## **Index**

AMENDMENT TO ARTICLES OF ORGANIZATION—Cont'd

**ACQUISITIONS** 

Generally, 23:1 et seq.

#### Other domestication, 7:10 Appraisal. See Appraisal Procedure, 7:4 Assets. See Asset Sales Required votes, 7:2 Corporate review, 23:9 Restated articles of organization, 7:5 Due diligence memorandum, 23:10 Shareholders **Forms** consent to amendment, 7:7 generally, 23:8 director's resolution submitting confidentiality agreement, 23:11 amendments to, 7:6 due diligence, 23:10 Letter of intent, 23:7, 23:8 ANNUAL REPORTS Mergers and consolidations. See Foreign corporations, 9:4, 9:8 MERGERS AND CONSOLIDATIONS ANNUAL STOCKHOLDERS' Non-tax considerations influencing **MEETINGS** form of transaction, 23:2 Generally, 19:2 Other considerations influencing form of transaction, 23:6 APPARENT AUTHORITY Procedure, 23:7 Officers, 18:3 Purchase and sale agreement, 23:7 APPOINTMENT Stock sales. See Stock Sales Receivers, 8:6, 8:17 ADMINISTRATIVE DISSOLUTION Generally, 8:12 APPRAISAL Generally, 27:1 et seq. **AGREEMENTS** After-acquired shares, 27:6 See Contracts and Agreements Dissatisfied shareholder's procedures, 27:8 **AMENDMENT** Exclusivity, 27:12 Articles of organization. See AMEND-Initiation of appraisal procedures, MENT TO ARTICLES OF ORGANIZA-By-laws, 15:2, 15:3 Judicial appraisal, 27:10 Notice, 27:2, 27:4, 27:7 AMENDMENT TO ARTICLES OF Payment, 27:6 **ORGANIZATION** Perfection of rights, 27:5 Generally, 7:1 et seq. Procedure, 27:2 Appraisal. See Appraisal. Stockholder objection and vote, 27:3 Articles of amendment, 7:4 Termination of right to obtain pay-Director's resolutions adopting and ment, 27:9 approving amendment, 7:6 Valuation methods, 27:11 Domestication, 7:8 Withdrawal rights, 27:5 Entity conversion, 7:9 APPROVAL Forms, 7:4 to 7:6 Other conversions, 7:10 See Consent or Approval

#### ARTICLES OF AMENDMENT

Articles of organization, 7:4

## ARTICLES OF ORGANIZATION

See Organization

#### ASSET SALES

Generally, 25:1 et seq.

Forms, 25:6, 25:7

Non-tax advantages and disadvantages, 23:4

Ordinary course of business, sales in, 25:2, 25:3

Product line successor liability, 25:5

Sale agreement, 25:6

Section 12.01—sales, etc. in the ordinary course of business, 25:2

Section 12.02—sales, etc. in the ordinary course of business, 25:3

Successor liability, 25:5

Tax clearance, 25:4, 25:7

Waiver of tax clearance, request for, 25:7

## ATTRIBUTION

Corporate acts, shareholders, stockholders, 28:3

## **AUTHORITY OF CORPORATIONS**

Generally, 13:1 et seq.

Buying and selling. See Buy and Sell Agreements

By-laws. See ByLaws

Directors. See Directors

Inspections. See Inspection Right

Officers. See Officers

Powers, purposes and authority, 13:1

Records and reports. See Records and Reports

Stockholders. See Shareholders Ultra vires. See Ultra Vires Acts

Voting. See Voting Trusts

## AUTHORIZED STOCK

Generally, 11:1

## **BAD FAITH**

Directors, 17:9

#### BUSINESS CORPORATION LAW

M.G.L.A. Chapter 156B, App D M.G.L.A. Chapter 156D, App A

## **BUSINESS TRUSTS**

Voluntary associations, 2:6

## BUY AND SELL AGREEMENTS

Generally, 22:1, 22:2

Form, 22:2

Initial meeting of directors, 4:5

#### **BY-LAWS**

Generally, 15:1 et seq.

