No. 2001-34

AN ACT

SB 215

Amending Titles 15 (Corporations and Unincorporated Associations) and 54 (Names) of the Pennsylvania Consolidated Statutes, relating to associations; making revisions, corrections and additions; providing for a function of the Department of State; and making repeals.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the GAA Amendments Act of 2001.

Section 2. Amendment of Title 15.

As much of Title 15 of the Pennsylvania Consolidated Statutes as is hereinafter set forth is amended or added to read:

§ 102. Definitions.

Subject to additional or inconsistent definitions contained in subsequent provisions of this title that are applicable to specific provisions of this title, the following words and phrases when used in this title shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

"Limited liability company." A ***domestic or foreign*** limited liability company as defined in section 8903 (relating to definitions ***and index of definitions***).

"Profession." Includes the performance of any type of personal service to the public that requires as a condition precedent to the performance of the service the obtaining of a license or admission to practice or other legal authorization from the Supreme Court of Pennsylvania or a licensing board or commission under the Bureau of Professional and Occupational Affairs in the Department of State. Except as otherwise expressly provided by law, this definition shall be applicable to this title only and shall not affect the interpretation of any other statute or any local zoning ordinance or other official document heretofore or hereafter enacted or promulgated.

"Professional services." Any type of services that may be rendered by a member of a profession within the purview of his profession.

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§ 134. Docketing statement.

(a) General rule.—The Department of State may, ***but shall not be required to,*** prescribe by regulation one or more official docketing statement forms designed to elicit from a person effecting a filing under this title information that the department has found to be necessary or desirable

in connection with the processing of a filing. [A **docketing statement submitted with the articles of incorporation or division of a proposed domestic corporation for profit or not-for-profit, the articles of domestication or application for a certificate of authority of a foreign corporation for profit or not-for-profit or the certificate of election of an electing partnership shall set forth, inter alia, the kind or kinds of business in which the association actually intends to engage in this Commonwealth within one year of the submission of the docketing statement. A docketing statement submitted with articles of incorporation, consolidation or division of a domestic corporation not-for-profit or an application for a certificate of authority of a foreign corporation not-for-profit shall set forth with respect to the new corporation or corporations resulting therefrom, inter alia, the statute by or under which it was incorporated, the date of incorporation, the names and residence addresses of its chief executive officer, secretary and treasurer, regardless of the names or titles by which they may be designated, the address of its principal place of business and the amount, if any, of its authorized and issued capital stock.**] A form of docketing statement prescribed under this subsection:

(1) Shall be published in the Pennsylvania Code.

(2) Shall not be integrated into a single document covering the requirements of the filing and its related docketing statement.

(3) May be required by the department in connection with a filing only if notice of the requirement appears on the official format for the filing prescribed under section 133(d) (relating to physical characteristics and copies of documents).

(4) Shall not be required to be submitted on department-furnished forms.

(5) Shall not constitute a document filed in, with or by the department for the purposes of this title or any other provision of law except 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(b) Transmission to Department of Revenue.—The department shall note ***on the docketing statement*** the fact and date of the filing [**of articles of incorporation, consolidation, merger, division, conversion or domestication or certificate of election or issuance of the certificate of authority, as the case may be, upon the docketing statement**] ***to which the docketing statement relates*** and shall transmit a copy of [it] ***the docketing statement or the information contained therein*** to the Department of Revenue. ***If a docketing statement is not required for a particular filing, the Department of State may transmit a copy of the filing or the information contained therein to the Department of Revenue at no cost to the person effecting the filing.***

(c) Transmission to other agencies.—If the docketing statement delivered to the Department of State sets forth any kind of business in which

a corporation, partnership or other association may not engage without the approval of or a license from any department, board or commission of the Commonwealth, the Department of State shall, upon **[the filing of articles of incorporation, consolidation, division or domestication or certificate of election or issuance of the certificate of authority]** ***processing the filing***, promptly transmit a copy of the docketing statement ***or the information contained therein*** to each such department, board or commission.

§ 138. Statement of correction.

* * *

(b) Effect of filing.—

* * *

(2) A filing under this section shall not have the effect of causing original articles of incorporation ***of a corporation or a similar type of document creating any other form of association*** to be stricken from the records of the department but the articles ***or other document*** may be corrected under this section.

* * *

(d) Cross reference.—See section 135 (relating to requirements to be met by filed documents).

§ 139. Tax clearance of certain fundamental transactions.

[A] ***(a) General rule.—Except as provided in subsection (c), a*** domestic association shall not file articles or a certificate of merger or consolidation effecting a merger or consolidation into a nonqualified foreign association or articles or a certificate of dissolution or a statement of revival, a qualified foreign association shall not file an application for termination of authority or similar document in the Department of State and a domestic association shall not file articles or a certificate of division dividing solely into nonqualified foreign associations unless the articles, certificate, application or other document are accompanied by clearance certificates from the Department of Revenue and the Office of Employment Security of the Department of Labor and Industry, evidencing the payment by the association of all taxes and charges due the Commonwealth required by law.

(b) Tax clearance in judicial proceedings.—Until the clearance certificates described in subsection (a) have been filed with the court:

(1) The court shall not order the dissolution of a domestic business corporation, nonprofit corporation or business trust.

(2) The court shall not approve a final distribution of the assets of a domestic general partnership, limited partnership, electing partnership or limited liability company if the court is supervising the winding up of the association.

(c) Alternative provisions.—If clearance certificates are filed with the court as required under subsection (b), it shall not be necessary to file the clearance certificates with the Department of State.

§ 155. Disposition of funds.

* * *

(c) Advisory committee.—The Secretary of the Commonwealth shall appoint a Corporation Bureau Advisory Committee. The committee shall be composed of persons knowledgeable in matters covered by this title and related provisions of law and who have been recommended for appointment to the committee by the organized bar or other organized users of the facilities and services of the bureau. Members shall serve without compensation other than reimbursement for reasonable and necessary expenses in accordance with Commonwealth policy or regulations, shall serve for terms fixed by the **[Secretary]** ***secretary*** and may be reappointed. The Chairman of the committee shall be elected by the committee. The committee shall make recommendations to the Governor with respect to each budget submitted under subsection (b) and may consult with the **[Department of State]** ***department*** in the administration of this title and related provisions of law. ***The committee, in consultation with the bureau and the department, shall submit, by June 1 of each odd-numbered year, a report to the General Assembly describing its activities under this title and any recommended changes to this title.***

§ 161. Domestication of certain alien associations.

* * *

(b) Statement of domestication.—The statement of domestication shall be executed by the association and shall set forth in the English language:

(1) The name of the association. If the name is in a foreign language, it shall be set forth in Roman letters or characters or Arabic or Roman numerals. ***If the name is one that is rendered unavailable for use by a corporation by any provision of section 1303(b) or (c) (relating to corporate name), the association shall adopt a new name, in accordance with any procedures for changing the name of the association that are applicable prior to the domestication of the association, and shall set forth the new name in the statement.***

(2) The name of the jurisdiction under the laws of which and the date on which it was first formed, incorporated or otherwise came into being.

(3) The name of the jurisdiction that constituted the seat, siege social or principal place of business or control administration of the association, or any equivalent under applicable law, immediately prior to the filing of the statement.

(4) A statement **[that upon domestication the association will be a domestic association under the laws of this Commonwealth]** ***of the type of domestic association that the association will be upon domestication.***

(5) A statement that the filing of the statement of domestication and, ***if desired,*** the renunciation of the prior domicile has been authorized (unless its charter or other organic documents require a greater vote) by

a majority in interest of the shareholders, members or other proprietors of the association.

(6) If the association will be a type of domestic association that is created by a filing in the department, such other provisions as are required to be included in an initial filing to create that type of domestic association, except that it shall not be necessary to set forth the name of the person organizing the association.

(7) Any other provision that the association may choose to insert unless this title prohibits the inclusion of such a provision in a filing that creates the type of domestic association that the association will be upon domestication.

(c) Execution.—The statement shall be signed on behalf of the association by any authorized person.

(d) Effect of domestication.—Upon the filing of the statement of domestication, the association shall be domesticated in this Commonwealth and the association shall thereafter be subject to any applicable provisions of this title**[, except Subpart B of Part II (relating to business corporations),]** and **[to]** any other provisions of law applicable to associations existing under the laws of this Commonwealth. ***If the association will be a type of domestic association that is created by a filing in the department, the statement of domestication shall constitute that filing.*** The domestication of any association in this Commonwealth pursuant to this section shall not be deemed to affect any obligations or liabilities of the association incurred prior to its domestication.

(e) Exclusion.—An association that can be domesticated under **[section 4161 (relating to domestication) or 6161 (relating to domestication)]** ***any of the following sections*** shall not be domesticated under this section:

Section 4161 (relating to domestication).

Section 6161 (relating to domestication).

Section 8590 (relating to domestication).

Section 8982 (relating to domestication).

Section 9501(a)(1)(ii) (relating to application and effect of chapter).

(f) Definition.—As used in this section, the term "association," except as restricted by subsection (e), includes any alien incorporated organization, private law corporation (whether or not organized for business purposes), public law corporation, partnership, proprietorship, joint venture, foundation, trust, association or similar organization or entity ***existing under the laws of any jurisdiction other than this Commonwealth.***

(g) Cross **[reference]** ***references.***—See **[section]** ***sections*** 134 (relating to docketing statement) ***and 135 (relating to requirements to be met by filed documents).***

§ 162. Contingent domestication of certain alien associations.

* * *

(c) Statement of consummation of domestication.—At any time after the filing of a statement of contingent domestication, the association may file in

the department a statement of consummation of domestication which shall be executed by the association and shall set forth:

(1) The name of the association[. **If the name is in a foreign language, it shall be set forth in Roman letters or characters or Arabic or Roman numerals.**] ***as set forth in its statement of contingent domestication.***

* * *

(j) Cross [**reference**] ***references.***—See [**section**] ***sections*** 134 (relating to docketing statement) ***and 135 (relating to requirements to be met by filed documents).***

§ 1106. Uniform application of subpart.

* * *

(b) Exceptions.—

* * *

(3) Subsection (a) shall not adversely affect the rights specifically provided for or saved in this subpart. See:

The provisions of section 1524(e) (relating to transitional provision).

The provisions of section 1554(c) (relating to transitional provision).

The cumulative voting rights set forth in section 1758(c)(2) (relating to cumulative voting).

The special voting requirements specified in section 1931(h) (relating to special requirements).

The [**special voting requirements specified in section 1952(h) (relating to special requirements).**] ***provisions of section 1952(g) and (h) (relating to proposal and adoption of plan of division).***

The provisions of section 2301(d) (relating to transitional provisions).

The provisions of section 2541(a)(2) and (3) and (c) (relating to application and effect of subchapter).

The provisions of section 2543(b)(1) and (2) (relating to exceptions generally).

The provisions of section 2551(b)(3)(i), (5) and (6) (relating to exceptions).

The provisions of section 2553(b)(2) (relating to exception).

* * *

§ 1303. Corporate name.

* * *

(e) Remedies for violation of section.—The use of a name in violation of this section shall not vitiate or otherwise affect the corporate existence, but any court having jurisdiction[,] ***may enjoin the corporation from using or continuing to use a name in violation of this section*** upon the application of:

(1) the Attorney General, acting on his own motion or at the instance of any administrative department, board or commission of this Commonwealth; or

(2) any person adversely affected.[; **may enjoin the corporation from using or continuing to use a name in violation of this section.**]

(f) Cross references.—See sections 135(e) (relating to distinguishable names) and 1106(b)(2) (relating to uniform application of subpart).

§ 1304. Required name changes by senior corporations.

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(b) Enforcement of undertaking to release name.—If a corporation has used a name [**which**] ***that*** is not distinguishable upon the records of the [**department**] ***Department of State*** from the name of another corporation or other association as permitted by section 1303(b)(1) (relating to duplicate use of names) and the other corporation or other association continues to use its name in this Commonwealth and does not change its name, cease to do business, be wound up or withdraw as it proposed to do in its consent or change its name as required by subsection (a), any court having jurisdiction[,] ***may enjoin the other corporation or other association from continuing to use its name or a name that is not distinguishable therefrom*** upon the application of:

(1) the Attorney General, acting on his own motion or at the instance of any administrative department, board or commission of this Commonwealth; or

(2) any person adversely affected[;

may enjoin the other corporation or other association from continuing to use its name].

§ 1311. Filing of statement of summary of record by certain corporations.

(a) General rule.—Where any of the [**valid**] charter documents of a business corporation are not on file in the Department of State ***or there is an error in any such document as transferred to the department pursuant to section 140 (relating to custody and management of orphan corporate and business records),*** and the corporation desires to file any document in the department under any other provision of this subpart or the corporation desires to secure from the department any certificate to the effect that the corporation is a corporation duly incorporated and existing under the laws of this Commonwealth or a certified copy of the articles of the corporation ***or the corporation desires to correct the text of its charter documents as on file in the department,*** the corporation shall file in the department a statement of summary of record which shall be executed by the corporation and shall set forth:

(1) The name of the corporation and, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the location, including street and number, if any, of its registered office.

(2) The statute by or under which the corporation was incorporated.

(3) The name under which, the manner in which and the date on which the corporation was originally incorporated, including the date when and the place where the original articles were recorded.

(4) The place or places, including volume and page numbers or their equivalent, where the documents **[constituting the currently effective articles are]** ***that are not on file in the department or that require correction in the records of the department were originally*** filed or recorded, the date or dates of each filing or recording and the ***correct*** text of the **[currently effective articles.]** ***documents.*** The information specified in this paragraph may be omitted in a statement of summary of record that is delivered to the department contemporaneously with amended and restated articles of the corporation filed under this subpart.

[(5) Each name by which the corporation was known, if any, other than its original name and its current name, and the date or dates on which each change of name of the corporation became effective.

(6) In the case of any entity brought within the scope of Chapter 29 (relating to professional corporations) by or pursuant to section 2905 (relating to election of professional associations to become professional corporations), amended and restated articles of incorporation which shall include all of the information required to be set forth in restated articles of a professional corporation.

A corporation shall be required to make only one filing under this subsection.]

(b) Validation of prior defects in incorporation.—Upon the filing of a statement ***by a corporation*** under this section ***or the transfer to the department of the records relating to a corporation pursuant to section 140,*** the corporation **[named in the statement]** shall be deemed to be a validly subsisting corporation to the same extent as if it had been duly incorporated and was existing under this subpart and the department shall so certify regardless of any absence of or defect in the prior proceedings relating to incorporation.

(c) Cross **[reference]** ***references.***—See **[section]** ***sections*** 134 (relating to docketing statement), ***135 (relating to requirements to be met by filed documents) and 1106(b)(2) (relating to uniform application of subpart).***

§ 1505. Persons bound by bylaws.

Except as otherwise provided by section 1713 (relating to personal liability of directors) or any similar provision of law, the bylaws of a business corporation shall operate only as regulations among the shareholders, ***directors and officers*** of the corporation and shall not affect contracts or other dealings with other persons unless those persons have actual knowledge of the bylaws.

§ 1508. Corporate records; inspection ***by shareholders.***

(a) Required records.—Every business corporation shall keep complete and accurate books and records of account, minutes of the proceedings of

the incorporators, shareholders and directors and a share register giving the names and addresses of all shareholders and the number and class of shares held by each. The share register shall be kept at **[either]** ***any of the following locations:***

(1) the registered office of the corporation in this Commonwealth **[or at its];**

(2) the principal place of business ***of the corporation*** wherever situated*;*

(3) any actual business office of the corporation; or **[at]**

(4) the office of **[its]** ***the*** registrar or transfer agent ***of the corporation.*** **[Any books, minutes or other records may be in written form or any other form capable of being converted into written form within a reasonable time.]**

(b) Right of inspection ***by a shareholder.***—Every shareholder shall, upon written verified demand stating the purpose thereof, have a right to examine, in person or by agent or attorney, during the usual hours for business for any proper purpose, the share register, books and records of account, and records of the proceedings of the incorporators, shareholders and directors and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to the interest of the person as a shareholder. In every instance where an attorney or other agent is the person who seeks the right of inspection, the demand shall be accompanied by a verified power of attorney or other writing that authorizes the attorney or other agent to so act on behalf of the shareholder. The demand shall be directed to the corporation*:*

(1) at its registered office in this Commonwealth **[or]***;*

(2) at its principal place of business wherever situated*; or*

(3) in care of the person in charge of an actual business office of the corporation.

(c) Proceedings for the enforcement of inspection ***by a shareholder.***—If the corporation, or an officer or agent thereof, refuses to permit an inspection sought by a shareholder or attorney or other agent acting for the shareholder pursuant to subsection (b) or does not reply to the demand within five business days after the demand has been made, the shareholder may apply to the court for an order to compel the inspection. The court shall determine whether or not the person seeking inspection is entitled to the inspection sought. The court may summarily order the corporation to permit the shareholder to inspect the share register and the other books and records of the corporation and to make copies or extracts therefrom, or the court may order the corporation to furnish to the shareholder a list of its shareholders as of a specific date on condition that the shareholder first pay to the corporation the reasonable cost of obtaining and furnishing the list and on such other conditions as the court deems appropriate. Where the shareholder seeks to inspect the books and records of the corporation, other than its share register or list of shareholders, he shall first establish:

(1) That he has complied with the provisions of this section respecting the form and manner of making demand for inspection of the document.

(2) That the inspection he seeks is for a proper purpose.

Where the shareholder seeks to inspect the share register or list of shareholders of the corporation and he has complied with the provisions of this section respecting the form and manner of making demand for inspection of the documents, the burden of proof shall be upon the corporation to establish that the inspection he seeks is for an improper purpose. The court may, in its discretion, prescribe any limitations or conditions with reference to the inspection or award such other or further relief as the court deems just and proper. The court may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought into this Commonwealth and kept in this Commonwealth upon such terms and conditions as the order may prescribe.

(d) Certain provisions of articles ineffective.—This section may not be relaxed by any provision of the articles.

(e) Cross [**reference**] *references.*—See [**section**] ***sections 107 (relating to form of records), 1512 (relating to informational rights of a director) and*** 1763(c) (relating to certification by nominee).

§ 1512. Informational rights of a director.

(a) General rule.—To the extent reasonably related to the performance of the duties of the director, including those arising from service as a member of a committee of the board of directors, a director of a business corporation is entitled:

(1) in person or by any attorney or other agent, at any reasonable time, to inspect and copy corporate books, records and documents and, in addition, to inspect and receive information regarding the assets, liabilities and operations of the corporation and any subsidiaries of the corporation incorporated or otherwise organized or created under the laws of this Commonwealth that are controlled directly or indirectly by the corporation; and

(2) to demand that the corporation exercise whatever rights it may have to obtain information regarding any other subsidiaries of the corporation.

(b) Proceedings for enforcement of inspection by a director.—If the corporation, or an officer or agent thereof, refuses to permit an inspection or obtain or provide information sought by a director or attorney or other agent acting for the director pursuant to subsection (a) or does not reply to the request within two business days after the request has been made, the director may apply to the court for an order to compel the inspection or the obtaining or providing of the information. The court shall summarily order the corporation to permit the requested inspection or to obtain the information unless the corporation establishes that the information to be obtained by the exercise of the right is not reasonably

related to the performance of the duties of the director or that the director or the attorney or agent of the director is likely to use the information in a manner that would violate the duty of the director to the corporation. The order of the court may contain provisions protecting the corporation from undue burden or expense and prohibiting the director from using the information in a manner that would violate the duty of the director to the corporation.

(c) Cross references.—See sections 107 (relating to form of records) and 1508 (relating to corporate records; inspection by shareholders) and 42 Pa.C.S. § 2503(7) (relating to right of participants to receive counsel fees).

§ 1521. Authorized shares.

* * *

(b) Provisions specifically authorized.—

(1) Without limiting the authority contained in subsection (a), a corporation, when so authorized in its articles, may issue classes or series of shares:

(i) Subject to the right or obligation of the corporation to redeem any of the shares for the consideration, if any, fixed by or in the manner provided by the articles for the redemption thereof. Unless otherwise provided in the articles, any shares subject to redemption shall be redeemable only pro rata or by lot or by such other equitable method as may be selected by the corporation. **[An amendment of the articles to add or amend a provision permitting the redemption of any shares by a method that is not pro rata nor by lot nor otherwise equitable may be effected only pursuant to section 1906 (relating to special treatment of holders of shares of same class or series).]**

(ii) Entitling the holders thereof to cumulative, noncumulative or partially cumulative dividends.

(iii) Having preference over any other shares as to dividends or assets or both.

(iv) Convertible into shares of any other class or series, or into obligations of the corporation.

(2) Any of the terms of a class or series of shares may be made dependent upon:

(i) Facts ascertainable outside of the articles if the manner in which the facts will operate upon the terms of the class or series is set forth in the articles. ***Such facts may include, without limitation, actions or events within the control of or determinations made by the corporation or a representative of the corporation.***

* * *

(d) Status and rights.—Shares of a business corporation shall be deemed personal property. Except as otherwise provided by the articles or, when so permitted by subsection (c), by one or more bylaws adopted by the

shareholders, each share shall be in all respects equal to every other share. ***See section 1906(d)(4) (relating to special treatment of holders of shares of same class or series).***

§ 1526. Liability of **[subscribers and]** shareholders.

[A subscriber to, or holder or owner of, shares of a business corporation shall not be under any liability to the corporation or any creditor thereof with respect to the shares other than the personal obligation of a shareholder who has acquired his shares by subscription to comply with the terms of the subscription.] ***(a) General rule.—A shareholder of a business corporation shall not be liable, solely by reason of being a shareholder, under an order of a court or in any other manner for a debt, obligation or liability of the corporation of any kind or for the acts of any shareholder or representative of the corporation.***

(b) Professional relationship unaffected.—Subsection (a) shall not afford the shareholders of a business corporation that is not a professional corporation but that provides professional services with greater immunity than is available to the officers, shareholders, employees or agents of a business corporation that is a professional corporation. See section 2925 (relating to professional relationship retained).

(c) Disciplinary jurisdiction unaffected.—A business corporation providing professional services shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the court, department, board, commission or other government unit regulating the profession in which the corporation is engaged. The court, department, board or other government unit may require that a corporation include in its articles provisions that conform to any rule or regulation heretofore or hereafter promulgated for the purpose of enforcing the ethics of a profession. This subpart shall not affect or impair the disciplinary powers of the court, department, board, commission or other government unit over licensed persons or any law, rule or regulation pertaining to the standards for professional conduct of licensed persons or to the professional relationship between any licensed person rendering professional services and the person receiving professional services.

§ 1554. Financial reports to shareholders.

(a) General rule.—Except as otherwise provided in subsection (d) or unless otherwise agreed between a business corporation and a shareholder, every corporation shall furnish to its shareholders annual financial statements, including at least a balance sheet as of the end of each fiscal year and a statement of income and expenses for the fiscal year. The financial statements shall be prepared on the basis of generally accepted accounting principles, if the corporation prepares financial statements for the fiscal year on that basis for any purpose, and may be consolidated statements of the corporation and one or more of its subsidiaries. The financial statements shall be mailed by the corporation to each of its

shareholders entitled thereto within 120 days after the close of each fiscal year and, after the mailing and upon written request, shall be mailed by the corporation to any shareholder or beneficial owner entitled thereto to whom a copy of the most recent annual financial statements has not previously been mailed. ***In lieu of mailing the statements, the corporation may send them by facsimile, e-mail or other electronic transmission to any shareholder who has supplied the corporation with a facsimile number or address for electronic transmissions for the purpose of receiving financial statements from the corporation.*** Statements that are audited or reviewed by a ***certified public accountant or a*** public accountant shall be accompanied by the report of the accountant; in other cases, each copy shall be accompanied by a statement of the person in charge of the financial records of the corporation:

(1) Stating his reasonable belief as to whether or not the financial statements were prepared in accordance with generally accepted accounting principles and, if not, describing the basis of presentation.

(2) Describing any material respects in which the financial statements were not prepared on a basis consistent with those prepared for the previous year.

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§ 1571. Application and effect of subchapter.

(a) General rule.—Except as otherwise provided in subsection (b), any shareholder ***(as defined in section 1572 (relating to definitions))*** of a business corporation shall have the right to dissent from, and to obtain payment of the fair value of his shares in the event of, any corporate action, or to otherwise obtain fair value for his shares, ***only*** where this part expressly provides that a shareholder shall have the rights and remedies provided in this subchapter. See:

Section 1906(c) (relating to dissenters rights upon special treatment).

Section 1930 (relating to dissenters rights).

Section 1931(d) (relating to dissenters rights in share exchanges).

Section 1932(c) (relating to dissenters rights in asset transfers).

Section 1952(d) (relating to dissenters rights in division).

Section 1962(c) (relating to dissenters rights in conversion).

Section 2104(b) (relating to procedure).

Section 2324 (relating to corporation option where a restriction on transfer of a security is held invalid).

Section 2325(b) (relating to minimum vote requirement).

Section 2704(c) (relating to dissenters rights upon election).

Section 2705(d) (relating to dissenters rights upon renewal of election).

Section 2904(b) (relating to procedure).

Section 2907(a) (relating to proceedings to terminate breach of qualifying conditions).

Section 7104(b)(3) (relating to procedure).

(b) Exceptions.—

(1) Except as otherwise provided in paragraph (2), the holders of the shares of any class or series of shares **[that, at]** ***shall not have the right to dissent and obtain payment of the fair value of the shares under this subchapter if, on*** the record date fixed to determine the shareholders entitled to notice of and to vote at the meeting at which a plan specified in any of section 1930, 1931(d), 1932(c) or 1952(d) is to be voted on[,] ***or on the date of the first public announcement that such a plan has been approved by the shareholders by consent without a meeting, the shares*** are either:

(i) listed on a national securities exchange ***or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.***; or

(ii) held ***beneficially or*** of record by more than 2,000 **[shareholders;**

shall not have the right to obtain payment of the fair value of any such shares under this subchapter.] ***persons.***

(2) Paragraph (1) shall not apply to and dissenters rights shall be available without regard to the exception provided in that paragraph in the case of:

(i) **[Shares converted by a plan if the shares are not converted solely into shares of the acquiring, surviving, new or other corporation or solely into such shares and money in lieu of fractional shares.]** ***(Repealed.)***

(ii) Shares of any preferred or special class ***or series*** unless the articles, the plan or the terms of the transaction entitle all shareholders of the class ***or series*** to vote thereon and require for the adoption of the plan or the effectuation of the transaction the affirmative vote of a majority of the votes cast by all shareholders of the class ***or series.***

(iii) Shares entitled to dissenters rights under section 1906(c) (relating to dissenters rights upon special treatment).

(3) The shareholders of a corporation that acquires by purchase, lease, exchange or other disposition all or substantially all of the shares, property or assets of another corporation by the issuance of shares, obligations or otherwise, with or without assuming the liabilities of the other corporation and with or without the intervention of another corporation or other person, shall not be entitled to the rights and remedies of dissenting shareholders provided in this subchapter regardless of the fact, if it be the case, that the acquisition was accomplished by the issuance of voting shares of the corporation to be outstanding immediately after the acquisition sufficient to elect a majority or more of the directors of the corporation.

* * *

(g) Computation of beneficial ownership.—For purposes of subsection (b)(1)(ii), shares that are held beneficially as joint tenants, tenants by the entireties, tenants in common or in trust by two or more persons, as fiduciaries or otherwise, shall be deemed to be held beneficially by one person.

[(g)] ***(h)*** Cross references.—See sections 1105 (relating to restriction on equitable relief), 1904 (relating to de facto transaction doctrine abolished), ***1763(c) (relating to determination of shareholders of record)*** and 2512 (relating to dissenters rights procedure).

§ 1572. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Corporation." The issuer of the shares held or owned by the dissenter before the corporate action or the successor by merger, consolidation, division, conversion or otherwise of that issuer. A plan of division may designate which ***one or more*** of the resulting corporations is the successor corporation for the purposes of this subchapter. The ***designated*** successor corporation ***or corporations*** in a division shall have sole responsibility for payments to dissenters and other liabilities under this subchapter except as otherwise provided in the plan of division.

"Dissenter." A shareholder **[or beneficial owner]** who is entitled to and does assert dissenters rights under this subchapter and who has performed every act required up to the time involved for the assertion of those rights.

