder’s shares for which appraisal rights are sought was acquired before the date specified in the appraisal notice sent in accordance with R.S. 12:1-1322(B)(1) and R.S. 12:1-1322(C).

B. If the corporation elects to withhold payment under Subsection A of this Section, it must, within thirty days after the form required by R.S. 12:1-1324 is issued, notify all shareholders who are described in Subsection A of this Section of all of the following:

(1) The information required by R.S. 12:1-1324(B)(4).

(2) The corporation’s estimate of fair value pursuant to R.S. 12:1-1324(B)(2).

(3) That they may accept the corporation’s estimate of fair value, plus interest, within ten days of full satisfaction of their demands or demand appraisal under R.S. 12:1-1326.

(4) That those shareholders who wish to accept such offer must notify the corporation of their acceptance of the corporation’s offer within thirty days after receiving the offer.

(5) That those shareholders who do not satisfy the requirements for demanding appraisal under R.S. 12:1-1326 shall be deemed to have accepted the corporation’s offer.

C. Within ten days after receiving the shareholder’s acceptance pursuant to Subsection B of this Section, the corporation must pay in cash the amount it offered under Paragraph (B)(2) of this Section to each shareholder who agreed to accept the corporation’s offer in full satisfaction of the shareholder’s demand.

D. Within ten days after sending the notice described in Subsection B of this Section, the corporation must pay in cash the amount it offered under Paragraph (B)(2) of this Section to each shareholder described in Paragraph (B)(5) of this Section. If the corporation fails to do so, the corporation is subject to the penalties provided by law.

§1-1326. Procedure if shareholder dissatisfied with payment or offer

A. A shareholder paid pursuant to R.S. 12:1-1324 who is dissatisfied with the amount of the payment must notify the corporation in writing of that dissatisfaction within thirty days after receiving the corporation’s offer. If the shareholder does not so notify the corporation within that period, it shall pay in cash the amount it offered under Paragraph (B)(2) of this Section to each shareholder described in Paragraph (B)(1) of this Section who is not paid under R.S. 12:1-1324. A shareholder offered payment under R.S. 12:1-1325 who is dissatisfied with that offer must reject the offer and demand payment of the shareholder’s stated estimate of the fair value of the shares plus interest.

B. A shareholder who fails to notify the corporation in writing that shareholder’s demand to be paid the shareholder’s stated estimate of the fair value plus interest, less any payment under R.S. 12:1-1324. A shareholder offered payment under R.S. 12:1-1325 who is dissatisfied with that offer that must reject the offer and demand payment of the shareholder’s stated estimate of the fair value of the shares plus interest.

C. The corporation shall make all shareholders, whether or not residents of this state, whose demands remain unsettled parties to the proceeding. Those shareholders shall be deemed to have accepted the corporation’s offer within thirty days after receiving the offer, unless the corporation shall cause the earlier-delivered financial statements no longer to meet the requirement that they be stated as of a date ending not more than sixteen months before the date of the payment.

D. Each shareholder made a party to the proceeding is entitled to judgment for either of the following:

1. The elimination of the duplicate delivery requirement does not affect the discovery rights of a shareholder in an action to enforce the shareholder’s appraisal rights.

E. Each shareholder made a party to the proceeding is entitled to judgment for either of the following:

1. The elimination of the duplicate delivery requirement does not affect the discovery rights of a shareholder in an action to enforce the shareholder’s appraisal rights.
(1) The amount, if any, by which the court finds the fair value of the shareholder’s shares, plus interest, exceeds the amount paid by the corporation to the shareholder for such shares.

(2) The fair value, plus interest, of the shareholder’s shares for which the corporation elected to withhold payment under R.S. 12:1-1323.


Comments - 2014 Revision

(a) This Section modifies Model Act Subsection (a) to state that the proceeding to be commenced by the corporation is to be a summary proceeding. Because a jury is unavailable in a summary proceeding, the Model Act rule against a jury trial in Subsection (d) was deleted as redundant.

(b) The Section also adds a date by which the corporation must pay the amount demanded by a shareholder if the corporation fails to commence the appraisal proceeding within the sixty-day period specified in Subsection A of this Section. The peremptive period for the enforcement of this payment obligation, which is provided in R.S. 12:1-1331(D), is measured from that date.

(c) Subsection D of this Section adds that a corporation that fails to make payment may “receive evidence and recommend a decision” in the appraisal proceeding. This Section modifies Subsection (d) to treat the appraiser as a court-appointed expert witness.

$1-1331. Court costs and expenses

A. The court in an appraisal proceeding commenced under R.S. 12:1-1330 shall determine all court costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the court costs against the corporation, except that the court may assess court costs against all or some of the shareholders demanding appraisal, in amounts which the court finds equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this Part.

B. The court in an appraisal proceeding may also assess the expenses of the respective parties in amounts the court finds equitable against either of the following:

(1) The corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of R.S. 12:1-1320, 1-1322, 1-1324, or 1-1325.

(2) Either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds the party against whom expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this Part.

C. If the court in an appraisal proceeding finds that the expenses incurred by any shareholder were of substantial benefit to other shareholders similarly situated and that such expenses should not be assessed against the corporation or any other shareholder, the court may order those expenses paid out of the amounts awarded the shareholders who were benefited.

D. To the extent the corporation fails to make a required payment pursuant to R.S. 12-1-1324, 1-1325, 1-1326, or 1-1330(A), the shareholder may sue directly for the amount owed, and to the extent successful, shall be entitled to recover from the corporation all expenses of the suit. The shareholder’s right to enforce the corporation’s payment obligation under this Subsection is perempted five years after the date that the payment by the corporation becomes due under the relevant provision.

Source: MBCA §13.31.

Comments - 2014 Revision

(a) This Section adds R.S. 12:1-1330(A) to the list of Sections under which a corporation’s payment obligation may provide a cause of action under Subsection D of this Section.

(b) This Section also adds a five year peremptive period for the actions authorized by Subsection D of this Section, measured from the date that the payment from the corporation becomes due under the relevant provision.

$1-1340. Other remedies limited

A. The legality of a proposed or completed corporate action described in R.S. 12:1-1320(A) may not be contested, nor may the corporate action be enjoined, set aside or rescinded, in any proceeding commenced by a shareholder after the shareholders have approved the corporate action.

B. The appraisal rights provided by this Part are the exclusive remedy of a shareholder in connection with a corporate action for which R.S. 12:1-1302 makes appraisal rights available if either of the following conditions is satisfied:

(1) The shareholder is not subject to the requirements of R.S. 12:1-1321(A) concerning the delivery of a written notice of the shareholder’s intent to assert appraisal rights.

(2) The corporation waives the requirements of R.S. 12:1-1321(A)(1).

C. If Subsection B of this Section makes appraisal rights the exclusive remedy of a shareholder, then the shareholder shall not have any other cause of action for damages or for any other form of relief against the corporation, or any director, officer, employee, agent, or controlling person of the corporation, with respect to the corporate action for which R.S. 12:1-1302 makes appraisal rights available.

D. If the corporation waives the requirements of R.S. 12:1-1321(A)(1), a shareholder may assert appraisal rights without complying with those requirements for payment by the corporation of the amount specified in R.S. 12:1-1320(A)(2) by sending shareholders the notice specified in R.S. 12:1-1320(A)(2).

E. Subsections A, B, and C of this Section do not apply to a corporate action that is any of the following:

(1) Not authorized and approved in accordance with the applicable provisions of any of the following:

(a) Part 9, 10, 11, or 12 of this Chapter.

(b) The articles of incorporation or bylaws.

(c) The resolution of the board of directors authorizing the corporate action.

(2) Reserved.

(3) Reserved.

(4) Approved by less than unanimous consent of the voting shareholders pursuant to R.S. 12:1-704 if both of the following requirements are met:

(a) The challenge to the corporate action is brought by a shareholder who did not consent and as to whom notice of the approval of the corporate action was not effective at least ten days before the corporate action was effected.

(b) The proceeding challenging the corporate action is commenced within ten days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.

D. To the extent the corporation fails to make a required payment pursuant to R.S. 12:1-1330(A), the proceeds that a shareholder shall receive from the corporation shall be limited to recovering from the corporation all expenses of the suit. The shareholder’s right to enforce the corporation’s payment obligation under this Subsection is perempted five years after the date that the payment by the corporation becomes due under the relevant provision.

Source: MBCA §13.40.

Comment - 2014 Revision

Model Act Paragraphs (b)(2) and (3) provide exceptions to the operation of Subsection A of this Section for a corporate action that was an “interested transaction,” if not approved as provided in R.S. 12:1-862 and 1-863, or one that was procured as a result of a material mistake, misrepresentation or omission. This Section deletes those paragraphs because of the potential they create of negating the effects of Subsection A of this Section almost entirely.

PART 14. DISSOLUTION

SUBPART A. VOLUNTARY DISSOLUTION

§1-1401. [Reserved.]

Comment - 2014 Revision

The substance of the simplified dissolution mechanism provided by Model Act Section 14.01 has been incorporated into R.S. 12:1-1441, concerning a simplified form of termination.

§1-1402. 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, both of the following requirements must be met:

(1) The board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders.

(2) The shareholders entitled to vote must approve the proposal to dissolve as provided in Subsection E of this Section.

C. The board of directors may condition its submission of the proposal for dissolution on any basis.

D. The corporation shall notify each shareholder, whether or not entitled to vote in a meeting of shareholders’ meeting. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

E. Unless the articles of incorporation or the board of directors acting pursuant to Subsection C of this Section require a greater vote or a vote by voting groups, adoption of the proposal to dissolve shall require the approval of at least a majority of the votes entitled to be cast.

Source: MBCA §14.02.

§1-1405. Articles of dissolution

A. At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth all of the following:

(1) The name of the corporation.

(2) The date dissolution was authorized.

(3) If dissolution was approved by the shareholders, a statement that the proposal was duly approved by the shareholders in the manner required by this Act and by the articles of incorporation.

B. If the corporation is dissolved upon the effective date of its articles of dissolution.

C. For purposes of this Subpart, “dissolved corporation” means a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

D. The secretary of state shall deliver a notice of the filing of the articles of dissolution to all of the following:

(1) The secretary of the Department of Revenue.