Amendment, 15:2, 15:3

Articles of organization provision, 15:3

Enactment, 15:2

Forms, 15:3, 15:4

Indemnification and exculpation, 31:9

Repeal, 15:3

## **CALL**

Stockholders' meetings, 19:16, 20:1, 20:2

#### CERTIFICATE OF STOCK

Adoption at initial meeting of directors, 4:3

#### **CERTIFICATES**

Initial meeting of directors, adoption of stock certificate, 4:3

Stock, adoption at initial meeting of directors, 4:3

## **CHAPTER 156D**

Introduction, generally, 1:2

## CLASSIFIED BOARDS OF DIRECTORS

Generally, 17:3

#### **CLERK**

Powers and duties of, 18:4

## CODE OF MASSACHUSETTS REGULATIONS

Business Corporation Act, text, App
B

## COMMON STOCK

Generally, 11:11, 11:12

Index-2

## CONFIDENTIALITY AGREEMENT

Generally, 23:11

#### CONSENT OR APPROVAL

Articles of organization, 3:5
Directors, telephonic meetings, 17:7
Initial meeting of directors, 5:3
Organization, consent of incorporators, 3:2, 5:1
Shareholders consent to amendment of articles of organization, 7:7
Stockholders' meetings, 19:15, 20:5

## **CONSOLIDATIONS**

See Mergers and Consolidations

#### CONTRACTS AND AGREEMENTS

Association, agreement of, 3:3
Buying and selling. See Buy and Sell Agreements
Promoters, status and enforceability of contracts of, 10:3
Voting. See Voting Agreements

## **CONVERTIBLE STOCK**

Generally, 11:12

## CORPORATIONS

Generally, 2:7 Types of organization, 2:7

## **CORRECTION**

Certificate of correction, 3:7

#### **CREDITOR**

Assets to unknown or incompetent, 8:18

### **CUMULATION OF VOTES**

Stockholders' meetings, 19:9, 19:10

## DE FACTO CORPORATIONS

Generally, 6:4

## **DEBT AND EQUITY SECURITIES**

Generally, 11:1

#### **DEFECTIVE ORGANIZATION**

Generally, 6:1 et seq.
Conditions precedent to corporate existence, 6:2
De facto corporation, 6:4
Direct and collateral attack, 6:3

### **DEFECTIVE ORGANIZATION**

—Cont'd

Directory and mandatory provisions, 6:2

Effect of fatal defects, 6:6 Estoppel, 6:5

#### **DERIVATIVE PROCEEDINGS**

Generally, 32:1 to 32:3 Direct, derivative or, 32:2 Procedure, 32:3

#### **DIRECTORS**

Generally, 17:1 et seq. Amendments to articles of organization, 7:6

Articles of organization provision, 17:3

Classified boards, 17:4

Composition of board, 17:2

Consents and telephonic meetings, 17:7

Dissolution, absolution of directors, 8:16

Executive and other committees, 17:8 Form, 17:3

Good faith and prudence, duties of, 17:9

Informal director authorization, 17:6 Initial meetings. See Initial Meeting of Directors

Loyalty, duty of, 17:10

Meetings

initial meetings. See Initial Meeting of Directors

notice and quorum, 17:5

Number of directors, 17:3

Powers, 17:1

Ratification, 17:6

Removal, 17:11

Staggered boards, 17:4

## DISCLOSURE

Financial statements and shareholders, 16:13

## DISSOLUTION

Generally, 8:1 et seq. Administrative, 8:12 Appointment of receiver, 8:6, 8:17

#### DISSOLUTION—Cont'd

Assets to unknown or incompetent creditor, claimant or shareholder, 8:18

Claimant, assets to unknown or incompetent, 8:18

Creditor, assets to unknown or incompetent, 8:18

Director

generally, 8:16

resolution authorizing voluntary dissolution, 8:9

submitting voluntary dissolution to shareholders, 8:9

Effect of, 8:5, 8:15

Grounds for, 8:3

Judicial, 8:1

Petition, 8:6

Power, 8:1

Procedure, 8:4

Receivership, 8:17

Reinstatement, 8:13, 8:14

Shareholder, assets to unknown or incompetent, 8:18

Shareholder consent to voluntary dissolution, 8:11

Voluntary, 8:7 to 8:11

## **DISTRIBUTIONS**

Generally, 12:1 et seq. Improper, liability for, 12:4 Permitted, 12:3 Share dividends, 12:5