* * *

"Shareholder." A shareholder as defined in section 1103 (relating to definitions) or an ultimate beneficial owner of shares, including, without limitation, a holder of depository receipts, where the beneficial interest owned includes an interest in the assets of the corporation upon dissolution.

§ 1702. Manner of giving notice.

(a) General rule.—**[Whenever written]**

(1) Any notice **[is]** required to be given to any person under the provisions of this subpart or by the articles or bylaws of any business corporation**[, it may]** ***shall*** be given to the person either personally or by sending a copy thereof **[by]:**

(i) By first class or express mail, postage prepaid, **[or by telegram (with messenger service specified), telex or TWX (with answerback received)]** or courier service, charges prepaid, **[or by facsimile transmission,]** to his ***postal*** address **[(or to his telex, TWX or facsimile number)]** appearing on the books of the corporation or, in the case of directors, supplied by him to the corporation for the purpose of notice. **[If the notice is sent by mail, telegraph or courier service, it shall be deemed to have been given to the person entitled thereto when deposited in the United States mail**

or with a telegraph office or courier service for delivery to that person or, in the case of telex or TWX, when dispatched.] ***Notice pursuant to this subparagraph shall be deemed to have been given to the person entitled thereto when deposited in the United States mail or with a courier service for delivery to that person.***

(ii) By facsimile transmission, e-mail or other electronic communication to his facsimile number or address for e-mail or other electronic communications supplied by him to the corporation for the purpose of notice. Notice pursuant to this subparagraph shall be deemed to have been given to the person entitled thereto when sent.

(2) A notice of meeting shall specify the **[place,]** day and hour ***and geographic location, if any,*** of the meeting and any other information required by any other provision of this subpart.

* * *

§ 1704. Place and notice of meetings of shareholders.

(a) Place.—Meetings of shareholders may be held at such **[place]** ***geographic location*** within or without this Commonwealth as may be provided in or fixed pursuant to the bylaws. Unless otherwise provided in or pursuant to the bylaws, all meetings of the shareholders shall be held **[in this Commonwealth at the registered office of the corporation.]** ***at the executive office of the corporation wherever situated. If a meeting of the shareholders is held by means of the Internet or other electronic communications technology in a fashion pursuant to which the shareholders have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the shareholders and pose questions to the directors, the meeting need not be held at a particular geographic location.***

* * *

§ 1708. Use of conference telephone **[and similar equipment]** ***or other electronic technology.***

(a) Incorporators and directors.—Except as otherwise provided in the bylaws, one or more persons may participate in a meeting of the incorporators**[,]** ***or*** the board of directors **[or the shareholders]** of a business corporation by means of conference telephone or **[similar communications equipment]** ***other electronic technology*** by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence in person at the meeting.

(b) Shareholders.—Except as otherwise provided in the bylaws, the presence or participation, including voting and taking other action, at a meeting of shareholders or the expression of consent or dissent to corporate action by a shareholder by conference telephone or other electronic means, including, without limitation, the Internet, shall

constitute the presence of, or vote or action by, or consent or dissent of the shareholder for the purposes of this subpart.

§ 1709. Conduct of shareholders meeting.

(a) Presiding officer.—There shall be a presiding officer at every meeting of the shareholders. The presiding officer shall be appointed in the manner provided in the bylaws or, in the absence of such provision, by the board of directors. If the bylaws are silent on the appointment of the presiding officer and the board fails to designate a presiding officer, the president shall be the presiding officer.

(b) Authority of the presiding officer.—Except as otherwise provided in the bylaws, the presiding officer shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.

(c) Procedural standard.—Any action by the presiding officer in adopting rules for and in conducting a meeting shall be fair to the shareholders.

(d) Closing of the polls.—The presiding officer shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes, nor any revocations or changes thereto, may be accepted.

§ 1721. Board of directors.

(a) General rule.—Unless otherwise provided by statute or in a bylaw adopted by the shareholders, all powers enumerated in section 1502 (relating to general powers) and elsewhere in this subpart or otherwise vested by law in a business corporation shall be exercised by or under the authority of, and the business and affairs of every business corporation shall be managed under the direction of, a board of directors. If any such provision is made in the bylaws, the powers and duties conferred or imposed upon the board of directors by this subpart shall be exercised or performed to such extent and by such person or persons as shall be provided in the bylaws. Persons upon whom the liabilities of directors are imposed by this section shall to that extent be entitled to the rights and immunities conferred by or pursuant to this part and other provisions of law upon directors of a corporation.

(b) Cross reference.—See section 2527 (relating to authority of board of directors).

§ 1727. Quorum of and action by directors.

* * *

(b) Action by **[written]** consent.—Unless otherwise restricted in the bylaws, any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if, prior or subsequent to the action, a consent or consents thereto by all of the directors in office is filed with the secretary of the corporation.

§ 1729. Voting rights of directors.

* * *

(c) Cross reference.—See section 2526 (relating to voting rights of directors).

§ 1731. Executive and other committees of the board.

(a) Establishment and powers.—Unless otherwise restricted in the bylaws:

* * *

(2) Any committee, to the extent provided in the resolution of the board of directors or in the bylaws, shall have and may exercise all of the powers and authority of the board of directors except that a committee shall not have any power or authority as to the following:

(i) The submission to shareholders of any action requiring approval of shareholders under this subpart.

(ii) The creation or filling of vacancies in the board of directors.

(iii) The adoption, amendment or repeal of the bylaws.

(iv) The amendment or repeal of any resolution of the board that by its terms is amendable or repealable only by the board.

(v) Action on matters committed by the bylaws or resolution of the board of directors ***exclusively*** to another committee of the board.

* * *

§ 1745. Advancing expenses.

Expenses (including attorneys' fees) incurred in defending any action or proceeding referred to in this subchapter may be paid by a business corporation in advance of the final disposition of the action or proceeding upon receipt of an undertaking by or on behalf of the representative to repay the amount if it is ultimately determined that he is not entitled to be indemnified by the corporation as authorized in this subchapter or otherwise. ***Except as otherwise provided in the bylaws, advancement of expenses shall be authorized by the board of directors. Sections 1728 (relating to interested directors or officers; quorum) and 2538 (relating to approval of transactions with interested shareholders) shall not be applicable to the advancement of expenses under this section.***

§ 1748. Application to surviving or new corporations.

[For] ***(a) General rule.—Except as provided in subsection (b), for*** the purposes of this subchapter, references to "the corporation" include all constituent corporations absorbed in a consolidation, merger or division, as well as the surviving or new corporations surviving or resulting therefrom, so that any person who is or was a representative of the constituent, surviving or new corporation, or is or was serving at the request of the constituent, surviving or new corporation as a representative of another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this subchapter with respect to the surviving or new

corporation as he would if he had served the surviving or new corporation in the same capacity.

(b) Divisions.—Notwithstanding subsection (a), the obligations of a dividing corporation to indemnify and advance expenses to its representatives, whether arising under this subchapter or otherwise, may be allocated in a division in the same manner and with the same effect as any other liability of the dividing corporation.

§ 1756. Quorum.

(a) General rule.—A meeting of shareholders of a business corporation duly called shall not be organized for the transaction of business unless a quorum is present. Unless otherwise provided in a bylaw adopted by the shareholders:

* * *

(4) If a proxy casts a vote on behalf of a shareholder on any issue other than a procedural motion considered at a meeting of shareholders, the shareholder shall be deemed to be present during the entire meeting for purposes of determining whether a quorum is present for consideration of any other issue.

* * *

§ 1758. Voting rights of shareholders.

* * *

(b) Procedures *for election of directors*.—**[If the bylaws provide a fair and reasonable procedure for the nomination of candidates for any office, only candidates who have been duly nominated in accordance therewith shall be eligible for election.]** Unless otherwise restricted in the bylaws, in elections for directors, voting need not be by ballot unless required by vote of the shareholders before the voting for election of directors begins. The candidates *for election as directors* receiving the highest number of votes from each class or group of classes, if any, entitled to elect directors separately up to the number of directors to be elected by the class or group of classes shall be elected. If at any meeting of shareholders, directors of more than one class are to be elected, each class of directors shall be elected in a separate election.

* * *

(e) Advance notice of nominations and other business.—If the bylaws provide a fair and reasonable procedure for the nomination of candidates for election as directors, only candidates who have been duly nominated in accordance therewith shall be eligible for election. If the bylaws impose a fair and reasonable requirement of advance notice of proposals to be made by a shareholder at the annual meeting of the shareholders, only proposals for which advance notice has been properly given may be acted upon at the meeting.

§ 1759. Voting and other action by proxy.

* * *

(b) Execution and filing.—Every proxy shall be executed **[in writing]** ***or authenticated*** by the shareholder or by his duly authorized attorney-in-fact and filed with ***or transmitted to*** the secretary of the corporation ***or its designated agent. A shareholder or his duly authorized attorney-in-fact may execute or authenticate a writing or transmit an electronic message authorizing another person to act for him by proxy.*** A telegram, telex, cablegram, datagram, ***e-mail, Internet communication*** or **[similar]** ***other means of electronic*** transmission from a shareholder or attorney-in-fact, or a photographic, facsimile or similar reproduction of a writing executed by a shareholder or attorney-in-fact:

(1) may be treated as properly executed ***or authenticated*** for purposes of this subsection; and

(2) shall be so treated if it sets forth ***or utilizes*** a confidential and unique identification number or other mark furnished by the corporation to the shareholder for the purposes of a particular meeting or transaction.

(c) Revocation.—A proxy, unless coupled with an interest, shall be revocable at will, notwithstanding any other agreement or any provision in the proxy to the contrary, but the revocation of a proxy shall not be effective until **[written]** notice thereof has been given to the secretary of the corporation ***or its designated agent in writing or by electronic transmission.*** An unrevoked proxy shall not be valid after three years from the date of its execution, ***authentication or transmission*** unless a longer time is expressly provided therein. A proxy shall not be revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, written notice of the death or incapacity is given to the secretary of the corporation ***or its designated agent.***

* * *

§ 1766. Consent of shareholders in lieu of meeting.

* * *

(b) Partial **[written]** consent.—If the bylaws so provide, any action required or permitted to be taken at a meeting of the shareholders or of a class of shareholders may be taken without a meeting upon the **[written]** consent of shareholders who would have been entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting. The consents shall be filed with the secretary of the corporation.

(c) Effectiveness of action by partial **[written]** consent.—An action taken pursuant to subsection (b) shall not become effective until after at least ten days' **[written]** notice of the action has been given to each shareholder entitled to vote thereon who has not consented thereto. This subsection may not be relaxed by any provision of the articles.

* * *

§ 1906. Special treatment of holders of shares of same class or series.

(a) General rule.—Except as otherwise restricted in the articles, **[an amendment or]** ***a*** plan may contain a provision classifying the holders of

shares of a class or series into one or more separate groups by reference to any facts or circumstances that are not manifestly unreasonable and providing mandatory treatment for shares of the class or series held by particular shareholders or groups of shareholders that differs materially from the treatment accorded other shareholders or groups of shareholders holding shares of the same class or series (including a provision modifying or rescinding rights previously created under this section) if:

(1) (i) such provision is specifically authorized by a majority of the votes cast by all shareholders entitled to vote on the **[amendment or]** plan, as well as by a majority of the votes cast by any class or series of shares any of the shares of which are so classified into groups, whether or not such class or series would otherwise be entitled to vote on the **[amendment or]** plan; and

(ii) the provision voted on specifically enumerates the type and extent of the special treatment authorized; or

(2) under all the facts and circumstances, a court of competent jurisdiction finds such special treatment is undertaken in good faith, after reasonable deliberation and is in the best interest of the corporation.

(b) Statutory voting rights upon special treatment.—Except as provided in subsection (c), if **[an amendment or]** *a* plan contains a provision for special treatment, each group of holders of any outstanding shares of a class or series who are to receive the same special treatment under the **[amendment or]** plan shall be entitled to vote as a special class in respect to the plan regardless of any limitations stated in the articles or bylaws on the voting rights of any class or series.

(c) Dissenters rights upon special treatment.—If any **[amendment or]** plan contains a provision for special treatment without requiring for the adoption of the **[amendment or]** plan the statutory class vote required by subsection (b), the holder of any outstanding shares the statutory class voting rights of which are so denied, who objects to the **[amendment or]** plan and complies with Subchapter D of Chapter 15 (relating to dissenters rights), shall be entitled to the rights and remedies of dissenting shareholders provided in that subchapter.

(d) Exceptions.—This section shall not apply to:

(1) The creation or issuance of securities, contracts, warrants or other instruments evidencing any shares, option rights, securities having conversion or option rights or obligations authorized by section 2513 (relating to disparate treatment of certain persons).

(2) A provision of **[an amendment or]** *a* plan that offers to all holders of shares of a class or series the same option to elect certain treatment.

(3) **[An amendment or]** *A* plan that contains an express provision that this section shall not apply or that fails to contain an express provision that this section shall apply. The shareholders of a corporation that proposes **[an amendment or]** *a* plan to which this section is not

applicable by reason of this paragraph shall have the remedies contemplated by section 1105 (relating to restriction on equitable relief).

(4) A provision of a plan that treats all of the holders of a particular class or series of shares differently from the holders of another class or series. A provision of a plan that treats the holders of a class or series of shares differently from the holders of another class or series of shares shall not constitute a violation of section 1521(d) (relating to authorized shares).

(e) Definition.—As used in this section, the term "plan" includes:

(1) an amendment of the articles that effects a reclassification of shares, whether or not the amendment is accompanied by a separate plan of reclassification; and

(2) a resolution recommending that the corporation dissolve voluntarily adopted under section 1972(a) (relating to proposal of voluntary dissolution).

§ 1912. Proposal of amendments.

* * *

(c) Terms of amendment.—The resolution or petition may set forth the manner and basis of reclassifying the shares of the corporation. Any of the terms of a plan of reclassification or other action contained in an amendment may be made dependent upon facts ascertainable outside of the amendment if the manner in which the facts will operate upon the terms of the amendment is set forth in the amendment. ***Such facts may include, without limitation, actions or events within the control of or determinations made by the corporation or a representative of the corporation.***

§ 1914. Adoption of amendments.

* * *

(b) Statutory voting rights.—Except as provided in this subpart, ***the holders of the outstanding shares of a class or series of shares shall be entitled to vote as a class in respect of a proposed amendment regardless of any limitations stated in the articles or bylaws on the voting rights of any class or series*** if **[a proposed]** ***the*** amendment would:

(1) authorize the board of directors to fix and determine the relative rights and preferences, as between series, of any preferred or special class;

(2) make any change in the preferences, limitations or special rights (other than preemptive rights or the right to vote cumulatively) of the shares of a class or series adverse to the class or series;

(3) authorize a new class or series of shares having a preference as to dividends or assets which is senior to the shares of a class or series; **[or]**

(4) increase the number of authorized shares of any class or series having a preference as to dividends or assets which is senior in any respect to the shares of a class or series; ***or***

(5) make the outstanding shares of a class or series redeemable by a method that is not pro rata, by lot or otherwise equitable.

[then the holders of the outstanding shares of the class or series shall be entitled to vote as a class in respect to the amendment regardless of any limitations stated in the articles or bylaws on the voting rights of any class or series.]

(c) Adoption by board of directors.—Unless otherwise restricted in the articles, an amendment of articles shall not require the approval of the shareholders of the corporation if:

(1) shares have not been issued;

(2) the amendment is restricted to **[any]** ***one or more*** of the following:

(i) changing the corporate name;

(ii) providing for perpetual existence;

(iii) reflecting a reduction in authorized shares effected by operation of section 1552(a) (relating to power of corporation to acquire its own shares) and, if appropriate, deleting all references to a class or series of shares that is no longer outstanding; **[or]**

(iv) adding or deleting a provision authorized by section 1528(f) (relating to uncertificated shares)**[.]**; ***or***

(v) adding, changing or eliminating the par value of any class or series of shares if the par value of that class or series does not have any substantive effect under the terms of that or any other class or series of shares;

(3) ***(i)*** the corporation has only one class ***or series*** of ***voting*** shares outstanding;

(ii) the corporation does not have any class or series of shares outstanding that is:

(A) convertible into those voting shares;

(B) junior in any way to those voting shares; or

(C) entitled to participate on any basis in distributions with those voting shares; and

(iii) the amendment is effective solely to ***accomplish one of the following purposes with respect to those voting shares:***

[(i)] ***(A) in connection with effectuating a stock dividend of voting shares on the voting shares, to*** increase the number of authorized shares **[to the extent necessary to permit the board of directors to effectuate a stock dividend in the shares of the corporation]** ***of the voting shares in the same proportion that the voting shares to be distributed in the stock dividend increase the issued voting shares***; or

[(ii) effectuate a] ***(B) to*** split ***the voting shares*** and, if desired, increase the number of ***authorized shares of the voting*** shares or change the par value of **[the authorized]** ***the voting*** shares, or both, in proportion thereto;

(4) to the extent the amendment has not been approved by the shareholders, it restates without change all of the operative provisions of the articles as theretofore amended or as amended thereby; or

(5) the amendment accomplishes any combination of purposes specified in this subsection.

Whenever a provision of this subpart authorizes the board of directors to take any action without the approval of the shareholders and provides that a statement, certificate, plan or other document relating to such action shall be filed in the Department of State and shall operate as an amendment of the articles, the board upon taking such action may, in lieu of filing the statement, certificate, plan or other document, amend the articles under this subsection without the approval of the shareholders to reflect the taking of such action. An amendment of articles under this subsection shall be deemed adopted by the corporation when it has been adopted by the board of directors pursuant to section 1912 (relating to proposal of amendments).

* * *

(f) Definition.—As used in this section, the term "voting shares" has the meaning specified in section 2552 (relating to definitions).

§ 1922. Plan of merger or consolidation.

(a) Preparation of plan.—A plan of merger or consolidation, as the case may be, shall be prepared, setting forth:

* * *

(5) Such other provisions as are deemed desirable.

[Any of the terms of the plan may be made dependent upon facts ascertainable outside of the plan if the manner in which the facts will operate upon the terms of the plan is set forth in the plan.]

(b) Post-adoption amendment.—A plan of merger or consolidation may contain a provision that the boards of directors of the constituent corporations may amend the plan at any time prior to its effective date, except that an amendment made subsequent to the adoption of the plan by the shareholders of any constituent ***domestic business*** corporation shall not change:

(1) The amount or kind of shares, obligations, cash, property or rights to be received in exchange for or on conversion of all or any of the shares of the constituent ***domestic business*** corporation ***adversely to the holders of those shares.***

(2) Any **[term]** ***provision*** of the articles of the surviving or new corporation **[to be effected by]** ***as it is to be in effect immediately following consummation of*** the merger or consolidation ***except provisions that may be amended without the approval of the shareholders under section 1914(c)(2) (relating to adoption of amendments).***

(3) Any of the ***other*** terms and conditions of the plan if the change would adversely affect the holders of any shares of the constituent ***domestic business*** corporation.

(c) Proposal.—[Every] ***Except where the approval of the board of directors is unnecessary under this subchapter, every*** merger or consolidation shall be proposed in the case of each domestic business corporation by the adoption by the board of directors of a resolution approving the plan of merger or consolidation. Except where the approval of the shareholders is unnecessary under this subchapter, the board of directors shall direct that the plan be submitted to a vote of the shareholders entitled to vote thereon at a regular or special meeting of the shareholders.

* * *

(e) Reference to outside facts.—Any of the terms of a plan of merger or consolidation may be made dependent upon facts ascertainable outside of the plan if the manner in which the facts will operate upon the terms of the plan is set forth in the plan. Such facts may include, without limitation, actions or events within the control of or determinations made by a party to the plan or a representative of a party to the plan.

§ 1923. Notice of meeting of shareholders.

(a) General rule.—Written notice of the meeting of shareholders that will act on the proposed plan shall be given to each shareholder of record, whether or not entitled to vote thereon, of each domestic business corporation that is a party to the merger or consolidation. There shall be included in, or enclosed with, the notice a copy of the proposed plan or a summary thereof and, if Subchapter D of Chapter 15 (relating to dissenters rights) is applicable to the holders of shares of any class or series, a copy of that subchapter and of section 1930 (relating to dissenters rights) shall be furnished to the holders of shares of that class or series. ***If the surviving or new corporation will be a nonregistered corporation, the notice shall state that a copy of its bylaws as they will be in effect immediately following the merger or consolidation will be furnished to any shareholder on request and without cost.***

* * *

§ 1924. Adoption of plan.

* * *

(b) Adoption by board of directors.—

(1) Unless otherwise required by its bylaws, a plan of merger or consolidation shall not require the approval of the shareholders of a constituent domestic business corporation if:

* * *

(ii) immediately prior to the adoption of the plan and at all times thereafter prior to its effective date, another corporation that is a party to the **[merger or consolidation]** ***plan*** owns directly or indirectly 80% or more of the outstanding shares of each class of the constituent corporation; or

* * *

(3) If a merger or consolidation of a subsidiary corporation with a parent corporation is effected pursuant to paragraph (1)(ii), the plan of

merger or consolidation shall be deemed adopted by the subsidiary corporation when it has been adopted by the board of the parent corporation and ***neither approval of the plan by the board of directors of the subsidiary corporation nor*** execution of articles of merger or consolidation by the subsidiary corporation shall **[not]** be necessary.

(4) (i) Unless otherwise required by its bylaws, a plan of merger or consolidation providing for the merger or consolidation of a domestic business corporation (referred to in this paragraph as the "constituent corporation") with or into a single indirect wholly owned subsidiary (referred to in this paragraph as the "subsidiary corporation") of the constituent corporation shall not require the approval of the shareholders of either the constituent corporation or the subsidiary corporation if all of the provisions of this paragraph are satisfied.

(ii) A merger or consolidation under this paragraph shall satisfy the following conditions:

(A) The constituent corporation and the subsidiary corporation are the only parties to the merger or consolidation, other than the resulting corporation, if any, in a consolidation (the corporation that survives or results from the merger or consolidation is referred to in this paragraph as the "resulting subsidiary").

(B) Each share or fraction of a share of the capital stock of the constituent corporation outstanding immediately prior to the effective time of the merger or consolidation is converted in the merger or consolidation into a share or equal fraction of a share of capital stock of a holding company having the same designations, rights, powers and preferences and the qualifications, limitations and restrictions as the share of stock of the constituent corporation being converted in the merger or consolidation.

(C) The holding company and the resulting subsidiary are each domestic business corporations.

(D) Immediately following the effective time of the merger or consolidation, the articles of incorporation and bylaws of the holding company are identical to the articles of incorporation and bylaws of the constituent corporation immediately before the effective time of the merger or consolidation except for changes that could be made without shareholder approval under section 1914(c) (relating to adoption by board of directors).

(E) Immediately following the effective time of the merger or consolidation, the resulting subsidiary is a direct or indirect wholly owned subsidiary of the holding company.

(F) The directors of the constituent corporation become or remain the directors of the holding company upon the effective time of the merger or consolidation.

(G) The board of directors of the constituent corporation has made a good faith determination that the shareholders of the constituent corporation will not recognize gain or loss for United States Federal Income Tax purposes.

(iii) As used in this paragraph only, the term "holding company" means a corporation that, from its incorporation until consummation of the merger or consolidation governed by this paragraph, was at all times a direct wholly owned subsidiary of the constituent corporation and whose capital stock is issued in the merger or consolidation.

(iv) If the holding company is a registered corporation, the shares of the holding company issued in connection with the merger or consolidation shall be deemed to have been acquired at the time that the shares of the constituent corporation converted in the merger or consolidation were acquired.

(5) A plan of merger or consolidation adopted by the board of directors under this subsection without the approval of the shareholders shall not, by itself, create or impair any rights or obligations on the part of any person under section 2538 (relating to approval of transactions with interested shareholders) or under Subchapters E (relating to control transactions), F (relating to business combinations), G (relating to control-share acquisitions), H (relating to disgorgement by certain controlling shareholders following attempts to acquire control), I (relating to severance compensation for employees terminated following certain control-share acquisitions) and J (relating to business combination transactions - labor contracts) of Chapter 25, nor shall it change the standard of care applicable to the directors under Subchapter B of Chapter 17 (relating to fiduciary duty).

* * *

§ 1929. Effect of merger or consolidation.

* * *

(b) Property rights.—All the property, real, personal and mixed, and franchises of each of the corporations parties to the merger or consolidation, and all debts due on whatever account to any of them, including subscriptions for shares and other choses in action belonging to any of them, shall be deemed to be **[transferred to and]** vested in ***and shall belong to*** the surviving or new corporation, as the case may be, without further action, and the title to any real estate, or any interest therein, vested in any of the corporations shall not revert or be in any way impaired by reason of the merger or consolidation. The surviving or new corporation shall thenceforth be responsible for all the liabilities of each of the

corporations so merged or consolidated. Liens upon the property of the merging or consolidating corporations shall not be impaired by the merger or consolidation and any claim existing or action or proceeding pending by or against any of the corporations may be prosecuted to judgment as if the merger or consolidation had not taken place or the surviving or new corporation may be proceeded against or substituted in its place.

(c) Taxes.—Any taxes, ***interest,*** penalties and public accounts of the Commonwealth[,] claimed against any of the merging or consolidating corporations **[but not]** ***that are*** settled, assessed or determined prior to ***or after*** the merger or consolidation[,] shall be **[settled, assessed or determined against]** ***the liability of*** the surviving or new corporation and, together with interest thereon, shall be a lien against the franchises and property, both real and personal, of the surviving or new corporation.

* * *

§ 1930. Dissenters rights.

* * *

(b) Plans adopted by directors only.—Except as otherwise provided pursuant to section 1571(c) (relating to grant of optional dissenters rights), Subchapter D of Chapter 15 shall not apply to any of the shares of a corporation that is a party to a merger or consolidation pursuant to section 1924(b)(1)(i) ***or (4)*** (relating to adoption by board of directors).

* * *

§ 1931. Share exchanges.

(a) General rule.—All the outstanding shares of one or more classes or series of a domestic business corporation, designated in this section as the exchanging corporation, may, in the manner provided in this section, be acquired by any person, designated in this section as the acquiring person, through an exchange of all the shares pursuant to a plan of exchange. ***The plan of exchange may also provide for the conversion of any other shares of the exchanging corporation into shares, other securities or obligations of any person or cash, property or rights.*** The procedure authorized by this section shall not be deemed to limit the power of any person to acquire all or part of the shares or other securities of any class or series of a corporation through a voluntary exchange or otherwise by agreement with the holders of the shares or other securities.

(b) Plan of exchange.—A plan of exchange shall be prepared, setting forth:

(1) The terms and conditions of the exchange.

(2) The manner and basis of ***exchanging or*** converting the shares of the exchanging corporation into shares or other securities or obligations of the acquiring person, and, if any of the shares of the exchanging corporation are not to be ***exchanged or*** converted solely into shares or other securities or obligations of the acquiring person, the shares or other securities or obligations of any other person or cash, property or rights that the holders of the shares of the exchanging corporation are to

receive in exchange for, or upon conversion of, the shares and the surrender of any certificates evidencing them, which securities or obligations, if any, of any other person or cash, property and rights may be in addition to or in lieu of the shares or other securities or obligations of the acquiring person.

(3) Any changes desired to be made in the articles of the exchanging corporation, which may include a restatement of the articles.

(4) Any provisions desired providing special treatment of shares held by any shareholder or group of shareholders as authorized by, and subject to the provisions of, section 1906 (relating to special treatment of holders of shares of same class or series). Notwithstanding subsection (a), a plan that provides special treatment may affect less than all of the outstanding shares of a class or series.

(5) Such other provisions as are deemed desirable.

[Any of the terms of the plan may be made dependent upon facts ascertainable outside of the plan if the manner in which the facts will operate upon the terms of the plan is set forth in the plan.]

(c) Proposal and adoption.—The plan of exchange shall be proposed and adopted and may be amended after its adoption and terminated by the exchanging corporation in the manner provided by this subchapter for the proposal, adoption, amendment and termination of a plan of merger except section 1924(b) (relating to adoption by board of directors). There shall be included in, or enclosed with, the notice of the meeting of shareholders to act on the plan a copy or a summary of the plan and, if Subchapter D of Chapter 15 (relating to dissenters rights) is applicable, a copy of the subchapter and of subsection (d). The holders of any class of shares to be **[acquired]** ***exchanged or converted*** pursuant to the plan of exchange shall be entitled to vote as a class on the plan if they would have been entitled to vote on a plan of merger that affects the class in substantially the same manner as the plan of exchange.

