

(S. B. 124)

(No. 164)

(Approved December 16, 2009)

AN ACT

To establish the “General Corporations Act”; to repeal Act No. 144 of August 10, 1995; and for other purposes.

STATEMENT OF MOTIVES

Puerto Rico is facing a historical moment of great challenges. The effectiveness of the Island *vis á vis* other jurisdictions has been undermined by the advances that these have had in their offerings to the entrepreneurial sector. The corporate laws are one of the instruments that the Government has to promote economic development. Delaware has always stood out for being the leading edge in the corporations field. Therefore the aforementioned legislation, Act No. 144 of August 10, 1995, as amended, mirrored the law of Delaware effective at that time. Ever since, such Act has undergone countless amendments so as to temper it with the commercial developments, including advances in terms of technology, information, and communications. Taking the General Corporation Law of Delaware as a model, this Act conforms and tempers our statute with the new corporate realities.

In turn, this new statute seeks to expedite corporate transactions and simplifying the processes proposed therein. Furthermore, it promotes the use of technology by corporations, and also places Puerto Rico at the cutting edge of corporate laws. With the adoption of this legislation, our jurisdiction shall broaden its capacity and take a step further toward the right direction to attain the greatest economic potential.

In carrying on the purpose of Act No. 144 of 1995, this Act has been adjusted so as to continue providing corporations flexibility in their operations, in the activities in which these may engage, as well as in transacting business.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.00.—It is hereby adopted the General Corporations Act for the Commonwealth of Puerto Rico under the following terms:

CHAPTER I
CORPORATE ORGANIZATION

Section 1.01.—Purposes; Incorporators.—

A. This Act shall be known as the “General Corporations Act.”

B. Corporations may be organized under this Act to transact or promote any lawful business or purpose, except those prohibited by the Constitution and laws of the Commonwealth of Puerto Rico.

C. Any natural person with legal capacity or any juridical person, singly or jointly with others, may incorporate or organize a corporation by filing a certificate of incorporation with the Department of State that shall be executed, acknowledged, filed, and recorded in accordance with Section 1.03 of this Act, and subject to inspection by the public.

Section 1.02.—Certificate of Incorporation.—

A. The certificate of incorporation shall set forth:

1. The name of the corporation, which shall contain one of the following terms: “Corporation,” “Corp.,” “CRL,” “SRL,” “Incorporated” or “Inc.,” or words or abbreviations of like import in other languages, provided they are written in Roman letters or characters such as, for example, “GmbH”.

Whenever words or abbreviations of like import in other languages are used, one of the following terms shall be included at the end of the corporate name for the sole purpose of identification and without implying a change in the corporate name: “Corporation,” “Corp.,” “Incorporated,” or “Inc.”

The name shall be of such nature that it may be distinguished in the records of the Department of State from the names of other corporations, limited liability companies, and limited liability partnerships organized, reserved or registered as domestic or foreign corporations in accordance with the laws of the Commonwealth of Puerto Rico. The exclusive right to use a corporate name may be reserved by any person who proposes to establish a corporation in accordance with this Act, any domestic corporation which proposes to change its name, any foreign corporation which proposes to request a certificate authorizing it to transact business in the Commonwealth of Puerto Rico, any foreign corporation which is authorized to transact business in the Commonwealth of Puerto Rico and which proposes to change its name; or any person who proposes to organize a foreign corporation and such corporation requests a certificate of authorization to transact business in the Commonwealth of Puerto Rico.

The reservation of a corporate name shall be made through the filing of an application with the office of the Department of State. Such application shall contain the name and address of the applicant, as well as the corporate name to be reserved. If the Department of State determines that the name requested is available for corporate use, such name shall be reserved for the exclusive use of the applicant, for a period of one hundred and twenty (120) days.

The right to the exclusive use of a corporate name so reserved may be transferred to any other person or juridical person through the filing of a notice of such transfer signed by the person who reserved the name, and specifying the name and address of the transferee, with the office of the Department of State.

2. The mailing and physical address (including street, number, and municipality) of the registered office of the corporation in the Commonwealth and the name of the registered agent at such office.

3. The nature of the businesses or purposes of the corporation and whether the corporation shall be established as for profit or non-profit. With respect to the nature of the businesses or purposes, it shall suffice to state, alone or with other businesses and purposes, that the objective or purpose of the corporation is to engage in any lawful acts or businesses for which corporations may be established pursuant to this Act; through such statement, all lawful acts and businesses shall be included within the purposes of the corporation, except for specific limitations, if any.

4. If the corporation is to be authorized to issue only one class of capital stock, the total number of shares which the corporation may issue and the par value of each share, or a statement noting that all of the shares are to be without par value. If the corporation is to be authorized to issue more than one class of stock, the certificate of incorporation must include:

- (a) The total shares of all classes;
- (b) The number of shares of each class that the corporation may issue;
- (c) The number of shares of each class that shall have no par value; and
- (d) Should any of the shares have par value:
 - (i) The number of shares of each class that shall have par value; and
 - (ii) The par value of the shares of each class.