(2) The secretary in charge of the Department of Environmental Quality.


Comments - 2014 Revision

(a) The rules in this Section concerning the content of a corporation’s articles of dissolution are supplemented by the general rules in R.S. 12:1-120 for the filing of documents under this Section. The effective date of the articles is governed by R.S. 12:1-123(A), and the duty of the secretary of state
to file the articles, if they meet the requirements for filing, is provided by R.S. 12:1-125(A).  
(b) Subsection D of this Section is not part of the Model Act. It was added to this Section to retain a modified version of R.S. 12:146(B). That Section conditioned the obligation of the secretary of state to file a corporation's final articles of dissolution, declaring its liquidation to be complete, on the filing of a certificate from each of the three listed agencies, to the effect that the corporation owed no unpaid debts to the agency or to the funds that the agency administered. The former approach was not retained unchanged in this Section because it imposed indefinite delays on the completion of the dissolution process, while providing the required notice only when the corporation had already liquidated and distributed all its assets. 
(c) As adopted in this Section, Subsection D of this Section requires the secretary of state to notify the listed agencies of the filing of articles of dissolution under this Section. Because articles of dissolution are filed at the time of dissolution, the corporation would be in an unauthorized position when it is still useful, before the corporation has already paid its other debts and distributed its residual value to its shareholders. And because the agencies are relieved of any obligation to take some affirmative position on whether a debt is owed, they are free to pursue the enforcement strategies they consider most efficient with respect to dissolved corporations, without delaying the completion of all corporate dissolutions for the indefinite time required to make the affirmative certifications required by the prior law.
§1-1404. Revocation of dissolution
A. A corporation that is not terminated may revoke its dissolution within one hundred and twenty days of its effective date.  
B. Revocation of dissolution must be authorized in the same manner as the dissolution was authorized.  
C. After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution that set forth all of the following:  
(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) 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, in which event the board of directors may revoke the dissolution without shareholder action.
D. Revocation of dissolution is effective upon the date of the articles of revocation of dissolution.  
E. When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.  
F. A dissolution under R.S. 12:1-1438 is not revocable.
Source: MBCA §14.04.

Comments - 2014 Revision
(a) Unlike the Model Act, this Section distinguishes between a corporation that has been dissolved and one that has been terminated. A corporation may revoke its dissolution under Subsection A of this Section only if the corporation is already terminated, or if the corporation is terminated, it may seek reinstatement as provided in R.S. 12:1-1444.  
(b) This Section adds a new Subsection F to provide that a dissolution under R.S. 12:1-1438 is not revocable. R.S. 12:1-1438 permits a corporation to dissolve in lieu of carrying out a court-ordered buyout of an oppressed shareholder.  
A revocation of dissolution under those circumstances is prohibited to prevent the majority shareholders of the corporation from circumventing the effects of the remedy, either a buyout or dissolution, that this Section makes available to an oppressed shareholder.  
§1-1405. 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 any of the following:  
(1) Collecting its assets.  
(2) Disposing of its properties that will not be distributed in kind to its shareholders.  
(3) Discharging or making reasonable provision for discharging its liabilities.  
(4) Distributing its remaining property among its shareholders according to their interests.  
(5) Doing every other act necessary to wind up and liquidate its business and affairs.  
B. Dissolution of a corporation does not do any of the following:  
(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 8 of this Chapter.  
(4) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws.
(5) Prevent commencement of a proceeding by or against the corporation in its corporate name.  
(6) Stay or dismiss a proceeding pending by or against the corporation on the effective date of dissolution.  
(7) Terminate the authority of the registered agent of the corporation.  
C. The limitation imposed by Subsection A of this Section on the business to be conducted by a dissolved corporation does not do either of the following:  
(1) Require the corporation to discontinue operations in any part of its business that the corporation plans to sell as a going concern in connection with the winding up and liquidation of the corporation's affairs.  
(2) Affect any right acquired by a third person before the third person knew or had reason to know that the corporation is dissolved.  
D. The filing of articles of dissolution by a corporation does not by itself give a third person knowledge or reason to know that the corporation is dissolved.  
E. The provisions of Code of Civil Procedure Articles 692 and 740 do not apply to a dissolved corporation that has not been terminated. A dissolved and unincorporated corporation continues to be the proper party plaintiff under Code of Civil Procedure Article 690 and the proper party defendant under Code of Civil Procedure Article 739. An action by or against a terminated corporation is governed by R.S. 12:1-1443.
Source: MBCA §14.05.

Comments - 2014 Revision
(a) This Section adds a new Subsection C to make it clear that the limitation on the business of a dissolved corporation imposed by Subsection A of this Section does not interfere with the ability of a dissolved corporation to sell all or part of its business as a going concern, or affect any right acquired by a third party without knowledge or reason to know of the dissolution. A new Subsection D of this Section rejects the view that the simple filing of an articles of dissolution is enough by itself to put a third party on notice of the dissolution.  
(b) This Section adds a new Subsection E to confirm the continued procedural capacity of a dissolved corporation that has not been terminated. It is clear from this Section that when a dissolution has been terminated, its procedural capacity is governed by R.S. 12:1-1443.
§1-1406. Known claims against dissolved corporation
A. A dissolved corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after its effective date.  
B. The written notice must do all of the following:  
(1) Describe information that must be included in a claim.  
(2) Provide a mailing address where a claim may be sent.  
C. A claim against the dissolved corporation is perempted by either of the following:  
(1) If a claimant who was given written notice under Subsection B of this Section does not deliver the claim to the dissolved corporation by the deadline stated in the rejection notice.  
(2) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim by the deadline stated in the rejection notice for the commencement of an enforcement proceeding.  
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.
Source: MBCA §14.06.

Comments - 2014 Revision
(a) This Section changes the word “barred” in Subsection C of this Section to “perempted” to make it clear that the time limitation in Subsection C of this Section is peremptive rather than prescriptive. Reflecting that change in terminology, the language of the notice in Paragraph (B)(4) of this Section is modified to use the phrase “extinguished by perempture.” That phrase is used in the notice both because it is technically correct and because the word “extinguished” is likely to convey to a layperson the critical idea that the affected claim will be terminated or eliminated in some fashion if the deadline stated in the notice is missed.  
(b) The Model Act deadline in Paragraph (C)(2) of this Section for the commencement of an enforcement proceeding on a claim extinguished by perempture may not be fewer than ninety days after the effective date of the corporation's notice to the claimant that the corporation has rejected the claim.  
A. Unlike the initial notice to the claimant under Paragraph (B)(3) of this Section, the Model Act rejection notice is not required to state the deadline that applies. Paragraph (C)(2) of this Section must be modified to require a statement of the deadline in the rejection notice similar to that required in the initial notice. As modified, the deadline for the commencement of a proceeding to enforce a rejected claim under Paragraph (C)(2) of this Section is the deadline stated in the rejection notice, and the deadline must be at least ninety days after the effective date of the rejection notice.  
§1-1407. Other claims against dissolved corporation
A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the provisions of R.S. 12:1-1406.

B. The notice must do all of the following:

1. Be published one time in a newspaper of general circulation in the parish where the dissolved corporation’s principal office or, if none in this state, its registered office, is or was last located.

2. Describe the information included in a claim and provide a mailing address where the claim may be sent.

3. State that a claim against the dissolved corporation will be extinguished by peremption unless a proceeding to enforce the claim is commenced within three years after the date that the notice becomes effective.

C. If the dissolved corporation publishes a newspaper notice in accordance with Subsection B of this Section, any claim not earlier perempted by R.S. 12:1-1406(C) is perempted unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within three years after the date that the notice becomes effective.

D. A claim that is not perempted by R.S. 12:1-1406(C) or 1-1407(C) may be enforced against either of the following:

1. The dissolved corporation, to the extent of the assets that the corporation has in liquidation.

2. The corporation’s assets that are distributed to shareholding claimants.

Source: MBCA §14.07.

Comments - 2014 Revision

(a) This Section changes the Model Act word “barred” to the Louisiana term “perempted” throughout the Section, except in Paragraph (B)(3) of this Section, concerning notice, where the phrase “extinguished by peremption” is used. The longer phrase is required in the notice both because it is technically correct, and because the word “extinguished” is likely to convey to a layperson the critical idea that the affected claim will be terminated or eliminated in some fashion if the deadline stated in the notice is missed.

(b) This Section simplifies the Model Act description in Subsection C of this Section of the parties whose claims are perempted by that Subsection. The Model Act lists the three types of claimants affected, but in so doing obscures the point that the peremption in Subsection C of this Section applies to all persons whose claims are not already perempted by Subsection 14.06(c). This Section makes the connection between the two provisions more explicit.

(c) This Section corrects an apparently erroneous cross reference in Model Act Subsection (d) to Subsection 14.06(b). Subsection 14.06(c) is the provision likely intended in the Model Act, and it is the correct provision under this Chapter.

(d) The peremption of claims provided by R.S. 12:1-1406(C) and 1-1407(C) does not extend any prescriptive or peremptive period that otherwise applies to a claim. A prescribed or perempted claim may not be enforced against the corporation even if the deadline stated in the notice is missed, within the peremptive periods specified in R.S. 12:1-1406(C) and 1-1407(C).

(e) This Section adds a new Subsection E to retain the two-year limitation period from prior law on claims brought against shareholders for excess distributions to the shareholders. Subsection E mirrors the three-year period in Model Act Subsection C, the two-year period in Subsection E of this Section applies without regard to whether the corporation publishes a newspaper notice in accordance with Subsection C of this Section.

(f) The effect of adding the two-year bar in Subsection E of this Section, when combined with a similar two-year bar for claims against directors under R.S. 12:1-833, is to make the three-year bar in Subsection C of this Section relevant only to claims against the corporation itself, recoverable under this Section. And, the additional three years of the three-year period of the corporation. Because the corporation is unlikely to hold any undistributed assets other than those unknown to the corporation itself or already dedicated to the payment of contingent and post-dissolution claims, the three-year bar is unlikely to prevent the corporation itself from the adverse effects of a late-arising claim. Still, the three-year bar remains important for two other reasons. First, where the corporation has made provision for the post-dissolution payment of claims, it allows that class to be closed and payments to be made as provided. Second, it bars successor liability claims that might otherwise be brought against anyone who succeeded to the assets of the dissolved corporation, or of one of its divisions or product lines. Both of those effects are consistent with the balance struck by the Model Act between the competing goals of compensating injured plaintiffs and of protecting asset transferees against liability for the dissolved corporation’s contingent claims.