(d) Dissenters rights in share exchanges.—Any holder of shares that are to be **[acquired]** ***exchanged or converted*** pursuant to a plan of exchange who objects to the plan and complies with the provisions of Subchapter D of Chapter 15 shall be entitled to the rights and remedies of dissenting shareholders therein provided, if any. See section 1906(c) (relating to **[dissenter]** ***dissenters*** rights upon special treatment).

(e) Articles of exchange.—Upon adoption of a plan of exchange, as provided in this section, articles of exchange shall be executed by the exchanging corporation and shall set forth:

(1) The name and, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the location of the registered office, including street and number, if any, of the exchanging corporation.

(2) If the plan is to be effective on a specified date, the hour, if any, and the month, day and year of the effective date.

(3) The manner in which the plan was adopted by the exchanging corporation.

(4) Except as provided in section 1901 (relating to omission of certain provisions from filed plans), the plan of exchange.

The articles of exchange shall be filed in the Department of State. See [section] *sections* 134 (relating to docketing statement) ***and 135 (relating to requirements to be met by filed documents).***

* * *

(i) Reference to outside facts.—Any of the terms of a plan of exchange may be made dependent upon facts ascertainable outside of the plan if the manner in which the facts will operate upon the terms of the plan is set forth in the plan. Such facts may include, without limitation, actions or events within the control of or determinations made by a party to the plan or a representative of a party to the plan.

§ 1932. Voluntary transfer of corporate assets.

* * *

(b) Shareholder approval required.—

(1) A sale, lease, exchange or other disposition of all, or substantially all, the property and assets, with or without the goodwill, of a business corporation, if not made pursuant to subsection (a) or (d) or to section 1551 (relating to distributions to shareholders) or Subchapter D (relating to division), may be made only pursuant to a plan of asset transfer[.] ***in the manner provided in this subsection. A corporation selling, leasing or otherwise disposing of all, or substantially all, its property and assets is referred to in this subsection and in subsection (c) as the "transferring corporation."***

(2) The property or assets of a direct or indirect subsidiary corporation that is controlled by a parent corporation shall also be deemed the property or assets of the parent corporation for the purposes of this subsection and of subsection (c). ***A merger or consolidation to which such a subsidiary corporation is a party and in which a third party acquires direct or indirect ownership of the property or assets of the subsidiary corporation constitutes an "other disposition" of the property or assets of the parent corporation within the meaning of that term as used in this section.***

(3) The plan of asset transfer shall set forth the terms and conditions of the sale, lease, exchange or other disposition or may authorize the board of directors to fix any or all of the terms and conditions, including the consideration to be received by the corporation therefor. ***The plan may provide for the distribution to the shareholders of some or all of the consideration to be received by the corporation, including provisions for special treatment of shares held by any shareholder or group of shareholders as authorized by, and subject to the provisions of, section 1906 (relating to special treatment of holders of shares of same class or series). It shall not be necessary for the person acquiring***

the property or assets of the transferring corporation to be a party to the plan. Any of the terms of the plan may be made dependent upon facts ascertainable outside of the plan if the manner in which the facts will operate upon the terms of the plan is set forth in the plan. ***Such facts may include, without limitation, actions or events within the control of or determinations made by the corporation or a representative of the corporation.***

(4) The plan of asset transfer shall be proposed and adopted, and may be amended after its adoption and terminated, by **[a business]** ***the transferring*** corporation in the manner provided in this subchapter for the proposal, adoption, amendment and termination of a plan of merger, except section 1924(b) (relating to adoption by board of directors). ***The procedures of this subchapter shall not be applicable to the person acquiring the property or assets of the transferring corporation.*** There shall be included in, or enclosed with, the notice of the meeting of the shareholders ***of the transferring corporation*** to act on the plan a copy or a summary of the plan and, if Subchapter D of Chapter 15 (relating to dissenters rights) is applicable, a copy of the subchapter and of subsection (c).

(5) In order to make effective the plan of asset transfer so adopted, it shall not be necessary to file any articles or other documents in the Department of State.

(c) Dissenters rights in asset transfers.—

(1) If a shareholder of a ***transferring*** corporation that adopts a plan of asset transfer objects to the plan and complies with Subchapter D of Chapter 15, the shareholder shall be entitled to the rights and remedies of dissenting shareholders therein provided, if any.

(2) Paragraph (1) shall not apply to a sale pursuant to an order of court having jurisdiction in the premises or a sale **[for money on terms requiring]** ***pursuant to a plan of asset transfer that requires*** that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests ~~within one year~~ after the date of sale ***or to a liquidating trust.***

* * *

(g) Presumption.—A corporation will conclusively be deemed not to have sold, leased, exchanged or otherwise disposed of all, or substantially all, of its property and assets, with or without goodwill, if the corporation or any direct or indirect subsidiary controlled by the corporation retains a business activity that represented at the end of its most recently completed fiscal year, on a consolidated basis, at least:

(1) 25% of total assets; and

(2) 25% of either:

(i) income from continuing operations before taxes; or

(ii) revenues from continuing operations.

§ 1952. Proposal and adoption of plan of division.

(a) Preparation of plan.—A plan of division shall be prepared, setting forth:

(1) The terms and conditions of the division, including the manner and basis of:

(i) The reclassification of the shares of the surviving corporation, if there be one, and, if any of the shares of the dividing corporation are not to be converted solely into shares or other securities or obligations of one or more of the resulting corporations, the shares or other securities or obligations of any other person, or cash, property or rights that the holders of such shares are to receive in exchange for or upon conversion of such shares, and the surrender of any certificates evidencing them, which securities or obligations, if any, of any other person or cash, property or rights may be in addition to or in lieu of shares or other securities or obligations of one or more of the resulting corporations.

(ii) The disposition of the shares and other securities or obligations, if any, of the new corporation or corporations resulting from the division.

(2) A statement that the dividing corporation will, or will not, survive the division.

(3) Any changes desired to be made in the articles of the surviving corporation, if there be one, including a restatement of the articles.

(4) The articles of incorporation required by subsection (b).

(5) Any provisions desired providing special treatment of shares held by any shareholder or group of shareholders as authorized by, and subject to the provisions of, section 1906 (relating to special treatment of holders of shares of same class or series).

(6) Such other provisions as are deemed desirable.

[Any of the terms of the plan may be made dependent upon facts ascertainable outside of the plan if the manner in which the facts will operate upon the terms of the plan is set forth in the plan.]

* * *

(g) [Action by] *Rights of* holders of indebtedness.—**[Unless otherwise provided by an indenture or other contract by which the dividing corporation is bound, a plan of division shall not require the approval of the holders of any debt securities or other obligations of the dividing corporation or of any representative of the holders, if the transfer of assets effected by the division, if effected by means of a sale, lease, exchange or other disposition, and any related distribution, would not require the approval of the holders or representatives thereof.]** ***If any debt securities, notes or similar evidences of indebtedness for money borrowed, whether secured or unsecured, indentures or other contracts were issued, incurred or executed by the dividing corporation before August 21, 2001, and have not been amended subsequent to that date, the***

liability of the dividing corporation thereunder shall not be affected by the division nor shall the rights of the obligees thereunder be impaired by the division, and each of the resulting corporations may be proceeded against or substituted in place of the dividing corporation as joint and several obligors on such liability, regardless of any provision of the plan of division apportioning the liabilities of the dividing corporation.

* * *

(i) Reference to outside facts.—Any of the terms of a plan of division may be made dependent upon facts ascertainable outside of the plan if the manner in which the facts will operate upon the terms of the plan is set forth in the plan. Such facts may include, without limitation, actions or events within the control of or determinations made by the dividing corporation or a representative of the dividing corporation.

§ 1953. Division without shareholder approval.

(a) General rule.—Unless otherwise restricted by its bylaws or required by section 1952(f) (relating to action by holders of preferred or special shares), a plan of division that does not alter the state of incorporation of a business corporation, provide for special treatment nor amend in any respect the provisions of its articles (except amendments which under section 1914(c) (relating to adoption by board of directors) may be made without shareholder action) shall not require the approval of the shareholders of the corporation if:

(1) the dividing corporation has only one class of shares outstanding and the shares and other securities, if any, of each corporation resulting from the plan are distributed pro rata to the shareholders of the dividing corporation;

(2) the dividing corporation survives the division and all the shares and other securities and obligations, if any, of all new corporations resulting from the plan are owned solely by the surviving corporation; or

(3) the **[transfers]** ***allocation*** of assets ***among the resulting corporations*** effected by the division, if effected by means of a sale, lease, exchange or other disposition, would not require the approval of shareholders under section 1932(b) (relating to shareholder approval required).

(b) Limitation.—A plan of division adopted by the board of directors under this section without the approval of the shareholders shall not, by itself, create or impair any rights or obligations on the part of any person under section 2538 (relating to approval of transactions with interested shareholders) or under Subchapters E (relating to control transactions), F (relating to business combinations), G (relating to control-share acquisitions), H (relating to disgorgement by certain controlling shareholders following attempts to acquire control), I (relating to severance compensation for employees terminated following certain control-share acquisitions) and J (relating to business combination transactions - labor contracts) of Chapter 25, nor shall it change the

standard of care applicable to the directors under Subchapter B of Chapter 17 (relating to fiduciary duty).

§ 1955. Filing of articles of division.

(a) General rule.—The articles of division, and the certificates or statement, if any, required by section 139 (relating to tax clearance of certain fundamental transactions) shall be filed in the Department of State.

(b) Cross **[reference]** ***references.***—See **[section]** ***sections*** 134 (relating to docketing statement) ***and 135 (relating to requirements to be met by filed documents).***

§ 1957. Effect of division.

* * *

(b) Property rights***; allocations of assets and liabilities.***—

(1) (i) All the property, real, personal and mixed, and franchises of the dividing corporation, and all debts due on whatever account to it, including subscriptions for shares and other choses in action belonging to it, shall (except as otherwise provided in paragraph (2)), to the extent **[transfers]** ***allocations*** of assets are contemplated by the plan of division, be deemed without further action to be **[transferred]** ***allocated*** to and vested in the resulting corporations on such a manner and basis and with such effect as is specified in the plan, or per capita among the resulting corporations, as tenants in common, if no specification is made in the plan, and the title to any real estate, or interest therein, vested in any of the corporations shall not revert or be in any way impaired by reason of the division.

(ii) Upon the division becoming effective, the resulting corporations shall each thenceforth be responsible as separate and distinct corporations only for such liabilities as each corporation may undertake or incur in its own name but shall be liable for the liabilities of the dividing corporation in the manner and on the basis provided in subparagraphs (iv) and (v).

(iii) Liens upon the property of the dividing corporation shall not be impaired by the division.

(iv) **[One]** ***To the extent allocations of liabilities are contemplated by the plan of division, the liabilities of the dividing corporation shall be deemed without further action to be allocated to and become the liabilities of the resulting corporations on such a manner and basis and with such effect as is specified in the plan; and one*** or more, but less than all, of the resulting corporations shall be free of the liabilities of the dividing corporation to the extent, if any, specified in the plan, if ***in either case:***

(A) no fraud **[of corporate creditors, or of]** ***on*** minority shareholders or shareholders without voting rights or violation of law shall be effected thereby**[**,**]**; and **[if applicable provisions of law are complied with.]**

(B) the plan does not constitute a fraudulent transfer under 12 Pa.C.S. Ch. 51 (relating to fraudulent transfers).

(v) If the conditions in subparagraph (iv) for freeing one or more of the resulting corporations from the liabilities of the dividing corporation *or for allocating some or all of the liabilities of the dividing corporation* are not satisfied, the liabilities of the dividing corporation *as to which those conditions are not satisfied* shall not be affected by the division nor shall the rights of creditors **[thereof or of any person dealing with the corporation]** *thereunder* be impaired by the division and any claim existing or action or proceeding pending by or against the corporation *with respect to those liabilities* may be prosecuted to judgment as if the division had not taken place, or the resulting corporations may be proceeded against or substituted in **[its]** place *of the dividing corporation* as joint and several obligors on **[such liability]** *those liabilities*, regardless of any provision of the plan of division apportioning the liabilities of the dividing corporation.

(vi) The conditions in subparagraph (iv) for freeing one or more of the resulting corporations from the liabilities of the dividing corporation and for allocating some or all of the liabilities of the dividing corporation shall be conclusively deemed to have been satisfied if the plan of division has been approved by the Department of Banking, the Insurance Department or the Pennsylvania Public Utility Commission in a final order issued after August 21, 2001, that has become not subject to further appeal.

(2) (i) The **[transfer]** *allocation* of any fee or freehold interest or leasehold having a remaining term of 30 years or more in any tract or parcel of real property situate in this Commonwealth owned by a dividing corporation (including property owned by a foreign business corporation dividing solely under the law of another jurisdiction) to a new corporation resulting from the division shall not be effective until one of the following documents is filed in the office for the recording of deeds of the county, or each of them, in which the tract or parcel is situated:

(A) A deed, lease or other instrument of confirmation describing the tract or parcel.

(B) A duly executed duplicate original copy of the articles of division.

(C) A copy of the articles of division certified by the Department of State.

(D) A declaration of acquisition setting forth the value of real estate holdings in such county of the corporation as an acquired company.

(ii) The provisions of 75 Pa.C.S. § 1114 (relating to transfer of vehicle by operation of law) shall not be applicable to **[a transfer]** ***an allocation*** of ownership of any motor vehicle, trailer or semitrailer **[from a dividing corporation]** to a new corporation under this section or under a similar law of any other jurisdiction but any such **[transfer]** ***allocation*** shall be effective only upon compliance with the requirements of 75 Pa.C.S. § 1116 (relating to issuance of new certificate following transfer).

(3) It shall not be necessary for a plan of division to list each individual asset or liability of the dividing corporation to be allocated to a new corporation so long as those assets and liabilities are described in a reasonable manner.

(4) Each new corporation shall hold any assets and liabilities allocated to it as the successor to the dividing corporation, and those assets and liabilities shall not be deemed to have been assigned to the new corporation in any manner, whether directly or indirectly or by operation of law.

(c) Taxes.—Any taxes, ***interest,*** penalties and public accounts of the Commonwealth[,] claimed against the dividing corporation **[but not]** ***that are*** settled, assessed or determined prior to ***or after*** the division[,] shall be **[settled, assessed or determined against]** ***the liability of*** any of the resulting corporations and, together with interest thereon, shall be a lien against the franchises and property, both real and personal, of all the corporations. Upon the application of the dividing corporation, the Department of Revenue, with the concurrence of the Office of Employment Security of the Department of Labor and Industry, shall release one or more, but less than all, of the resulting corporations from liability and liens for all taxes, ***interest,*** penalties and public accounts of the dividing corporation due the Commonwealth for periods prior to the effective date of the division if those departments are satisfied that the public revenues will be adequately secured.

* * *

(h) Conflict of laws.—It is the intent of the General Assembly that:

(1) The effect of a division of a domestic business corporation shall be governed solely by the laws of this Commonwealth and any other jurisdiction under the laws of which any of the resulting corporations is incorporated.

(2) The effect of a division on the assets and liabilities of the dividing corporation shall be governed solely by the laws of this Commonwealth and any other jurisdiction under the laws of which any of the resulting corporations is incorporated.

(3) The validity of any allocations of assets or liabilities by a plan of division of a domestic business corporation, regardless of whether or not any of the new corporations is a foreign business corporation, shall be governed solely by the laws of this Commonwealth.

(4) In addition to the express provisions of this subsection, this subchapter shall otherwise generally be granted the protection of full faith and credit under the Constitution of the United States.

§ 1962. Proposal and adoption of plan of conversion.

(a) Preparation of plan.—A plan of conversion shall be prepared, setting forth:

(1) The terms and conditions of the conversion.

(2) A restatement of the articles of the resulting corporation, which articles shall comply with the requirements of this part relating to nonprofit corporations.

(3) Any provisions desired providing special treatment of shares held by any shareholder or group of shareholders as authorized by, and subject to the provisions of, section 1906 (relating to special treatment of holders of shares of same class or series).

(4) Such other provisions as are deemed desirable.

[Any of the terms of the plan may be made dependent upon facts ascertainable outside of the plan if the manner in which the facts will operate upon the terms of the plan is set forth in the plan.]

* * *

(d) Reference to outside facts.—Any of the terms of a plan of conversion may be made dependent upon facts ascertainable outside of the plan if the manner in which the facts will operate upon the terms of the plan is set forth in the plan. Such facts may include, without limitation, actions or events within the control of or determinations made by the corporation or a representative of the corporation.

§ 1972. Proposal of voluntary dissolution.

(a) General rule.—Any business corporation that has commenced business may dissolve voluntarily in the manner provided in this subchapter and wind up its affairs in the manner provided in section 1975 (relating to predissolution provision for liabilities) or Subchapter H (relating to postdissolution provision for liabilities). Voluntary dissolution shall be proposed by the adoption by the board of directors of a resolution recommending that the corporation be dissolved voluntarily. The resolution shall contain a statement either that the dissolution shall proceed under section 1975 or that the dissolution shall proceed under Subchapter H. ***The resolution may set forth provisions for the distribution to shareholders of any surplus remaining after paying or providing for all liabilities of the corporation, including provisions for special treatment of shares held by any shareholder or group of shareholders as authorized by, and subject to the provisions of, section 1906 (relating to special treatment of holders of shares of same class or series).***

(b) Submission to shareholders.—The board of directors shall direct that the **[question of]** ***resolution recommending*** dissolution be submitted to a vote of the shareholders of the corporation entitled to vote thereon at a regular or special meeting of the shareholders.

* * *

§ 1973. Notice of meeting of shareholders.

(a) General rule.—Written notice of the meeting of shareholders that will consider the **[advisability of voluntarily dissolving a]** ***resolution recommending dissolution of the*** business corporation shall be given to each shareholder of record entitled to vote thereon and the purpose shall be included in the notice of the meeting.

* * *

§ 1975. Predissolution provision for liabilities.

(a) Powers of board.—The board of directors of a business corporation ***that has elected to proceed under this section*** shall have full power to wind up and settle the affairs of **[a business]** ***the*** corporation in accordance with this section prior to filing articles of dissolution in accordance with section 1977 (relating to articles of dissolution).

(b) Notice to creditors and taxing authorities.—After the approval by the shareholders of the **[proposal]** ***resolution recommending*** that the corporation dissolve voluntarily, the corporation shall immediately cause notice of the winding up proceedings to be officially published and to be mailed by certified or registered mail to each known creditor and claimant and to each municipal corporation in which **[its registered office or principal]** ***it has a*** place of business in this Commonwealth **[is located]**.

(c) Winding up and distribution.—The corporation shall, as speedily as possible, proceed to collect all sums due it, convert into cash all corporate assets the conversion of which into cash is required to discharge its liabilities and, out of the assets of the corporation, discharge or make adequate provision for the discharge of all liabilities of the corporation, according to their respective priorities. Any surplus remaining after paying or providing for all liabilities of the corporation shall be distributed to the shareholders according to their respective rights and preferences. ***See section 1972(a) (relating to proposal of voluntary dissolution).***

§ 1976. Judicial supervision of proceedings.

A business corporation ***that has elected to proceed under section 1975 (relating to predissolution provision for liabilities)***, at any time during the winding up proceedings, may apply to the court to have the proceedings continued under the supervision of the court and thereafter the proceedings shall continue under the supervision of the court as provided in Subchapter G (relating to involuntary liquidation and dissolution).

§ 1977. Articles of dissolution.

(a) General rule.—Articles of dissolution and the certificates or statement required by section 139 (relating to tax clearance of certain fundamental transactions) shall be filed in the Department of State when:

(1) all liabilities of the business corporation have been discharged, or adequate provision has been made therefor, in accordance with section 1975 (relating to predissolution provision for liabilities), and all of the remaining assets of the corporation have been distributed as provided in

section 1975 (or in case its assets are not sufficient to discharge its liabilities, when all the assets have been fairly and equitably applied, as far as they will go, to the payment of such liabilities); or

(2) an election to proceed under Subchapter H (relating to postdissolution provision for liabilities) has been made.

[See section 134 (relating to docketing statement).]

(b) Contents of articles.—The articles of dissolution shall be executed by the corporation and shall set forth:

* * *

(5) A statement ***that***:

(i) **[that]** all liabilities of the corporation have been discharged or that adequate provision has been made therefor; **[or]**

(ii) **[that]** the assets of the corporation are not sufficient to discharge its liabilities, and that all the assets of the corporation have been fairly and equitably applied, as far as they will go, to the payment of such liabilities**[. An election by]**; ***or***

(iii) the corporation ***has elected*** to proceed under Subchapter H **[shall constitute the making of adequate provision for the liabilities of the corporation, including any judgment or decree that may be obtained against the corporation in any pending action or proceeding]**.

* * *

(7) [A] ***In the case of a corporation that has not elected to proceed under Subchapter H, a*** statement that no actions or proceedings are pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment or decree that may be obtained against the corporation in each pending action or proceeding.

(8) [A] ***In the case of a corporation that has not elected to proceed under Subchapter H, a*** statement that notice of the winding-up proceedings of the corporation was mailed by certified or registered mail to each known creditor and claimant and to each municipal corporation in which the **[registered office or principal place of business of the]** corporation ***has a place of business*** in this Commonwealth **[is located]**.

* * *

(d) Cross references.—See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

§ 1978. Winding up of corporation after dissolution.

* * *

(b) Standard of care of directors and officers.—The dissolution of the corporation shall not subject its directors or officers to standards of conduct different from those prescribed by or pursuant to Chapter 17 (relating to officers, directors and shareholders). ***Directors of a dissolved corporation who have complied with section 1975 (relating to predissolution provision for liabilities) or Subchapter H (relating to postdissolution provision for***

liabilities) shall not be personally liable to the creditors of the dissolved corporation.

§ 1979. Survival of remedies and rights after dissolution.

(a) General rule.—The dissolution of a business corporation, either under this subchapter or under Subchapter G (relating to involuntary liquidation and dissolution) or by expiration of its period of duration or otherwise, shall not eliminate nor impair any remedy available to or against the corporation or its directors, officers or shareholders for any right or claim existing, or liability incurred, prior to the dissolution, if an action or proceeding thereon is brought on behalf of:

(1) the corporation within the time otherwise limited by law; or

(2) any other person before or within two years after the date of the dissolution or within the time otherwise limited by this subpart or other provision of law, whichever is less. See sections 1987 (relating to proof of claims), 1993 (relating to acceptance or rejection of matured claims) and 1994 (relating to disposition of unmatured claims).

[The actions or proceedings may be prosecuted against and defended by the corporation in its corporate name.]

* * *

(e) Conduct of actions.—An action or proceeding may be prosecuted against and defended by a dissolved corporation in its corporate name.

§ 1980. Dissolution by domestication.

Whenever a domestic business corporation has domesticated itself under the laws of another jurisdiction by action similar to that provided by section 4161 (relating to domestication) and has authorized that action by the vote required by this subchapter for the approval of a proposal that the corporation dissolve voluntarily, the corporation may surrender its charter under the laws of this Commonwealth by filing in the Department of State articles of dissolution under this subchapter containing the statement specified by section [1977(a)(1)] ***1977(b)(1)*** through (4) (relating to [preparation of articles).] ***articles of dissolution). If the corporation as domesticated in the other jurisdiction qualifies to do business in this Commonwealth either prior to or simultaneously with the filing of the articles of dissolution under this section, the corporation shall not be required to file with the articles of dissolution the tax clearance certificates that would otherwise be required by section 139 (relating to tax clearance of certain fundamental transactions).***

§ 1989. Articles of involuntary dissolution.

(a) General rule.—In a proceeding under this subchapter, the court shall enter an order dissolving the business corporation when the costs and expenses of the proceeding and all liabilities of the corporation have been discharged, and all of its remaining assets have been distributed to its shareholders or, in case its assets are not sufficient to discharge such costs, expenses and liabilities, when all the assets have been applied, as far as they

will go, to the payment of such costs, expenses and liabilities. ***See section 139(b) (relating to tax clearance in judicial proceedings).***

(b) Filing.—After entry of an order of dissolution, the office of the clerk of the court of common pleas shall prepare and execute articles of dissolution substantially in the form provided by section 1977 (relating to articles of dissolution), attach thereto a certified copy of the order and transmit the articles and attached order to the Department of State. **[A certificate or statement provided for by section 139 (relating to tax clearance of certain fundamental transactions) shall not be required, and the]** ***The*** department shall not charge a fee in connection with the filing of articles of dissolution under this section. See **[section]** ***sections*** 134 (relating to docketing statement) ***and 135 (relating to requirements to be met by filed documents).***

* * *

§ 1991.1. Authority of board of directors.

(a) General rule.—The board of directors of a business corporation that has elected to proceed under this subchapter shall have full power to wind up and settle the affairs of the corporation in accordance with this subchapter both prior to and after the filing of articles of dissolution in accordance with section 1977 (relating to articles of dissolution).

(b) Winding up.—The corporation shall, as speedily as possible, proceed to comply with the requirements of this subchapter while simultaneously collecting all sums due it and converting into cash all corporate assets, the conversion of which into cash is required to make adequate provision for its liabilities.

§ 1992. Notice to claimants.

* * *

(c) Publication and service of notices.—

(1) The notices required by this section shall be officially published at least once a week for two consecutive weeks and, in the case of a corporation having $10,000,000 or more in total assets at the time of its dissolution, at least once in all editions of a daily newspaper with a national circulation.

(2) Concurrently with or preceding the publication, the corporation or successor entity shall send a copy of the notice by certified or registered mail, return receipt requested, to each:

(i) known creditor or claimant;

(ii) holder of a claim described in subsection (b); and

(iii) municipal corporation in which **[the registered office or principal]** ***a*** place of business of the corporation in this Commonwealth was located at the time of filing the articles of dissolution in the department.

* * *

§ 1997. Payments and distributions.

* * *

(b) Disposition.—The claims and liabilities shall be paid in full and any provision for payment shall be made in full if there are sufficient assets. If there are insufficient assets, the claims and liabilities shall be paid or provided for in order of their priority, and, among claims of equal priority, ratably to the extent of funds legally available therefor. Any remaining assets shall be distributed to the shareholders of the corporation ***according to their respective rights and preferences***, except that the distribution shall not be made less than 60 days after the last notice of rejection, if any, was given under section 1993 (relating to acceptance or rejection of matured claims). ***See section 1972(a) (relating to proposal of voluntary dissolution).***

* * *

[(d) Liability of directors.—Directors of a dissolved corporation or governing persons of a successor entity that has complied with this section shall not be personally liable to the claimants of the dissolved corporation.]

§ 2105. Termination of nonstock corporation status.

* * *

(c) Mutual insurance companies.—With respect to the termination of the status of a mutual insurance company as a nonstock corporation, see section 103 (relating to subordination of title to regulatory laws) and **[the act of December 10, 1970 (P.L.884, No.279), referred to as the Mutual Insurance Company Conversion Law.]** ***Article VIII-A of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921.***

§ 2524. Consent of shareholders in lieu of meeting.

(a) General rule.—An action may be authorized by the shareholders of a registered corporation without a meeting by less than unanimous **[written]** consent only if permitted by its articles.

(b) Effectiveness of action.—An action authorized by the shareholders of a registered corporation without a meeting by less than unanimous **[written]** consent may become effective immediately upon its authorization, but prompt notice of the action shall be given to those shareholders entitled to vote thereon who have not consented.

§ 2526. Voting rights of directors.

Every director of a registered corporation described in section 2502(1) (relating to registered corporation status) shall be entitled to one vote except as otherwise provided in:

(1) the articles; or

(2) a bylaw adopted by the shareholders either:

(i) on or before August 21, 2001; or

(ii) at a time when the corporation was not a registered corporation described in section 2502(1).

§ 2527. Authority of board of directors.