## **DIVIDENDS**

Generally, 11:4 Propriety, 12:2 Share, 12:5

## **DOING BUSINESS**

Foreign corporations, 9:2

#### **DOMESTICATION**

Amendment to articles of organization, 7:8

Other conversions, 7:10

## DUE DILIGENCE MEMORANDUM

Acquisitions, 23:10

#### **ELECTION**

Officers, 18:2

#### ENTITY CONVERSION

Amendment to articles of organization, 7:9

## **ESTOPPEL**

Defective organization, 6:5

## **EXCLUSIVITY**

Appraisal, 27:12

## **EXCULPATION**

See Contribution, Indemnification and Exculpation

## EXECUTIVE AND OTHER COMMITTEES

Directors, 17:8

#### **EXPRESS AUTHORITY**

Officers, 18:3

#### **FALSE STATEMENTS**

Records or reports, 21:5

#### **FEES**

Fee schedules, website, App. E Filing fees, 21:7

## FIDUCIARY DUTIES

Promoters, 10:2 Stockholders, 30:1 et seq.

## **FILING**

Articles of organization, 3:5 Records and reports, 21:7

## FINANCE

Generally, 10:1 et seq. Dividends. See Dividends Promoters. See Promoters Stock. See Stock

# FINANCIAL STATEMENT DISCLOSURE

Stockholders, 16:13

## **FINES**

Foreign corporations, failure to file certificate, 9:8

## FOREIGN CORPORATIONS

Generally, 9:1 et seq.

## FOREIGN CORPORATIONS

## —Cont'd

Actions against foreign corporations, 9:8

Amended certificate, 9:3

Annual report, 9:4, 9:8

Defined, 9:1

Doing business, 9:2

Fine for failure to file certificate, 9:8

Instructions for certificate, 9:3

Registration, 9:3

Resident agent, 9:5

Revocation of authority, 9:7

Tax clearance for withdrawal

purposes, 9:6

Withdrawal, 9:6

## **FORMS**

Generally, App C

Acquisitions. See Acquisitions

Amendment to articles of organization, 7:4 to 7:6

Asset sales, 25:6, 25:7

Buy and sell agreements, 22:2

By-laws, 15:3, 15:4

Contribution, indemnification and exculpation, 31:9, 31:11

Directors, 17:3

Limited partnerships, 2:7

Mergers and consolidations, 26:6, 26:7

Organization, 5:1 et seq.

Records and reports, 21:6

Shareholder action, written, 19:12

Shareholders' meetings, 19:10, 20:1 et seq.

Stock, 11:7, 11:10 to 11:14

Stock, 11.7, 11.10 to 11.12 Stock sales, 24:4, 24:5

# FRACTIONAL SHARES AND SCRIP

Generally, 11:8

#### **GENERAL MANAGER**

Powers and duties, 18:4

## GENERAL PARTNERSHIP

Generally, 2:2

## GOOD FAITH

Directors, 17:9

#### IMPLIED AUTHORITY

Officers, 18:3

## **INCORPORATORS**

Generally, 3:2, 5:1

# INDEMNIFICATION AND EXCULPATION

Generally, 31:1 et seq.

Advances for expenses, 31:6

By-law provisions, 31:9

Court ordered indemnification, 31:5

Determination and authorization, 31:4

Forms, 31:9, 31:11

Insurance, mandatory indemnifica-

tion, 31:8

Mandatory indemnification, 31:2

Officers, mandatory indemnification of, 31:7

Permissive indemnification, 31:3

Stock sales, 24:4

Variation by corporate action, mandatory indemnification, 31:8

# INITIAL MEETING OF DIRECTORS

Generally, 4:1 et seq.

Certificate of stock, adoption of, 4:3

Consent of directors, 5:3

Election of certain officers, 4:6

Issuance of stock, 4:4

Seal, adoption of, 4:2

Stockholder voting and/or buy/sell agreements, adoption of, 4:5

Subchapter S election, 4:6

## INSPECTION RIGHT

Generally, 16:8

Common law inspection right, 16:10

Court-ordered inspection, 16:12

Response to request for inspection, 16:15

Scope of inspection, 16:11

Shareholder request for inspection,

Statutory inspection right, 16:9

## INSTALLMENT STOCK

Generally, 11:3

#### **INSTRUCTIONS**

Foreign corporations, certificate, 9:3

## INTRODUCTORY INFORMATION

Generally, 1:1 et seq.