(g) This Section adds a new Subsection F to make it clear that the contingent and post-dissolution claims that are excluded from the effects of R.S. 12:1-1406 through the special definition of “claim” in Subsection D of
(1) A proceeding by the attorney general if either of the following is established:
   (a) The corporation obtained its articles of incorporation through fraud.
   (b) The corporation has continued to exceed or abuse the authority conferred upon it by law.

(2) A proceeding by a shareholder if any of the following is established:
   (a) The directors are deadlock in the management of the corporate affairs. The court may break the deadlock by appointing a receiver or liquidator whose power in a corporation could obtain court supervision of a voluntary dissolution as in a proceeding to obtain court supervision of a voluntary dissolution as in a proceeding to dissolve a corporation unless relief is sought against them individually.

   (b) The corporation is insolvent and has admitted in writing that the corporation is insolvent.

(c) The corporation is insolvent and has admitted in writing that the corporation is insolvent.

(d) A proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

(f) A proceeding by a receiver or liquidator has jurisdiction over the corporation and all of its property wherever located.

(g) The corporation is insolvent and has admitted in writing that the corporation is insolvent.

(h) A proceeding by a receiver or liquidator has jurisdiction over the corporation and all of its property wherever located.

(j) A proceeding by a receiver or liquidator has jurisdiction over the corporation and all of its property wherever located.

(k) A proceeding by a receiver or liquidator has jurisdiction over the corporation and all of its property wherever located.

(2) The receiver or liquidator may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to wind up the business and affairs of the corporation as contemplated by R.S. 12:1-1405.

(3) The court from time to time may order compensation paid and expenses incurred by the receiver or liquidator to be paid to the receiver or liquidator.

(4) The court may dissolve a corporation unless relief is sought against them individually.

(5) A proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

(c) The corporation is insolvent and has admitted in writing that the corporation is insolvent.

(d) A proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

(2) The corporation is insolvent and has admitted in writing that the corporation is insolvent.

(e) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.

(f) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.

(g) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.

(h) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.

(i) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.

(j) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.

(k) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.

(l) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.

(m) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.

(n) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.

(o) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.

(p) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.

(q) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.

(r) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.

(s) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.

(t) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.

(u) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.

(v) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.

(w) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.

(x) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.

(y) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.

(z) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.

(A) The corporation is insolvent and has admitted in writing that the corporation is insolvent.

(B) The corporation is insolvent and has admitted in writing that the corporation is insolvent.

(C) In Subsection A of this Section, “shareholder” means a record shareholder, a beneficial shareholder, and a voting trust beneficial owner.

(D) This Section adds language to Model Act Paragraph (a)(4) to retain the powers of the board of directors to the extent necessary to wind up the business and affairs of the corporation as contemplated by R.S. 12:1-1405.

(E) The court from time to time may order compensation paid and expenses incurred by the receiver or liquidator to be paid to the receiver or liquidator.

(F) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.

(G) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.

(H) A court in a proceeding brought to dissolve a corporation as contemplated by R.S. 12:1-1405.
intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless the court otherwise directs.

(4) After an election has been filed by the corporation or one or more shareholders, the proceeding under R.S. 12:1-1430(A)(2) may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his or her shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other disposition.

A notice to purchase is filed by the corporation within ninety days after the filing of the petition under R.S. 12:1-1430(A)(2), the corporation's election shall be given precedence over any shareholder election filed within the same period, even if the shareholder's election is filed before that of the corporation.

C. If within sixty days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

D. If the parties are unable to reach an agreement as provided for in Subsection C of this Section, the court, upon application of any party, shall stay the R.S. 12:1-1430(A)(2) proceedings and determine the fair value of the petitioner's shares as of the day before the date on which the petition under R.S. 12:1-1430(A)(2) was filed or as of such other date as the court deems appropriate.

E. Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in kind or in money. The court may order the corporation to provide security to assure payment of the purchase price and any additional expenses as may be awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating shares, the court shall attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase.

F. A notice of acceptance that operates as an acceptance of the offer to sell shares at their fair value. The corporation's acceptance of such an offer shall be final unless the notice states that the offer is subject to the acceptance of one or more other offers. If a corporation accepts an offer to purchase shares at their fair value, it shall dismiss the petition to dissolve the corporation under R.S. 12:1-1430(A) as of the date of the corporation's notice of acceptance.

G. Any payment by the corporation pursuant to an order under Subsections C or E of this Section shall be made within ten days after the date the order becomes final unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to R.S. 12:1-1402 and 1-1403, which sets forth the date on which the articles are intended to be filed with the Secretary of State. The corporation shall send written notice to the shareholders of that date and the corporation's intention to adopt articles of dissolution.

H. The waiver takes effect when the last consent required to make the consent effective under R.S. 12:1-704 is delivered to the corporation, and the corporation shall send written notice to the shareholders of that date and the corporation's intention to adopt articles of dissolution.

I. This Section shall not apply in the case of a corporation that, on the date that the notice of withdrawal was given, has shares that are covered securities under Section 18(b)(1)(A) or (B) of the Securities Act of 1934.

J. If the corporation does not accept the withdrawing shareholder's offer as provided in Subsection E of this Section, the corporation may file an ordinary proceeding against the corporation in district court to enforce the right to withdraw. A judgment in the action that recognizes the right of the shareholder to withdraw on grounds of oppression is a partial judgment under Code of Civil Procedure Article 1915B.

K. The corporation's notice of withdrawal specifies a price for the shares, the corporation's notice of acceptance operates as an acceptance of the offer to sell the corporation's shares at their fair value. The corporation's acceptance of the shareholder's offer does not operate as an admission or as evidence that the corporation has engaged in oppression of the shareholder.

L. A notice of acceptance that operates as an acceptance of both the shareholder's offer to sell and the shareholder's proposed price forms a contract of sale of the shares at that price, payable in cash. The contract includes the warranties of a seller of investment securities under the Uniform Commercial Code and imposes a duty on the selling shareholder to deliver any certificates issued by the corporation for the withdrawing shareholder's shares or, if a certificate has been lost, stolen, or destroyed, an affidavit to that effect. Either party may file an action to enforce the contract at the specified price if the contract is not fully performed within thirty days after entry of judgment.

M. If a withdrawing shareholder fails to deliver the certificate for a share purchased by the corporation under a contract formed under this Subsection, the shareholder owes the same indemnity obligation as a shareholder who sells shares as described in R.S. 12:1-631 and to the limitations on distribution imposed by R.S. 12:1-640.

N. The waiver takes effect when the last consent required to make the consent effective under R.S. 12:1-704 is delivered to the corporation, and the corporation shall send written notice to the shareholders of that date and the corporation's intention to adopt articles of dissolution.

O. This Section shall not apply in the case of a corporation that, on the date that the notice of withdrawal was given, has shares that are covered securities under Section 18(b)(1)(A) or (B) of the Securities Act of 1934.

P. If the corporation does not accept the withdrawing shareholder's offer as provided in Subsection E of this Section, the corporation may file an ordinary proceeding against the corporation in district court to enforce the right to withdraw. A judgment in the action that recognizes the right of the shareholder to withdraw on grounds of oppression is a partial judgment under Code of Civil Procedure Article 1915B.
12:1-1430(A)(2) only on grounds of oppression. But the main effect of the four new Sections is to reverse the order of the remedies provided by the Model Act for oppression, for instance, if the corporation chooses quickly to buy out the plaintiff shareholder, to the buyout of the plaintiff shareholder unless the corporation chooses to dissolve before final judgment in the suit is rendered.

(b) This change in the order of remedies is designed to do two things: allay the fears of a plaintiff shareholder’s allegations of oppression without risking an involuntary dissolution of the entire company, and align the statutory remedies for oppression more closely with those that have been provided in most of the reported American cases on the subject.

(c) While the shareholders of a closely-held corporation are commonly in deciding whether withdrawal on grounds of oppression is warranted. The evaluation of challenged contributions to the business by the minority investor or his predecessor in interest.

(d) The conduct of the complaining shareholder is to be taken into account in determining whether the directors or others in control have behaved in a way that is incompatible with a genuine effort to be fair to the complaining shareholder. This formulation is designed to provide a generous range of discretion to the majority owners in designing corporate policies and align the statutory remedies for oppression more closely with those that have been provided in most of the reported American cases on the subject.

(e) The second sentence of Subsection B of this Section creates a presumption in Subsection B of this Section should be treated as oppressive only if (1) it would be considered oppressive but for the reasons explained in the next comment, it drops the requirement that the plaintiff in an oppression case to prove that the conduct of the controlling shareholder was substantially defeated expectations that “objectively viewed, were both reasonable under the circumstances and were central to the petitioner’s decision to join the venture.” Matter of Kemp & Beatley, 1977 N.Y.S.2d 1014 (Sup. 1984).

(f) The definition of “fair value” in Subsection C of this Section is not affected by the terms of any agreement among the shareholders or the parties or bylaws of the company that state the value of the shares or state that the corporation’s board of directors has the discretion to determine the value of the shares. The “fair market value” of the shares under other agreements or governance documents, which often constitute oppression under Subsection B of this Section or violate the rule of reason in Subsection J of this Section against the diminution of a shareholder’s voting power, and they are entitled as much as the minority shareholders to have their reasonable expectations respected. The evaluation of challenged contributions to the business by the minority investor or his predecessor in interest.

(g) Conduct that is consistent with the good faith performance of a unanimous shareholders’ agreement should be considered oppressive only rarely. The fact that an agreement operates imperfectly, and even unexpectedly in some respects, is not sufficient to rebut the presumption created in Subsection B of this Section. Conduct that qualifies for the presumption in Subsection B of this Section should be treated as oppressive only if (1) the plaintiff’s own decision to join the corporation as a shareholder.