The authority, powers and functions of the board of directors of a registered corporation described in section 2502(1) (relating to registered corporation status) may not be varied, and a committee of the board of such a corporation may not be established, by a bylaw adopted by the shareholders unless the bylaw has been adopted:

(1) with the approval of the board of directors;

(2) on or before August 21, 2001; or

(3) at a time when the corporation was not a registered corporation described in section 2502(1).

§ 2902. Definitions *and index of definitions.*

(a) Definitions.—The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Disqualified person." [A] *The term "disqualified person" as used in this chapter means a* licensed person who for any reason is or becomes legally disqualified (temporarily or permanently) to render the same professional services that the particular professional corporation of which he is an officer, director, shareholder or employee is or was rendering.

["Licensed person." **Any natural person who is duly licensed or admitted to practice his profession by a court, department, board, commission or other agency of this Commonwealth or another jurisdiction to render a professional service that is or will be rendered by the professional corporation of which he is, or intends to become, an officer, director, shareholder, employee or agent.**

"Profession." **Includes the performance of any type of personal service to the public that requires as a condition precedent to the performance of the service the obtaining of a license or admission to practice or other legal authorization, including all personal services that prior to the enactment of the act of July 9, 1970 (P.L.461, No.160), known as the Professional Corporation Law, could not lawfully be rendered by means of a corporation. By way of example, and without limiting the generality of the foregoing, the term includes for the purposes of this chapter personal services rendered as an architect, chiropractor, dentist, funeral director, osteopath, podiatrist, physician, professional engineer, veterinarian, certified public accountant or surgeon and, except as otherwise prescribed by general rules, an attorney at law. Except as otherwise expressly provided by law, the definition specified in this paragraph shall be applicable to this chapter only and shall not affect the interpretation of any other statute or any local zoning ordinance or other official document heretofore or hereafter enacted or promulgated.**

"Professional services." **Any type of services that may be rendered by the member of any profession within the purview of his profession.**]

(b) Index of other definitions.—Other definitions applying to this chapter and the sections in which they appear are:

"Licensed person." Section 102 (relating to definitions).
"Profession." Section 102.
"Professional services." Section 102.

§ 2904. Election of an existing business corporation to become a professional corporation.

* * *

(b) Procedure.—The amendment shall be adopted in accordance with the requirements of Subchapter B of Chapter 19 (relating to amendment of articles) **[except that the amendment must be approved by the unanimous consent of all shareholders of the corporation regardless of any limitations on voting rights stated in the articles or bylaws]**. ***If any shareholder of a business corporation that proposes to amend its articles to become a professional corporation objects to that amendment and complies with the provisions of Subchapter D of Chapter 15 (relating to dissenters rights), the shareholder shall be entitled to the rights and remedies of dissenting shareholders therein provided, if any.***

§ 2922. Stated purposes.

* * *

(b) Additional powers.—A professional corporation may be **[a partner in or a shareholder]** ***an equity owner*** of a partnership **[or]**, ***limited liability company,*** corporation ***or other association*** engaged in the business of rendering the professional service or services for which the professional corporation was incorporated.

§ 2923. Issuance and retention of shares.

(a) General rule.—Except as otherwise provided by a statute, rule or regulation applicable to a particular profession, ***all of the ultimate beneficial owners of*** shares in a professional corporation **[may be beneficially owned, directly or indirectly, only by one or more]** ***shall be*** licensed persons and any issuance or transfer of shares in violation of this restriction shall be void. A shareholder of a professional corporation shall not enter into a voting trust, proxy or any other arrangement vesting another person (other than **[another licensed]** ***a*** person who is ***qualified to be*** a direct or indirect shareholder of the same corporation) with the authority to exercise the voting power of any or all of his shares, and any such purported voting trust, proxy or other arrangement shall be void.

(b) Ownership by estate.—Unless a lesser period of time is provided in a bylaw **[of the corporation]** adopted by the shareholders or in a written agreement among the shareholders of the corporation, the estate of a deceased shareholder may continue to hold shares of the professional corporation for a reasonable period of administration of the estate, but the personal representative of the estate shall not by reason of the retention of shares be authorized to participate in any decisions concerning the rendering of professional service.

* * *

§ 3133. Notice of meetings of members of mutual insurance companies.

(a) General rule.—Unless otherwise restricted in the bylaws, persons authorized or required to give notice of an annual meeting of members of a mutual insurance company for the election of directors or of a meeting of members of a mutual insurance company called for the purpose of considering **[an]** amendment of the articles ***or bylaws, or both,*** of the corporation may, in lieu of any written notice of meeting of members required to be given by this subpart, give notice of such meeting by causing notice of such meeting to be officially published. Such notice shall be published each week for at least:

(1) Three successive weeks, in the case of an annual meeting.

(2) Four successive weeks, in the case of a meeting to consider **[an]** amendment of the articles ***or bylaws, or both.***

* * *

§ 4123. Requirements for foreign corporation names.

* * *

(b) Exceptions.—

(1) The provisions of section 1303(b) (relating to duplicate use of names) shall not prevent the issuance of a certificate of authority to a foreign business corporation setting forth a name that is **[confusingly similar to]** ***not distinguishable upon the records of the department from*** the name of any other domestic or foreign corporation for profit or corporation not-for-profit, **[or of any domestic or foreign limited partnership that has filed a certificate or qualified under Chapter 85 (relating to limited partnerships) or corresponding provisions of prior law,]** or of any corporation or other association then registered under 54 Pa.C.S. Ch. 5 (relating to corporate and other association names) or to any name reserved or registered as provided in this part, if the foreign business corporation applying for a certificate of authority files in the department **[one of the following:**

(i) A] ***a*** resolution of its board of directors adopting a fictitious name for use in transacting business in this Commonwealth, which fictitious name is **[not confusingly similar to]** ***distinguishable upon the records of the department from*** the name of the other corporation or other association or **[to]** ***from*** any name reserved or registered as provided in this part and that is otherwise available for use by a domestic business corporation.

[(ii) The written consent of the other corporation or other association or holder of a reserved or registered name to use the same or confusingly similar name and one or more words are added to make the name applied for distinguishable from the other name.]

* * *

§ 4126. Amended certificate of authority.

(a) General rule.—After receiving a certificate of authority, a qualified foreign business corporation may, subject to the provisions of this subchapter, change **[the name under which it is authorized to transact business in this Commonwealth]** ***or correct any of the information set forth in its application for a certificate of authority or previous filings under this section*** by filing in the Department of State an application for an amended certificate of authority. The application shall be executed by the corporation and shall state:

(1) The name under which the applicant corporation currently holds a certificate of authority to do business in this Commonwealth.

[(2) The name of the jurisdiction under the laws of which the corporation is incorporated.

(3) The address, including street and number, if any, of its principal office under the laws of the jurisdiction in which it is incorporated.

(4)] *(2)* Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office in this Commonwealth.**[, which may constitute a change in the address of its registered office.**

(5) The new name of the corporation and]

(3) The information to be changed or corrected.

(4) If the application reflects a change in the name of the corporation, the application shall include a statement that either:

(i) the change of name reflects a change effected in the jurisdiction of incorporation; or

(ii) documents complying with section 4123(b) (relating to **[exception; name]** ***exceptions***) accompany the application.

(b) Issuance of amended certificate of authority.—Upon the filing of the application, the applicant corporation shall be deemed to hold an amended certificate of authority.

(c) Cross **[reference]** ***references.***—See **[section]** ***sections*** 134 (relating to docketing statement) ***and 135 (relating to requirements to be met by filed documents).***

§ 4146. Provisions applicable to all foreign corporations.

The following provisions of this subpart shall, except as otherwise provided in this section, be applicable to every foreign corporation for profit, whether or not required to procure a certificate of authority under this chapter:

Section 1503 (relating to defense of ultra vires), as to contracts and conveyances **[made in]** ***governed by the laws of*** this Commonwealth and conveyances affecting real property situated in this Commonwealth.

Section 1506 (relating to form of execution of instruments), as to instruments or other documents **[made or to be performed in]** ***governed***

by the laws of this Commonwealth or affecting real property situated in this Commonwealth.

Section 1510 (relating to certain specifically authorized debt terms), as to obligations (as defined in the section) **[executed or effected in]** ***governed by the laws of*** this Commonwealth or affecting real property situated in this Commonwealth.

* * *

§ 4161. Domestication.

* * *

(b) Articles of domestication.—The articles of domestication shall be executed by the corporation and shall set forth in the English language:

(1) The name of the corporation. If the name is in a foreign language, it shall be set forth in Roman letters or characters or Arabic or Roman numerals. ***If the name is one that is rendered unavailable by any provision of section 1303(b) or (c) (relating to corporate name), the corporation shall adopt, in accordance with any procedures for changing the name of the corporation that are applicable prior to the domestication of the corporation, and shall set forth in the articles of domestication an available name.***

* * *

(c) Cross **[reference]** ***references.***—See **[section]** ***sections*** 134 (relating to docketing statement) ***and 135 (relating to requirements to be met by filed documents).***

§ 4162. Effect of domestication.

(a) General rule.—As a domestic business corporation, the domesticated corporation shall no longer be a foreign business corporation for the purposes of this subpart and shall **[have]**, ***instead, be a domestic business corporation with*** all the powers and privileges and **[be subject to]** all the duties and limitations granted and imposed upon domestic business corporations. **[The property, franchises, debts, liens, estates, taxes, penalties and public accounts due the Commonwealth shall continue to be vested in and imposed upon the corporation to the same extent as if it were the successor by merger of the domesticating corporation with and into a domestic business corporation under Subchapter C of Chapter 19 (relating to merger, consolidation, share exchanges and sale of assets).]** ***In all other respects, the domesticated corporation shall be deemed to be the same corporation as it was prior to the domestication without any change in or effect on its existence. Without limiting the generality of the previous sentence, the domestication shall not be deemed to have affected in any way:***

(1) the right and title of the corporation in and to its assets, property, franchises, estates and choses in action;

(2) the liability of the corporation for its debts, obligations, penalties and public accounts due the Commonwealth;

(3) any liens or other encumbrances on the property or assets of the corporation; or

(4) any contract, license or other agreement to which the corporation is a party or under which it has any rights or obligations.

(b) Reclassification of shares.—The shares of the domesticated corporation shall be unaffected by the domestication except to the extent, if any, reclassified in the articles of domestication.

§ 5303. Corporate name.

* * *

(b) Duplicate use of names.—The corporate name shall **[not be the same as or confusingly similar to]** ***be distinguishable upon the records of the Department of State from***:

(1) The name of any other domestic corporation for profit or not-for-profit which is either in existence or for which articles of incorporation have been filed but have not yet become effective, or of any foreign corporation for profit or not-for-profit which is either authorized to do business in this Commonwealth or for which an application for a certificate of authority has been filed but which has not yet become effective, **[or of any domestic or foreign limited partnership that has filed in the Department of State a certificate or qualified under Chapter 85 (relating to limited partnerships) or under corresponding provisions of prior law,]** or the name of any association registered at any time under 54 Pa.C.S. Ch. 5 (relating to corporate and other association names), unless**[:**

(i) where the name is the same or confusingly similar,] the other association:

[(A)] ***(i)*** has stated that it is about to change its name, or to cease to do business, or is being wound up, or is a foreign association about to withdraw from doing business in this Commonwealth, and the statement and **[the]** ***a*** written consent **[of the other association]** to the adoption of the name ***executed by the other association*** is filed in the Department of State;

[(B)] ***(ii)*** has filed with the Department of Revenue a certificate of out of existence, or has failed for a period of three successive years to file with the Department of Revenue a report or return required by law and the fact of such failure has been certified by the Department of Revenue to the Department of State;

[(C)] ***(iii)*** has abandoned its name under the laws of its jurisdiction of incorporation, by amendment, merger, consolidation, division, expiration, dissolution or otherwise, without its name being adopted by a successor in a merger, consolidation, division or otherwise, and an official record of that fact, certified as provided by 42 Pa.C.S. § 5328 (relating to proof of official records), is presented by any person to the department; or

[(D)] *(iv)* has had the registration of its name under 54 Pa.C.S. Ch. 5 terminated and, if the termination was effected by operation of 54 Pa.C.S. § 504 (relating to effect of failure to make [decennial] filings), the application for the use of the name is accompanied by a verified statement stating that at least 30 days' written notice of intention to appropriate the name was given to the delinquent association at its [registered office] *last known place of business* and that, after diligent search by the affiant, the affiant believes the association to be out of existence.[; or

(ii) where the name is confusingly similar, the consent of the other association to the adoption of the name is filed in the Department of State.

The consent of the association shall be evidenced by a statement to that effect executed by the association.]

* * *

(e) Remedies for violation of section.—The use of a name in violation of this section shall not vitiate or otherwise affect the corporate existence, but any court having jurisdiction[,] *may enjoin the corporation from using or continuing to use a name in violation of this section* upon the application of:

(1) the Attorney General, acting on his own motion or at the instance of any administrative department, board or commission of this Commonwealth; or

(2) any person adversely affected.[;

may enjoin the corporation from using or continuing to use a name in violation of this section.]

(f) Cross references.—See sections 135(e) (relating to distinguishable names) and 5106(b)(2) (relating to limited uniform application of subpart).

§ 5304. Required name changes by senior corporations.

(a) Adoption of new name upon reactivation.—Where a corporate name is made available on the basis that the corporation or [nonprofit unincorporated] *other* association [which] *that* formerly registered [such] *the* name has failed to file with the Department of Revenue [or in the Department of State] a report or a return required by law or where the corporation or [nonprofit unincorporated] *other* association has filed with the Department of Revenue a certificate of out of existence, [such] *the* corporation or *other* association shall cease to have by virtue of its prior registration any right to the use of [such] *the* name[, and such]. *The* corporation or *other* association, upon withdrawal of the certificate of out of existence or upon the removal of its delinquency in the filing of the required reports or returns, shall make inquiry with the Department of State with regard to the availability of its name[,] and, if [such] *the* name has been made available to another domestic or foreign corporation for profit or not-for-profit *or other association* by virtue of [the above] *these* conditions,

shall adopt a new name in accordance with law before resuming its activities.

(b) Enforcement of undertaking to release name.—If a corporation has used a name **[the same as, or deceptively similar to,]** ***that is not distinguishable upon the records of the Department of State from*** the name of another corporation or **[nonprofit unincorporated]** ***other*** association as permitted by section 5303(b)(1)**[(i)]** (relating to duplicate use of names) and the other corporation or **[nonprofit unincorporated]** ***other*** association continues to use its name in this Commonwealth and does not change its name, cease to do business, be wound up, or withdraw as it proposed to do in its consent or change its name as required by subsection (a), any court **[of competent]** ***having*** jurisdiction ***may enjoin the other corporation or other association from continuing to use its name or a name that is not distinguishable therefrom***, upon the application of:

(1) the Attorney General, acting on his own motion or at the instance of any administrative department, board or commission of this Commonwealth**[,]**; or

(2) upon the application of any person adversely affected**[, may enjoin the other corporation or association from continuing to use its name or a name deceptively similar thereto]**.

§ 5311. Filing of statement of summary of record by certain corporations.

(a) General rule.—Where any of the **[valid]** charter documents of a nonprofit corporation are not on file in the Department of State ***or there is an error in any such document as transferred to the department pursuant to section 140 (relating to custody and management of orphan corporate and business records),*** and the corporation desires to file any document in the department under any other provision of this **[article]** ***subpart*** or the corporation desires to secure from the department any certificate to the effect that the corporation is a corporation duly incorporated and existing under the laws of this Commonwealth or a certified copy of the articles of the corporation ***or the corporation desires to correct the text of its charter documents as on file in the department,*** the corporation shall file in the department a statement of summary of record which shall be executed by the corporation and shall set forth:

(1) The name of the corporation and, subject to section 109 (relating to name of commercial registered office **[provides]** ***provider*** in lieu of registered address), the location, including street and number, if any, of its registered office.

(2) The statute by or under which the corporation was incorporated.

(3) The name under which, the manner in which and the date on which the corporation was originally incorporated, including the date when and the place where the original articles were recorded.

(4) The place or places, including volume and page numbers or their equivalent, where the documents **[constituting the currently effective articles are]** ***that are not on file in the department or that require***

correction in the records of the department were originally filed or recorded, the date or dates of each **[such]** filing or recording and the ***correct*** text of **[such currently effective articles]** ***the documents.*** The information specified in this paragraph may be omitted in a statement of summary of record that is delivered to the department contemporaneously with amended and restated articles of the corporation filed under this subpart.

[(5) Each name by which the corporation was known, if any, other than its original name and its current name, and the date or dates on which each change of name of the corporation became effective.

A corporation shall be required to make only one filing under this subsection.]

(b) Validation of prior defects in incorporation.—Upon the filing of a statement ***by a corporation*** under this section ***or the transfer to the department of the records relating to a corporation pursuant to section 140***, the corporation **[named in the statement]** shall be deemed to be a validly subsisting corporation to the same extent as if it had been duly incorporated and was existing under this subpart and the department shall so certify regardless of any absence of or defect in the prior proceedings relating to incorporation.

(c) Cross **[reference]** ***references.***—See **[section]** ***sections*** 134 (relating to docketing statement), ***135 (relating to requirements to be met by filed documents) and 5106(b)(2) (relating to limited uniform application of subpart).***

§ 5503. Defense of ultra vires.

(a) General rule.—**[No]** ***A*** limitation upon the business, **[purpose or]** purposes[,] or powers of a nonprofit corporation, expressed or implied in its articles ***or bylaws*** or implied by law, shall ***not*** be asserted in order to defend any action at law or in equity between the corporation and a third person, or between a member and ***a*** third person, involving any contract to which the corporation is a party or any right of property or any alleged liability of **[whatsoever]** ***whatever*** nature**[; but such]**, ***but the*** limitation may be asserted:

(1) In an action by a member against the corporation to enjoin the doing of unauthorized acts or the transaction or continuation of unauthorized business. If the unauthorized acts or business sought to be enjoined are being transacted pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the action[,] and if it deems **[such action]** ***the result*** to be equitable, set aside and enjoin the performance of **[such]** ***the*** contract, and in so doing shall allow to the corporation, or to the other parties to the contract, as the case may be, such compensation as may be **[equitable]** ***appropriate*** for the loss or damage sustained by any of them from the action of the court in setting aside and enjoining the

performance of [such] *the* contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(2) In any action by or in the right of the corporation to procure a judgment in its favor against an incumbent or former officer, director or member of an other body of the corporation for loss or damage due to his unauthorized acts.

(3) In a proceeding by the Commonwealth under section 503 (relating to actions to revoke corporate franchises)[,] or in a proceeding by the Commonwealth to enjoin the corporation from the doing of unauthorized or unlawful business.

(b) Conveyances of property by or to a corporation.—[No] *A* conveyance or transfer by or to a *nonprofit* corporation of property, real or personal, of any kind or description, shall *not* be invalid or fail because in making [such] *the* conveyance or transfer, or in acquiring the property, real or personal, [the board of directors or other body or any of the officers] *any representative* of the corporation acting within the scope of the actual or apparent authority given to [them] *him* by the [board of directors or other body, have] *corporation has* exceeded any of the purposes or powers of the corporation.

(c) [Nonqualified foreign corporations.—The provisions of this section shall extend to contracts and conveyances made by nonqualified foreign corporations in this Commonwealth and to conveyances by nonqualified foreign corporations of real property situated in this Commonwealth.] *Cross reference.—See section 6146 (relating to provisions applicable to all foreign corporations).*

§ 5505. Persons bound by bylaws.

Except as otherwise provided by section 5713 (relating to personal liability of directors) or any similar provision of law, bylaws of a nonprofit corporation shall operate only as regulations among the members, *directors, members of an other body and officers* of the corporation, and shall not affect contracts or other dealings with other persons, unless those persons have actual knowledge of the bylaws.

§ 5506. Form of execution of instruments.

(a) General rule.—Any form of execution provided in the *articles or* bylaws to the contrary notwithstanding, any note, mortgage, evidence of indebtedness, contract[,] or other [instrument in writing] *document*, or any assignment or endorsement thereof, executed or entered into between any nonprofit corporation and any other person, when signed by one or more officers or agents having actual or apparent authority to sign it, or by the president or vice-president and secretary or assistant secretary or treasurer or assistant treasurer of [such] *the* corporation, shall be held to have been properly executed for and in behalf of the corporation.

(b) Seal unnecessary.—[Except as otherwise required by statute, the] *The* affixation of the corporate seal shall not be necessary to the valid

execution, assignment or endorsement by a corporation of any instrument **[in writing]** ***or other document.***

(c) **[Nonqualified foreign corporations.—The provisions of this section shall extend to instruments in writing made or to be performed in this Commonwealth by a nonqualified foreign corporation and to instruments executed by nonqualified foreign corporations affecting real property situated in this Commonwealth.]** ***Cross reference.—See section 6146 (relating to provisions applicable to all foreign corporations).***

§ 5508. Corporate records; inspection ***by members.***

(a) Required records.—Every nonprofit corporation shall keep **[an original or duplicate record]** ***minutes*** of the proceedings of the members **[and]**, the directors[,] and **[of]** any other body **[exercising powers or performing duties which under this article may be exercised or performed by such other body, the original or a copy of its bylaws, including all amendments thereto to date, certified by the secretary of the corporation]**, and **[an original or]** a **[duplicate]** membership register, giving the names **[of the members, and showing their respective]** ***and*** addresses ***of all members*** and the class and other details of the membership of each. **[Every such]** ***The*** corporation shall also keep appropriate, complete and accurate books or records of account. The records provided for in this subsection shall be kept at **[either]** ***any of the following locations:***

(1) the registered office of the corporation in this Commonwealth **[or at its]**;

(2) the principal place of business wherever situated[.]; ***or***

(3) any actual business office of the corporation.

(b) Right of inspection ***by a member.***—Every member shall, upon written ***verified*** demand **[under oath]** stating the purpose thereof, have a right to examine, in person or by agent or attorney, during the usual hours for business for any proper purpose, the membership register, books and records of account, and records of the proceedings of the members, directors and **[such]** ***any*** other body, and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to the interest of **[such]** ***the*** person as a member. In every instance where an attorney or other agent **[shall be]** ***is*** the person who seeks the right **[to]** ***of*** inspection, the demand **[under oath]** shall be accompanied by a ***verified*** power of attorney or **[such]** other writing **[which]** ***that*** authorizes the attorney or other agent to so act on behalf of the member. The demand **[under oath]** shall be directed to the corporation:

(1) at its registered office in this Commonwealth **[or]**;

(2) at its principal place of business wherever situated[.]; ***or***

(3) in care of the person in charge of an actual business office of the corporation.

(c) Proceedings for the enforcement of inspection ***by a member.***—If the corporation, or an officer or agent thereof, refuses to permit an inspection

sought by a member or attorney or other agent acting for the member pursuant to subsection (b) **[of this section]** or does not reply to the demand within five business days after the demand has been made, the member may apply to the court for an order to compel **[such]** ***the*** inspection. The court shall determine whether or not the person seeking inspection is entitled to the inspection sought. The court may summarily order the corporation to permit the member to inspect the membership register and the other books and records of the corporation and to make copies or extracts therefrom; or the court may order the corporation to furnish to the member a list of its members as of a specific date on condition that the member first pay to the corporation the reasonable cost of obtaining and furnishing **[such]** ***the*** list and on such other conditions as the court deems appropriate. Where the member seeks to inspect the books and records of the corporation, other than its membership register or list of members, he shall first establish:

(1) that he has complied with the provisions of this section respecting the form and manner of making demand for inspection of such document; and

(2) that the inspection he seeks is for a proper purpose.

Where the member seeks to inspect the membership register or list of members of the corporation and he has complied with the provisions of this section respecting the form and manner of making demand for inspection of **[such]** ***the*** documents, the burden of proof shall be upon the corporation to establish that the inspection he seeks is for an improper purpose. The court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other or further relief as the court **[may deem]** ***deems*** just and proper. The court may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought **[within]** ***into*** this Commonwealth and kept in this Commonwealth upon such terms and conditions as the order may prescribe.

(d) Cross references.—See sections 107 (relating to form of records) and 5512 (relating to informational rights of a director).

§ 5510. **[(Reserved).]** ***Certain specifically authorized debt terms.***

(a) Interest rates.—A nonprofit corporation shall not plead or set up usury, or the taking of more than the lawful rate of interest, or the taking of any finance, service or default charge in excess of any maximum rate therefor provided or prescribed by law, as a defense to any action or proceeding brought against it to recover damages on, or to enforce payment of, or to enforce any other remedy on, any obligation executed or effected by the corporation.

(b) Yield maintenance premiums.—A prepayment premium determined by reference to the approximate spread between the yield at issuance, or at the date of amendment of any of the terms, of an obligation of a corporation and the yield at or about such date of an interest rate index of independent significance and contingent upon a change in the ownership of or memberships in the corporation or a

default by or other change in the condition or prospects of the corporation or any affiliate of the corporation shall be deemed liquidated damages and shall not constitute a penalty.

(c) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Affiliate." An affiliate or associate as defined in section 2552 (relating to definitions).

"Obligation." Includes an installment sale contract.

(d) Cross reference.—See section 6146 (relating to provisions applicable to all foreign corporations).

§ 5512. Informational rights of a director.

(a) General rule.—To the extent reasonably related to the performance of the duties of the director, including those arising from service as a member of a committee of the board of directors, a director of a nonprofit corporation is entitled:

(1) in person or by any attorney or other agent, at any reasonable time, to inspect and copy corporate books, records and documents and, in addition, to inspect, and receive information regarding, the assets, liabilities and operations of the corporation and any subsidiaries of the corporation incorporated or otherwise organized or created under the laws of this Commonwealth that are controlled directly or indirectly by the corporation; and

(2) to demand that the corporation exercise whatever rights it may have to obtain information regarding any other subsidiaries of the corporation.

(b) Proceedings for the enforcement of inspection by a director.—If the corporation, or an officer or agent thereof, refuses to permit an inspection or obtain or provide information sought by a director or attorney or other agent acting for the director pursuant to subsection (a) or does not reply to the request within two business days after the request has been made, the director may apply to the court for an order to compel the inspection or the obtaining or providing of the information. The court shall summarily order the corporation to permit the requested inspection or to obtain the information unless the corporation establishes that the information to be obtained by the exercise of the right is not reasonably related to the performance of the duties of the director or that the director or the attorney or agent of the director is likely to use the information in a manner that would violate the duty of the director to the corporation. The order of the court may contain provisions protecting the corporation from undue burden or expense and prohibiting the director from using the information in a manner that would violate the duty of the director to the corporation.

(c) Cross references.—See sections 107 (relating to form of records), 5508 (relating to corporate records; inspection by members) and 42

Pa.C.S. § 2503(7) (relating to right of participants to receive counsel fees).

§ 5552. Liabilities of members.

(a) General rule.—**[The members of a nonprofit corporation shall not be personally liable for the debts, liabilities or obligations of the corporation.]** ***A member of a nonprofit corporation shall not be liable, solely by reason of being a member, under an order of a court or in any other manner for a debt, obligation or liability of the corporation of any kind or for the acts of any member or representative of the corporation.***

(b) Obligations of member to corporation.—A member shall be liable to the corporation only to the extent of any unpaid portion of the capital contributions, membership dues or assessments which the corporation may have lawfully imposed upon him, or for any other indebtedness owed by him to the corporation. No action shall be brought by any creditor of the corporation to reach and apply any such liability to any debt of the corporation until after:

(1) final judgment **[shall have]** ***has*** been rendered against the corporation in favor of the creditor and execution thereon returned unsatisfied**[, or the corporation shall have been adjudged bankrupt, or]**;

(2) a case involving the corporation has been brought under 11 U.S.C. Ch. 7 (relating to liquidation) and a distribution has been made and the case closed or a notice of no assets has been issued; or

(3) a receiver **[shall have]** ***has*** been appointed with power to collect debts, and **[which]** ***the*** receiver, on demand of a creditor to bring an action thereon, has refused to sue for **[such]** ***the*** unpaid amount, or the corporation **[shall have]** ***has*** been dissolved or ceased its activities leaving debts unpaid.

[No such] ***(c) Action by a creditor.—An*** action ***by a creditor under subsection (b)*** shall ***not*** be brought more than three years after the happening of **[any one of such events.]** ***the first to occur of the events listed in subsection (b)(1) through (3).***

§ 5709. Conduct of members meeting.