The certificate of incorporation shall also include a statement of every designation, power, preference and right, with the conditions, limitations and restrictions thereof, which are intended to be established in the certificate of incorporation and that are permitted by the provisions of Section 5.01 of this Act with respect of any class or classes of stock of the corporation; or the certificate

may include an express grant of authorities to the board of directors to establish, by resolution or resolutions, any of the aforementioned matters which shall not be set forth in the certificate of incorporation. The foregoing provisions of this clause shall not apply to corporations which shall not have the authority to issue capital stock. In the case of such corporations, the fact that they shall not have the power to issue capital stock shall be stated in the certificate of incorporation. The required conditions of the members of such corporations shall likewise be stated in the certificate of incorporation, or it shall be provided therein that such conditions shall be stated in the bylaws of the corporation.

5. The name of each incorporator and his/her mailing and physical address, including street, number, and municipality.

6. If the powers of the incorporator or incorporators are to terminate upon the filing of the certificate of incorporation, the names and addresses (including street, number, and municipality) of the persons who are to serve as directors until the first annual meeting of stockholders, or until their successors replace them.

B. In addition to the requirements of subsection (A) of this Section, the certificate of incorporation may contain any of the following provisions:

1. Provisions requiring for any corporate action, the vote of a larger portion of the stock or of any class or series of such stock or of any other securities having voting power, or a larger proportion of directors than that required by this Act.

2. Any provision for the management of the business or for the conduct of the affairs of the corporation, or to create, define, limit or regulate the powers of the corporation, of the directing, supervising or consulting bodies, or of its directors, supervisors, consultants, stockholders or partners and any provision authorizing the directors to execute management contracts for the affairs of the corporation, whose terms shall not exceed three (3) years, if such provisions do not

violate the laws of the Commonwealth. Any provision whose inclusion is required or permitted in the bylaws of the corporation may be included in the certificate of incorporation.

3. Provisions to grant to the holders of the capital stock of the corporation, or the holders of any class of stock, or series of class of stock, the preemptive right to subscribe to all or each of the additional issues of all or each one of the classes of stock of the corporation, or any of the securities of the corporation convertible into such class of stock. No stockholder shall have a preemptive subscription right regarding the issue of additional capital stock or securities convertible into such stock unless, and only to the extent that, the certificate of incorporation expressly grants such right.

4. A provision limiting the duration of the existence of the corporation to a specific date. If no such provision is included, the corporation shall have perpetual existence.

5. Provisions to impose personal liability for the debts of the corporation on the stockholders or members up to a specified extent and under specific circumstances. If the certificate of incorporation does not contain any provision to such effect, the stockholders or members shall not be personally liable for the debts of the corporation, except by reason of their own acts.

6. A provision to eliminate or limit the personal liability of the directors or stockholders of a corporation in cases of monetary claims for damages resulting from the breach of the fiduciary duties as director, provided that such provision does not eliminate or limit the liability of the director for:

(a) Any breach of the duty of loyalty of the director to the corporation or its stockholders;

(b) For acts or omissions not in good faith, or which involve intentional misconduct or knowing violations of law;

(c) Under Section 5.22 of this Act; or

(d) For any transaction whereby the director derives an improper personal benefit.

The inclusion of this provision shall not eliminate nor limit the liability of the directors for any act or omission occurring prior to the effective date of the provision. The reference made in this subsection with respect to a director shall be deemed to also include the members of the governing body of a corporation not authorized to issue capital stock and such other person or persons, if any, who, in accordance with a provision contained in a certificate of incorporation, as authorized in Section 4.01 (A) of this Act, exercises or performs any power or duty which would otherwise fall to the Board of Directors.

C. Except for the provisions in Sections 1.02 A(1), 1.02 A(2), 1.02 A(5), 1.02 A(6), 1.02 B(4), and 1.02 B(7) of this Act, and the provisions of Section 1.02 A(4) requiring information of the classes of capital stock, the total number of shares that the corporation may issue and the par value of each share, any provisions required in the certificate of incorporation may be dependent upon the facts ascertainable outside such document, provided that the manner in which such facts shall operate upon the provision is clearly and explicitly set forth in the certificate of incorporation. The term “facts” as used in this subsection, includes, but is not limited to the occurrence of any event, including a determination or action by any person or body, including the corporation.

D. The term “certificate of incorporation,” as used in this Act, includes, unless otherwise specifically provided, not only the original certificate of incorporation filed for the creation of the corporation, but also all of the certificates, merger or consolidation agreements, reorganization plans or other instruments that are filed

pursuant to Section 1.02, 3.03 to 3.06, 5.01, 8.01 to 8.03, 8.05, 10.01 to 10.09 or any other Section of this Act and that has the effect of amending or supplementing in any manner the original certificate of incorporation of a corporation.

Section 1.03.—Execution, Acknowledgment, Filing, and Recording of the Original Certificate of Incorporation; Effective Date; Exceptions.—

A. Whenever it is required to file any document with the Department of State in accordance with this Section or any other provision of this Act, such filing shall be executed as follows:

1. The certificate of incorporation, and any other instrument to be filed before the election of the initial board of directors if the initial directors were not named in the certificate of incorporation: it shall be signed by the incorporator or incorporators. If any incorporator is not available by reason of death, disability, unknown whereabouts, or refusal to act, then any such other instrument that needs to be filed, as stated before, may be signed, with the same effect as if such incorporator had signed it, by any person for whom or on whose behalf such incorporator, in executing the certificate of incorporation, was acting directly or indirectly as employee or agent, provided that such other instrument shall state that such incorporator was not available and states:

- a. The reason for his/her absence;
- b. That such incorporator in executing the certificate of incorporation was acting directly or indirectly as employee or agent for or on behalf of such person;
- c. That such person's signature on such instrument is otherwise authorized and not invalid.