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12:1-1430(A)(2) only on grounds of oppression. But the main effect of the four new Sections is to reverse the order of the remedies provided by the Model Act for oppression, for instance, if the corporation chooses quickly to buy out the plaintiff shareholder, to the buyout of the plaintiff shareholder unless the corporation chooses to dissolve before final judgment in the suit is rendered.

(b) This change in the order of remedies is designed to do two things: allay the fears of a plaintiff shareholder’s allegations of oppression without risking an involuntary dissolution of the entire company, and align the statutory remedies for oppression more closely with those that have been provided in most of the reported American cases on the subject.

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(d) The conduct of the complaining shareholder is to be taken into account in determining whether the directors or others in control have behaved in a way that is incompatible with a genuine effort to be fair to the complaining shareholder. This formulation is designed to provide a generous range of discretion to the majority owners in designing corporate policies and align the statutory remedies for oppression more closely with those that have been provided in most of the reported American cases on the subject.

(e) The second sentence of Subsection B of this Section creates a presumption in Subsection B of this Section should be treated as oppressive only if (1) it would be considered oppressive but for the reasons explained in the next comment, it drops the requirement that the plaintiff in an oppression case to prove that the conduct of the controlling shareholder was substantially defeated expectations that “objectively viewed, were both reasonable under the circumstances and were central to the petitioner’s decision to join the venture.” Matter of Kemp & Beatley, 1977 N.Y.S.2d 1014 (Sup. 1984).

(f) The definition of “fair value” in Subsection C of this Section is not affected by the terms of any agreement among the shareholders or the articles or bylaws of the company that state the value of the shares or state that the corporation’s board of directors has the discretion to determine the value of the shares. The “fair market value” of the shares under other agreements or governance documents, which often constitute oppression under Subsection B of this Section or violate the rule of reason in Subsection J of this Section against the diminution of a shareholder’s voting power, and they are entitled as much as the minority shareholders to have their reasonable expectations respected. The evaluation of challenged contributions to the business by the minority investor or his predecessor in interest.
contract. Because ownership of the shares will be transferred immediately and by operation of law, the only items left to be performed under the contract are (1) the corporation's obligation to pay for the shares and (2) the shareholder's obligation with respect to any certificates issued by the corporation for the shares.

(k) If the exchange of offer and acceptance does not create a contract of sale under Subsection F of this Section, but only the right to pursue a court-ordered sale or clause and sale, the shareholder remains a shareholder in the company until the court-ordered transaction is consummated as provided in R.S. 12:1-1436(C) or until the shares are transferred in some other fashion.

(l) Some states' courts have used a fiduciary duty theory to protect minority shareholders in a closely held corporation against conduct of the kind defined as oppression in Subsection B of this Section. Subsection L of this Section rejects the treatment of oppression as a breach of fiduciary duty that may justify an action for damages against the corporation, the directors, or others in control. Instead, it provides the dissolution and buyout remedies that are set forth in this Section and in R.S. 12:1-1436. Subsection L of this Section does not affect any of the remedies that are available on grounds other than oppression, including the remedies that were available before the special remedy provided by this Section for oppression became effective.

§1-1436. Judicial determination of fair value and payment terms for withdrawing shareholder's shares

A. (1) If a shareholder's right to withdraw from a corporation is recognized by means of a notice of acceptance under R.S. 12:1-1435(E), but the notice does not create a contract under R.S. 12:1-1435(F), the corporation and shareholder shall have sixty days from the effective date of the notice of acceptance to negotiate the fair value of the shareholder's shares and the terms and purchase terms for the withdrawing shareholder's shares. Within one year after the expiration of the sixty-day period, either party may file an action against the other to determine the fair value of the shares and the terms for the purchase of the shares. Venue for the action lies in the district court of the parish where the corporation's principal office or, if none in this state, where its registered office is located.

(2) If neither party files an action to establish the fair value of the shares within the time period provided in this Subsection, then subject to the terms of the contract, the court shall appoint a court-appointed broker to value the withdrawing shareholder's shares or notices of withdrawal and acceptance under R.S. 12:1-1435 are terminated. The termination of the effects of the earlier notices does not affect the right of the corporation to recover the fair value of the shares, and the corporation and shareholder shall have sixty days from the effective date of the notice of acceptance to negotiate the fair value of the withdrawing shareholder's shares or notices of withdrawal and acceptance under R.S. 12:1-1435.

B. If a shareholder's right to withdraw from a corporation is recognized by a judgment under R.S. 12:1-1435(G), the corporation shall stay the proceeding for a period of at least sixty days from the date that the judgment is rendered to allow the corporation and shareholder to negotiate the fair value of the withdrawing shareholder's shares or other terms for the settlement of their dispute. After the stay expires or is lifted, either party may file a motion to have the court determine the fair value and terms for the purchase of the shares.

C. The court shall conduct the trial of the action under Subsection A of this Section or the motion under Subsection B of this Section by summary proceeding.

D. Except as provided in Subsection E of this Section, at the conclusion of the trial the court shall render final judgment as follows:

(1) If the corporation has an offer to purchase the withdrawing shareholder's shares, the court shall order the corporation to purchase the withdrawing shareholder's shares for the fair value of the withdrawing shareholder's shares.

(2) If the corporation does not have an offer to purchase the withdrawing shareholder's shares, the court shall order the corporation to pay the withdrawing shareholder an amount equal to the fair value of the withdrawing shareholder's shares.

(3) The court shall also order the corporation to pay the withdrawing shareholder's attorney fees as the court determines to be equitable.

E. If at the conclusion of the trial the court finds that the corporation has not made a full payment in cash of the fair value of the withdrawing shareholder's shares, the court shall order the corporation to pay the withdrawing shareholder interest on the unpaid balance of the fair value of the withdrawing shareholder's shares at the rate of interest prescribed by law until the full payment is made.

F. If at the conclusion of the trial the court finds that the corporation has made a full payment in cash of the fair value of the withdrawing shareholder's shares, the court shall order the corporation to deliver the withdrawing shareholder's shares to the withdrawing shareholder within one year after the expiration of the sixty-day period.

§1-1437. Stay of duplicative proceedings

A. If a withdrawing shareholder fails to deliver the certificate for a share of stock to the corporation at the conclusion of the trial, and a third person presents the certificate to the corporation after the shareholder's ownership of the share is terminated by the judgment, the corporation shall indemnify the withdrawing shareholder for any dilution in value caused by the presence of the certificate to the corporation after the shareholder is no longer the owner of the shares.

B. If a withdrawing shareholder fails to deliver the certificate for a share of stock to the corporation at the conclusion of the trial, and a third person presents the certificate to the corporation after the shareholder's ownership of the share is terminated by the judgment, the corporation shall indemnify the withdrawing shareholder for any dilution in value caused by the presence of the certificate to the corporation after the shareholder is no longer the owner of the shares.

C. If a withdrawing shareholder fails to deliver the certificate for a share of stock to the corporation at the conclusion of the trial, and a third person presents the certificate to the corporation after the shareholder's ownership of the share is terminated by the judgment, the corporation shall indemnify the withdrawing shareholder for any dilution in value caused by the presence of the certificate to the corporation after the shareholder is no longer the owner of the shares.

D. If a withdrawing shareholder fails to deliver the certificate for a share of stock to the corporation at the conclusion of the trial, and a third person presents the certificate to the corporation after the shareholder's ownership of the share is terminated by the judgment, the corporation shall indemnify the withdrawing shareholder for any dilution in value caused by the presence of the certificate to the corporation after the shareholder is no longer the owner of the shares.

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F. If a withdrawing shareholder fails to deliver the certificate for a share of stock to the corporation at the conclusion of the trial, and a third person presents the certificate to the corporation after the shareholder's ownership of the share is terminated by the judgment, the corporation shall indemnify the withdrawing shareholder for any dilution in value caused by the presence of the certificate to the corporation after the shareholder is no longer the owner of the shares.

§1-1438. Conversion of oppression proceeding into court-supervised dissolution

A. A corporation may by contrary motion convert a withdraw or valuation proceeding under R.S. 12:1-1435 or 1-1436 into a proceeding for a court-supervised dissolution of the corporation if the dissolution is approved as provided in R.S. 12:1-1402. If the court finds that the motion to convert the proceeding into a court-supervised dissolution of the corporation is not in the best interest of the corporation and its shareholders, the court shall deny the motion.

B. If a withdrawing shareholder fails to deliver the certificate for a share of stock to the corporation at the conclusion of the trial, and a third person presents the certificate to the corporation after the shareholder's ownership of the share is terminated by the judgment, the corporation shall indemnify the withdrawing shareholder for any dilution in value caused by the presence of the certificate to the corporation after the shareholder is no longer the owner of the shares.

C. If a withdrawing shareholder fails to deliver the certificate for a share of stock to the corporation at the conclusion of the trial, and a third person presents the certificate to the corporation after the shareholder's ownership of the share is terminated by the judgment, the corporation shall indemnify the withdrawing shareholder for any dilution in value caused by the presence of the certificate to the corporation after the shareholder is no longer the owner of the shares.

D. If a withdrawing shareholder fails to deliver the certificate for a share of stock to the corporation at the conclusion of the trial, and a third person presents the certificate to the corporation after the shareholder's ownership of the share is terminated by the judgment, the corporation shall indemnify the withdrawing shareholder for any dilution in value caused by the presence of the certificate to the corporation after the shareholder is no longer the owner of the shares.

E. If a withdrawing shareholder fails to deliver the certificate for a share of stock to the corporation at the conclusion of the trial, and a third person presents the certificate to the corporation after the shareholder's ownership of the share is terminated by the judgment, the corporation shall indemnify the withdrawing shareholder for any dilution in value caused by the presence of the certificate to the corporation after the shareholder is no longer the owner of the shares.

F. If a withdrawing shareholder fails to deliver the certificate for a share of stock to the corporation at the conclusion of the trial, and a third person presents the certificate to the corporation after the shareholder's ownership of the share is terminated by the judgment, the corporation shall indemnify the withdrawing shareholder for any dilution in value caused by the presence of the certificate to the corporation after the shareholder is no longer the owner of the shares.