(a) Presiding officer.—There shall be a presiding officer at every meeting of the members. The presiding officer shall be appointed in the manner provided in the bylaws or, in the absence of such provision, by the board of directors. If the bylaws are silent on the appointment of the presiding officer and the board fails to designate a presiding officer, the president shall be the presiding officer.

(b) Authority of the presiding officer.—Except as otherwise provided in the bylaws, the presiding officer shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.

(c) Procedural standard.—Any action by the presiding officer in adopting rules for, and in conducting, a meeting shall be fair to the members.

(d) Closing of the polls.—The presiding officer shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes, nor any revocations or changes thereto, may be accepted.

§ 5731. Executive and other committees of the board.

(a) Establishment and powers.—Unless otherwise restricted in the bylaws:

(1) The board of directors may, by resolution adopted by a majority of the directors in office, establish one or more committees to consist of one or more directors of the corporation.

(2) Any **[such]** committee, to the extent provided in the resolution of the board of directors or in the bylaws, shall have and may exercise all of the powers and authority of the board of directors, except that **[no such]** *a* committee shall *not* have any power or authority as to the following:

(i) The submission to members of any action requiring approval of members under this **[article]** *subpart.*

(ii) The *creation or* filling of vacancies in the board of directors.

(iii) The adoption, amendment or repeal of the bylaws.

(iv) The amendment or repeal of any resolution of the board *that by its terms is amendable or repealable only by the board.*

(v) Action on matters committed by the bylaws or *a* resolution of the board of directors *exclusively* to another committee of the board.

[(2)] *(3)* The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another director to act at the meeting in the place of any **[such]** absent or disqualified member.

(b) Term.—Each committee of the board shall serve at the pleasure of the board.

§ 5745. Advancing expenses.

Expenses (including attorneys' fees) incurred in defending any action or proceeding referred to in this subchapter may be paid by a nonprofit corporation in advance of the final disposition of the action or proceeding upon receipt of an undertaking by or on behalf of the representative to repay the amount if it is ultimately determined that he is not entitled to be indemnified by the corporation as authorized in this subchapter or otherwise. *Except as otherwise provided in the bylaws, advancement of expenses shall be authorized by the board of directors. Section 5728*

(relating to interested members, directors or officers; quorum) shall not be applicable to the advancement of expenses under this section.

§ 5748. Application to surviving or new corporations.

[For] ***(a) General rule.—Except as provided in subsection (b), for*** the purposes of this subchapter, references to "the corporation" include all constituent corporations absorbed in a consolidation, merger or division, as well as the surviving or new corporations surviving or resulting therefrom, so that any person who is or was a representative of the constituent, surviving or new corporation, or is or was serving at the request of the constituent, surviving or new corporation as a representative of another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this subchapter with respect to the surviving or new corporation as he would if he had served the surviving or new corporation in the same capacity.

(b) Divisions.—Notwithstanding subsection (a), the obligations of a dividing corporation to indemnify and advance expenses of its representatives, whether arising under this subchapter or otherwise, may be allocated in a division in the same manner and with the same effect as any other liability of the dividing corporation.

§ 5758. Voting rights of members.

(a) General rule.—Unless otherwise provided in a bylaw adopted by the members, every member of a nonprofit corporation shall be entitled to one vote.

(b) Procedures.—The manner of voting on any matter, including changes in the articles or bylaws, may be by ballot, mail or any reasonable means provided in a bylaw adopted by the members. If a bylaw adopted by the members provides a fair and reasonable procedure for the nomination of candidates for any office, only candidates who have been duly nominated in accordance therewith shall be eligible for election. Unless otherwise provided in such a bylaw, in elections for directors, voting shall be by ballot, and the candidates receiving the highest number of votes from each class or group of classes, if any, of members entitled to elect directors separately up to the number of directors to be elected by such class or group of classes shall be elected. If at any meeting of members directors of more than one class are to be elected, each class of directors shall be elected in a separate election.

(c) Cumulative voting.—**[The members of a nonprofit corporation shall have the right to cumulate their votes for the election of directors only if and to the extent a bylaw adopted by the members so provides.]** ***If a bylaw adopted by the members so provides, in each election of directors of a nonprofit corporation every member entitled to vote shall have the right to multiply the number of votes to which he may be entitled by the total number of directors to be elected in the same election by the members or the class of members to which he belongs, and he may cast***

the whole number of his votes for one candidate or he may distribute them among any two or more candidates.

(d) Sale of votes.—No member shall sell his vote or issue a proxy for money or anything of value.

(e) Voting lists.—Upon request of a member, the books or records of membership shall be produced at any regular or special meeting of the corporation. If at any meeting the right of a person to vote is challenged, the presiding officer shall require **[such]** ***the*** books or records to be produced as evidence of the right of the person challenged to vote, and all persons who appear by **[such]** ***the*** books or records to be members entitled to vote may vote. ***See section 6145 (relating to applicability of certain safeguards to foreign corporations).***

§ 5782. Actions against directors, members of an other body and officers.

(a) General rule.—Except as provided in subsection (b), in any action or proceeding brought to enforce a secondary right on the part of one or more members of a nonprofit corporation against any present or former officer, director or member of an other body of the corporation because the corporation refuses to enforce rights that may properly be asserted by it, each plaintiff must aver and it must be made to appear that each plaintiff was a member of the corporation at the time of the transaction of which he complains.

(b) Exception.—Any member who, except for the provisions of subsection (a), would be entitled to maintain the action or proceeding and who does not meet such requirements may, nevertheless in the discretion of the court, be allowed to maintain the action or proceeding on preliminary showing to the court, by application and upon such verified statements and depositions as may be required by the court, that there is a strong prima facie case in favor of the claim asserted on behalf of the corporation and that without the action serious injustice will result.

(c) Security for costs.—In any action or proceeding instituted or maintained by less than the smaller of 50 members of any class or 5% of the members of any class of the corporation, the corporation in whose right the action or proceeding is brought shall be entitled at any stage of the proceedings to require the plaintiffs to give security for the reasonable expenses, including attorney fees, that may be incurred by it in connection therewith or for which it may become liable pursuant to section 5743 (relating to mandatory indemnification), but only insofar as relates to actions by or in the right of the corporation, to which security the corporation shall have recourse in such amount as the court determines upon the termination of the action or proceeding. The amount of security may from time to time be increased or decreased in the discretion of the court upon showing that the security provided has or may become inadequate or excessive. The security may be denied or limited in the discretion of the court upon preliminary showing to the court, by application and upon such verified statements and depositions

as may be required by the court, establishing prima facie that the requirement of full or partial security would impose undue hardship on plaintiffs and serious injustice would result.

(d) Cross reference.—See section 6146 (relating to provisions applicable to all foreign corporations).

§ 5903. Bankruptcy or insolvency proceedings.

(a) General rule.—**[Whenever]** ***Unless otherwise provided in the bylaws, whenever*** a nonprofit corporation is insolvent or in financial difficulty, the board of directors may, by resolution and without the consent of the members, authorize and designate the officers of the corporation to execute a deed of assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or file an answer consenting to the appointment of a receiver upon a complaint in the nature of an equity action filed by creditors or members, or, if insolvent, file an answer to an involuntary petition in bankruptcy admitting the insolvency of the corporation and its willingness to be adjudged a debtor on that ground.

(b) Bankruptcy proceedings.—**[A]** ***If authorized pursuant to subsection (a), a*** nonprofit corporation may participate in proceedings under and in the manner provided by Title 11 of the United States Code (relating to bankruptcy) notwithstanding any contrary provision of its articles or bylaws or this subpart, other than **[section]** ***sections*** 103 (relating to subordination of title to regulatory laws) ***and 5107 (relating to subordination of subpart to canon law)***. The corporation shall have full power and authority to put into effect and carry out a plan of reorganization or arrangement and the decrees and orders of the court, or judge or referee relative thereto, and may take any proceeding and do any act provided in the plan or arrangement or directed by such decrees and orders, without further action by its directors or members. Such power and authority may be exercised, and such proceedings and acts may be taken, as may be directed by such decrees or orders, by the trustees or receivers of the corporation appointed in the bankruptcy proceedings, or a majority thereof, or, if none be appointed and acting, by designated officers of the corporation, or by a master or other representative appointed by the court or judge or referee, with the effect as if exercised and taken by unanimous action of the directors and members of the corporation. Without limiting the generality or effect of the foregoing, the corporation may:

* * *

§ 5912. Proposal of amendments.

(a) General rule.—Every amendment **[to]** ***of*** the articles ***of a nonprofit corporation*** shall be proposed **[by]**:

(1) ***by*** the adoption by the board of directors or other body of a resolution setting forth the proposed amendment;

(2) ***unless otherwise provided in the articles, by*** petition of members entitled to cast at least 10% of the votes **[which]** ***that*** all members are entitled to cast thereon, setting forth the proposed amendment, which

petition shall be directed to the board of directors and filed with the secretary of the corporation; or

(3) *by* such other method as may be provided in the bylaws.

[The] *(b) Submission to members.—Except where the approval of the members is unnecessary under this subchapter, the* board of directors or other body [or the petitioning members] shall direct that the proposed amendment be submitted to a vote of the members entitled to vote thereon at a regular or special meeting of the members.

[(b)] *(c)* Form of amendment.—**[The resolution or petition shall contain the language of the proposed amendment to the articles by providing that the articles shall be amended so as to read as therein set forth in full, or that any provision thereof be amended so as to read as therein set forth in full, or that the matter stated in the resolution or petition be added to or stricken from the articles. The resolution or petition may set forth the manner and basis of reclassifying the shares of the corporation.]** *The resolution or petition shall contain the language of the proposed amendment of the articles:*

(1) by setting forth the existing text of the articles or the provision thereof that is proposed to be amended, with brackets around language that is to be deleted and underscoring under language that is to be added; or

(2) by providing that the articles shall be amended so as to read as therein set forth in full, or that any provision thereof be amended so as to read as therein set forth in full, or that the matter stated in the resolution or petition be added to or stricken from the articles.

(d) Terms of amendment.—The resolution or petition may set forth the manner and basis of reclassifying the memberships in or shares of the corporation. Any of the terms of a plan of reclassification or other action contained in an amendment may be made dependent upon facts ascertainable outside of the amendment if the manner in which the facts will operate upon the terms of the amendment is set forth in the amendment. Such facts may include, without limitation, actions or events within the control of or determinations made by the corporation or a representative of the corporation.

§ 5922. Plan of merger or consolidation.

(a) Preparation of plan.—A plan of merger or consolidation, as the case may be, shall be prepared, setting forth:

(1) The terms and conditions of the merger or consolidation.

[(2) The mode of carrying the merger or consolidation into effect.

(3)] *(2)* If the surviving or new corporation is or is to be a domestic *nonprofit* corporation:

(i) any changes desired to be made in the articles, which may include a restatement of the articles in the case of a merger; or

(ii) in the case of a consolidation, all of the statements required by this [article] *subpart* to be set forth in restated articles.

[(4)] *(3)* Such other **[details and]** provisions as are deemed desirable.

(b) Post-adoption amendment.—A plan of merger or consolidation may contain a provision that the boards of directors or other bodies of the constituent corporations may amend the plan at any time prior to its effective date, except that an amendment made subsequent to the adoption of the plan by the members of any constituent corporation shall not change:

(1) The term of memberships or the amount or kind of securities, obligations, cash, property or rights to be received in exchange for or on conversion of all or any of the memberships in the constituent corporation.

(2) Any term of the articles of the surviving or new corporation to be effected by the merger or consolidation.

(3) Any of the terms and conditions of the plan if the change would adversely affect the members of the constituent corporation.

[(b)] *(c)* Proposal.—Every merger or consolidation shall be proposed in the case of each domestic *nonprofit* corporation **[by]**:

(1) *by* the adoption by the board of directors or other body of a resolution approving the plan of merger or consolidation;

(2) *unless otherwise provided in the articles, by* petition of members entitled to cast at least 10% of the votes **[which]** *that* all members are entitled to cast thereon, setting forth the proposed plan of merger or consolidation, which petition shall be directed to the board of directors and filed with the secretary of the corporation; or

(3) *by* such other method as may be provided in the bylaws.

[The] *(d) Submission to members.—Except where the corporation has no members entitled to vote thereon, the* board of directors or other body **[or the petitioning members]** shall direct that the plan be submitted to a vote of the members entitled to vote thereon at a regular or special meeting of the members.

(e) Party to plan or transaction.—A corporation, partnership, business trust or other association that approves a plan in its capacity as a member or creditor of a merging or consolidating corporation or that furnishes all or a part of the consideration contemplated by a plan does not thereby become a party to the plan or the merger or consolidation for the purposes of this subchapter.

(f) Reference to outside facts.—Any of the terms of a plan of merger or consolidation may be made dependent upon facts ascertainable outside of the plan if the manner in which the facts will operate upon the terms of the plan is set forth in the plan. Such facts may include, without limitation, actions or events within the control of or determinations made by a party to the plan or a representative of a party to the plan.

§ 5923. Notice of meeting of members.

*(a) General rule.—*Written notice *of the meeting of members that will act on the proposed plan* shall**[, not less than ten days before the meeting**

of members called for the purpose of considering the proposed plan,] be given to each member of record, ***whether or not*** entitled to vote thereon, ***of each domestic nonprofit corporation that is a party to the merger or consolidation.*** There shall be included in, or enclosed with, **[such]** ***the*** notice a copy of the proposed plan or a summary thereof. ***The notice shall state that a copy of the bylaws of the surviving or new corporation will be furnished to any member on request and without cost.***

(b) Cross reference.—See Subchapter A of Chapter 57 (relating to notice and meetings generally).

§ 5929. Effect of merger or consolidation.

(a) Single surviving or new corporation.—Upon the merger or consolidation becoming effective, the several corporations parties to the **[plan of]** merger or consolidation shall be a single corporation which, in the case of a merger, shall be **[that]** ***the*** corporation designated in the plan of merger as the surviving corporation[,] and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation. The separate existence of all corporations parties to the **[plan of]** merger or consolidation shall cease, except that of the surviving corporation, in the case of a merger. The surviving or new corporation, as the case may be, if it is a domestic ***nonprofit*** corporation, shall not thereby acquire authority to engage in any business or exercise any right **[which]** ***that*** a corporation may not be incorporated under this **[article]** ***subpart*** to engage in or exercise.

(b) Property rights.—Except as otherwise provided by order, if any, obtained pursuant to section 5547(b) (relating to nondiversion of certain property), all the property, real, personal[,] and mixed, and franchises of each of the corporations parties to the **[plan of]** merger or consolidation, and all debts due on whatever account to any of them, including subscriptions for membership and other choses in action belonging to any of them, shall be **[taken and]** deemed to be **[transferred to and]** vested in ***and shall belong to*** the surviving or new corporation, as the case may be, without further **[act or deed]** ***action, and the title to any real estate, or any interest therein, vested in any of the corporations shall not revert or be in any way impaired by reason of the merger or consolidation.*** The surviving or new corporation shall thenceforth be responsible for all the liabilities **[and obligations]** of each of the corporations so merged or consolidated. **[No liens]** ***Liens*** upon the property of the merging or consolidating corporations shall ***not*** be impaired by **[such]** ***the*** merger or consolidation, and any claim existing or action or proceeding pending by or against any of **[such]** ***the*** corporations may be prosecuted to judgment as if **[such]** ***the*** merger or consolidation had not taken place, or the surviving or new corporation may be proceeded against or substituted in its place. Any devise, gift or grant contained in any will or other instrument, in trust or otherwise, made before or after such merger or consolidation, to or for any of the constituent corporations, shall inure to the surviving or new corporation, as the case may be, subject to compliance with the requirements of section

5550 (relating to devises, bequests and gifts after certain fundamental changes).

(c) Taxes.—Any taxes, ***interest,*** penalties and public accounts of the Commonwealth[,] claimed against any of the merging or consolidating corporations[, **but not**] ***that are*** settled, assessed or determined prior to [**such**] ***or after the*** merger or consolidation[,] shall be [**settled, assessed or determined against**] ***the liability of*** the surviving or new corporation[,] and, together with interest thereon, shall be a lien against the franchises and property, both real and personal, of the surviving or new corporation.

(d) Articles of incorporation.—In the case of a merger, the articles of incorporation of the surviving domestic ***nonprofit*** corporation, if any, shall be deemed to be amended to the extent, if any, that changes in its articles are stated in the plan of merger[; **and in**]. ***In*** the case of a consolidation into a domestic ***nonprofit*** corporation, the statements [**which**] ***that*** are set forth in the plan of consolidation, ***or articles of incorporation set forth therein,*** shall be deemed to be the articles of incorporation of the new corporation.

§ 5952. Proposal and adoption of plan of division.

(a) Preparation of plan.—A plan of division shall be prepared, setting forth:

(1) The terms and conditions of the division, including the manner and basis of:

(i) [**the**] ***The*** reclassification of the membership interests or shares [**or obligations**] of the surviving corporation, if there be one[; **and**].

(ii) [**the**] ***The*** disposition of the membership interests or shares [**and**] ***or*** obligations, if any, of the new corporation or corporations resulting from the division.

[**(2) The mode of carrying the division into effect.**

(3)] ***(2)*** A statement that the dividing nonprofit corporation will, or will not, survive the division.

[**(4)**] ***(3)*** Any changes desired to be made in the articles of the surviving corporation, if there be one, including a restatement of the articles.

[**(5)**] ***(4)*** The articles of incorporation required by subsection (b) [**of this section**].

[**(6)**] ***(5)*** Such other [**details and**] provisions as are deemed desirable.

(b) Articles of new corporations.—There shall be included in or annexed to the plan of division:

(1) Articles of incorporation, which shall contain all of the statements required by this [**article**] ***subpart*** to be set forth in restated articles, for each of the new domestic nonprofit corporations, if any, resulting from the division.

(2) Articles of incorporation, certificates of incorporation[,] or other charter documents for each of the new foreign ***nonprofit*** corporations [**not-for-profit**], if any, resulting from the division.

(c) Proposal and adoption.—**[The]** ***Except as otherwise provided in section 5953 (relating to division without member approval), the*** plan of division shall be proposed and adopted, and may be ***amended after its adoption and*** terminated, by a domestic nonprofit corporation in the manner provided for the proposal, adoption, ***amendment*** and termination of a plan of merger in Subchapter C (relating to merger, consolidation and sale of assets) or, if the dividing corporation is a foreign ***nonprofit*** corporation **[not-for-profit]**, in accordance with the laws of the jurisdiction in which it is incorporated[.] ***and, in the case of a foreign domiciliary corporation, the provisions of this subpart to the extent provided by section 6145 (relating to applicability of certain safeguards to foreign corporations). There shall be included in or enclosed with the notice of the meeting of members that will act on the plan a copy or summary of the plan.***

(d) Special requirements.—If any provision of the bylaws of a dividing domestic nonprofit corporation adopted before January 1, 1972 shall require for the adoption of a plan of merger or consolidation or a plan involving the sale, lease or exchange of all or substantially all of the property and assets of the corporation a specific number or percentage of votes of directors, members, or members of an other body or other special procedures, the plan of division shall not be adopted without such number or percentage of votes or compliance with such other special procedures.

(e) Financial status of resulting corporations.—Unless the plan of division provides that the dividing corporation shall survive the division and that all membership interests or shares or obligations, if any, of all new corporations resulting from the plan shall be owned solely by the surviving corporation, no plan of division may be made effective at a time when the dividing corporation is insolvent or when the division would render any of the resulting corporations insolvent.

(f) Rights of holders of indebtedness.—If any debt securities, notes or similar evidences of indebtedness for money borrowed, whether secured or unsecured, indentures or other contracts were issued, incurred or executed by the dividing corporation before January 1, 1972, and have not been amended subsequent to that date, the liability of the dividing corporation thereunder shall not be affected by the division nor shall the rights of the obligees thereunder be impaired by the division, and each of the resulting corporations may be proceeded against or substituted in place of the dividing corporation as joint and several obligors on such liability, regardless of any provision of the plan of division apportioning the liabilities of the dividing corporation.

(g) Reference to outside facts.—Any of the terms of a plan of division may be made dependent upon facts ascertainable outside of the plan if the manner in which the facts will operate upon the terms of the plan is set forth in the plan. Such facts may include, without limitation, actions or events within the control of or determinations made by the dividing corporation or a representative of the dividing corporation.

§ 5953. [(Reserved).] *Division without member approval.*

Unless otherwise required by its bylaws or by section 5952 (relating to proposal and adoption of plan of division), a plan of division that does not alter the state of incorporation of a nonprofit corporation nor amend in any respect the provisions of its articles, except amendments that under section 5914(b) (relating to adoption in absence of voting members) may be made without member action, shall not require the approval of the members of the corporation if the transfers of assets effected by the division, if effected by means of a sale, lease, exchange or other disposition, would not require the approval of members under section 5930 (relating to voluntary transfer of corporate assets).

§ 5957. Effect of division.

(a) Multiple resulting corporations.—Upon the division becoming effective, the dividing corporation shall be subdivided into the distinct and independent resulting corporations named in the plan of division and, if the dividing corporation is not to survive the division, the existence of the dividing corporation shall cease. The resulting corporations, if they are domestic ***nonprofit*** corporations, shall not thereby acquire authority to engage in any business or exercise any right **[which]** ***that*** a corporation may not be incorporated under this **[article]** ***subpart*** to engage in or exercise. Any resulting foreign ***nonprofit*** corporation **[which]** ***that*** is stated in the articles of division to be a qualified foreign ***nonprofit*** corporation shall be a qualified foreign ***nonprofit*** corporation under **[this subpart]** ***Article C (relating to foreign nonprofit corporations)***, and the articles of division shall be deemed to be the application for a certificate of authority and the certificate of authority issued thereon of **[such]** ***the*** corporation.

(b) Property rights; ***allocations of assets and liabilities.***—

(1) Except as otherwise provided by order, if any, obtained pursuant to section 5547(b) (relating to nondiversion of certain property)**[, all]**:

(i) All the property, real, personal**[,]** and mixed, and franchises of the dividing corporation, and all debts due on whatever account to it, including subscriptions for membership and other choses in action belonging to it, shall, ***to the extent allocations of assets are contemplated by the plan of division,*** be **[taken and]** deemed without further **[act or deed]** ***action*** to be **[transferred]** ***allocated*** to and vested in the resulting corporations on such a manner and basis and with such effect as is specified in the plan **[of division]**, or per capita among the resulting corporations, as tenants in common, if no **[such]** specification is made in the plan**[. The]**, ***and the title to any real estate, or interest therein, vested in any of the corporations shall not revert or be in any way impaired by reason of the division.***

(ii) Upon the division becoming effective, the resulting corporations shall each thenceforth be responsible as separate and distinct corporations only for such liabilities **[and obligations]** as each corporation may undertake or incur in its own name, but shall be

liable **[inter se]** for the **[debts and]** liabilities of the dividing corporation in the manner and on the basis **[specified in the plan of division. No liens]** ***provided in paragraphs (4) and (5).***

(iii) Liens upon the property of the dividing corporation shall ***not*** be impaired by the division.

[One] ***(iv) To the extent allocations of liabilities are contemplated by the plan of division, the liabilities of the dividing corporation shall be deemed without further action to be allocated to and become the liabilities of the resulting corporations on such a manner and basis and with such effect as is specified in the plan; and one*** or more, but less than all, of the resulting corporations shall be free of **[all]** the liabilities **[and obligations]** of the dividing corporation to the extent, if any, specified in the plan, if ***in either case:***

(A) no fraud **[of corporate creditors or]** ***on*** members without voting rights **[and if no]** ***or*** violation of law shall be effected thereby[,]; and **[if applicable provisions of law are complied with. Otherwise, the liability]**

(B) the plan does not constitute a fraudulent transfer under 12 Pa.C.S. Ch. 51 (relating to fraudulent transfers).

(v) If the conditions in subparagraph (iv) for freeing one or more of the resulting corporations from the liabilities of the dividing corporation or for allocating some or all of the liabilities of the dividing corporation are not satisfied, the liabilities of the dividing corporation[**, or of its members, directors, or officers,**] ***as to which those conditions are not satisfied*** shall not be affected by the division[,] nor shall the rights of **[the]** creditors **[thereof or of any person dealing with such corporation]** ***thereunder*** be impaired by **[such]** ***the*** division[,] and[**, except as otherwise provided in this section,**] any claim existing or action or proceeding pending by or against **[such]** ***the*** corporation ***with respect to those liabilities*** may be prosecuted to judgment as if **[such]** ***the*** division had not taken place, or the resulting corporations may be proceeded against or substituted in **[its]** place ***of the dividing corporation*** as joint and several obligors on **[such liability]** ***those liabilities***, regardless of any provision of the plan of division apportioning the **[debts and]** liabilities of the dividing corporation.

(2) It shall not be necessary for a plan of division to list each individual asset or liability of the dividing corporation to be allocated to a new corporation so long as those assets and liabilities are described in a reasonable manner.

(3) Each new corporation shall hold any assets and liabilities allocated to it as the successor to the dividing corporation, and those assets and liabilities shall not be deemed to have been assigned to the

new corporation in any manner, whether directly or indirectly or by operation of law.

(c) Taxes.—Any taxes, ***interest,*** penalties and public accounts of the Commonwealth[,] claimed against the dividing corporation[**, but not**] ***that are*** settled, assessed or determined prior to [**such**] ***or after the*** division[,] shall be [**settled, assessed or determined against**] ***the liability of*** any of the resulting corporations[,] and, together with interest thereon, shall be a lien against the franchises and property, both real and personal, of all [**such**] ***the*** corporations. [**The**] ***Upon the application of the dividing corporation, the*** Department of Revenue [**may, upon the application of the dividing corporation**], ***with the concurrence of the Office of Employment Security of the Department of Labor and Industry, shall*** release one or more, but less than all, of the resulting corporations from liability ***and liens*** for all taxes, ***interest,*** penalties and public accounts of the dividing corporation due the Commonwealth [**or any other taxing authority**] for periods prior to the effective date of the division[,] if [**the Department of Revenue is**] ***those departments are*** satisfied that the public revenues will be adequately secured.

(d) Articles of surviving corporation.—The articles of incorporation of the surviving corporation, if there be one, shall be deemed to be amended to the extent, if any, that changes in its articles are stated in the plan of division.

(e) Articles of new corporations.—The statements [**which**] ***that*** are set forth in the plan of division with respect to each new domestic ***nonprofit*** corporation and [**which**] ***that*** are required or permitted to be set forth in restated articles of incorporation of corporations incorporated under this [**article**] ***subpart, or the articles of incorporation of each new corporation set forth therein,*** shall be deemed to be the articles of incorporation of each [**such**] new corporation.

(f) Directors and officers.—Unless otherwise provided in the plan, the directors and officers of the dividing corporation shall be the initial directors and officers of each of the resulting corporations.

(g) Disposition of memberships.—Unless otherwise provided in the plan, the memberships and other securities or obligations, if any, of each new corporation resulting from the division shall be distributable to:

(1) the surviving corporation if the dividing corporation survives the division; or

(2) the members of the dividing corporation pro rata in any other case.

(h) Conflict of laws.—It is the intent of the General Assembly that:

(1) The effect of a division of a domestic business corporation shall be governed solely by the laws of this Commonwealth and any other jurisdiction under the laws of which any of the resulting corporations is incorporated.

(2) The effect of a division on the assets and liabilities of the dividing corporation shall be governed solely by the laws of this Commonwealth and any other jurisdiction under the laws of which any of the resulting corporations is incorporated.

(3) The validity of any allocations of assets or liabilities by a plan of division of a domestic business corporation, regardless of whether or not any of the new corporations is a foreign business corporation, shall be governed solely by the laws of this Commonwealth.

(4) In addition to the express provisions of this subsection, this subchapter shall otherwise generally be granted the protection of full faith and credit under the Constitution of the United States.

§ 5975. Predissolution provision for liabilities.

(a) Powers of board.—The board of directors or other body of a nonprofit corporation ***that has elected to proceed under this section*** shall have full power to wind up and settle the affairs of **[a nonprofit]** ***the*** corporation in accordance with this section prior to filing articles of dissolution in accordance with section 5977 (relating to articles of dissolution).