2. All other instruments shall be signed:

a. By any authorized officer of the corporation; or

b. If the instrument states that there are no such officers, then by a majority of the directors or by such directors as may be designated by the board; or

c. If the instrument states that there are no such officers or directors, then by the holders of record of a majority of all voting outstanding shares of stock, or such of them as may be designated by the holders of record; or

d. By the holders of record of all outstanding shares of stock entitled to vote.

B. Whenever this Act requires any instrument to be acknowledged, such requirement shall be satisfied in any of the following ways:

1. A formal acknowledgment by the person or by one of the persons signing the instrument, that the same was executed by him/her by the corporation and that the facts stated therein are true. Such acknowledgment shall be sworn before an official authorized by the laws of the place of execution to take sworn statements. If said official has an official seal, he/she shall affix it to the instrument.

2. The signature, by itself, of the person or persons signing the instrument, in which case such signature or signatures shall constitute the formal affirmation or acknowledgment of the signatory, under penalty of perjury, that the instrument was executed by him/her or the corporation and that the facts contained therein are true.

C. Whenever an instrument is to be filed in the Department of State as provided in this Section of this Act, such requirement shall mean that:

1. The original signed instrument or a certified copy, in the case of deeds or acts executed before a notary public, shall be filed at the registrar's office of the Department of State.

2. All fees authorized by law in connection with the filing of the instrument shall be tendered to the Department of State.

3. Once the instrument has been filed and all required fees tendered, the Department of State shall record the date and time of its delivery. Once the instrument is recorded, the Department of State shall certify the filing of the instrument at its offices by endorsing on the original the word "Filed" and the date and time of its filing. This evidence constitutes the "filing date" of the instrument and shall be conclusive as to the date and time of the filing, except in the case of fraud. The Secretary of State shall record and file the instrument. Except as provided in paragraph (4) of this subsection or in subsection (G) of this Section, the "filing date" of the document shall be the date and time on which the document was filed.

4. If on or before the filing of the instrument the Secretary of State is requested to record the instrument on a subsequent date and time he/she may do so to the extent deemed practicable. If the Secretary of State refuses to file any instrument due to an error, omission or other imperfection in the content thereof, the Secretary of State may retain and hold such instrument in suspension upon filing of a replacement instrument, within five (5) days after the suspension is notified, in which case the Secretary shall use the date and time of the filing of the original document as the "filing date." The Department of State shall not issue a certificate of good standing insofar as a corporation has an instrument held in suspension.

5. The Department of State shall cause to be entered such information from each document as the Secretary of State deems appropriate into an information system. Such information and a copy of the document shall be deemed to be public documents and should be kept for the term established by the Secretary of State on a suitable medium.

D. Any instrument filed pursuant to the provisions of subsection (C) of this Section shall be effective on its filing date. However, any instrument may provide that it is not to become effective until a specified date subsequent to the filing date, but such date shall not exceed ninety (90) days from the filing date. If any instrument filed in accordance with subsection (C) of this Section provides for its effective date or time to be subsequent to that in which it was filed at the Department of State, the filing of a new or amended document, prior to the effective date or time set forth in such instrument, shall be necessary so as to be able to cancel its effective date and amend the subsequent date and time. Such amendment may state that the filing date should be the original date in which the document was filed at the Department of State, but it shall not be allowed to amend the subsequent date and time to exceed the ninety (90)-day term of effectiveness as of the filing.

E. If in any other Section of this Act another manner of executing, acknowledging, filing or recording a particular instrument or a date for such instrument to become effective which differs from the corresponding provisions of this Section is specifically provided, then the other provision shall prevail over this Section.

F. Whenever an instrument filed at the Department of State pursuant to the provisions of this Act is an inaccurate record of the corresponding corporate action or is erroneously or defectively executed, sealed or acknowledged, the instrument may be corrected by filing at the Department of State of a certificate of correction which shall be executed, acknowledged, filed, and recorded pursuant to the provisions of this Section. The certificate of correction shall specify the inaccuracies or defects to be corrected and shall set forth such portion of the instrument in its corrected form. In lieu of filing a certificate of correction the instrument may be corrected by filing with the Department of State a corrected

instrument which shall be executed, acknowledged, filed, and recorded in accordance with the provisions of this Section. The corrected instrument shall be specifically designated as such in its heading, shall indicate the inaccuracy or defect to be corrected, and shall set forth the entire instrument in corrected form. The corrected instrument shall be effective as of the filing date of the original instrument, except as to the persons who are substantially and adversely affected by the correction, for which the corrected instrument shall be effective from the filing date thereof.