§1-1439. Stay of duplicative proceedings

A. If a withdrawing shareholder fails to deliver the certificate for a share of stock to the corporation at the conclusion of the trial, and a third person presents the certificate to the corporation after the shareholder's ownership of the share is terminated by the judgment, the corporation shall indemnify the withdrawing shareholder for any dilution in value caused by the presence of the certificate to the corporation after the shareholder is no longer the owner of the shares.

B. If a withdrawing shareholder fails to deliver the certificate for a share of stock to the corporation at the conclusion of the trial, and a third person presents the certificate to the corporation after the shareholder's ownership of the share is terminated by the judgment, the corporation shall indemnify the withdrawing shareholder for any dilution in value caused by the presence of the certificate to the corporation after the shareholder is no longer the owner of the shares.

C. If a withdrawing shareholder fails to deliver the certificate for a share of stock to the corporation at the conclusion of the trial, and a third person presents the certificate to the corporation after the shareholder's ownership of the share is terminated by the judgment, the corporation shall indemnify the withdrawing shareholder for any dilution in value caused by the presence of the certificate to the corporation after the shareholder is no longer the owner of the shares.

D. If a withdrawing shareholder fails to deliver the certificate for a share of stock to the corporation at the conclusion of the trial, and a third person presents the certificate to the corporation after the shareholder's ownership of the share is terminated by the judgment, the corporation shall indemnify the withdrawing shareholder for any dilution in value caused by the presence of the certificate to the corporation after the shareholder is no longer the owner of the shares.
which provided a mechanism for terminating the existence of a dissolved corporation.

(c) Under prior Louisiana law, a corporation was dissolved in four steps. In the first step, the dissolution process was begun, either through the filing of articles of dissolution or through a court order of dissolution. The first step resulted in the transfer of managerial power over the corporation from the board of directors to a liquidator. The liquidator was then responsible for winding up and liquidating the corporation's business and affairs, and determining that the corporation has completed the winding up and liquidation of its business and affairs, the board of liquidator's appointment, determines that the corporation has completed §1-1440. Articles of termination its winding up and liquidation of its business and affairs, the board of directors or liquidator may cause the corporation to deliver to the secretary of state not the articles unless the articles have attached or appended to them a certified copy of the court order that authorizes the liquidator to wind up the affairs of the corporation.

Comments - 2014 Revision
(a) This Section provides a means by which the board of directors or a court-appointed liquidator may declare the liquidation of a dissolved corporation to terminate its existence for all purposes other than other than ended, a liquidation, or if the dissolution was judicially supervised, an order of dissolution. Finally, in the fourth step, if the order or articles of liquidation met the requirements of law and certain listed state agencies certified that the corporation owed no unpaid obligations to them, the secretary of state was required to issue a "certificate of dissolution," which caused the corporation to be dissolved in the sense that its existence was terminated as of the effective date of the certificate. The law dealt with any late-discovered assets or claims by vesting the assets in the liquidator and requiring the liquidator to take any action required to preserve the interests of the corporation, its creditors or shareholders. If the liquidator died or was unwilling or unable to serve, the statute allowed the appointment of a new liquidator "for any proper purpose."

(b) Under the Model Act, the dissolution of a corporation involves only two steps: (1) the dissolution is triggered by articles or an order of dissolution and (2) the board of directors or a director if one is judicially-appointed conducts or supervises the winding up and liquidation of the corporation's business and affairs. At no point does the Model Act require (or permit) the filing of the documents contemplated by steps three and four of prior Louisiana law, those declaring the liquidation to be complete and the existence of the corporation to be terminated. Instead, a dissolved corporation continues to exist forever under the Model Act scheme, but only for purposes of winding up and liquidating its business, paying its debts, and settling any claims against it. The Model Act provides a single set of rules to govern a dissolved corporation, both during the period in which the corporation is engaged in winding up its affairs and during the perpetually period that follows the completion of that person, i.e. the corporation, that owns any undistributed corporate assets and owes any undischarged corporate debts. But this Subpart rejects the Model Act view that a dissolved corporation may continue to be governed by the same Section 14.05 rules continue to apply forever to a dissolved corporation, except for the change in the object of corporate operations from normal business to liquidation, even after the corporation has been fully liquidated and its operations - for any purpose - fully shut down.

(d) Under the Model Act, the dissolution of a corporation, including the liquidation of assets and distribution of liquidation proceeds, continues to exist except for the change in the object of corporate operations from normal business to liquidation, even after the corporation has been fully liquidated and its operations - for any purpose - fully shut down. This Subpart differs from prior law by eliminating the theoretical vesting of undiscovered assets in a liquidator. Instead, the corporation itself, even after its termination, will continue to hold any undiscovered assets and to owe any undiscovered unsecured debts and to bear liability only for unlawful distributions from the corporation. This Section eliminates the confusion between the two different meanings of dissolution by providing that the procedure authorized in this Section results in a termination of the corporation's existence, and not a mere dissolution in the Model Act sense of the term. Source: MBCA §14.01, R.S. 12:142.1.

Comments - 2014 Revision
(a) This Section combines features of Model Act Section 14.01, which provides a simplified dissolution mechanism for a corporation that has not issued shares or has not begun business, with those of former R.S. 12:142.1, which permitted a corporation to dissolve by affidavit if it owed no debts and owned no immovable property. As used in the Model Act provision, dissolution would not terminate the corporation's existence; even dissolved corporations would continue to exist perpetually under the Model Act. As used in the former Louisiana provision, dissolution referred to the termination of the corporation's existence. This Section avoids the possible confusion between the two different meanings of dissolution by providing that the procedure authorized in this Section results in a termination of the corporation's existence, and not a mere dissolution in the Model Act sense of the term.

(b) This Subpart rejects the rule in former R.S. 12:142.1 that imposed personal liability on shareholders who utilized the procedure authorized in this Section. The rule encouraged shareholders who wished to shut down corporate operations to do so without any formal dissolution process, thereby avoiding dissolution and liquidation costs. The failure to file annual reports for a period of three years triggered a requirement that the secretary of state revoke the non-filing corporation's charter. The charter revocation accomplished the same result as the dissolution-by-affidavit, but without the personal liability on shareholders for the revoked corporation's debts. Indeed, if the corporation's existence was terminated by revocation rather than affidavit, the shareholders could reinstate their corporation during the first three years following the revocation, with retroactive effect, by filing a simple form with the secretary of state's office and paying a small filing fee. Given the choice between liability-imposing dissolution and cost-free, no-risk charter revocation, most well-advised shareholders opted for charter revocation. This Section eliminates the strong incentive created by the former liability rule to dissolve by violating, rather than filing, the reporting requirement. The provisions of the corporation statute.

(c) Shareholders who use the simplified form of dissolution authorized by this Section do not receive the benefits of the claims-barring and claims-discharging rules of R.S. 12:1-1406 through 1-1408. Those rules are available only if the corporation has made a full and complete liquidation and winding up. This Section requires that the corporation has completed the winding up and liquidation of its business and affairs, the board of directors or liquidator may cause the corporation to deliver to the secretary of state not the articles unless the articles have attached or appended to them a certified copy of the court order that authorizes the liquidator to wind up the affairs of the corporation.

§1-1440. Articles of termination
(a) When the board of directors, or the liquidator acting during the liquidator's appointment, determines that the corporation has completed the winding up and liquidation of its business and affairs, the board of directors or liquidator may cause the corporation to deliver to the secretary of state for filing articles of termination.

(b) The articles of termination shall state all of the following:

(1) The name of the corporation.
(2) The date of its dissolution.
(3) Whether its dissolution was voluntary or judicial.
(4) That the corporation has paid or made reasonable provision for the payment of all of its liabilities.
(5) That the net assets of the corporation remaining after winding up have been distributed to the shareholders.

§1-1441. Administrative termination
(a) Subject to Subsection B of this Section, the secretary of state shall terminate the existence of a corporation if, according to the records of the secretary of state, the corporation has failed for ninety consecutive days to do either of the following:

(1) Comply with the requirements imposed by R.S. 12:1-501 concerning the continuous maintenance in this state of a registered office and registered agent.
(2) Pay the annual registration fee for the previous year for each of the current fiscal years.
A. The filing by the secretary of state of a corporation’s articles of termination under R.S. 12:1-1440 or 1441 or a certificate of termination under R.S. 12:1-1442 causes the existence of the corporation to terminate on the effective date of the articles or certificate of termination. The effects of the filing of the articles or certificate of termination are not affected by any error in the articles or certificate, but the error may justify reinstatement of the corporation as provided in R.S. 12:1-1444 or the appointment of a liquidator as provided in R.S. 12:1-1445. When a corporation terminates, the corporation's juridical personality ends except for purposes of any of the following:

1. Reserving the corporation's name as provided in R.S. 12:1-402(C).
2. Concluding any proceeding to which the corporation is a party at the time of the termination. 
3. Continuing to own any undistributed corporate assets and to owe any undischarged corporate obligations or liabilities.
4. The termination does not do any of the following:
   a. Extinct any claim against the corporation.
   b. Abate any proceeding to which the corporation is a party.
   c. Cause any obligation or liability owed by the corporation to become the obligation or liability of any of the corporation’s current or former shareholders, directors, officers, employees, or agents.
   d. Cause any manager or representative of the corporation to become the property of any of the corporation's current or former shareholders, directors, officers, employees, or agents.

D. A terminated corporation’s juridical personality, and the authority of a person or entity acting on the corporation’s behalf as its legal counsel or managerial representative, continues for purposes of Paragraph (B)(2) of this Section as if the termination had not occurred, but subject to the power of an authorized representative of a reinstated corporation, or of a liquidator appointed in accordance with R.S. 12:1-1445, to change the identity or authority of the legal counsel or managerial representative.