(b) Notice to creditors and taxing authorities.—After the approval by the members or the board of directors or other body pursuant to section 5974(b) (relating to adoption in absence of voting members) that the corporation dissolve voluntarily, the corporation shall immediately cause notice of the winding up proceedings to be officially published and to be mailed by certified or registered mail to each known creditor and claimant and to each municipal corporation in which **[its registered office or principal]** ***it has a*** place of business in this Commonwealth **[is located]**.

(c) Winding up and distribution.—The corporation shall, as speedily as possible, proceed to collect all sums due it, convert into cash all corporate assets the conversion of which into cash is required to discharge its liabilities and, out of the assets of the corporation, discharge or make adequate provision for the discharge of all liabilities of the corporation, according to their respective priorities. Except as otherwise provided in a bylaw adopted by the members or in this subpart or by any other provision of law, any surplus remaining after paying or providing for all liabilities of the corporation shall be distributed to the shareholders, if any, pro rata, or if there be no shareholders, among the members per capita. ***See section 1972(a) (relating to proposal of voluntary dissolution).***

§ 5976. Judicial supervision of proceedings.

(a) General rule.—A nonprofit corporation ***that has elected to proceed under section 1975 (relating to predissolution provision for liabilities)***, at any time during the winding up proceedings, may apply to the court to have the proceedings continued under the supervision of the court and thereafter the proceedings shall continue under the supervision of the court as provided in Subchapter G (relating to involuntary liquidation and dissolution).

* * *

§ 5977. Articles of dissolution.

* * *

(b) Contents of articles.—The articles of dissolution shall be executed by the corporation and shall set forth:

* * *

(5) A statement ***that***:

(i) **[that]** all liabilities of the corporation have been discharged or that adequate provision has been made therefor; **[or]**

(ii) **[that]** the assets of the corporation are not sufficient to discharge its liabilities, and that all the assets of the corporation have been fairly and equitably applied, as far as they will go, to the payment of such liabilities**[. An election by]**; ***or***

(iii) the corporation ***has elected*** to proceed under Subchapter H **[shall constitute the making of adequate provision for the liabilities of the corporation, including any judgment or decree that may be obtained against the corporation in any pending action or proceeding]**.

* * *

(7) **[A]** ***In the case of a corporation that has not elected to proceed under Subchapter H, a*** statement that no actions or proceedings are pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment or decree that may be obtained against the corporation in each pending action or proceeding.

(8) **[A]** ***In the case of a corporation that has not elected to proceed under Subchapter H, a*** statement that notice of the winding-up proceedings of the corporation was mailed by certified or registered mail to each known creditor and claimant and to each municipal corporation in which the **[registered office or principal place of business of the]** corporation ***has a place of business*** in this Commonwealth **[is located]**.

* * *

(d) Cross references.—See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

§ 5989. Articles of involuntary dissolution.

(a) General rule.—In a proceeding under this subchapter, the court shall enter an order dissolving the nonprofit corporation when the order, if any, obtained pursuant to section 5547(b) (relating to nondiversion of certain property) has been entered and when the costs and expenses of the proceeding, and all liabilities of the corporation have been discharged, and all of its remaining assets have been distributed to the persons entitled thereto, or, in case its assets are not sufficient to discharge such costs, expenses and liabilities, when all the assets have been applied, as far as they will go, to the payment of such costs, expenses and liabilities. ***See section 139(b) (relating to tax clearance in judicial proceedings).***

(b) Filing.—After entry of an order of dissolution, the office of the clerk of the court of common pleas shall prepare and execute articles of dissolution substantially in the form provided by section 5977 (relating to articles of dissolution), attach thereto a certified copy of the order and transmit the articles and attached order to the Department of State. **[A certificate or statement provided for by section 139 (relating to tax clearance of certain fundamental transactions) shall not be required, and the]** ***The*** department shall not charge a fee in connection with the filing of articles of dissolution under this section. See **[section]** ***sections*** 134 (relating to docketing statement) ***and 135 (relating to requirements to be met by filed documents).***

* * *

§ 5991.1. Authority of board of directors.

(a) General rule.—The board of directors or other body of a nonprofit corporation that has elected to proceed under this subchapter shall have full power to wind up and settle the affairs of the corporation in accordance with this subchapter both prior to and after the filing of articles of dissolution in accordance with section 5977 (relating to articles of dissolution).

(b) Winding up.—The corporation shall, as speedily as possible, proceed to comply with the requirements of this subchapter while simultaneously collecting all sums due it and converting into cash all corporate assets, the conversion of which into cash is required to make adequate provision for its liabilities.

§ 6126. Amended certificate of authority.

(a) General rule.—After receiving a certificate of authority, a qualified foreign nonprofit corporation may, subject to the provisions of this subchapter, change **[the name under which it is authorized to transact business in this Commonwealth]** ***or correct any of the information set forth in its application for a certificate of authority or previous filings under this section*** by filing in the Department of State an application for an amended certificate of authority. The application shall be executed by the corporation and shall state:

(1) The name under which the applicant corporation currently holds a certificate of authority to do business in this Commonwealth.

[(2) The name of the jurisdiction under the laws of which the corporation is incorporated.

(3) The address, including street and number, if any, of its principal office under the laws of the jurisdiction in which it is incorporated.

(4)] *(2)* Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office in this Commonwealth. **[which may constitute a change in the address of its registered office.**

(5) The new name of the corporation and]

(3) The information to be changed or corrected.

(4) If the application reflects a change in the name of the corporation, the application shall include a statement that either:

(i) the change of name reflects a change effected in the jurisdiction of incorporation; or

(ii) documents complying with section 6123(b) (relating to exceptions) accompany the application.

(b) Issuance of amended certificate of authority.—Upon the filing of the application, the applicant corporation shall be deemed to hold an amended certificate of authority.

(c) Cross reference.—See section 134 (relating to docketing statement).

§ 6146. Provisions applicable to all foreign corporations.

The following provisions of this subpart shall, except as otherwise provided in this section, be applicable to every foreign corporation not-for-profit, whether or not required to procure a certificate of authority under this chapter:

Section 5503 (relating to defense of ultra vires) as to contracts and conveyances governed by the laws of this Commonwealth and conveyances affecting real property situated in this Commonwealth.

Section 5506 (relating to form of execution of instruments) as to instruments or other documents governed by the laws of this Commonwealth or affecting real property situated in this Commonwealth.

Section 5510 (relating to certain specifically authorized debt terms) as to obligations (as defined in the section) governed by the laws of this Commonwealth or affecting real property situated in this Commonwealth.

Section 5782 (relating to actions against directors, members of an other body and officers) as to any action or proceeding brought in a court of this Commonwealth.

§ 8105. Ownership of certain professional partnerships.

Except as otherwise provided by statute, rule or regulation applicable to a particular profession, all of the **[partners in]** ***ultimate beneficial owners of the partnership interests in*** a partnership that renders one or more restricted professional services shall be licensed persons. As used in this section, the term "restricted professional services" shall have the meaning specified in section 8903 (relating to definitions ***and index of definitions***).

§ 8201. Scope.

* * *

(e) Prohibited termination.—A registration under this subchapter may not be terminated while the partnership is a bankrupt as that term is defined in section 8903 (relating to definitions and index of definitions). See section 8221(f) (relating to annual registration).

(f) Alternative procedure.—In lieu of filing a statement of registration as provided in subsection (a), a limited partnership may register as a registered limited liability partnership by including in its certificate of limited partnership, either originally or by amendment, the statements required by subsection (a)(3) and (4). To terminate its registration, a limited partnership that uses the procedure authorized by this subsection shall amend its certificate of limited partnership to delete the statements required by this subsection.

(g) Constructive notice.—Filing under this section shall constitute constructive notice that the partnership is a registered limited liability partnership and that the partners are entitled to the protections from liability provided by this subchapter.

[(e)] *(h)* Cross references.—See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

§ 8202. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Partner." Includes a person who is or was a partner in a registered limited liability partnership at any time while the registration of the partnership under this subchapter is or was in effect.

* * *

§ 8204. Limitation on liability of partners.

(a) General rule.—Except as provided in subsection (b), a partner in a registered limited liability partnership shall not be individually liable directly or indirectly, whether by way of indemnification, contribution or otherwise, for debts and obligations of, or chargeable to, the partnership, *whether sounding in contract or tort or otherwise,* that arise from any negligent or wrongful acts or misconduct committed by another partner or other representative of the partnership *while the registration of the partnership under this subchapter is in effect.*

(b) Exceptions.—

(1) **[Subsection (a) shall not apply to any debt or obligation with respect to which the partnership is not in compliance with section 8206(a) (relating to insurance).]** *(Repealed).*

* * *

(3) Subsection (a) shall not affect in any way:

(i) the liability of the partnership itself for all its debts and obligations; **[or]**

(ii) the availability of the entire assets of the partnership to satisfy its debts and obligations*; or*

(iii) any obligation undertaken by a partner in writing to individually indemnify another partner of the partnership or to individually contribute toward a liability of another partner.

* * *

§ 8205. Liability of withdrawing partner.

* * *

(b) Exceptions.—Subsection (a) shall not affect the liability of a partner:

* * *

(7) For any obligation undertaken by a partner in writing to individually indemnify another partner of the partnership or to individually contribute toward a liability of another partner.

* * *

(e) Permissive filing.—Filing under this section is permissive, and failure to make a filing under this section by a partner entitled to do so shall not affect the right of that partner to the limitation on liability provided by section 8204 (relating to limitation on liability of partners).

(f) Constructive notice.—Filing under this section shall constitute constructive notice that the partner has withdrawn from the partnership and is entitled to the protection from liability provided by this section.

(g) Variation of section.—A written provision of the partnership agreement may restrict or condition the application of this section to some or all of the partners of the partnership.

(h) Application of section.—A partner in a foreign registered limited liability partnership, regardless of whether or not it has registered to do business in this Commonwealth under section 8211 (relating to foreign registered limited liability partnerships), shall not be entitled to make a filing under this section with regard to that partnership.

[(e)] ***(i)*** Cross references.—See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

§ 8211. Foreign registered limited liability partnerships.

(a) Governing law.—Subject to the Constitution of Pennsylvania:

(1) The laws of the jurisdiction under which a foreign registered limited liability partnership is organized govern its organization and internal affairs and the liability of its partners ***except as provided in subsection (c).***

(2) A foreign registered limited liability partnership may not be denied registration by reason of any difference between those laws and the laws of this Commonwealth.

(b) Registration to do business.—A foreign registered limited liability partnership, regardless of whether or not it is also a foreign limited partnership, shall be subject to Subchapter K of Chapter 85 (relating to foreign limited partnerships) as if it were a foreign limited partnership, except that **[the]**:

(1) Its application for registration shall state that it is a registered limited liability partnership.

(2) The name under which **[the foreign registered limited liability partnership]** ***it*** registers and conducts business in this Commonwealth shall comply with the requirements of section 8203 (relating to name).

(3) Section 8582(a)(5) and (6) (relating to registration) shall not be applicable to the application for registration of a foreign limited liability partnership that is not a foreign limited partnership.

(c) Exception.—The liability of the partners in a foreign registered limited liability partnership shall be governed by the laws of the jurisdiction under which it is organized, except that the partners shall not be entitled to greater protection from liability than is available to the partners in a domestic registered limited liability partnership.

§ 8221. Annual registration.

* * *

(e) **[Annual fee to be lien]** *Failure to pay annual fee.—*

(1) Failure to **[pay the annual registration fee imposed]** *file the certificate of annual registration required* by this section **[shall not affect the existence or]** *for five consecutive years shall result in the automatic termination of the* status of the registered limited liability partnership as such**[, but the]**. *In addition, any* annual registration fee *that is not paid when due* shall be a lien *in the manner provided in this subsection* from the time the annual registration fee is due and payable **[upon]**. *If a certificate of annual registration is not filed within 30 days after the date on which it is due, the department shall assess a penalty of $500 against the partnership, which shall also be a lien in the manner provided in this subsection. The imposition of that penalty shall not be construed to relieve the partnership from liability for any other penalty or interest provided for under other applicable law.*

(2) If the annual registration fee paid by a registered limited liability partnership is subsequently determined to be less than should have been paid because it was based on an incorrect number of general partners or was otherwise incorrectly computed, that fact shall not affect the existence or status of the registered limited liability partnership as such, but the amount of the additional annual registration fee that should have been paid shall be a lien in the manner provided in this subsection from the time the incorrect payment is discovered by the department.

(3) The annual registration fee shall bear simple interest from the date that it becomes due and payable until paid. The interest rate shall be that provided for in section 806 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, with respect to unpaid taxes. The penalty provided for in paragraph (1) shall not bear interest. The payment of interest shall not relieve the registered limited liability partnership from liability for any other penalty or interest provided for under other applicable law.

(4) The lien created by this subsection shall attach to all of the property and proceeds thereof of the registered limited liability partnership in which a security interest can be perfected in whole or in part by filing in the department under 13 Pa.C.S. Div. 9 (relating to

secured transactions; sales of accounts, contract rights and chattel paper), whether the property and proceeds are owned by the partnership at the time the annual registration fee ***or any penalty or interest*** becomes due and payable or ***whether the property and proceeds*** are acquired thereafter. Except as otherwise provided by statute, the lien created by this subsection shall have priority over all other liens, security interests or other charges, except liens for taxes or other charges due the Commonwealth. The lien created by this subsection shall be entered on the records of the department and indexed in the same manner as a financing statement filed under 13 Pa.C.S. Div. 9. At the time an annual registration fee, ***penalty or interest*** that has resulted in the creation of a lien under this subsection is paid, the department shall terminate the lien with respect to that annual registration fee, ***penalty or interest*** without requiring a separate filing by the partnership for that purpose.

(5) If the annual registration fee paid by a registered limited liability partnership is subsequently determined to be more than should have been paid for any reason, no refund of the additional fee shall be made.

(6) Termination of the status of a registered limited liability partnership as such, whether voluntarily or involuntarily, shall not release it from the obligation to pay any accrued fees, penalties and interest and shall not release the lien created by this subsection.

(f) Exception for bankrupt partnerships.—A partnership that would otherwise be required to pay the annual registration fee set forth in subsection (b) shall not be required to pay that fee with respect to any year during any part of which the partnership is a bankrupt as defined in section 8903 (relating to definitions and index of definitions). The partnership shall, instead, indicate on its certificate of annual registration for that year that it is exempt from payment of the annual registration fee pursuant to this subsection. If the partnership fails to file timely a certificate of annual registration, a lien shall be entered on the records of the department pursuant to subsection (e) which shall not be removed until the partnership files a certificate of annual registration indicating its entitlement to an exemption from payment of the annual registration fee as provided in this subsection. See section 8201(e) (relating to scope).

§ 8359. Right to wind up affairs.

Unless otherwise agreed, the partners who have not wrongfully dissolved the partnership, or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs except that any partner, his legal representative or his assignee, upon cause shown, may obtain winding up by the court. ***See section 139(b) (relating to tax clearance in judicial proceedings).***

§ 8503. Definitions ***and index of definitions.***

(a) Definitions.—The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Certificate of limited partnership." The certificate referred to in section 8511 (relating to certificate of limited partnership) and the certificate as amended. The term includes any other statements or certificates permitted or required to be filed in the Department of State by sections 108 (relating to change in location or status of registered office provided by agent) and 138 (relating to statement of correction) or this part. If an amendment of the certificate of limited partnership or a certificate of merger ***or division*** made in the manner permitted by this chapter restates the certificate in its entirety or if there is a certificate of consolidation, thenceforth the "certificate of limited partnership" shall not include any prior documents and any certificate issued by the department with respect thereto shall so state.

* * *

"Court." Subject to any inconsistent general rule prescribed by the Supreme Court of Pennsylvania:

(1) the court of common pleas of the judicial district embracing the county where the registered office of the limited partnership is or is to be located; or

(2) where a limited partnership results from a merger, consolidation, ***division*** or other transaction without establishing a registered office in this Commonwealth or withdraws as a foreign limited partnership, the court of common pleas in which venue would have been laid immediately prior to the transaction or withdrawal.

["Department." The Department of State of the Commonwealth.]

* * *

"Partnership agreement." Any agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business. **[A written partnership agreement:**

(1) May provide that a person shall be admitted as a limited partner, or shall become an assignee of a partnership interest or other rights or powers of a limited partner to the extent assigned, and shall become bound by the partnership agreement:

(i) if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a partnership interest) executes the partnership agreement or any other writing evidencing the intent of such person to become a limited partner or assignee; or

(ii) without such execution, if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a partnership interest) complies with the conditions for becoming a limited partner or assignee as set forth in the partnership agreement or any other writing and requests (orally, in writing or by other action such as payment for a

partnership interest) that the records of the limited partnership reflect such admission or assignment.

(2) Shall not be unenforceable by reason of its not having been signed by a person being admitted as a limited partner or becoming an assignee as provided in paragraph (1) or by reason of its having been signed by a representative as provided in section 8514(b) (relating to attorney-in-fact).

(3) May provide that, whenever a provision of this chapter requires the vote or consent of a specified number or percentage of partners or of a class of partners for the taking of any action, a higher number or percentage of votes or consents shall be required for the action. Except as otherwise provided in the partnership agreement, whenever the partnership agreement requires for the taking of any action by the partners or a class of partners a specific number or percentage of votes or consents, the provision of the partnership agreement setting forth that requirement shall not be amended or repealed by any lesser number or percentage of votes or consents of the partners or the class of partners.]

* * *

"Relax." When used with respect to a provision of the certificate of limited partnership or partnership agreement, means to provide lesser rights for an affected representative or partner.

(b) Index of definitions.—Other definitions applying to this chapter and the sections in which they appear are:

"Act" or "action." Section 102.

"Department." Section 102.

"Licensed person." Section 102.

"Professional services." Section 102.

§ 8510. Indemnification.

* * *

(b) When indemnification is not to be made.—Indemnification pursuant to subsection (a) shall not be made in any case where the act **[or failure to act]** giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness. ***The certificate of limited partnership or partnership agreement may not provide for indemnification in the case of willful misconduct or recklessness.***

* * *

(f) Mandatory indemnification.—Without regard to whether indemnification or advancement of expenses is provided under subsections (a) and (d), a limited partnership shall be subject to section 8331(2) (relating to rules determining rights and duties of partners).

SUBCHAPTER B

FORMATION**[; CERTIFICATE OF LIMITED PARTNERSHIP]**

§ 8511. Certificate of limited partnership.

(a) General rule.—In order to form a limited partnership, a certificate of limited partnership must be executed and filed in the Department of State. The certificate shall set forth:

(1) The name of the limited partnership.

(2) Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office.

(3) The name and business address of each general partner.

(4) If a partner's interest in the limited partnership is to be evidenced by a certificate of partnership interest, a statement to that effect.

(5) Any other **[matters the partners determine to include therein. A provision included in the certificate of limited partnership pursuant to this paragraph shall be deemed to be a provision of the partnership agreement for purposes of any provision of this chapter that refers to a rule as set forth in the partnership agreement.]** ***provision, whether or not specifically authorized by or in contravention of this chapter, that the partners elect to set out in the certificate of limited partnership for the regulation of the internal affairs of the limited partnership, except where a provision of this chapter expressly provides that the certificate of limited partnership shall not relax or contravene any provision on a specified subject.***

(b) Effective date of formation.—A limited partnership is formed at the time of the filing of the certificate of limited partnership in the department or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section or the corresponding provisions of prior law.

(c) **[Duties of recorders of deeds.—Each recorder of deeds shall continue to keep open for public inspection the record of limited partnership certificates recorded under the statutes supplied by this chapter and by prior law the custody of which has not been transferred to the department pursuant to section 140 (relating to custody and management of orphan corporate and business records).]** ~~*(Repealed).*~~

(d) Transitional provision.—A limited partnership formed under prior law shall not be required to set forth in its certificate of limited partnership a registered office or the business address of each general partner until such time as it first amends its certificate of limited partnership under this chapter.

(e) Effect of provisions.—A provision of the certificate of limited partnership shall be deemed to be a provision of the partnership agreement for purposes of any provision of this chapter that refers to a rule as set forth in the partnership agreement.

[(e)] ***(f)*** Cross references.—See sections 134 (relating to docketing statement), ***135 (relating to requirements to be met by filed documents)*** and 8514 (relating to execution of certificates).

§ 8517. Notice.

The fact that a certificate of limited partnership is on file in the Department of State is *not* notice *of any fact other than:*

(1) that the partnership is a limited partnership and that all partners are limited partners except the persons designated therein as general partners**[, but it is not notice of any other fact]**; *and*

(2) if it is registered under Chapter 82 (relating to registered limited liability partnerships), that it is also a registered limited liability partnership.

§ 8519. Filing of certificate of summary of record by limited partnerships formed prior to 1976.

(a) General rule.—**[Any limited partnership that was not formed under this chapter, has never made any filing under this section or corresponding provisions of prior law and]** *Where any of the organic documents of a limited partnership are not on file in the Department of State or there is an error in any such document as transferred to the department pursuant to section 140 (relating to custody and management of orphan corporate and business records), and the limited partnership* desires to file any document in the **[Department of State]** *department* under any other provision of this chapter or **[that desires]** to secure from the department a certified copy of the certificate of limited partnership *or to correct the text of its organic documents as on file in the department, the limited partnership* shall file in the department a certificate of summary of record which shall set forth:

(1) The name of the limited partnership.

(2) Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office.

(3) The statute under which the limited partnership was formed.

(4) The name under which, and the date on which, the limited partnership was originally formed, including the date when and the place where the original certificate was recorded.

(5) The place or places, including the volume and page numbers or their equivalent, where the documents **[constituting the currently effective certificate are]** *that are not on file in the department or that require correction in the records of the department where originally* recorded, the date or dates of each recording and the *correct* text of the **[currently effective certificate]** *documents*. The information specified in this paragraph may be omitted in a certificate of summary of record that is delivered to the department contemporaneously with an amended certificate filed under this chapter that restates the certificate in its entirety.

[(6) Each name by which the limited partnership was known, if any, other than its original name and its current name and the date

or dates on which each change of name of the partnership became effective.]

(b) Cross references.—See sections 134 (relating to docketing statement), ***135 (relating to requirements to be met by filed documents)*** and 8514 (relating to execution of certificates).

§ 8520. Partnership agreement.

(a) Admission of limited partners.—A partnership agreement may provide in writing that a person shall be admitted as a limited partner, or shall become an assignee of a partnership interest or other rights or powers of a limited partner to the extent assigned, and shall become bound by the partnership agreement:

(1) if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a partnership interest) executes the partnership agreement or any other writing evidencing the intent of such person to become a limited partner or assignee; or

(2) without such execution, if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a partnership interest) complies with the conditions for becoming a limited partner or assignee as set forth in the partnership agreement or any other writing and requests (orally, in writing or by other action such as payment for a partnership interest) that the records of the limited partnership reflect such admission or assignment.

(b) Signature by limited partners.—A written partnership agreement shall not be unenforceable by reason of its not having been signed by a person being admitted as a limited partner or becoming an assignee as provided in subsection (a) or by reason of its having been signed by a representative as provided in section 8514(b) (relating to attorney-in-fact).

(c) Voting requirements.—A partnership agreement may provide in writing that, whenever a provision of this chapter requires the vote or consent of a specified number or percentage of partners or of a class of partners for the taking of any action, a higher number or percentage of votes or consents shall be required for the action. Except as otherwise provided in the partnership agreement, whenever the partnership agreement requires for the taking of any action by the partners or a class of partners a specific number or percentage of votes or consents, the provision of the partnership agreement setting forth that requirement shall not be amended or repealed by any lesser number or percentage of votes or consents of the partners or the class of partners.

(d) Freedom of contract.—A written partnership agreement may contain any provision for the regulation of the internal affairs of the limited partnership agreed to by the partners, whether or not specifically authorized by or in contravention of this chapter, except where this chapter:

(1) refers only to a rule as set forth in the certificate of limited partnership; or

(2) expressly provides that the partnership agreement shall not relax or contravene any provision on a specified subject.

(e) Oral provisions.—A partnership agreement may provide in writing that it cannot be amended or modified except in writing, in which case an oral agreement, amendment or modification shall not be enforceable.

(f) Cross reference.—See section 8511(a)(5) (relating to certificate of limited partnership).

§ 8523. Liability of limited partners to third parties.

(a) General rule.—A limited partner is not liable **[for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he participates in the control of the business. However, if the limited partner participates in the control of the business, he is liable only to persons who transact business with the limited partnership reasonably believing, based upon the conduct of the limited partner, that the limited partner is a general partner.]** ***solely by reason of being a limited partner, under an order of a court or in any other manner, for a debt, obligation or liability of the limited partnership of any kind or for the acts of any partner, agent or employee of the limited partnership.***

(b) **[Activities compatible with limited partner status.—A limited partner does not participate in the control of the business within the meaning of subsection (a) solely by doing one or more of the following:**

(1) Being a contractor for, or an agent or employee of the limited partnership or of a general partner, or being an officer, director, trustee, partner or shareholder of a general partner.

(2) Consulting with and advising a general partner with respect to any matter, including, without limitation, the business of the limited partnership.

(3) (i) Acting as surety for the limited partnership, or guaranteeing, endorsing or assuming one or more specific obligations of the limited partnership, or a general partner.

(ii) Borrowing money from the limited partnership or a general partner.

(iii) Lending money to the limited partnership or a general partner.

(iv) Providing collateral for the limited partnership or a general partner.

(4) Taking any action required or permitted by law to bring, pursue or settle or otherwise terminate a derivative action in the right of the limited partnership.

(5) Requesting or attending a meeting of partners.

(6) Acting or causing the taking or refraining from the taking of any action, including, without limitation, by proposing, approving,

consenting or disapproving, by voting or otherwise, with respect to one or more of the following matters:

(i) The dissolution and winding up of the limited partnership, or an election to continue the limited partnership or the business of the limited partnership.

(ii) The sale, exchange, lease, mortgage, pledge or other transfer of, or the grant of a security interest in, any asset or assets of the limited partnership.

(iii) The incurrence, renewal, refinancing or payment or other discharge of indebtedness by the limited partnership.

(iv) A change in the nature of the business.

(v) The admission or removal of a general partner.

(vi) The admission or removal of a limited partner.

(vii) A transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners.

(viii) An amendment to the partnership agreement or certificate of limited partnership.

(ix) The merger or consolidation of the limited partnership.

(x) The indemnification of any partner or other person.

(xi) Matters related to the business of the limited partnership not otherwise enumerated in this subsection, which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners.

(7) Applying for dissolution of the partnership pursuant to section 8572 (relating to judicial dissolution).

(8) Winding up the limited partnership pursuant to section 8573 (relating to winding up).

(9) In the case of a registered investment company, voting on one or more of the following matters:

(i) The approval or termination of investment advisory or underwriting contracts.

(ii) The approval of auditors.

(iii) Any other matter that by reason of the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.) the general partners consider to be a proper matter for the vote of the holders of voting securities or beneficial interests in the limited partnership.

(10) Serving on a committee of the limited partnership or the limited partners.

(11) Exercising any right or power permitted to limited partners under this chapter and not specifically enumerated in this subsection.

(12) Exercising any other right or power stated in the partnership agreement.] *(Repealed).*

(c) **[Enumeration nonexclusive.—The enumeration in subsection (b) does not mean that the possession or exercise of any other powers, or having or acting in other capacities, by a limited partner constitutes participation by him in the control of the business of the limited partnership.]** ***(Repealed).***

(d) Use of name of limited partner.—A limited partner does not **[participate in the control of the business within the meaning of subsection (a)]** ***become liable for the obligations of a limited partnership*** by reason of the fact that all or any part of the name of the limited partner is included in the name of the limited partnership.

(e) **[Effect of section.—This section does not create rights or powers of limited partners. Such rights and powers may be created only by the certificate of limited partnership, partnership agreement or any other agreement or other provisions of this chapter.]** ***(Repealed).***

* * *

§ 8546. Approval of merger or consolidation.