G. As an exception, the Secretary may establish such date and time as the filing date if:

1. When filing any instrument with the Department of State, the same shall enclose an affidavit under penalty of perjury attesting, on the basis of personal knowledge of the affiant or a reliable source of knowledge identified in the affidavit under penalty of perjury, that an earlier effort to file such instrument was made in good faith, stating the nature, date, and time of such effort and requesting that the Secretary of State establish such date and time as the “filing date” of such instrument; or

2. When filing any instrument with the Department of State, the Secretary of State in his/her discretion provides a written waiver of the requirement for such an affidavit under penalty of perjury and states that, according to his/her judgment, it appears that an earlier effort to file such instrument was made in good faith and specifies the date and time of such effort; and

3. The Secretary of State determines that a special condition existed at the date and time of the effort, that such earlier effort was unsuccessful as a result of the existence of such special condition, and that subsequently such filing was made within a reasonable period not exceeding two (2) days after the cessation of such special condition. The Secretary of State may establish such date and time as the

filing date. The Secretary may request such evidence as he/she may deem to be necessary to make the determinations required under this paragraph and in absence of fraud the determination shall be final and binding. If the Secretary of State establishes the “filing date” according to the provisions of this paragraph, the affidavit under penalty of perjury or the written waiver, as the case may be, should be endorsed with the date and time in which they were filed or issued, respectively, and shall be enclosed with the filed instrument. The filed instrument, pursuant to this subsection G, shall be effective as of the date determined by the Secretary of State and the provisions set forth herein, except for those persons who are substantially and adversely affected by such determination, as to those persons, the instrument shall be effective from the date and time endorsed on the affidavit under penalty of perjury or written waiver, as the case may be.

Section 1.04.—Certificate of Incorporation; Evidence.—

The copy certified by the Secretary of State of a certificate of incorporation, or of any other certificate which has been filed with the Department of State as required by any provision of this Act, shall be *prima facie* evidence of: (1) due execution and filing; (2) observance of all acts necessary for the instrument to become effective; and (3) any other facts required or permitted in the instrument.

Section 1.05.—Commencement of Corporate Existence and Liability for Transactions Executed Prior to Incorporation.—

A. Once the certificate of incorporation has been executed and filed as provided in subsection (D) of Section 1.03 of this Act and the fees required by law have been tendered, the person or persons who have thus associated and their successors and assignees shall constitute, as of the filing date, or if it was set forth in the certificate of incorporation, as of a subsequent date which shall not exceed ninety (90) days, a corporate entity with the name set forth in the certificate, subject to dissolution as provided in this Act.

B. The issue of the certificate of incorporation by the Secretary of State shall constitute conclusive evidence that all the conditions required by this Act for incorporation have been satisfied, except in procedures initiated by the Commonwealth to cancel or revoke the certificate of incorporation or to dissolve the corporation.

C. All persons acting as a corporation without having the authority to do so shall be severally liable of all the debts and obligations incurred or assumed as a result of such action.

Section 1.06.—Authorities of the Incorporators.—

If the persons who are to serve as directors until the first annual meeting of stockholders have not been designated in the certificate of incorporation, the incorporator or incorporators shall manage the affairs and the organization of the corporation until such directors are elected and may take the necessary measures to obtain the required stock subscription and perfect the organization of the corporation, including the adoption of the original bylaws of the corporation and the election of the directors.

Section 1.07.—First Meeting of the Incorporators or Directors Designated in the Certificate of Incorporation.—

A. After the filing of the certificate of incorporation, the first meeting of the incorporator or incorporators, or of the board of directors if the directors were designated in the certificate, shall be called through notice signed by a majority of the incorporators or the directors, as the case may be, stating the date and place of the meeting, which may be held inside or outside of the territorial jurisdiction of the Commonwealth. The purpose of the meeting shall be to adopt the bylaws of the corporation, elect the directors if it is an incorporators meeting, who shall hold office until the first annual meeting of stockholders or until their successors are elected and qualify, or to elect the officers of the corporation if it is a directors

meeting. Any other acts necessary to perfect the organization of the corporation shall be carried out and any other matters presented at the meeting shall be addressed. This and any other meetings may be held by individual or collective consultation through any communications, which shall be stated in the minutes.

B. The persons calling the meeting shall give written notice thereof and of the agenda to each of the other incorporators or directors at least two (2) days prior to such meeting by any usual communication medium. Such notice shall not be necessary in the case of every person who attends the meeting or waives said notice in writing before or after the meeting.

C. Any action which may be taken in the first meeting of the incorporators or of directors, as the case may be, may be taken without the need of a meeting if each incorporator or director, when more than one (1) , or the sole incorporator or director when only one (1), signs an instrument which states the action so taken.

Section 1.08.—Statutes.—

A. The original or subsequent bylaws of the corporation may be adopted, amended or repealed by the incorporators, by the initial directors if they were designated in the certificate of incorporation, or, if the corporation has not received any payment for its stock, by the board of directors. After the corporation has received any payment for any stock, the stockholders entitled to vote or, in the case of nonstock corporations, to the partners or members entitled to vote, shall be empowered to adopt, amend or repeal the bylaws. In any case, the power to adopt, amend, or repeal the bylaws may be conferred upon the board of directors or, in the case of nonstock corporations, upon the governing body by whichever name it bears in the certificate of incorporation. The fact that such power has been conferred upon the board of directors or upon the corresponding governing body, as the case may be, shall not divest or limit the stockholders or partners of the power to adopt, amend or repeal the bylaws.

B. The bylaws may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and the rights or powers of the corporation, its stockholders, directors, officers or employees.