## ISSUANCE OF STOCK

Generally, 4:4, 11:3

## JUDICIAL DISSOLUTION

Generally, 8:1, 8:2

## LETTER OF INTENT

Acquisitions, 23:7, 23:8

## LIMITED LIABILITY COMPANIES

Generally, 2:5

Types of organization, 2:5

# LIMITED LIABILITY PARTNERSHIPS

Generally, 2:3

Registered, 2:3

## LIMITED PARTNERSHIP

Generally, 2:4

#### **LOCATION**

Stockholders' meetings, 19:17

#### LOYALTY

Directors, 17:10

#### **MEETINGS**

Directors. See Directors
Stockholders. See Shareholders'
Meetings

# MERGERS AND CONSOLIDATIONS

Generally, 26:1 et seq.

Agreement of merger or consolidation of domestic corporations, form, 26:6

Appraisal. See Appraisal

Defined, 26:2 et seq.

Domestic corporations, merger or consolidation of, 26:2

Effect of merger or consolidation, 26:6

Forms, 26:6, 26:7

Non-tax advantages and disadvantages, 23:5

#### MERGERS AND

## CONSOLIDATIONS—Cont'd

Parent and subsidiary, merger of, 26:5

Procedure, 26:4

Share exchange, 26:3

## M.G.L.A. CHAPTER 156B

Certain Business Corporations, text, App D

## M.G.L.A. CHAPTER 156D

Business Corporations, text, App A

#### **MINUTES**

Routine special stockholders' meeting, 20:4

#### **NAMES**

Corporations, 3:8

## **NOMENCLATURE**

Generally, 1:4

#### **NOTICE**

Generally, 21:8

Appraisal, 27:2, 27:4

Directors, meetings, 17:5

Stockholders' meetings, 19:16, 20:1, 20:2

## **NUMBER**

Officers, 18:1

## **OFFICERS**

Generally, 18:1 et seq.

Boston Athletic Ass'n v. International Marathons, Inc., 18:5

Directors. See Directors

Election, tenure and removal, 18:2

Express, implied, apparent and ostensible authority, 18:3

Number, qualifications and offices,

Powers, duties and authority, 18:3

Specific offices, powers and duties of,

## **ORGANIZATION**

Generally, 3:1 et seq.

Agreement of association, 3:3

#### ORGANIZATION—Cont'd PREFERRED STOCK—Cont'd Amendments to articles of organiza-Redeemable, 11:11 tion. See Amendment to Articles **PRESIDENT** OF ORGANIZATION Powers and duties, 18:4 Approval and filing of articles of organization, 3:5 PRODUCT LINE SUCCESSOR Articles of incorporation, 5:2 LIABILITY Articles of organization Asset sales, 25:5 generally, 3:4, 3:5 **PROMOTERS** amendments. See AMENDMENT TO Generally, 10:1 et seq. ARTICLES OF ORGANIZATION Contracts, status and enforceability by-laws, 15:3 of, 10:3 directors, 17:3 Corporation, enforceability of stock provisions, 11:7, 11:10 contracts by or against, 10:4 stockholders' meetings, 19:10 Defined, 10:1 Consent of incorporators, 3:2, 5:1 Fiduciary duties, 10:2 Correction, certificate of, 3:7 Liability of promoters on contracts Defects. See Defective Organization made prior to corporate exis-Dissolution. See Dissolution tence, 10:5 Forms, 5:1 et seq. Pre incorporation subscriptions, 10:6 Incorporators, 3:2, 5:1 PROPOSED LEGISLATION Initial meetings. See Initial Meeting Business organizations, 1:3 of Directors Name of corporation, 3:8 PROPRIETORSHIPS Resident. See Resident Agents Generally, 2:1 S corporations. See S Corporations Subscription agreements, 5:4 **PROXIES** Generally, 19:8, 20:3 **OSTENSIBLE AUTHORITY PRUDENCE** Officers, 18:3 Directors, 17:9 PARENT AND SUBSIDIARY PURCHASE AND SALE **CORPORATIONS** AGREEMENT Merger, 26:5 Generally, 23:7 **PARTNERSHIP** PURCHASE PRICE Generally, 2:2 to 2:7 **ADJUSTMENTS** PIERCING CORPORATE VEIL Stock sales, 24:5 Generally, 29:1 et seq. QUALIFICATIONS **PLACE** Officers, 18:1 Stockholders' meetings, 19:17 QUESTIONNAIRE PREEMPTIVE RIGHTS Organization of, 3:1 Securities, 11:6, 11:7 **QUORUM PREFERENCES** Directors, 17:5 Securities, 11:4 Stockholders' meetings, 19:7, 19:11 PREFERRED STOCK RATIFICATION Generally, 11:1 Board of directors, 17:6