(a) Preparation of plan of merger or consolidation.—A plan of merger or consolidation, as the case may be, shall be prepared, setting forth:

* * *

(3) The manner and basis of converting the partnership interests of each limited partnership into partnership interests, securities or obligations of the surviving or new limited partnership, as the case may be, and, if any of the partnership interests of any of the limited partnerships that are parties to the **[plan]** ***merger or consolidation*** are not to be converted solely into partnership interests, securities or obligations of the surviving or new limited partnership, the partnership interests, securities or obligations of any other person or cash, property or rights that the holders of such partnership interests are to receive in exchange for, or upon conversion of, such partnership interests, and the surrender of any certificates evidencing them, which securities or obligations, if any, of any other person or cash, property or rights may be in addition to or in lieu of the partnership interests, securities or obligations of the surviving or new limited partnership.

(4) Such other provisions as are deemed desirable.

[Any of the terms of the plan may be made dependent upon facts ascertainable outside of the plan if the manner in which the facts will operate upon the terms of the plan is set forth in the plan.]

(b) Post-adoption amendment of plan of merger or consolidation.—A plan of merger or consolidation may contain a provision that the general partners of the constituent limited partnerships may amend the plan at any time prior to its effective date, except that an amendment made subsequent to any adoption of the plan by the limited partners of any constituent ***domestic*** limited partnership shall not change:

(1) The amount or kind of partnership interests, obligations, cash, property or rights to be received in exchange for or on conversion of all

or any of the partnership interests of the constituent ***domestic*** limited partnership ***adversely to the holders of those partnership interests.***

(2) Any term of the certificate of limited partnership or partnership agreement of the surviving or new limited partnership **[to be effected by]** ***as it is to be in effect immediately following consummation of*** the merger or consolidation ***except provisions that may be amended without the approval of the limited partners.***

(3) Any of the ***other*** terms and conditions of the plan if the change would adversely affect the holders of any partnership interests of the constituent ***domestic*** limited partnership.

* * *

(d) Party to plan.—**[A limited partnership]** ***An association*** that approves a plan in its capacity as a partner or creditor of a merging or consolidating limited partnership, or that furnishes all or a part of the consideration contemplated by a plan, does not thereby become a party to the **[plan]** ***merger or consolidation*** for the purposes of this subchapter.

(e) Notice of meeting of limited partners.—Notwithstanding any other provision of the partnership agreement, written notice of the meeting of limited partners called for the purpose of considering the proposed plan shall be given to each limited partner of record, whether or not entitled to vote thereon, of each domestic limited partnership that is a party to the **[plan]** ***proposed merger or consolidation.*** There shall be included in, or enclosed with, the notice a copy of the proposed plan or a summary thereof. ***The provisions of this subsection may not be relaxed by the certificate of limited partnership or partnership agreement.***

(f) Adoption of plan by limited partners.—The plan of merger or consolidation shall be adopted upon receiving a majority of the votes cast by all limited partners, if any, entitled to vote thereon of each of the domestic limited partnerships that is a party to the **[plan]** ***proposed merger or consolidation*** and, if any class of limited partners is entitled to vote thereon as a class, a majority of the votes cast in each class vote. A proposed plan of merger or consolidation shall not be deemed to have been adopted by the limited partnership unless it has also been approved by the general partners, regardless of the fact that the general partners have directed or suffered the submission of the plan to the limited partners for action.

* * *

(h) Termination of plan.—Prior to the time when a merger or consolidation becomes effective, the merger or consolidation may be terminated pursuant to provisions therefor, if any, set forth in the plan. If a certificate of merger or consolidation has been filed in the department prior to the termination, a certificate of termination executed by each limited partnership that is a party to the **[plan]** ***merger or consolidation,*** unless the plan permits termination by less than all of the limited partnerships, in which case the certificate shall be executed on behalf of the limited

partnership exercising the right to terminate, shall be filed in the department. The certificate of termination shall set forth:

(1) A copy of the certificate of merger or consolidation relating to the plan that is terminated.

(2) A statement that the plan has been terminated in accordance with the provisions therefor set forth therein.

See sections 134 (relating to docketing statement), ***135 (relating to requirements to be met by filed documents),*** 138 (relating to statement of correction) and 8514 (relating to execution of certificates).

* * *

(j) Reference to outside facts.—Any of the terms of a plan of merger or consolidation may be made dependent upon facts ascertainable outside of the plan if the manner in which the facts will operate upon the terms of the plan is set forth in the plan. Such facts may include, without limitation, actions or events within the control of or determinations made by a party to the plan or a representative of a party to the plan.

§ 8549. Effect of merger or consolidation.

* * *

(b) Property rights.—All the property, real, personal and mixed, of each of the limited partnerships parties to the plan of merger or consolidation, and all debts due on whatever account to any of them, as well as all other things and causes of action belonging to any of them, shall be deemed to be **[transferred to and]** vested in ***and shall belong to*** the surviving or new limited partnership, as the case may be, without further action, and the title to any real estate, or any interest therein, vested in any of the limited partnerships shall not revert or be in any way impaired by reason of the merger or consolidation. The surviving or new limited partnership shall thenceforth be responsible for all the liabilities of each of the limited partnerships so merged or consolidated. Liens upon the property of the merging or consolidating limited partnerships shall not be impaired by the merger or consolidation, and any claim existing or action or proceeding pending by or against any of the limited partnerships may be prosecuted to judgment as if the merger or consolidation had not taken place or the surviving or new limited partnership may be proceeded against or substituted in its place.

(c) Taxes.—Any taxes, ***interest,*** penalties and public accounts of the Commonwealth claimed against any of the merging or consolidating limited partnerships **[but not]** ***that are*** settled, assessed or determined prior to ***or after*** the merger or consolidation shall be **[settled, assessed or determined against]** the ***liability of the*** surviving or new limited partnership and, together with interest thereon, shall be a lien against the property, both real and personal, of the surviving or new limited partnership.

* * *

§ 8553. Voluntary withdrawal of limited partner.

(a) General rule.—A limited partner may withdraw from a limited partnership *only* at the time or upon the happening of events specified in writing in the partnership agreement. **[If the partnership agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months' prior written notice to each general partner at his address on the books of the limited partnership.]**

(b) [Prohibition of withdrawal.—The partnership agreement may provide that a limited partner may not withdraw from the limited partnership or assign a partnership interest in the limited partnership prior to the dissolution and winding up of the limited partnership.] *(Repealed).*

(c) Transitional rule.—This section applies to all limited partnerships formed on or after January 1, 2002. If the partnership agreement of a limited partnership formed before January 1, 2002, did not on December 31, 2001, specify in writing the time or the events upon the happening of which a limited partner could withdraw or a definite time for the dissolution and winding up of the limited partnership, the provisions of this section that were in effect prior to January 1, 2002, shall apply until such time, if any, as the partnership agreement is amended in writing after January 1, 2002, to specify:

(1) a time or the events upon the happening of which a limited partner may withdraw;

(2) a definite time for the dissolution and winding up of the limited partnership; or

(3) that this section as effective January 1, 2002, shall apply to the limited partnership.

§ 8557. **[Limitations on distribution.]** *Distributions and allocation of profits and losses.*

[A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests and liabilities as to which recourse of creditors is limited to specified property of the limited partnership, exceed the fair value of the partnership assets. The fair value of any property that is subject to a liability as to which recourse of creditors is so limited shall be included in the partnership assets only to the extent that the fair value of the property exceeds that liability.] *A limited partnership may from time to time make distributions and allocate the profits and losses of its business to the partners upon the basis stipulated in the partnership agreement or, if not stipulated in the partnership agreement, per capita. The allocation of losses pursuant to this section*

shall not affect the limitation on liability of limited partners as provided in section 8523 (relating to liability of limited partners to third parties).

§ 8558. Liability upon return of contribution.

* * *

(c) Determination of return of contribution.—A partner receives a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership[, **as determined under section 8557 (relating to limitations on distribution),**] below the value (as stated or determined in the manner provided in the partnership agreement, if stated or provided for therein) of his contribution (to the extent it has been received by the limited partnership) that has not been distributed to him, and otherwise to the extent of the fair value of the distribution.

(d) Fair value of net assets.—For purposes of computing the fair value of the net assets of the limited partnership under subsection (c):

(1) liabilities of the limited partnership to partners on account of their partnership interests and liabilities as to which recourse of creditors is limited to specified property of the limited partnership shall not be considered; and

(2) the fair value of property that is subject to a liability as to which recourse of creditors is so limited shall be included in the partnership assets only to the extent that the fair value of the property exceeds that liability.

§ 8571. Nonjudicial dissolution.

(a) General rule.—A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(1) At the time or upon the happening of events specified in the certificate of limited partnership.

(2) At the time or upon the happening of events specified in writing in the partnership agreement.

(3) Written consent of all partners.

(4) An event of withdrawal of a general partner unless at the time there is at least one other general partner and the written provisions of the partnership agreement permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so. The limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within 180 days after the withdrawal, [**all**] ***a majority in interest, or such greater number as shall be provided in writing in the partnership agreement, of the*** partners agree in writing to continue the business of the limited partnership or to the appointment of one or more replacement general partners.

(5) Entry of an order of judicial dissolution under section 8572 (relating to judicial dissolution).

* * *

(c) Dissolution by domestication.—Whenever a domestic limited partnership has domesticated itself under the laws of another jurisdiction by action similar to that provided by section 8590 (relating to domestication) and has authorized that action in the manner required by this subchapter for the approval of a proposal that the partnership dissolve voluntarily, the partnership may surrender its certificate of limited partnership under the laws of this Commonwealth by filing in the department a certificate of cancellation under section 8513 (relating to cancellation of certificate). If the partnership, as domesticated in the other jurisdiction, registers to do business in this Commonwealth either prior to or simultaneously with the filing of the certificate of cancellation under this subsection, the partnership shall not be required to file with the certificate of cancellation the tax clearance certificates that would otherwise be required by section 139 (relating to tax clearance of certain fundamental transactions).

[(c)] *(d)* Cross [**references**] *reference*.—See [**sections 8103 (relating to continuation of certain limited partnerships) and**] *section* 8512(b) (relating to events requiring amendment).

§ 8573. Winding up.

Except as otherwise provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, or a person approved by the limited partners or, if there is more than one class or group of limited partners, by each class or group of limited partners, in either case by a majority in interest of the limited partners in each class or group, may wind up the affairs of the limited partnership, but the court may wind up the affairs of the limited partnership upon application of any partner, his legal representative or assignee, and in connection therewith, may appoint a liquidating trustee. *See section 139(b) (relating to tax clearance in judicial proceedings).*

§ 8577. Proposal and adoption of plan of division.

* * *

(b) Reference to outside facts.—Any of the terms of the plan may be made dependent upon facts ascertainable outside of the plan if the manner in which the facts will operate upon the terms of the plan is set forth in the plan. *Such facts may include, without limitation, actions or events within the control of or determinations made by the dividing limited partnership or a representative of the dividing limited partnership.*

* * *

(e) [**Restrictions on certain distributions.—A plan of division may not be made effective if the effect of the plan is to make a distribution to the holders of any class or series of partnership interests of the dividing limited partnership unless the distribution is permitted by section 8557 (relating to limitations on distribution.**] *(Repealed).*

(f) [**Action by**] *Rights of* holders of indebtedness.—[**Unless otherwise provided by an indenture or other contract by which the dividing**

limited partnership is bound, a plan of division shall not require the approval of the holders of any debt securities or other obligations of the dividing limited partnership or of any representative of the holders if the transfer of assets effected by the division, if effected by means of a sale, lease, exchange or other disposition, and any related distribution would not require the approval of the holders or representatives thereof.] ***If any such debt securities, notes, similar evidences of indebtedness, indentures or other contracts were issued, incurred or executed by the dividing limited partnership before August 21, 2001, and have not been amended subsequent to that date, the liability of the dividing limited partnership thereunder shall not be affected by the division nor shall the rights of the obligees thereunder be impaired by the division, and each of the resulting limited partnerships may be proceeded against or substituted in place of the dividing limited partnership as joint and several obligors on such liability, regardless of any provision of the plan of division apportioning the liabilities of the dividing limited partnership.***

* * *

§ 8580. Effect of division.

* * *

(b) Property rights*; allocations of assets and liabilities.*—

(1) (i) All the property, real, personal and mixed, of the dividing limited partnership, and all debts due on whatever account to it, including subscriptions for partnership interests or other causes of action belonging to it, shall, except as otherwise provided in paragraph (2), to the extent **[transfers]** ***allocations*** of assets are contemplated by the plan of division, be deemed without further action to be **[transferred]** ***allocated*** to and vested in the resulting limited partnerships on such a manner and basis and with such effect as is specified in the plan, or per capita among the resulting limited partnerships, as tenants in common, if no specification is made in the plan, and the title to any real estate or interest therein vested in any of the limited partnerships shall not revert or be in any way impaired by reason of the division.

(ii) Upon the division becoming effective, the resulting limited partnerships shall each thenceforth be responsible as separate and distinct limited partnerships only for such liabilities as each limited partnership may undertake or incur in its own name but shall be liable for the liabilities of the dividing limited partnership in the manner and on the basis provided in subparagraphs (iv) and (v).

(iii) Liens upon the property of the dividing limited partnership shall not be impaired by the division.

(iv) **[One]** ***To the extent allocations of liabilities are contemplated by the plan of division, the liabilities of the dividing limited partnership shall be deemed without further action to be***

allocated to and become the liabilities of the resulting limited partnerships on such a manner and basis and with such effect as is specified in the plan; and one or more but less than all of the resulting limited partnerships shall be free of the liabilities of the dividing limited partnership to the extent, if any, specified in the plan **[if no fraud of creditors or partners or violation of law shall be effected thereby and if all applicable provisions of law are complied with.]** ***if in either case:***

(A) no fraud of partners or violation of law shall be effected thereby; and

(B) the plan does not constitute a fraudulent transfer under 12 Pa.C.S. Ch. 51 (relating to fraudulent transfers).

(v) If the conditions in subparagraph (iv) for freeing one or more of the resulting limited partnerships from the liabilities of the dividing limited partnership, ***or for allocating some or all of the liabilities of the dividing limited partnership,*** are not satisfied, the liabilities of the dividing limited partnership ***as to which those conditions are not satisfied*** shall not be affected by the division nor shall the rights of creditors **[thereof]** ***thereunder*** or of any person dealing with the limited partnership be impaired by the division, and any claim existing or action or proceeding pending by or against the limited partnership ***with respect to those liabilities*** may be prosecuted to judgment as if the division had not taken place, or the resulting limited partnerships may be proceeded against or substituted in **[its]** place ***of the dividing limited partnership*** as joint and several obligors on **[such liability]** ***those liabilities***, regardless of any provision of the plan of division apportioning the liabilities of the dividing limited partnership.

(vi) The conditions in subparagraph (iv) for freeing one or more of the resulting limited partnerships from the liabilities of the dividing limited partnership and for allocating some or all of the liabilities of the dividing limited partnership shall be conclusively deemed to have been satisfied if the plan of division has been approved by the Pennsylvania Public Utility Commission in a final order issued after August 21, 2001, that has become not subject to further appeal.

(2) (i) The **[transfer]** ***allocation*** of any fee or freehold interest or leasehold having a remaining term of 30 years or more in any tract or parcel of real property situate in this Commonwealth owned by a dividing limited partnership (including property owned by a foreign limited partnership dividing solely under the law of another jurisdiction) to a new limited partnership resulting from the division shall not be effective until one of the following documents is filed in the office for the recording of deeds of the county, or each of them, in which the tract or parcel is situated:

(A) A deed, lease or other instrument of confirmation describing the tract or parcel.

(B) A duly executed duplicate original copy of the certificate of division.

(C) A copy of the certificate of division certified by the Department of State.

(D) A declaration of acquisition setting forth the value of real estate holdings in the county of the limited partnership as an acquired company.

(ii) The provisions of 75 Pa.C.S. § 1114 (relating to transfer of vehicle by operation of law) shall not be applicable to **[a transfer]** ***an allocation*** of ownership of any motor vehicle, trailer or semitrailer **[from a dividing limited partnership]** to a new limited partnership under this section or under a similar law of any other jurisdiction, but any such **[transfer]** ***allocation*** shall be effective only upon compliance with the requirements of 75 Pa.C.S. § 1116 (relating to issuance of new certificate following transfer).

(3) It shall not be necessary for a plan of division to list each individual asset or liability of the dividing limited partnership to be allocated to a new limited partnership so long as those assets and liabilities are described in a reasonable and customary manner.

(4) Each new limited partnership shall hold any assets and liabilities allocated to it as the successor to the dividing limited partnership, and those assets and liabilities shall not be deemed to have been assigned to the new limited partnership in any manner, whether directly or indirectly or by operation of law.

(c) Taxes.—Any taxes, ***interest,*** penalties and public accounts of the Commonwealth claimed against the dividing limited partnership **[but not]** ***that are*** settled, assessed or determined prior to ***or after*** the division shall be **[settled, assessed or determined against]** ***the liability of*** any of the resulting limited partnerships and, together with interest thereon, shall be a lien against the ***franchises and*** property, both real and personal, of all the limited partnerships. Upon the application of the dividing limited partnership, the Department of Revenue, with the concurrence of the Office of Employment Security of the Department of Labor and Industry, shall release one or more, but less than all, of the resulting limited partnerships from liability and liens for all taxes, ***interest,*** penalties and public accounts of the dividing limited partnership due the Commonwealth for periods prior to the effective date of the division if those departments are satisfied that the public revenues will be adequately secured.

* * *

(g) Conflict of laws.—It is the intent of the General Assembly that:

(1) The effect of a division of a domestic limited partnership shall be governed solely by the laws of this Commonwealth and any other

jurisdiction under the laws of which any of the resulting limited partnerships is organized.

(2) The effect of a division on the assets and liabilities of the dividing limited partnership shall be governed solely by the laws of this Commonwealth and any other jurisdiction under the laws of which any of the resulting limited partnerships is organized.

(3) The validity of any allocations of assets or liabilities by a plan of division of a domestic limited partnership, regardless of whether or not any of the new limited partnerships is a foreign limited partnership, shall be governed solely by the laws of this Commonwealth.

(4) In addition to the express provisions of this subsection, this subchapter shall otherwise generally be granted the protection of full faith and credit under the Constitution of the United States.

§ 8590. Domestication.

* * *

(b) Certificate of domestication.—The certificate of domestication shall be executed by the limited partnership and shall set forth in the English language:

(1) The name of the limited partnership. If the name is in a foreign language, it shall be set forth in Roman letters or characters or Arabic or Roman numerals. ***If the name is one that is rendered unavailable for use by any provision of section 8505 (relating to name), the limited partnership shall adopt, in accordance with any procedures for changing the name of the limited partnership that are applicable prior to the domestication of the limited partnership, and shall set forth in the certificate of domestication an available name.***

* * *

(c) Effect of domestication.—

(1) As a domestic limited partnership, the domesticated limited partnership shall no longer be a foreign limited partnership for the purposes of this chapter and shall **[have]** ***instead be a domestic limited partnership with*** all the powers and privileges and **[be subject to]** all the duties and limitations granted and imposed upon domestic limited partnerships. **[The property, debts, liens, estates, taxes, penalties and public accounts due the Commonwealth shall continue to be vested in and imposed upon the limited partnership to the same extent as if it were the successor by merger of the domesticating limited partnership with and into a domestic limited partnership under Subchapter F (relating to merger and consolidation).]** ***In all other respects, the domesticated limited partnership shall be deemed to be the same limited partnership as it was prior to the domestication without any change in or effect on its existence. Without limiting the generality of the previous sentence, the domestication shall not be***

deemed to have dissolved the limited partnership or to have affected in any way:

(i) the right and title of the limited partnership in and to its assets, property, franchises, estates and choses in action;

(ii) the liability of the limited partnership for its debts, obligations, penalties and public accounts due the Commonwealth;

(iii) any liens or other encumbrances on the property or assets of the limited partnership; or

(iv) any contract, license or other agreement to which the limited partnership is a party or under which it has any rights or obligations.

(2) The partnership interests in the domesticated limited partnership shall be unaffected by the domestication except to the extent, if any, reclassified in the certificate of domestication.

§ 8903. Definitions ***and index of definitions.***

(a) Definitions.—The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

["Department." The Department of State of the Commonwealth.]

* * *

["Licensed person." A natural person who is duly licensed or admitted to practice his profession by a court, department, board, commission or other agency of this Commonwealth or another jurisdiction to render a professional service that is or will be rendered by the professional company of which he is or intends to become a manager, member, employee or agent.]

"Limited liability company," ***"domestic limited liability company"*** or "company." An association that is a limited liability company organized and existing under this chapter.

* * *

"Operating agreement." Any **[agreement of the members as to]** rules or procedures adopted for the regulation and governance of the affairs of a limited liability company and the conduct of its business. **[The operating agreement need not be in writing except where this chapter refers to a written provision of the operating agreement. The operating agreement may contain any provision for the regulation of the internal affairs of the company agreed to by the members, whether or not specifically authorized by or in contravention of this chapter, except where this chapter:**

(1) refers only to a rule as set forth in the certificate of organization; or

(2) expressly provides that the operating agreement shall not relax or contravene any provision on a specified subject. See sections

8913(8) (relating to certificate of organization) and 8915 (relating to modification by agreement).]

* * *

["Professional services." The term shall have the meaning specified in section 2902 (relating to definitions).]

* * *

(b) Index of other definitions.—Other definitions applying to this chapter and the sections in which they appear are:

"Act" or "action." Section 102.

"Department." Section 102.

"Licensed person." Section 102.

"Professional services." Section 102.

SUBCHAPTER B
ORGANIZATION**[; CERTIFICATE OF ORGANIZATION]**

§ 8915. Modification by agreement.

The provisions of this chapter are intended to permit a limited liability company to qualify for taxation as an entity that is not an association taxable as a corporation under the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.). Notwithstanding the limitations in **[the definition of "operating agreement" in section 8903 (relating to definitions) and the limitations in section]** *sections* 8913(8) (relating to certificate of organization) ***and 8916(b) (relating to operating agreement)***, the certificate of organization and operating agreement may effect any change in the form of organization of the company, in addition to or in contravention of the provisions of this chapter, that may be necessary to accomplish that purpose.

§ 8916. Operating agreement.

(a) General rule.—The operating agreement of a limited liability company need not be in writing except where this chapter refers to a written provision of the operating agreement. If a written operating agreement provides that it cannot be amended or modified except in writing, an oral agreement, amendment or modification shall not be enforceable.

(b) Freedom of contract.—An operating agreement may contain any provision for the regulation of the internal affairs of a limited liability company adopted by the members, whether or not specifically authorized by or in contravention of this chapter, except where this chapter:

(1) refers only to a rule as set forth in the certificate of organization; or

(2) expressly provides that the operating agreement shall not relax or contravene any provision on a specified subject.

(c) Cross references.—See sections 8913(8) (relating to certificate of organization) and 8915 (relating to modification by agreement).

§ 8922. Liability of members **[and managers]**.

(a) General rule.—**[Neither]** ***Except as provided in subsection (e),*** the members of a limited liability company **[nor the managers of a company managed by one or more managers are]** ***shall not be*** liable, solely by reason of being a member **[or a manager]**, under an order of a court or in any other manner for a debt, obligation or liability of the company of any kind or for the acts **[or omissions]** of any **[other]** member, manager, agent or employee of the company.

(b) Professional relationship unaffected.—Subsection (a) shall not afford members **[and managers]** of a professional company with greater immunity than is available to the officers, shareholders, employees or agents of a professional corporation. See section 2925 (relating to professional relationship retained).

* * *

(d) Conflict of laws.—The personal liability of a member of a company to any person or in any action or proceeding for the debts, obligations or liabilities of the company or for the acts **[or omissions]** of other members, managers, employees or agents of the company shall be governed solely and exclusively by this chapter and the laws of this Commonwealth. Whenever a conflict arises between the laws of this Commonwealth and the laws of any other state with regard to the liability of members of a company organized and existing under this chapter for the debts, obligations and liabilities of the company or for the acts **[or omissions]** of the other members, managers, employees or agents of the company, the laws of this Commonwealth shall govern in determining such liability.

(e) Expansion of liability.—The certificate of organization may provide that some or all of the members shall be liable for some or all of the debts, obligations and liabilities of the company to the extent and under the circumstances provided in the certificate.

(f) Medical professional liability.—A professional company shall be deemed to be a partnership for purposes of section 811 of the act of October 15, 1975 (P.L.390, No.111), known as the Health Care Services Malpractice Act.

[(e)] ***(g)*** Cross reference.—See section 8904(b) (relating to rules for cases not provided for in this chapter).

§ 8924. Limited transferability of membership interest.

(a) General rule.—The interest of a member in a limited liability company constitutes the personal estate of the member and may be transferred or assigned as provided in writing in the operating agreement. Unless otherwise provided in writing in the operating agreement, if all of the other members of the company other than the member proposing to dispose of his interest do not approve of the proposed transfer or assignment by unanimous ***vote or*** written consent, ***which approval may be unreasonably withheld by any of the other members,*** the transferee of the interest of the member shall have no right to participate in the management

of the business and affairs of the company or to become a member. The transferee shall only be entitled to receive the distributions and the return of contributions to which that member would otherwise be entitled.

(b) Certificate of membership interest.—The certificate of organization may provide that a member's interest in a company may be evidenced by a certificate of membership interest issued by the company **[and]**. ***If such provision is made for the issuance of certificates of membership interest, the operating agreement*** may **[also]** provide for the assignment or transfer of any membership interest represented by such a certificate and make other provisions with respect to such certificates. **[See 13 Pa.C.S. § 8102 (relating to definitions and index of definitions).]**

§ 8932. Distributions ***and allocation of profits and losses.***

A limited liability company may from time to time **[divide]** ***make distributions and allocate*** the profits ***and losses*** of its business **[and distribute the same]** to **[and allocate any losses among]** the members of the company upon the basis stipulated in the operating agreement or, if not stipulated in the operating agreement, per capita. ***The allocation of losses pursuant to this section shall not affect the limitation on liability of members as provided in section 8922 (relating to liability of members).***

§ 8942. Voting.

* * *

(c) Exception.—An amendment of the certificate of organization that:

(1) restates without change all of the operative provisions of the certificate of organization as theretofore in effect;

(2) changes the name or registered office of the company; or

(3) accomplishes any combination of the foregoing purposes;

is not an amendment of the certificate of organization for the purposes of subsection (b). ***Unless otherwise provided in writing in the operating agreement, an amendment described in this subsection may be made by the affirmative vote of a majority of the managers or, in the case of a company that is not managed by one or more managers, of a majority of the members.***

* * *

§ 8943. Duties of managers and members.

* * *

(b) Companies with managers.—If the certificate of organization provides that the company shall be managed by one or more managers:

(1) **[Unless otherwise provided in writing in the operating agreement, the provisions of Subchapter B of Chapter 17 (relating to officers, directors and shareholders)]** ***Sections 1711 (relating to alternative provisions) through 1717 (relating to limitation on standing)*** shall be applicable to representatives of the company. ***A written provision of the operating agreement may increase, but not relax, the duties of representatives of the company to its members under those sections. For purposes of applying the provisions of those***

sections, references to the "articles of incorporation," "bylaws," "directors" and "shareholders" shall mean the certificate of organization, operating agreement, managers and members, respectively.

(2) A member who is not a manager shall have no duties to the company or to the other members solely by reason of acting in his capacity as a member.

§ 8944. **[Classes of members.]** ***Members.***

(a) General rule.—***A limited liability company may have one or more members.***

(b) Classes of members.—An operating agreement may provide for:

(1) classes or groups of members having such relative rights, powers and duties as the operating agreement may provide;

(2) the future creation in the manner provided in the operating agreement of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members; and

(3) the taking of an action, including, without limitation, amendment of the certificate of organization or operating agreement or creation of a class or group of interests in the limited liability company that was not previously outstanding, without the vote or approval of any member or class or group of members.

[(b)] *(c)* Class voting.—The operating agreement may grant to all or certain identified members or a specified class or group of members the right to vote (on a per capita or other basis), separately or with all or any class or group of members, upon any matter.

§ 8945. Indemnification.

* * *

(f) Mandatory indemnification.—Without regard to whether indemnification or advancement of expenses is provided under subsections (a) and (d), a limited liability company shall be subject to section 8331(2) (relating to rules determining rights and duties of partners), and both the members and the managers, if any, shall be deemed to be general partners for purposes of applying that section.