CHAPTER II

POWERS

Section 2.01.—General Powers.—

In addition to the powers stated in Section 2.02 of this Act, every corporation, its officers, directors, stockholders and other members shall possess and may exercise all of the powers and privileges granted by this or other Acts or by the certificate of incorporation, in addition to such other powers incidental thereto, provided that such powers and privileges are necessary or convenient for the attainment or promotion of the businesses or purposes set forth in the certificate of incorporation.

Section 2.02.—Specific Powers.—

Every corporation created under the provisions of this Act shall have the power to:

A. Legally exist in perpetuity with its corporate name, unless its term of duration is limited in the certificate of incorporation;

B. Sue and be sued under its corporate name in any Court and participate in any judicial, administrative, arbitration proceeding or of any other nature;

C. Have a corporate seal which may be altered at will, and use such seal or a facsimile thereof, by affixing or reproducing the same by any other means;

D. Purchase, receive, own, lease, acquire or assign, in any other manner or form, personal or real property or any other interest therein, wherever situated, and sell, lease, exchange or otherwise transfer or encumber, in whole or in part, its property and assets, or any interest therein, wherever situated;

E. Appoint such officers and agents as the business of the corporation requires and designate suitable remuneration for them;

F. Adopt, amend, and repeal corporate bylaws for the administration of the enterprise;

G. Dissolve itself in the manner provided by this Act;

H. Conduct its business and operations, have one or more offices, and exercise its powers inside or outside the territorial jurisdiction of the Commonwealth of Puerto Rico;

I. Make gifts, and receive donations;

J. Create, promote or administer any other kind of corporation;

K. Buy, take, subscribe or otherwise acquire, own, vote, utilize, sell, mortgage or in any other manner encumber, or dispose of stock or other securities in any corporation, association, partnership or domestic or foreign enterprise, or of direct or indirect obligations of the United States or of any other government, state, municipality or government agency;

L. Execute contracts and securities and incur liabilities, borrow money, issue notes, promissory notes, bonds or any other type of obligation and secure any of its obligations by means of mortgage, lien or other encumbrance over its properties, franchises or incomes, whether in whole or in part, execute contracts of surety or bonds to secure the obligations of any parent company, subsidiary or affiliate;

M. Lend money or use its credit for corporate purposes, invest or reinvest its funds and take and hold personal or real property to secure the payment of the funds so loaned or invested;

N. Reimburse to all directors and officers or former directors and officers, or any person who, at the request of the corporation, has rendered services as a director or officer of another corporation of which is a stockholder or which corporation is creditor, the expenses which necessarily or in fact were incurred

with respect to the defense in any action, suit or proceeding in which such persons, or any of them, are included as a party or parties for having been directors or officers of one or another corporation, pursuant to the provisions of Section 4.08;

O. Make payments for employee retirement benefit plans, establish and promote employee retirement and benefits, profit sharing, stock options, incentive and deferred or nondeferred compensation plans, trusts and other incentives for any or all of the directors, officers and employees, and for any or all of the directors, officers and employees of its subsidiaries;

P. Obtain for the benefit of the corporation, life or disability insurance on or for its directors, officers or employees. It may also obtain life insurance on a stockholder with the purpose of acquiring the stock of any stockholder upon his/her death;

Q. Participate with others in any corporation, partnership, association, joint or any other kind of venture, in any transaction, business, arrangement or agreement for which the participating corporation is empowered to conduct by itself, whether or not such participation includes the sharing with others or delegate corporate control on others;

R. Transact any lawful business which the Board of Directors deems to be of assistance to a government agency;

S. Waive, through its certificate of incorporation or a decision from its Board of Directors, any interest or expectation it may have in the corporation, or in which it is offered participation regarding specific business opportunities, or categories or types of business opportunities presented to the corporation or to one or several of its officers, directors or stockholders.

Section 2.03.—Management in Benefit of the Corporation.—

The authority and the powers conferred upon every corporation organized under the laws of the Commonwealth of Puerto Rico or upon the officers or directors thereof, by law or in the certificate of incorporation or instrument with equal force and validity, or in the corporate bylaws, shall be enjoyed and must be exercised by the corporation or by the officers or directors, as the case may be, in benefit of the stockholders of the corporation and for the prudent conduct of its businesses and affairs, as well as for the furtherance of its objectives and purposes.

Section 2.04.—Banking Powers; Definition.—

A. No corporation created under this Act shall, by inference or interpretation, be deemed empowered to issue bills of exchange, notes or other titles for circulation as legal tender; or to deal in the receipt of money deposits, or foreign currency.

B. Corporations created or to be created in accordance with the provisions of this Act, or created in accordance with the provisions of any prior general corporations law of the Commonwealth of Puerto Rico, shall not be deemed to be engaged in the banking business, if they have been created with the purpose of buying, selling or otherwise dealing with notes, checking account credits or other similar titles; or for the purposes of lending money accepting notes, checking account credits or other titles, as collateral.

Section 2.05.—Absence of Corporate Powers.—

No act of a corporation and no transfer of personal or real property made by or in favor of a corporation shall be invalid if the corporation lacks the capacity or power to execute such act or to make or receive such transfer, but such lack of capacity or power may be invoked:

A. In a proceeding initiated by a stockholder to enjoin any action or the transfer of personal or real property by or to the corporation. If the unauthorized acts which the stockholder seeks to enjoin are being or shall be performed pursuant to a contract to which the corporation is a party, the Court may, if all of the parties to the contract are also parties to the proceeding, and if the Court determines that it would be fair and reasonable, order the rescission of the contract and permit to the corporation or to the other parties to the contract, as the case may be, the compensation which is fair for the damages sustained by such persons resulting from the rescission of the contract by the Court; being understood that the anticipated profits to be earned under the contract shall not be awarded by the Court as part of the damages sustained.