#### RECEIVERSHIP

Generally, 8:17

## **RECORD DATE**

Stockholders' meetings, 19:4

## RECORDS AND REPORTS

Generally, 21:1 et seq.

Annual reports

foreign corporations, 9:4, 9:8

Appeal from Secretarys refusal to file, 21:3

False statements, 21:5

Filing, 21:1 to 21:8

Filing fees, 21:7

Form and content of filings, 21:2

Forms, 21:6

Resident agents. See Resident Agents

Types of records and reports, 21:4

## REDEEMABLE PREFERRED STOCK

Generally, 11:11

#### REGISTRATION

Foreign corporations, 9:3

#### REINSTATEMENT

Generally, 8:13, 8:14

## **REMEDIES**

Stock sales, 24:4

## REMOTE COMMUNICATION

Board of directors' meetings, 17:7 Stockholders' meetings, 19:17

#### REMOVAL

Directors, 17:11

Officers, 18:2

## REPEAL

By-laws, 15:3

### REPORTS

See RECORDS AND REPORTS

## **RESERVATION OF NAME**

Generally, 3:8

## RESIDENT AGENTS

Generally, 3:6

Foreign corporations, 9:5

Name of corporation, 3:8

## Index-8

## RESIDENT AGENTS—Cont'd

Principal, 3:6

#### RESIDENT OFFICE

Generally, 3:6

# RESTATED ARTICLES OF ORGANIZATION

Generally, 7:5

#### REVOCATION

Foreign corporations, authority, 9:7

## **S CORPORATIONS**

Initial meeting of directors, Subchapter S election, 4:6

#### SALE OF ASSETS

Appraisal. See Appraisal

#### **SEAL**

Adoption at initial meeting of directors, 4:2

#### **SECURITIES**

Stock. See Stock

## SEPARATE EXISTENCE

Generally, 28:1 et seq., 29:1 et seq.

Attribution of corporate or

stockholder acts to other, 28:3

Corporation as separate person, 28:2 My Bread case, 29:2 to 29:4

Piercing corporate veil, 29:1 et seq.

## **SHAREHOLDERS**

Generally, 16:1 et seq., 30:1 et seq.

Appraisal, objection and vote, 27:3

Assets to unknown or incompetent,

8:18

Brodie v. Jordan and "the minority's reasonable expectations," 30:4

Case law, 30:1 et seq.

Corporate acts, attribution, 28:3

Donahue, 30:1

Fiduciary duties, 30:1 et seq.