§ 8948. **[Dissociation of member limited.]** ***Limitation on dissociation or assignment of membership interest.***

Notwithstanding anything to the contrary set forth in this part, an operating agreement may provide that a member may not voluntarily dissociate from the limited liability company or assign his membership interest prior to the dissolution and winding-up of the company, and an attempt by a member to dissociate voluntarily from the company ***or to assign his membership interest*** in violation of the operating agreement shall be ineffective.

§ 8957. Approval of merger or consolidation.

* * *

(b) Reference to outside facts.—Any of the terms of the plan may be made dependent upon facts ascertainable outside of the plan if the manner in which the facts will operate upon the terms of the plan is set forth in the plan. ***Such facts may include, without limitation, actions or events within the control of or determinations made by a party to the plan or a representative of a party to the plan.***

(c) **[Postadoption]** ***Post-adoption*** amendment of plan of merger or consolidation.—A plan of merger or consolidation may contain a provision that the managers, if any, of the constituent companies may amend the plan at any time prior to its effective date, except that an amendment made subsequent to any adoption of the plan by the members of any constituent ***domestic*** company shall not, without the approval of the members, change:

(1) The amount or kind of membership interests, obligations, cash, property or rights to be received in exchange for or on conversion of all or any of the membership interests of the constituent ***domestic*** company ***adversely to the holders of those membership interests.***

(2) Any **[term]** ***provision*** of the certificate of organization or operating agreement of the surviving or new company **[to be effected by]** ***as it is to be in effect immediately following consummation of*** the merger or consolidation ***except provisions that may be amended without the approval of the members.***

(3) Any of the ***other*** terms and conditions of the plan if the change would adversely affect the holders of any membership interests of the constituent ***domestic*** company.

* * *

(e) Party to plan.—An association that approves a plan in its capacity as a member or creditor of a merging or consolidating company or that furnishes all or a part of the consideration contemplated by a plan does not thereby become a party to the **[plan or the]** merger or consolidation for the purposes of this subchapter.

* * *

(i) Termination of plan.—Prior to the time when a merger or consolidation becomes effective, the merger or consolidation may be terminated pursuant to provisions therefor, if any, set forth in the plan. If a certificate of merger or consolidation has been filed in the department prior to the termination, a certificate of termination executed by each company that is a party to the merger or consolidation, unless the plan permits termination by less than all of the companies, in which case the certificate shall be executed on behalf of the company exercising the right to terminate, shall be filed in the department. The certificate of termination shall set forth:

(1) A copy of the certificate of merger or consolidation relating to the plan that is terminated.

(2) A statement that the plan has been terminated in accordance with the provisions therefor set forth therein.

See sections 134 (relating to docketing statement), 135 (relating to requirements to be met by filed documents), ***138 (relating to statement of correction)*** and 8907 (relating to execution of documents).

* * *

§ 8959. Effect of merger or consolidation.

* * *

(b) Property rights.—All the property, real, personal and mixed, of each of the companies parties to the merger or consolidation and all debts due on whatever account to any of them, as well as all other things and causes of action belonging to any of them, shall be deemed to be **[transferred to and]** vested in ***and shall belong to*** the surviving or new company, as the case may be, without further action, and the title to any real estate or any interest therein vested in any of the companies shall not revert or be in any way impaired by reason of the merger or consolidation. The surviving or new company shall thenceforth be responsible for all the liabilities of each of the companies so merged or consolidated. Liens upon the property of the merging or consolidating companies shall not be impaired by the merger or consolidation, and any claim existing or action or proceeding pending by or against any of the companies may be prosecuted to judgment as if the merger or consolidation had not taken place or the surviving or new company may be proceeded against or substituted in its place.

(c) Taxes.—Any taxes, ***interest,*** penalties and public accounts of the Commonwealth claimed against any of the merging or consolidating companies **[but not]** ***that are*** settled, assessed or determined prior to ***or after*** the merger or consolidation shall be **[settled, assessed or determined against]** the ***liability of the*** surviving or new company and, together with interest thereon, shall be a lien against the property, both real and personal, of the surviving or new company.

* * *

§ 8962. Proposal and adoption of plan of division.

* * *

(b) Reference to outside facts.—Any of the terms of the plan may be made dependent upon facts ascertainable outside of the plan if the manner in which the facts will operate upon the terms of the plan is set forth in the plan. ***Such facts may include, without limitation, actions or events within the control of or determinations made by the dividing limited liability company or a representative of the dividing limited liability company.***

* * *

(e) **[Action by holders of indebtedness.—Unless otherwise provided by an indenture or other contract by which the dividing limited liability company is bound, a plan of division shall not require the approval of the holders of any debt securities or other obligations of the dividing company or of any representative of the holders if the transfer of assets**

effected by the division, if effected by means of a sale, lease, exchange or other disposition, and any related distribution would not require the approval of the holders or representatives thereof.] ***(Repealed).***

§ 8965. Effect of division.

* * *

(b) Property rights*; allocations of assets and liabilities.*—

(1) (i) All the property, real, personal and mixed, of the dividing company and all debts due on whatever account to it, including subscriptions for membership interests and other causes of action belonging to it, shall, except as otherwise provided in paragraph (2), to the extent **[transfers]** ***allocations*** of assets are contemplated by the plan of division, be deemed without further action to be **[transferred]** ***allocated*** to and vested in the resulting companies on such a manner and basis and with such effect as is specified in the plan, or per capita among the resulting companies as tenants in common if no specification is made in the plan, and the title to any real estate or interest therein vested in any of the companies shall not revert or be in any way impaired by reason of the division.

(ii) Upon the division becoming effective, the resulting companies shall each thenceforth be responsible as separate and distinct companies only for such liabilities as each company may undertake or incur in its own name but shall be liable for the liabilities of the dividing company in the manner and on the basis provided in subparagraphs (iv) and (v).

(iii) Liens upon the property of the dividing company shall not be impaired by the division.

(iv) **[One]** ***To the extent allocations of liabilities are contemplated by the plan of division, the liabilities of the dividing company shall be deemed without further action to be allocated to and become the liabilities of the resulting companies on such a manner and basis and with such effect as is specified in the plan; and one*** or more, but less than all, of the resulting companies shall be free of the liabilities of the dividing company to the extent, if any, specified in the plan **[if no fraud of creditors or members or violation of law shall be effected thereby and if all applicable provisions of law are complied with.]** ***if in either case:***

(A) no fraud on members or violation of law shall be effected thereby; and

(B) the plan does not constitute a fraudulent transfer under 12 Pa.C.S. Ch. 51 (relating to fraudulent transfers).

(v) If the conditions in subparagraph (iv) for freeing one or more of the resulting companies from the liabilities of the dividing company*, or for allocating some or all of the liabilities of the dividing company,* are not satisfied, the liabilities of the dividing company *as to which those conditions are not satisfied* shall not be

affected by the division nor shall the rights of creditors **[thereof]** ***thereunder*** or of any person dealing with the company be impaired by the division, and any claim existing or action or proceeding pending by or against the company ***with respect to those liabilities*** may be prosecuted to judgment as if the division had not taken place, or the resulting companies may be proceeded against or substituted in **[its]** place ***of the dividing company*** as joint and several obligors on **[such liability]** ***those liabilities***, regardless of any provision of the plan of division apportioning the liabilities of the dividing company.

(vi) The conditions in subparagraph (iv) for freeing one or more of the resulting companies from the liabilities of the dividing company and for allocating some or all of the liabilities of the dividing company shall be conclusively deemed to have been satisfied if the plan of division has been approved by the Pennsylvania Public Utility Commission in a final order issued after August 21, 2001, that has become not subject to further appeal.

(2) (i) The **[transfer]** ***allocation*** of any fee or freehold interest or leasehold having a remaining term of 30 years or more in any tract or parcel of real property situate in this Commonwealth owned by a dividing company (including property owned by a foreign limited liability company dividing solely under the law of another jurisdiction) to a new company resulting from the division shall not be effective until one of the following documents is filed in the office for the recording of deeds of the county, or each of them, in which the tract or parcel is situated:

(A) A deed, lease or other instrument of confirmation describing the tract or parcel.

(B) A duly executed duplicate original copy of the certificate of division.

(C) A copy of the certificate of division certified by the Department of State.

(D) A declaration of acquisition setting forth the value of real estate holdings in such county of the company as an acquired company.

(ii) The provisions of 75 Pa.C.S. § 1114 (relating to transfer of vehicle by operation of law) shall not be applicable to **[a transfer]** ***an allocation*** of ownership of any motor vehicle, trailer or semitrailer **[from a dividing company]** to a new company under this section or under a similar law of any other jurisdiction but any such **[transfer]** ***allocation*** shall be effective only upon compliance with the requirements of 75 Pa.C.S. § 1116 (relating to issuance of new certificate following transfer).

(3) It shall not be necessary for a plan of division to list each individual asset or liability of the dividing company to be allocated to a

new company so long as those assets and liabilities are described in a reasonable and customary manner.

(4) Each new company shall hold any assets and liabilities allocated to it as the successor to the dividing company, and those assets and liabilities shall not be deemed to have been assigned to the new company in any manner, whether directly or indirectly or by operation of law.

(c) Taxes.—Any taxes, *interest,* penalties and public accounts of the Commonwealth claimed against the dividing company **[but not]** *that are* settled, assessed or determined prior to *or after* the division shall be **[settled, assessed or determined against]** *the liability of* any of the resulting companies and, together with interest thereon, shall be a lien against the *franchises and* property, both real and personal, of all the companies. Upon the application of the dividing company, the Department of Revenue, with the concurrence of the Office of Employment Security of the Department of Labor and Industry, shall release one or more, but less than all, of the resulting companies from liability and liens for all taxes, *interest,* penalties and public accounts of the dividing company due the Commonwealth for periods prior to the effective date of the division if those departments are satisfied that the public revenues will be adequately secured.

* * *

(h) Conflict of laws.—It is the intent of the General Assembly that:

(1) The effect of a division of a domestic limited liability company shall be governed by the laws of this Commonwealth and any other jurisdiction under the laws of which any of the resulting companies is organized.

(2) The effect of a division on the assets and liabilities of the dividing company shall be governed solely by the laws of this Commonwealth and any other jurisdiction under the laws of which any of the resulting companies is organized.

(3) The validity of any allocation of assets or liabilities by a plan of division of a domestic limited liability company, regardless of whether or not any of the new companies is a foreign limited liability company, shall be governed solely by the laws of this Commonwealth.

(4) In addition to the express provisions of this subsection, this subchapter shall otherwise generally be granted the protection of full faith and credit under the Constitution of the United States.

§ 8971. Dissolution.

(a) General rule.—A limited liability company is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following events:

(1) At the time or upon the happening of events specified in the certificate of organization.

(2) At the time or upon the happening of events specified in writing in the operating agreement.

(3) **[By]** ***Except as otherwise provided in the operating agreement, by*** the unanimous written agreement or consent of all members.

(4) **[Upon]** ***Except as otherwise provided in writing in the operating agreement, upon*** a member becoming a bankrupt or executing an assignment for the benefit of creditors or the death, retirement, ***insanity,*** resignation, expulsion or dissolution of a member or the occurrence of any other event that terminates the continued membership of a member in the company unless the business of the company is continued by the ***vote or*** consent of **[all]** ***a majority in interest, or such greater number as shall be provided in writing in the operating agreement, of*** the remaining members given within **[90]** ***180*** days following such event **[or under a right to do so stated in the operating agreement]**.

(5) Entry of an order of judicial dissolution under section 8972 (relating to judicial dissolution).

[(b) Cross reference.—See section 8103 (relating to continuation of certain limited partnerships and limited liability companies).]

(b) Perpetual existence.—The certificate of organization may provide that the company shall have perpetual existence, in which case subsection (a)(4) shall not be applicable to the company.

§ 8973. Winding up.

* * *

(b) Judicial supervision.—The court may wind up the affairs of the company upon application of any member, his legal representative or assignee and, in connection therewith, may appoint a liquidating trustee. ***See section 139(b) (relating to tax clearance in judicial proceedings).***

§ 8974. Distribution of assets upon dissolution.

(a) General rule.—In settling accounts after dissolution, the liabilities of the limited liability company shall be entitled to payment in the following order:

(1) Those to creditors, including members or managers who are creditors, in the order of priority as provided by law, in satisfaction of the liabilities of the company, whether by payment or the making of reasonable provision for payment thereof, other than liabilities for distributions to members under section 8932 (relating to distributions ***and allocation of profits and losses***) or 8933 (relating to distributions upon an event of dissociation).

(2) Unless otherwise provided in the operating agreement, to members and former members in satisfaction of liabilities for distributions under section 8932 or 8933.

(3) Unless otherwise provided in the operating agreement, to members in respect of:

(i) Their contributions to capital.

(ii) Their share of the profits and other compensation by way of income on their contributions.

* * *

§ 8978. Dissolution by domestication.

Whenever a domestic limited liability company has domesticated itself under the laws of another jurisdiction by action similar to that provided by section 8982 (relating to domestication) and has authorized that action by the vote required by this subchapter for the approval of a proposal that the company dissolve voluntarily, the company may surrender its certificate of organization under the laws of this Commonwealth by filing in the Department of State a certificate of dissolution under section 8975 (relating to certificate of dissolution). In lieu of the statements required by section 8975(a)(2) through (4), the certificate of dissolution shall set forth a statement that the company has domesticated itself under the laws of another jurisdiction. ***If the company, as domesticated in the other jurisdiction, registers to do business in this Commonwealth either prior to or simultaneously with the filing of the certificate of dissolution under this section, the company shall not be required to file with the certificate of dissolution the tax clearance certificates that would otherwise be required by section 139 (relating to tax clearance of certain fundamental transactions).***

§ 8982. Domestication.

* * *

(b) Certificate of domestication.—The certificate of domestication shall be executed by the company and shall set forth in the English language:

(1) The name of the company. If the name is in a foreign language, it shall be set forth in Roman letters or characters or Arabic or Roman numerals. ***If the name is one that is rendered unavailable for use by any provision of section 8905 (relating to name), the company shall adopt, in accordance with any procedures for changing the name of the company that are applicable prior to the domestication of the company, and shall set forth in the certificate of domestication an available name.***

* * *

(c) Effect of domestication.—

(1) As a domestic limited liability company, the domesticated company shall no longer be a foreign limited liability company for the purposes of this chapter and shall **[have]** ***instead be a domestic limited liability company with*** all the powers and privileges and **[be subject to]** all the duties and limitations granted and imposed upon domestic limited liability companies. **[The property, debts, liens, estates, taxes, penalties and public accounts due the Commonwealth shall continue to be vested in and imposed upon the company to the same extent as if it were the successor by merger of the domesticating company with and into a domestic limited liability company under Subchapter G**

(relating to mergers and consolidations).] ***In all other respects, the domesticated limited liability company shall be deemed to be the same limited liability company as it was prior to the domestication without any change in or effect on its existence. Without limiting the generality of the previous sentence, the domestication shall not be deemed to have dissolved the company or to have affected in any way:***

(i) the right and title of the company in and to its assets, property, franchises, estates and choses in action;

(ii) the liability of the company for its debts, obligations, penalties and public accounts due the Commonwealth;

(iii) any liens or other encumbrances on the property or assets of the company; or

(iv) any contract, license or other agreement to which the company is a party or under which it has any rights or obligations.

(2) The **[shares of]** ***membership interests in*** the domesticated company shall be unaffected by the domestication except to the extent, if any, reclassified in the certificate of domestication.

§ 8996. Restrictions.

* * *

(b) Ownership and governance of restricted professional companies.—Except as otherwise provided by a statute, rule or regulation applicable to a particular profession, all of the **[members]** ***ultimate beneficial owners of membership interests in*** and ***all of*** the managers, if any, of a restricted professional company shall be licensed persons.

* * *

(d) Application.—For purposes of applying subsection (a):

* * *

(3) The practice of the restricted professional service of law shall be deemed to include the following activities when conducted incidental to the practice of law:

(i) serving as an attorney-in-fact, guardian, custodian, executor, personal representative, trustee or fiduciary;

(ii) serving as a director or trustee of a corporation for profit or not-for-profit, manager of a limited liability company or a similar position with any other form of association;

(iii) testifying, teaching, lecturing or writing about any topic related to the law;

(iv) serving as a master, receiver, arbitrator or similar official;

(v) providing actuarial, insurance, investment, estate and trust administration, tax return preparation, financial and other similar services and advice; and

(vi) conducting intellectual property and other real and personal property title searches and providing other title insurance agency services.

§ 8998. Annual registration.

* * *

(f) Annual fee to be lien.—

(1) Failure to **[pay the annual registration fee imposed]** ***file the certificate of annual registration required*** by this section shall not affect the existence or status of the restricted professional company as such, but the annual registration fee ***that would have been payable*** shall be a lien ***in the manner provided in this subsection*** from the time the annual registration fee is due and payable **[upon]**. ***If a certificate of annual registration is not filed within 30 days after the date on which it is due, the department shall assess a penalty of $500 against the company, which shall also be a lien in the manner provided in this subsection. The imposition of that penalty shall not be construed to relieve the company from liability for any other penalty or interest provided for under other applicable law.***

(2) If the annual registration fee paid by a restricted professional company is subsequently determined to be less than should have been paid because it was based on an incorrect number of members or was otherwise incorrectly computed, that fact shall not affect the existence or status of the restricted professional company as such, but the amount of the additional annual registration fee that should have been paid shall be a lien in the manner provided in this subsection from the time the incorrect payment is discovered by the department.

(3) The annual registration fee shall bear simple interest from the date that it becomes due and payable until paid. The interest rate shall be that provided for in section 806 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, with respect to unpaid taxes. The penalty provided for in paragraph (1) shall not bear interest. The payment of interest shall not relieve the restricted professional company from liability for any other penalty or interest provided for under other applicable law.

(4) The lien created by this subsection shall attach to all of the property and proceeds thereof of the ***restricted professional*** company in which a security interest can be perfected, in whole or in part, by filing in the department under 13 Pa.C.S. Div. 9 (relating to secured transactions; sales of accounts, contract rights and chattel paper), whether the property and proceeds are owned by the company at the time the annual registration fee ***or any penalty or interest*** becomes due and payable or ***whether the property and proceeds*** are acquired thereafter. Except as otherwise provided by statute, the lien created by this subsection shall have priority over all other liens, security interests or other charges, except liens for taxes or other charges due the Commonwealth. The lien created by this subsection shall be entered on the records of the department and indexed in the same manner as a financing statement filed under 13 Pa.C.S. Div. 9. At the time an annual

registration fee, ***penalty or interest*** that has resulted in the creation of **[the]** ***a*** lien under this subsection is paid, the department shall terminate the lien with respect to that annual registration fee, ***penalty or interest*** without requiring a separate filing by the company for that purpose.

(5) If the annual registration fee paid by a restricted professional company is subsequently determined to be more than should have been paid for any reason, no refund of the additional fee shall be made.

* * *

§ 9502. Creation, ***status and termination*** of business trusts.

(a) Creation.—A business trust may be created in real or personal property, or both, with power in the trustee **[or a majority of the trustees]**:

(1) To receive title to, hold, buy, sell, exchange, transfer and convey real and personal property for the use of the business trust.

(2) To take, receive, invest or disburse the receipts, earnings, rents, profits or returns from the trust estate.

(3) To carry on and conduct any lawful business designated in the deed or other instrument of trust, and generally to do any lawful act in relation to such trust property that any individual owning the same absolutely might do.

(4) To merge with another business trust or other association, to divide or to engage in any other fundamental or other transaction contemplated by the deed or other instrument of trust.

(b) Term.—Except as otherwise provided in the instrument, a business trust shall have perpetual existence.

(c) Separate entity.—A business trust is a separate legal entity. Except as otherwise provided in the instrument, title to real and personal property may be held in the name of the trust, without in any manner diminishing the rights, powers and duties of the trustees as provided in subsection (a).

(d) Termination.—Except as otherwise provided in the instrument:

(1) The business trust may not be terminated, dissolved or revoked by a beneficial owner or other person.

(2) The death, incapacity, dissolution, termination or bankruptcy of a beneficial owner or a trustee shall not result in the termination, dissolution or revocation of the business trust.

(e) Contents of instrument.—The instrument may contain any provision for the regulation of the internal affairs of the business trust included in the instrument by the settlor, the trustee or the beneficiaries in accordance with the applicable procedures for the adoption or amendment of the instrument.

§ 9503. Documentation of trust.

(a) General rule.—A business trust shall not be valid unless created by deed of trust or other written instrument subscribed by one or more individuals, associations or other entities. The trustees of a business trust shall promptly cause the instrument or any amendment thereof, except an amendment solely effecting or reflecting the substitution of or other change

in the trustees, to be filed in the Department of State. **[The failure to effect the filing shall not affect the validity of a business trust. A trustee who violates the requirements of this subsection shall be liable for a civil penalty in the amount of $1,000 payable to the department.]**

* * *

§ 9505. **[Succession of trustees.]** ***Trustees.***

(a) Succession of trustees.—An instrument may provide for the succession of title to **[the]** ***any*** trust property ***not titled in the name of the trust*** to a successor trustee, in case of the death, resignation, removal or incapacity of any trustee. In the case of any such succession, the title to **[the]** ***such*** trust property shall at once vest in the succeeding trustee.

(b) Nature of service.—Service as the trustee of a business trust by an association that is not a banking institution shall not be deemed to constitute acting as a fiduciary for purposes of the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965.

§ 9506. Liability of trustees and beneficiaries.

(a) General rule.—**[Liability to third parties for any act, omission or obligation of a trustee of a business trust when acting in such capacity shall extend to so much of the trust estate as may be necessary to discharge such liability, but personal liability shall not attach to the trustee or the beneficiaries of the trust for any such act, omission or liability.]**

(1) Except as otherwise provided in the instrument, the beneficiaries of a business trust shall be entitled to the same limitation of personal liability as is extended to shareholders in a domestic business corporation.

(2) Except as otherwise provided in the instrument, the trustees of a trust, as such, shall not be personally liable to any person for any act or obligation of the trust or any other trustee.

(3) An obligation of a trust based upon a writing may be limited to a specific fund or other identified pool or group of assets of the trust.

* * *

(f) Permissible beneficiaries.—Except as otherwise provided by a statute, rule or regulation applicable to a particular profession, all of the **[beneficiaries of]** ***ultimate beneficial owners of interests in*** a business trust that renders one or more restricted professional services shall be licensed persons. As used in this subsection, the term "restricted professional services" shall have the meaning specified in section 8903 (relating to definitions ***and index of definitions***).

* * *

(h) Medical professional liability.—A business trust shall be deemed to be a professional corporation for purposes of section 811 of the act of October 15, 1975 (P.L.390, No.111), known as the Health Care Services Malpractice Act.

Section 3. Amendment of Title 54.

As much of Title 54 as is hereinafter set forth is amended or added to read:

§ 302. Definitions.

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Business." Any commercial or professional activity.

"Entity." Any individual or any corporation, association, partnership, joint-stock company, business trust, syndicate, joint adventureship or other combination or group of persons, ***regardless of whether it is organized or formed under the laws of this Commonwealth or any other jurisdiction.***

* * *

"Proper name." **[The]** ***When used with respect to an association of a type listed in the following paragraphs, the term means the*** name set forth in:

(1) the articles of incorporation, for a corporation;

(2) the statement of registration, for a limited liability partnership;

(3) the certificate of limited partnership, for a limited partnership;

(4) the statement of election, for an electing partnership;

(5) the certificate of organization, for a limited liability company;

(6) the articles of association, for a professional association;

(7) the deed of trust or other trust instrument, ***if any, that has been filed in the Department of State*** for a business trust; or

* * *

§ 503. Decennial filings required.

* * *

(b) Exceptions.—Subsection (a) shall not apply to any of the following:

(1) A corporation or other association **[which]** ***that*** during the **[preceding]** ten years ***ending on December 31 of the year in which a filing would otherwise be required under subsection (a)*** has made any filing in the department ***pursuant to a provision of this title or 15 Pa.C.S. (relating to corporations and unincorporated associations)*** other than:

(i) a report required by subsection (a); or

(ii) a filing **[required by]** ***under***:

(A) 15 Pa.C.S. § 1305 (relating to reservation of corporate name);

(B) 15 Pa.C.S. § 5305 (relating to reservation of corporate name);

(C) 15 Pa.C.S. § 8203(b) (relating to name);

(D) 15 Pa.C.S. § 8505(b) (relating to name); or

(E) 15 Pa.C.S. § 8905(b) (relating to name).

(2) A corporation whose name is registered pursuant to section 501(a)(4) (relating to register established).

(3) A corporation [**which**] ***that*** has had officer information forwarded to the department by the Department of Revenue during the preceding ten years under 15 Pa.C.S. § 1110 (relating to annual report information).

[**(b.1) Exemption.—An entity which made a filing after December 31, 1989, and before January 1, 1991, pursuant to a provision of this title or 15 Pa.C.S. (relating to corporations and unincorporated associations) shall be exempt from the 2001 decennial filing. For purposes of this subsection, none of the following shall be considered a filing:**

(1) A filing under:

(i) 15 Pa.C.S. § 1305;

(ii) 15 Pa.C.S. § 5305;

(iii) 15 Pa.C.S. § 8203(b);

(iv) 15 Pa.C.S. § 8505(b); or

(v) 15 Pa.C.S. § 8905(b).

(2) A name registration under section 501(a)(4).

(3) Forwarding of information to the department by the Department of Revenue under 15 Pa.C.S. § 1110.]

(c) Exemptions.—An association shall be exempt from the 2001 decennial filing if the association made a filing:

(1) After December 31, 1989, and before January 1, 1992, pursuant to a provision of this title or 15 Pa.C.S. other than a filing under:

(i) 15 Pa.C.S. § 1305;

(ii) 15 Pa.C.S. § 5305;

(iii) 15 Pa.C.S. § 8203(b);

(iv) 15 Pa.C.S. § 8505(b); or

(v) 15 Pa.C.S. § 8905(b).

(2) Under this section during the year 2000.

[**(c) Cross reference**] ***(d) Cross references.***—See 15 Pa.C.S. §§ 134 (relating to docketing statement) ***and 135 (relating to requirements to be met by filed documents).***

§ 1314. Decennial filings required.

* * *

(b) Requirement satisfied by other filings.—Subsection (a) shall not apply to a registrant which during the [**preceding**] ten years ***ending on December 31 of the year in which a filing would otherwise be required under subsection (a)*** has made any filing with the department under this chapter other than a report required by subsection (a).

* * *

§ 1515. Decennial filings required.

* * *

(b) Requirement satisfied by other filings.—Subsection (a) shall not apply to a registrant which during the [**preceding**] ten years ***ending on December 31 of the year in which a filing would otherwise be required***

under subsection (a) has made any filing with the department under this chapter other than a report required by subsection (a).

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Section 3.1. Fee schedule.

The Department of State is authorized to prescribe a fee schedule to implement 13 Pa.C.S. § 9525. The following apply to the fee schedule:

(1) The fee schedule shall be published in the Pennsylvania Bulletin.

(2) The fee schedule is not a regulation and is not subject to:

(i) section 612 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929;

(ii) the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law;

(iii) section 204(b) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act; or

(iv) the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

(3) The fee schedule shall expire on the earlier of:

(i) September 30, 2001; or

(ii) the effective date of regulations promulgated under 13 Pa.C.S. § 9525(d).

Section 4. Repeals.

The following acts and parts of acts are repealed to the extent specified:

(1) As much as reads ", and act as the attorney-in-fact and authorized agent of such corporations for the service of process thereon" in section 806 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, absolutely.

(2) Section 404(b) of the act of December 19, 1990 (P.L.834, No.198), known as the GAA Amendments Act of 1990, insofar as it applies to 15 Pa.C.S. §§ 1745 and 5745.

(3) Section 30(2) of the act of June 8, 2001 (P.L.123, No.18), known as the Uniform Commercial Code Modernization Act of 2001, absolutely.

(4) 15 Pa.C.S. §§ 5543.1, 5546.1, 5764.1, 8103 and 8206, absolutely.

Section 5. Effective date.

This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

(i) Section 3.1 of this act.

(ii) Section 4(3) of this act.

(iii) This section.

(2) The remainder of this act shall take effect in 60 days.

APPROVED—The 22nd day of June, A.D. 2001.

THOMAS J. RIDGE