B. In a proceeding by the corporation, acting by itself or through a receiver or other legal representative, or through the stockholders in a suit against an officer or director or a former officer or director, for the losses or damages as a result of his/her unauthorized act.

C. In a proceeding by the Commonwealth of Puerto Rico to dissolve the corporation or to enjoin the transaction by the corporation of any unauthorized business.

CHAPTER III

REGISTERED OFFICE AND REGISTERED AGENT

Section 3.01.—Registered Office.—

A. Every corporation shall maintain a registered office in the Commonwealth which may be located in its same place of business or in any other place. For the purposes of this Act, the registered office shall be that registered with the Department of State where the registered agent of the corporation is.

B. Whenever the terms “main office” or “main place of business” are used in the certificate of incorporation, or in any other corporate document or bylaw, such term so used shall be deemed to mean and refer to, unless otherwise stated, the designated office required by this Section to be registered with the Department of State, and it shall not be necessary for a corporation to amend its certificate of incorporation and any other document to comply with the requirements of this Section.

Section 3.02.—Registered Agent.—

A. Every corporation shall maintain a registered agent in the Commonwealth, who may be: (i) the corporation itself; (ii) an individual resident in the Commonwealth; (iii) a juridical person duly organized under the laws of the Commonwealth of Puerto Rico, or juridical person authorized to do business in the Commonwealth, whose place of business must coincide, in each case, with the registered office of the corporation which shall be regularly open during working hours to be served process and to conduct the duties germane to a registered agent.

B. Whenever the terms “registered agent” or “registered agent in charge of the registered office,” or other terms with similar meanings which refer to the agent of a corporation required by law to be domiciled in the Commonwealth of Puerto Rico, are used in the certificate of incorporation or in any other corporate document or bylaw, such term shall be deemed to mean and refer to, unless stated to the contrary, the registered agent required by this Section. It shall not be necessary for a corporation to amend its certificate of incorporation or any other document to comply with the requirements of this Section.

Section 3.03.—Transfer of the Designated Office and Change of Registered Agent.—

Any corporation may transfer its registered office to any other place within the territorial jurisdiction of the Commonwealth of Puerto Rico, by resolution of its Board of Directors. It may also, by resolution, replace the registered agent by another natural or juridical person that may even be the affected corporation itself. In both cases, the resolution must contain the details provided in paragraph (A)(2) of Section 1.02 of this Act. Upon approving such resolution, a certified copy thereof indicating the change shall be filed with the offices of the Department of State.

Section 3.04.—Change of Address of the Registered Agent.—

A. A registered agent may change the address of the registered office of the corporation or corporations for which he/she serves in such capacity to any other address within the Commonwealth through the filing with the Department of State of a document duly certified by the registered agent stating the present name and address of the registered office of the corporation or corporations for which he/she is registered agent and the new address where the registered office of the corporation or corporations is to be transferred. Once the certificate is filed and recorded with the offices of the Department of State, and until further change, the registered office shall be located at the new address, as it appears in the certificate executed by the registered agent.

B. In the event of a change of name of a person or corporation acting as a registered agent in the Commonwealth of Puerto Rico, such registered agent shall file with the Secretary of State an executed and duly authenticated certificate setting forth:

1. The new name of such registered agent;
2. The name of the former registered agent;

3. The names of all of the corporations represented by such registered agent; and

4. The address where such registered agent maintains the registered office for each corporation for which he/she is registered agent.

The change of name of a person or juridical person acting as registered agent, as a result of a merger or consolidation with or in another person or juridical person, whereby such other person or corporation survives and becomes the successor of the registered agent by application of law, shall be deemed to be a change of name for the purposes of this Act.

Section 3.05.—Resignation of the Registered Agent, and Appointment of Successor.—

The registered agent of one or more corporations organized in accordance with the laws of the Commonwealth of Puerto Rico may file at the Department of State a certificate of his/her resignation to the office, stating the name and address of the registered agent who shall replace him/her, pursuant to the provisions of Section 1.02 of this Act.

The certificate shall be enclosed with statements of the authorized officers from the affected corporations ratifying and approving such change of registered agent. Each statement shall be executed in accordance with Section 1.03 of this Act. Once these requirements are met, the successor registered agent of the corporation shall be the new registered agent.

Section 3.06.—Resignation of the Registered Agent without Designation of a Successor.—

A. The registered agent of one or more corporations organized in accordance with the laws of the Commonwealth of Puerto Rico may file at the Department of State a certificate of resignation, issued pursuant to Section 1.03 of this Act, to such office without the need of including in the certificate the appointment of the

natural or juridical person who shall replace him/her. The resignation shall not be effective until thirty (30) days after filing the certificate at the Department of State. Such certificate shall be enclosed with a statement of such registered agent, whereby he/she attests that: (1) written notice of his/her resignation to the office was given to the affected corporations at least thirty (30) days before filing the certificate; (2) such notice was sent by certified mail or delivered to the corporation to the most recent address thereof known by the registered agent; and (3) the date in which the notice was given.