E. The existence of a terminated corporation may be reinstated as provided in R.S. 12:1-1444, and a liquidator may be appointed as provided in R.S. 12:1-1445 for any proper purpose. Unless a terminated corporation is reinstated by the appointment of a liquidator, the responsibility of the terminated corporation for any current or former obligations remains until the liquidation of the corporation. Automatic liabilities of the terminated corporation are not extinguished by their creation, nor are they extinguished by the substitution of a liquidator that is appointed in accordance with R.S. 12:1-1445 for any proper purpose. The failure to reinstate a terminated corporation by the effective date of its termination shall be brought by or against a terminated corporation to continue, any recovery by the corporation to the position it was in before the termination occurred.

F. A terminated corporation may, through its former shareholders, directors or managers, or agents, make changes in the identity or authority of the corporation’s legal counsel or managerial representatives in the litigation. However, the authorized representatives of a reinstated corporation, or a liquidator who is appointed in accordance with R.S. 12:1-1443 and who holds the appropriate authority, may make changes in the identity or authority of the corporation’s legal counsel or managerial representatives to the extent that any other change would not itself create managerial authority, but it would return the corporation to the position it was in before the termination occurred.

§1-1444. Reinstatement of terminated corporation

A. A terminated corporation may be reinstated if the corporation satisfies both of the following:

1. Was not dissolved by a judgment of dissolution.
2. (Requests reinstatement in accordance with this Section no later than three years after the effective date of its articles or certificate of termination. However, if the articles of reinstatement and the annual report shall be signed by an officer or director who is entitled to approve the articles under R.S. 12:1-1444, and a liquidator may be appointed in accordance with R.S. 12:1-1445, and who holds the appropriate authority, the articles of reinstatement shall be approved by either of the following:
   a. A director or officer listed in the corporation’s last annual report before its termination,
   b. The corporation elected by the shareholders of the corporation after the last annual report, regardless of whether the director was elected before or after the administrative termination.
   c. If the corporation was terminated after its dissolution or termination was authorized by a vote of shareholders, then all of the following actions are required to be taken:
      1. The reinstatement of the corporation shall be approved by the same vote that was required to approve the dissolution or termination, by the persons who were shareholders at the time of the dissolution or termination was authorized.
      2. The persons entitled to vote on the reinstatement shall elect a board of directors for the reinstated corporation.
      3. The board of directors elected in accordance with Paragraph (C)(2) of this subpart is entitled to file articles of reinstatement within three years after the effective date of the dissolution or termination.
D. A corporation may request reinstatement by delivering to the secretary of state for filing articles of reinstatement and an annual report. The articles of reinstatement and the annual report shall be signed by an officer or director of the corporation who is entitled to approve the articles under R.S. 12:1-1443 and who holds the appropriate authority. The articles of reinstatement and the annual report shall be in accordance with Subsection C of this Section, by a director or officer elected in accordance with that Subsection. The annual report shall be accompanied by a written consent to appointment signed by the registered agent of the corporation as required by R.S. 12:1-1443 and a requested grace period of three years after the effective date of its articles or certificate of termination.
E. The articles of reinstatement shall state all of the following:

1. The name of the corporation.
2. That the reinstatement was approved in accordance with either of the following.
(a) R.S. 12:1-1444(B).
(b) R.S. 12:1-1444(C) and that the directors and officers listed in the annual report and having the articles of reinstatement were elected in accordance with that provision.
(c) That the corporation had never been terminated.
(d) The secretary of state shall file the articles of reinstatement only if both of the following conditions are met:
(1) The articles are delivered for filing to the secretary of state within three years after the effective date of the articles or certificate of termination for the corporation.
(2) The fees paid for the filing of an annual report for each year between the corporation's last annual report and the year in which the corporation is reinstated.
(e) This Section is not part of the Model Act. It is based on former R.S. 12:163(E), which permitted the reinstatement of a corporation that had been revoked by the secretary of state on grounds that the corporation had failed to file its annual report or to maintain a registered agent and principal office as required by law. This Part broadens the scope of the former provision by making reinstatement available not only to corporations terminated administratively, but also to those terminated voluntarily under R.S. 12:1-1440 or 1-1441.
(f) The broadening of the reinstatement option to include voluntarily-terminated corporations is designed to deal with similar cases in similar ways. Where the corporation's last annual report and the year in which the corporation is reinstated.
(g) The prior law's three-year time limit on reinstatement was retained in this Part. A three-year period is long enough to cover most of the post-termination issues that are likely to arise, yet short enough to make it likely that the pre-termination arrangements within the corporation can be reinstated without the need for judicial review. If it is not possible to obtain the vote required for reinstatement, or if the three-year period allowed for reinstatement has expired, a liquidator may be appointed under R.S. 12:1-1445 to deal with any undistributed assets or unchallenged claims of a terminated corporation.
(h) Articles of reinstatement may be filed by the secretary of state only if they meet the requirements specified in R.S. 12:1-120 for the filing of a document under this Chapter. Subsection F of this Section imposes requirements that must be satisfied in addition to those provided in R.S. 12:1-120.
(i) The appointment of a liquidator for a terminated corporation under R.S. 12:1-1440.
(j) The fees paid for the filing of an annual report for each year between the corporation's last annual report and the year in which the corporation is reinstated.

PART 15. FOREIGN CORPORATIONS

§1-1601. 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 a liquidated corporation in respect to any of its undistributed assets or undischarged claims or interests. The court's appointment of a liquidator under this Section is governed by the provisions of R.S. 12:1-1432 as if the liquidator were being appointed to conduct a dissolution of the corporation under court supervision. The costs and expenses of the liquidator and of the appointment of the liquidator under this Section shall be paid by the party seeking the appointment, subject to reimbursement from any undistributed assets of the corporation or the proceeds of its disposition.

B. A corporation shall keep appropriate accounting records. A corporation may 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 and of the class or series of shares owned by each, and of the number of shares of each class or series of shares owned by each.

C. A corporation shall maintain its records in the form of a book, including an electronic record, or in another form capable of conversion into paper form within a reasonable time.

D. A corporation shall keep a copy of all of the following records at its principal office:

(1) Its articles of incorporation, all amendments to them currently in effect, and any notices to shareholders referred to in R.S. 12:1-1200(4) regarding facts on which a title document is dependent.

(2) 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 R.S. 12:1-1620.

(6) A list of the names and business addresses of its current directors and officers.

(7) Its most recent annual report delivered to the secretary of state under R.S. 12:1-1621.

(8) Any unanimous governance agreement, as defined in R.S. 12:1-732, then in effect.

Source: MBCA §16.01.

Comment - 2014 Revision

This Part adds a new Paragraph (E)(8) that includes unanimous governance agreements among the records that must be kept at the corporation's principal office under R.S. 12:1-1601, and be available for inspection under
R.S. 12:1-1602(A). The new Subsection does not require a corporation to create or maintain a unanimous governance agreement, but only to keep a copy of it, and to allow its inspection, if one is in effect. If a corporation does not have a unanimous governance agreement, it is one of the basics of corporate governance that must be available for inspection by the corporation’s shareholders.

12.1-1602. Inspection of records by shareholders

A. A shareholder of at least five percent of any class of the corporation’s shares 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 R.S. 12:1-1601(E) if the shareholder gives the corporation a signed written notice of the shareholder’s demand at least five business days before the date on which the shareholder wishes to inspect and copy.

B. For any meeting of shareholders for which the record date for determining shareholders entitled to vote at the meeting is different than the record date for notice of the meeting, any person who becomes a shareholder of the corporation after the record date for notice of the meeting and is entitled to vote at the meeting is entitled to obtain from the corporation, upon request, the notice and any other information provided by the corporation to shareholders in connection with the meeting, unless the corporation has made such information generally available to shareholders by posting it on its website or by other generally recognized means. Failure of a corporation to provide such information does not affect the validity of action taken at the meeting.

C. A shareholder of at least five percent of any class of the issued shares of a corporation for at least the preceding six months is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any and all of the records of the corporation if the shareholder meets the requirements of Subsection D of this Section and gives the corporation a signed written notice of the shareholder’s demand at least five business days before the date on which the shareholder wishes to inspect and copy the records. A shareholder of less than five percent of a corporation’s issued shares may exercise the rights provided in this Subsection to inspect and copy records under R.S. 12:1-1604(D) along with the written notice of demand, written consents to the demand by other shareholders who, in the aggregate with the shareholder making the demand, own the required percentage of shares for the required period.

D. A shareholder may inspect the records described in Subsection B of this Section only if the following conditions are satisfied:

1. The shareholder’s demand is made in good faith and for a proper purpose.

2. The shareholder describes with reasonable particularity the shareholder’s purpose and the records the shareholder desires to inspect.

3. The records are directly connected with the shareholder’s purpose.

E. The right of inspection granted by this Section may not be abolished or limited by a corporation’s articles of incorporation, bylaws, unanimous governance agreement, or any other agreement.

F. This Section does not affect either of the following:

1. The right of a shareholder to inspect records under R.S. 12:1-720 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant.

2. The power of a court to deny the right of inspection as to confidential matters, or to place restrictions on the use or distribution of records as provided in R.S. 12:1-1604(D).

G. For purposes of this Section, “shareholder” means a record shareholder, a prospective shareholder, or a beneficial shareholder, and an unrestricted voting trust beneficial owner.

Source: MBCA §16.02.

Comments - 2014 Revision

(a) This Section amends Model Act Subsection (c) to retain the phrase in prior law “outstanding,” and instead of “if the corporation chooses to issue” by themselves or together with other cooperating shareholders, owned at least five percent of a class of the corporation’s shares for at least six months. The prior law’s reference to “outstanding” shares has been replaced in this Section with a reference to “issued” shares because “issued” shares is the correct term under this Chapter for what prior law called “outstanding” shares. Under prior law, an issued share that was owned by a third party was called an “outstanding” share, to distinguish it from an issued share that had been reacquired by the corporation, and not canceled, which was called a “treasury” share. Under R.S. 12:1-1601(E), an issued share is a share that the corporation does not retain its issued status as treasury shares. Rather, they return to the status of unissued shares. The five percent ownership requirement under Subsection C of this Section applies only to issuances of “any and all” records under that Subsection. Any shareholder may exercise the inspection rights provided by Subsection A of this Section.