Financial Statement Disclosure, 16:13

Inspections. See Inspection Right

Limitations on and expansion of

powers, 16:1

List, stockholders' meetings, 19:5

SIMPLE NOTE

Generally, 11:14

#### SHAREHOLDERS—Cont'd SIMPLE STOCK PROVISION Meetings. See Shareholders' Meet-Generally, 11:10 INGS SPECIAL SHAREHOLDERS' Merola, 30:3 **MEETINGS** "Minority's reasonable expecta-Generally, 19:3, 20:4 tions," Brodie v. Jordan and, 30:4 STAGGERED BOARDS OF Voting. See Voting Trusts **DIRECTORS** Voting agreements, 16:6, 16:7 Generally, 17:4 Wilkes v. Springside Nursing Homes, STANDARDS OF CONDUCT Inc., 30:2 Generally, 18:6 SHAREHOLDERS' MEETINGS **STOCK** Generally, 19:1 et seq., 20:1 et seq. Generally, 11:1 et seq. Alternative quorum requirements, Articles of organization provisions, 19:11 11:7, 11:10 Annual meetings, 19:2 Authorized stock, 11:1 Articles of organization provision, Buying and selling. See Buy and Sell 19:10 AGREEMENTS Call, notice and waiver, 19:16, 20:1, Classes and series, 11:12 20:2 Common and preferred shares, 11:13 Consent, 19:15, 20:5 Common stock, 11:11 Cumulation of votes, 19:10 Debt and equity securities, 11:1 Cumulative voting, 19:9 Dividends. See DIVIDENDS Entitlement to vote, 19:6 Forms, 11:7, 11:10 to 11:14 Form of written shareholder action, Fractional shares and scrip, 11:8 19:12 Installment stock, 11:3 Forms, 19:10, 20:1 et seq. Issuance of stock, 4:4, 11:3 Greater voting requirements, 19:11 Multiple series, 11:13 Minutes of routine special meeting, Options, 11:5 20:4 Preemptive rights, 11:6, 11:7 Place of meetings, 19:17 Preferred stock, 11:1, 11:11 Proxies, 19:8, 20:3 Redeemable preferred stock, 11:11 Quorum, 19:7, 19:11 Sales. See STOCK SALES Record date, 19:4 Simple note, 11:14 Remote communication, meetings by, Simple stock provision, 11:10 19:17 Transfers, 11:9 Shareholder list, 19:5 Types of stock, classes, and series, Special meetings, 19:3, 20:4 11:2 Telephonic meetings, 19:17 Voting, preferences and other rights Votes, cumulation by holders of comand privileges, 11:4 mon stock, 19:10 STOCK SALES Voting, generally, 19:6, 19:14 Generally, 24:1 et seq. Voting—cumulative voting, 19:9 Forms, 24:4, 24:5 Waiver of notice, 20:2

Indemnity and remedies, 24:4

tages, 23:3

Non-tax advantages and disadvan-

#### STOCK SALES—Cont'd

Purchase price adjustments, 24:5 Stock sale agreement, 24:2

## SUBSCRIPTION AGREEMENTS

Generally, 5:4

## SUCCESSOR LIABILITY

Asset sales, 25:5

## TAX CLEARANCE

Asset sales, 25:4, 25:7

## **TAXATION**

Generally, 25:4, 25:7 Foreign corporations, 9:6

## TELEPHONIC MEETINGS

Directors, 17:7 Stockholders' meetings, 19:17

#### **TENURE**

Officers, 18:2

## **TERMINOLOGY**

Generally, 1:4

## **TRANSFERS**

Securities, 11:9

## **TREASURER**

Powers and duties, 18:4

## TRUSTS

Businesses. See Business Trusts Voting. See Voting Trusts

## TYPES OF ORGANIZATION

Generally, 2:1 et seq.
Corporations, 2:7
Limited liability companies, 2:5
Limited liability partnerships,
registered, 2:3
Limited partnership, 2:4
Partnership, 2:2
Proprietorships, 2:1

## **ULTRA VIRES ACTS**

Generally, 14:1 et seq.

#### ULTRA VIRES ACTS—Cont'd

Enforcement of remedy, 14:1 Equitable estoppel, 14:1 Exceptions, 14:1 Full performance exception, 14:1 Guarantees, 14:2

#### VALUATION METHODS

Appraisal, 27:11

#### **VALUE**

Appraisal. See Appraisal.

#### VICE PRESIDENT

Powers and duties, 18:4

## **VOLUNTARY ASSOCIATIONS**

Generally business trusts, 2:6

## VOLUNTARY DISSOLUTION

Generally, 8:7 to 8:11

#### **VOTING**

Agreements. See Voting Agreements Securities, 11:4 Stockholders. See Shareholders' Meetings Trusts. See Voting Trusts

## VOTING AGREEMENTS

Initial meeting of directors, 4:5 Stockholders, 16:6, 16:7

## VOTING ENTITLEMENT

Stockholders' meetings, 19:6

## **VOTING TRUSTS**

Generally, 16:2 to 16:5 Enforceability, 16:3 Fogelin v. Nordblom, 16:5 Operation, 16:4

### WAIVER

Asset sales, tax clearance, 25:7 Stockholders' meetings, 19:16, 20:1, 20:2

## WITHDRAWAL

Foreign corporations, 9:6