B. Upon receipt of the notice of resignation from its registered agent, as provided in subsection (A) of this Section, the corporation shall proceed to designate a new registered agent. Such designation shall be made as provided in Section 3.02 of this Act. If the corporation does not designate a new registered agent as provided above before the thirty (30) days following the filing of the certificate of resignation by the previous registered agent, the Secretary of State shall proceed to rescind the authority of the corporation to do business in the Commonwealth of Puerto Rico and cancel the certificate of incorporation.

C. In case the resignation of a registered agent becomes effective, in accordance with the provisions of this Section, and if no new registered agent has been designated as provided, service of process against the corporation for which the registered agent had been acting shall be executed as provided in the Rules of Civil Procedure of the Commonwealth of Puerto Rico.

CHAPTER IV
DIRECTORS AND OFFICERS

Section 4.01.—Board of Directors; Powers; Number; Requirements; Terms and Quorum; Committees; Classes of Directors; Nonprofit Corporations; Actions in which the Books are Trusted, Etc.—

A. The business and affairs of every corporation organized in accordance with the provisions of this Act shall be governed by a board of directors, except as otherwise provided in this Act or in the certificate of incorporation. Whenever the certificate of incorporation contains any such provision, the powers and duties conferred or imposed upon the board of directors by this Act shall be exercised or performed by the person or persons designated in the certificate of incorporation.

B. The board of directors shall consist of one or more members, which shall be natural persons. The number of directors which shall compose the board of directors shall be fixed in the bylaws of the corporation, unless the certificate of incorporation fixes the number of directors, in which case, a change in the number of directors shall be made only by amending the certificate. The directors need not be stockholders of the corporation, unless so required by the certificate of incorporation or the bylaws. The certificate of incorporation or the bylaws may prescribe any other conditions to be a director. The directors shall continue to hold office until their successors are elected and qualified, or until they resign or are removed, whichever occurs first. The directors may resign at any time, provided that such resignation is informed to the corporation by written or electronic communication. A majority of the total number of directors shall constitute a quorum for the transaction of business, unless the certificate of incorporation or the bylaws require a greater number. Unless the certificate of incorporation provides otherwise, the bylaws may provide that a number less than a majority shall constitute a quorum, but said number shall never be less than one-third of the total

number of directors, except in such cases in which the board of directors composed of only one director is authorized, in which case only one director shall constitute a quorum. The vote of the majority of the directors present at a meeting in which there is a quorum shall be sufficient to approve the decisions of the board of directors, unless this Act or the certificate of incorporation or the bylaws require a greater proportion.

C. Any corporation incorporated prior to the date of effectiveness of this Act shall be subject to the provisions of paragraph (1) hereinbelow, while any corporation incorporated on or after the date of effectiveness of this Act shall be subject to paragraph (2):

1. The board of directors may, by resolution adopted by a majority of the entire board, designate one or more committees, each one of which shall be composed of one or more directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member in any meeting of the committee. The bylaws may provide that in the absence or disqualification of a member of the committee, the member or members present at any meeting and not disqualified from voting, whether or not these members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. To the extent authorized by the resolution of the board of directors, or the bylaws of the corporation, such committees shall have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation, including the power to order the affixing of the corporate seal on all documents which so require. Notwithstanding the foregoing, such committees shall not have the power to: remove or elect officers; amend the certificate of incorporation (except that a committee may, to the extent authorized by a resolution of the board of directors providing for the issue of stock,

as provided in Section 5.01 of this Act, fix the designations and any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of the assets of the corporation or the conversion or exchange of such shares for shares of any class or classes, or any other series of the same or another class of stock of the corporation, or fix the number of stock of any series or authorize the increase or decrease in the number of shares of any series); adopt an agreement of merger or consolidation under Sections 10.01 and 10.02 of this Act; make recommendations to the stockholders regarding the sale, lease or exchange of all or a substantial portion of the property or assets of the corporation; approve resolutions to recommend a dissolution or a revocation of a dissolution, or to amend the bylaws of the corporation; and unless the resolution for the creation of a committee, the bylaws or the certificate of incorporation so provides, such committee shall not have the power to declare dividends, authorize the issuance of capital stock or adopt an agreement of merger under Section 10.03 of this Act. Such committees shall have such name or names which are stated in the bylaws of the corporation, or the name or names which from time to time the board of directors shall determine by resolution.

2. The board of directors may designate one or more committees, each one of which shall be composed of one or more directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member in any meeting of the committee. The bylaws may provide that in the absence or disqualification of a member of the committee, the member or members present at any meeting and not disqualified from voting, whether these members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. To the extent authorized by the resolution of the board of directors, or the bylaws of the corporation, such

committees shall have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation, including the power to order the stamping of the corporate seal on all documents which so require it. Notwithstanding the foregoing, such committees shall not have the power to: (i) approve, adopt, or recommend affairs or actions to the stockholders (not related to the election or destitution of the directors) requiring to be submitted for the approval of the stockholders pursuant to the provisions of this Chapter; or (ii) adopt, amend, or repeal the bylaws of the corporation. Such committees shall have such name or names which are stated in the bylaws of the corporation, or the name or names which from time to time the board of directors shall determine by resolution. Except when the certificate of incorporation, the bylaws or the resolution of the board of directors designating directors provides otherwise, the committee may create one or more sub-committees, and may delegate to the sub-committee any and all of the powers and authorities of the committee. Each sub-committee shall consist of one or more members of the committee.