(b) This Section drops the separate and higher percentage ownership requirement, twenty-five percent, that was imposed under prior law on shareholders who were competitors of the corporation. A higher percentage requirement might interfere arbitrarily with the legitimate inspection rights of shareholders who happen to be competitors, while still failing to protect the corporation adequately against the inspection of records for improper purposes by competitors who happen to own the required percentage of shares. This Section deals with the corporation’s interests in the confidentiality of the records through an electronic transmission if electronic transmission is available or, if none in this state, its registered office is located may by summary proceeding order inspection and copying of the records demanded. If the court determines that the shareholder was entitled to inspect and copy the demanded records under R.S. 12:1-1602(A), then the court shall order the corporation to provide copies of the demanded records at the corporation’s expense.

Source: MBCA §16.04.

Comment - 2014 Revision

This Section combines the two separate enforcement provisions in Model Act Subsections (a) and (b) into a single unified Subsection A of this Section and reserves Subsection B of this Section for future use.

12.1-1603. Scope of inspection right

A. A shareholder’s agent or attorney has the same inspection and copying rights as the shareholder represented.

B. [Reserved.]

C. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the inspected records under R.S. 12:1-1604(D). A court should deny the inspection of confidential items only if it concludes that the restrictions that the court may impose on the use or distribution of the inspected records under R.S. 12:1-1604(D) are not sufficient to protect the corporation’s interests in the confidentiality of the records.

Source: MBCA §16.03.

12.1-1604. Court-ordered inspection

A. If a corporation does not within a reasonable time allow a shareholder who complies with the applicable provisions of R.S. 12:1-1602 to inspect and copy any records required by that Section to be available for inspection, the district court of the parish where the corporation’s principal office is located may by summary proceeding order inspection and copying of the records demanded. If the court determines that the shareholder was entitled to inspect and copy the demanded records under R.S. 12:1-1602(A), then the court shall order the corporation to provide copies of the demanded records at the corporation’s expense.

B. [Reserved.]

C. 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.

Source: MBCA §16.04.

Comment - 2014 Revision

This Section combines the two separate enforcement provisions in Model Act Subsections (a) and (b) into a single unified Subsection A of this Section and reserves Subsection B of this Section for future use.
from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's expenses incurred in connection with the proceeding under Subsection B of this Section. In addition to a director's rights under this Section, a director is also entitled to the corporation's payment of expenses, and to the corporation's provision of copies of the corporation's expense, on the same basis as a shareholder under R.S. 12:1-1604, regardless of whether the director owns the shares required to obtain those rights in his or her capacity as a shareholder.

§1-1606. Exception to notice requirement

A. Whenever notice would otherwise be required to be given under any provision of this Chapter to a shareholder, such notice need not be given if either of the following conditions are met:

(1) Notices to the shareholders of two consecutive annual meetings, and all notices of meetings during the period between such two consecutive annual meetings, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable or could not be delivered.

(2) All, but not less than two, payments of dividends on securities during a period of more than twelve months, have been sent to a shareholder during a twelve-month period, or two consecutive payments of dividends on undeliverable or could not be delivered.

B. Information in the annual report must be current as of the date the annual report is signed on behalf of the corporation.

C. A corporation's annual report shall be delivered to the secretary of state each year on or before the anniversary of the date that the corporation was incorporated under the provisions of this Chapter, making the Model Act references to "domestic" corporations, as distinguished from foreign corporations, unnecessary. This Section applies to a "corporation," a term that means the same thing as "domestic corporation" when it is used without any other descriptive words. See R.S. 12:1-140(4).

D. If an annual report does not contain the information required by this Section, the secretary of state shall promptly notify the corporation in writing and return the report to it for correction. If the report is corrected to include the information required by this Section and delivered to the secretary of state within thirty days after the effective date of notice, it is deemed to be timely filed.

E. A dissolved corporation shall continue to file annual reports under this Section until the existence of the corporation is terminated.

Source: MBCA §16.22.

SUBPART B. REPORTS

§1-1620. Financial statements for shareholders

A. Once each calendar year a shareholder may obtain a report of financial information from the corporation. To obtain the report, a shareholder shall give notice to the corporation of the request for the report to the corporation. The notice shall specify a postal mailing address, and if desired an electronic mailing address, to which the report should be delivered. Promptly after receiving the shareholder's notice, the corporation shall deliver to the shareholder at one of the specified addresses, a report that complies with the requirements of Subsections B and C of this Section.

B. A report of financial information shall contain all of the following financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, for the last fiscal year or the fiscal year ending at least four months before the effective date of the shareholder's notice:

(1) A balance sheet.
(2) An income statement.
(3) A statement of changes in shareholders' equity unless that information appears elsewhere in the financial statements provided.
(4) If ordinarily prepared by the corporation, a statement of cash flows.
(5) Names and business addresses of the directors and principal officers.

C. The corporation's financial statements are prepared on the basis of generally accepted accounting principles, the statements in the report of financial information listed in Subsection B of this Section must also be prepared on that basis. If those statements are reported upon by a public accountant, the accountant’s report shall be delivered as part of the report of financial information described in Subsection B of this Section.

D. A public corporation may fulfill its responsibilities under this Section by delivering the financial statements listed in Subsection B of this Section, or otherwise making them available, in any manner permitted by the applicable rules and regulations of the United States Securities and Exchange Commission. A corporation that contracts with the state is not required to deliver a report of financial information as provided in Subsection A of this Section.

Source: MBCA §16.20.

PART 17. TRANSITION PROVISIONS

§1-1701. Application to existing domestic corporations

This Chapter applies to all domestic corporations in existence on its effective date that were incorporated under the laws of this state for a purpose or purposes for which a corporation might be formed under this Chapter.

Source: MBCA §17.01.

Comment - 2014 Revision

This Chapter was added to Part to retain the substance of former R.S. 12:25(E). In prior law, the reporting requirement was included as part of the provision that described the requirements for incorporating a business. The requirement was moved to the reporting provisions of this Chapter because the duty to file the required statement is triggered by a contract between the corporation and the state, and not by the act of incorporating a new company.
§1-1702. Limited applicability to foreign corporations

Except where express reference is made to foreign corporations, this Chapter does not apply to foreign corporations.

Source: R.S. 12:175.

Comments - 2014 Revision

(a) Because this Chapter omits Model Act Chapter 15, concerning the qualification of foreign corporations to do business in this state, it also omits Model Act Section 17.02, concerning the transition rules applicable to already-qualified foreign corporations. Chapter 3 of Title 12 continues to govern the qualification of foreign corporations in this state, without any change by this Chapter.

(b) This Part utilizes R.S. 12:1-702 to retain the substance of former R.S. 12:175, which rendered the predecessor statute generally inapplicable to foreign corporations. R.S. 12:1-1702 states that the Chapter does not apply to foreign corporations except where it makes an express reference to foreign corporations. Examples of express references to foreign corporations include the references to the names of qualified foreign corporations in R.S. 12:1-401(B) and the references to foreign corporations in Parts 9 and 11 of this Chapter.

§1-1703. Saving provisions

A. Except as provided in Subsection B of this Section, the repeal of a statute by this Chapter does not affect any of the following:

(1) The operation of the statute or any action taken under it, before its repeal.

(2) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute, before its repeal.

(3) Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal.

(4) Any proceeding, reorganization, or dissolution commenced under the statute, before its repeal.

B. If a penalty or punishment imposed for violation of a statute repealed by this Chapter is not paid or otherwise satisfied before its repeal, the provisions of this Chapter shall control to the maximum extent permitted by Section 102(a)(2) of that federal act.

§1-1704. [Reserved.]

Comment - 2014 Revision

Model Act Section 17.04, which provides for severability, is omitted from this Chapter. A general rule of severability is provided in R.S. 24:175 for all acts of the Legislature. A separate severability rule in this Chapter would either be repetitious of or inconsistent with the general rule.

§1501. Applicability

The provisions of this Chapter shall be applicable to all business organizations defined in R.S. 12:1502(B), except as provided in R.S. 12:1502(D), 93(D), or 1225(C).

§1502. Actions against persons who control business organizations

A. The provisions of this Section shall apply to all business organizations formed under the laws of this state and shall be applicable to actions against any owner, director, shareholder, member, managing general partner, limited partner, managing partner, or other person similarly situated. The provisions of this Section shall not apply to actions governed by R.S. 12:1-622, 1-833, 1-1407, or 1225(C).

§1601. Definitions

Conversion of domestic business entities

As used in this Chapter, the following terms and phrases shall have the meaning ascribed to them in this Section, unless the context clearly indicates otherwise:

(1) “Conversion” means the continuance of a domestic entity of one type as a domestic entity of another type.

(2) “Converted entity” means an entity resulting from a conversion.

(3) “Converting entity” means an entity as the entity existed before the execution and filing of the required conversion documents.

One form of domestic business entity may convert to another form of domestic business entity as provided in the Business Corporation Act. This authorization of domestic entity conversions does not limit the other forms of transaction authorized by the Business Corporation Act.

Comments - 2014 Revision

(a) The original version of Chapter 25 of Title 12 was enacted in 2006 to authorize the conversion of one form of domestic unincorporated business entity into another. In 2014, the Chapter was revised extensively in connection with the adoption in Louisiana of the Model Business Act. Chapter 25 of Title 12, now Chapter 1 of Title 12, which contains its own provisions on entity conversion. Although the basic concept of entity conversion was similar under the Model Act and former Chapter 25, the two approaches differed in several respects:

(1) The Model Act applied only to conversions in which a domestic business corporation was either a converting or surviving entity, but permitted conversions that included as parties foreign corporations and domestic and foreign unincorporated entities, such as partnerships and limited liability companies.

(2) The Model Act rules on the content, execution and filing of the relevant documents were part of a larger model structure, widely adopted in other states. The analogous Louisiana rules were designed to work within the existing framework established by Louisiana’s 1968 business corporation statute.

(3) Chapter 25 of Title 12 addressed two issues on which the Model Act was silent: the need to file “short period” tax returns for the converting entity and the treatment of government-issued licenses held by the converting entity.

(b) The two approaches to entity conversion were reconciled in three ways:

(1) The scope of the Model Act conversion provisions was expanded to include the types of non-corporate conversions covered by former Chapter 25 of Title 12.

(2) The provisions of former Chapter 25 of Title 12 concerning the content, execution and filing of the required conversion documents were repealed and replaced by a cross reference to the Model Act provisions on conversion.

(3) The substance of the tax-return and government licensing rules in Chapter 25 of Title 12 was retained.

(d) Neither this Chapter nor the Business Corporation Act authorizes the conversion of a nonprofit corporation into a business corporation. Former R.S. 12:165, which permitted a nonprofit corporation to “reincorporate” as a business corporation if the provisions of the Nonprofit Corporation Law “no longer applied,” was not retained as part of the current Business Corporation Act. It was not clear how the former reincorporation provision could ever be satisfied, as it required the Nonprofit Corporation Law “no longer applied.” A benefit of the Model Act provision could indeed be satisfied, it appeared to provide an unjustified means of circumventing the prohibition in the Nonprofit Corporation Law against the distribution of profits. See R.S. 12:210(F). The Nonprofit Corporation Law “no longer applied” a nonprofit corporation to merge or consolidate with a business corporation. R.S. 12:242(A). But a nonprofit corporation that is not permitted to distribute its net assets to its members upon dissolution may be merged only with another corporation that is subject to the same limitation. R.S. 12:242(C).

$1602. Conversion of domestic entities

Definitions

A. Any domestic limited liability company, business corporation, partnership in commendam, or partnership may convert to another type of domestic business entity by submitting a conversion application to the secretary of state. If the owners or members of the converting entity must approve the conversion in the same manner provided for by law and by the document, instrument, agreement, or other writing governing the internal affairs of the converting entity and the conduct of its business.

B. An entity may not convert under this Chapter if an owner or member of the entity, as a result of the conversion, becomes personally liable, without the consent of the owner or member, for a liability or other obligation of the converted entity.

Terms that are defined in the Business Corporation Act have the same meaning in this Chapter as in that Act.

As used in this Chapter:

(1) “Allowed update rule” means a rule of a licensing body allowed by R.S. 12:1604(B) or (C).

(2) “Business entity” means any of the following business organizations: business corporation, limited liability company, partnership in commendam, and registered limited liability partnership.

(3) “Converting entity” means a domestic business corporation or domestic unincorporated entity as it exists before the effective date of an entity conversion under the Business Corporation Act.

(4) “Domestic business entity” means a business entity that is incorporated, organized, or formed under the laws of this state.

(5) “License” means any license, permit, or certificate issued by any board, commission, or agency of the state or any of its political subdivisions.

(6) “Licensing body” means the board, commission, or agency of the state or any of its political subdivisions that issues a license.

(7) “Publicly traded entity” means a business entity that is the issuer of shares, ownership interests, or other securities that are listed on a national securities exchange or regularly conducted a market maintained by one or more members of a national securities association.

(8) “Surviving entity” means a domestic business corporation or domestic unincorporated entity as it exists immediately after the consummation of an entity conversion under the Business Corporation Act.

$1603. Conversion application Tax filing requirements

A. The application shall set forth the following:

(1) The name of the converting entity and the converted entity.

(2) The name of the type of the converting entity and converted entity.

(3) A statement that the converting entity is continuing its existence in the organizational form of the converted entity.

(4) The manner and basis of converting the ownership or membership interests of the converting entity into ownership or membership interests of the converted entity.

(5) The fact that the conversion has been authorized and approved in accordance with this Section.
E. A license held by a converting entity terminates on the effective date of the conversion or entity conversion continues to hold the license as a surviving entity.

F. If a surviving entity fails to comply with an allowed update rule or in contravention of any document of creation, organization or management of such business entity, the aggrieved party may file suit against the party who caused the aggrieved party’s name to be removed from such document or in the absence of the conversion, the license of the surviving entity in the conversion continues for any period remaining in the term of the continued license.

§1701. Judicial review; removal of officers, members, managers, and partners

A. Should any officer, member, manager, or partner of any corporation, limited liability company, or partnership have his name removed from any document or record by the secretary of state, or in contravention of any document of creation, organization or management of such business entity, the aggrieved party may file suit against the party who caused the aggrieved party’s name to be removed from such document or record.

B. Such suit shall be filed in the judicial district court where the business entity is domiciled.

C. The secretary of state shall be made a party to the suit.

D. The court shall conduct a hearing within ten days after service of process of the suit on all parties.

E. Should the court find that the name of the aggrieved party was improperly or fraudulently removed from the documents and records of the secretary of state, the court shall order the secretary of state to replace the name of the aggrieved party on all appropriate documents and records of the secretary of state.

F. Nothing in this Section shall be construed to supersede or conflict with the provisions of R.S. 12:209B.

A. The secretary of state may accept any filing authorized by this Title by electronic or facsimile transmission. All electronic filings authorized by this Title shall include an electronic or digital signature.

(2) “Digital signature” means a type of electronic signature that corresponds to the signer’s public key that can accurately determine both of the following:

(a) Whether the transformation was created using the private key that corresponds to the signer’s public key.

(b) Whether the initial message has been altered since the transformation was made.

(3) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

R. Electronic signatures are admissible in evidence in any proceeding and are considered reliable evidence of the authenticity and integrity of the data and of the signer’s intent if a person with the intent to sign a record adopts or signs an electronic document in e-mail in the commercial division, office of the secretary of state.

§1702. Internet filing

A. The secretary of state is authorized to implement and establish procedures and systems for secure Internet-form filing for the filing of any instrument required under this Title.

B. An instrument required under this Title shall be submitted or acknowledged before a notary public may be dispensed with if the instrument is filed and signed electronically as provided in Paragraph (A3) of this Section by a person authorized to sign the instrument.

C. If the instrument is filed and signed electronically as provided in Paragraph (A3) of this Section by a person authorized to sign the instrument.

D. The instrument filed under this Title shall be submitted or acknowledged before a notary public may be dispensed with if the instrument is filed and signed electronically as provided in Paragraph (A3) of this Section by a person authorized to sign the instrument.

E. The instrument filed under this Title shall be submitted or acknowledged before a notary public may be dispensed with if the instrument is signed by the person authorized to sign, in the presence of the employee of the secretary of state.

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* As it appears in the enrolled bill

CODING: Words in normal type are deletions from existing law; words underscored (House Bills) and boldfaced (Senate Bills) are additions.
receiving the instrument for filing and the employee verifies the identity of the person signing the instrument.

§1702. Electronic mail addresses and short message service numbers; confidentiality

Any electronic mail address or short message service number submitted to or captured by the secretary of state pursuant to the provision of this Title shall be confidential and shall not be disclosed by the secretary of state or any employee or official of the Department of State.

§1703. Electronic notification of status changes

The secretary of state shall notify any person who subscribes to the secretary of state's electronic mail or short message service notification service and who is a shareholder, officer, director, member, or manager of a limited liability company, or partner in a partnership, or any agent thereof, when a filing has occurred that purports to remove that person's name from documents and records of that entity held by the secretary of state.

§1704. Judicial review; removal of officers, members, and partners

A. Should any officer, member, manager, or partner of any corporation, limited liability company, or partnership have his name removed from any document or record filed with the secretary of state in violation of state law or in contravention of any document of creation, organization, or management of such business entity, the aggrieved party may file suit against the party who caused the aggrieved party's name to be removed from such document or record.

B. Such suit shall be filed in the district court of the parish where the business entity is domiciled.

C. The secretary of state shall be made a party to the suit.

D. The court shall conduct a hearing within ten days after service of process of the suit on all parties.

E. Should the court find that the name of the aggrieved party was improperly or fraudulently removed from the documents and records of the secretary of state, the court shall order the secretary of state to restore the name of the aggrieved party in all appropriate documents and records of the secretary of state.

F. Nothing in this Section shall be construed to supersede or conflict with the provisions of R.S. 12:206.

Section 2. R.S. 44:4.1(B)(5) is hereby amended and reenacted to read as follows:

§4.1. Exceptions

B. The legislature further recognizes that there exist exceptions, exemptions, and limitations to the laws pertaining to public records throughout the revised statutes and codes of this state. Therefore, the following exceptions, exemptions, and limitations are hereby continued in effect by incorporation into this Chapter by citation:

(5) R.S. 12:2.1  R.S. 12:1702

Section 3. R.S. 49:222(B)(1) and (6) are hereby amended and reenacted to read as follows:

§222. Fees chargeable by secretary of state

B. The secretary of state is authorized to collect the following fees:

1. Domestic corporations and limited liability companies.
   (a) Twenty-five dollars for reserving a corporate name or limited liability company name, transferring a reserved corporate name, registering a corporate name, renewing a registered corporate name, or applying for use of an indistinguishable name by a corporation.
   (b) Seventy-five dollars for filing and recording corporation articles of incorporation, amended articles of incorporation, dissolution proceedings, termination of dissolution proceedings, articles of amendment, articles of restatement, articles of domestication, articles of charter surrender, articles of nonprofit conversion, articles of nonprofit domestication and conversion, articles of dissolution, articles of revocation of dissolution, articles of reinstatement, articles of merger proceedings, articles of merger proceedings or share exchange, conversions, and certificates of correction.
   (c) One hundred dollars for filing and recording limited liability company articles of organization, amended articles of organization, dissolution proceedings, termination of dissolution proceedings, reinstatement proceedings, merger proceedings, conversions, and certificates of correction.
   (d) Twenty dollars for filing any other document or issuing and sealing any other certificate required or permitted by the Louisiana business corporation law. Business Corporation Act, R.S. 12:1 -740(1), R.S. 12:1-741 et seq., or the limited liability companies law, R.S. 12:1301 et seq.
   (e) Twenty-five dollars for a corporation's statement of change of registered agent or registered office, or both, the resignation of an agent or officer, appointment of a registered agent, change of domicile, appointment of new officers, directors, members, or managers; and change of address for agents, officers, directors, members, or managers.
   (f) Twenty-five dollars for a supplemental initial report.
   (g) Thirty dollars for annual reports.

2. Business Articles of entity conversions.
   (a) Seventy-five dollars for conversion from or to a limited liability company, except as provided in Subparagraph (B)(6)(b) of this Section.