D. As provided in the certificate of incorporation or in the original bylaws or in a bylaw adopted by the vote of the stockholders, the directors of a corporation organized in accordance with this Act may be classified into one, two, or three groups. The term of office of the directors in the first group shall expire at the next annual meeting; of the second group, one year after said annual meeting; and of the third group, two years after said meeting. At each annual election subsequent to this classification and election, the directors shall be elected for full terms, as the case may be, to succeed those whose terms expire. The certificate of incorporation may confer on the holders of any class or series of stock the right to elect one or more directors who shall serve for the term and with such voting powers as may be stated in the certificate of incorporation. The conditions of office and the voting powers of the directors elected separately by the holders of any class or series of

stock may be greater or lesser than those of any other director or class of director. The certificate of incorporation may also confer on one or more directors, whether or not they have been elected separately by the holders of any class or series of stock, voting powers greater or lesser than those of the other directors. If the certificate of incorporation provides that directors elected by the holders of any class or series of stock shall have more than one vote per director in any issue, every reference in this Act to a majority or other proportion of directors shall refer to a majority or other proportion of the votes of such directors.

E. Unless prohibited or restricted by the certificate of incorporation or the bylaws of the corporation, any action needed or permitted in any meeting of the board of directors or of any committee designated thereby, in accordance with the powers conferred to it by this subsection, shall be authorized without need of a meeting, provided that all of the members of the board of directors or of the committee, as the case may be, give their consent in writing or by electronic communication to such action. Even though the consent by electronic communication does not entail physical transmission of paper, it shall establish a registry or record on the action and the decision taken, and shall be susceptible to automatic reproduction or transfer to paper format, if necessary. The electronic communication shall be reproduced in paper or shall be maintained in an electronic registry as determined by the board of directors or the committee, as the case may be. The validity, integrity, and reliability of the document to be transmitted must comply with the provisions of Section 10, Chapter III, of Act No. 359 of September 16, 2004, "Puerto Rico Electronic Signature Act." In such case, the consent shall be recorded in the minutes of the meeting of the board of directors or of the committee, as the case may be.

F. The board of directors may hold meetings within or outside the Commonwealth, unless otherwise provided by the certificate of incorporation or the bylaws. The meetings of the board of directors shall be notified to the directors pursuant to the provisions of the bylaws.

G. The board of directors shall be empowered to fix the compensation of directors, unless otherwise provided by the certificate of incorporation or the bylaws.

H. Unless otherwise provided by the certificate of incorporation or the bylaws, the members of the board of directors or any committee designated by the board of directors, in accordance with the powers conferred to it by this Section, shall have the right to participate in any meeting or committee by a telephone conference, or other medium of communication, by which all of the persons who participate in the meeting may hear each other simultaneously. The participation of the board in the aforementioned manner shall constitute attendance to said meeting.

I. A member of the board of directors, or a member of any committee designated by the board of directors shall, in discharging his/her duties, be fully protected and exempted from responsibility for relying in good faith on the records of the corporation and on the information, opinions, reports or statements presented to the corporation by any of the officers or employees of the corporation, or committees of the board of directors, or by any other person as to issues which the member reasonably believes are within the scope of the professional or expert competence of such person who has been selected reasonably careful by or on behalf of the corporation.

J. The certificate of incorporation of any corporation organized pursuant to the provisions of this Act which is not authorized to issue capital stock may provide that less than one-third (1/3) of the members of the governing body shall

constitute a quorum or may provide that the business and affairs of the corporation shall be managed in a manner different from that provided by this Section. Except as provided in the certificate of incorporation, this Section shall apply to such corporation, and when so applied, all reference to the board of directors, the members thereof, and the stockholders shall be construed as reference to the governing body of the corporation, the members thereof, and the members of the corporation, respectively.

K. Any director or the entire board of directors may be removed, with or without just cause, by the majority stockholders entitled to vote to elect directors, except:

1. In case of a corporation whose board of directors is classified in groups, in accordance to subsection (D) of this Section, in which case the stockholders may remove the director or directors only for just cause, unless otherwise provided by the certificate of incorporation; or

2. In case of a corporation whose certificate of incorporation authorizes cumulative voting, if less than the entire board of directors is to be constituted, no director shall be removed without just cause when the votes against the removal would be sufficient to elect him/her had voting been cumulative to elect all of the directors or, if there be classes or groups of directors, to elect him/her to the class or group of directors to which he/she belongs.

In those cases where the certificate of incorporation grants to the holders of any class or series of stock the power to elect one director or more, the provisions of this subsection shall apply, with respect to the removal without just cause of a director or directors so elected, to the vote of the holders of outstanding shares of that class or series and not to the vote of the total outstanding shares.

Section 4.02.—Officers, Selection, Term and Duties; Omission of the Elections; Vacancies, Nonprofit Organizations.—

A. Every corporation organized in accordance with this subtitle shall have officers with such titles and duties as are provided in the bylaws of the corporation or in a resolution of the board of directors which is not inconsistent with such bylaws, and as may be necessary to allow the corporation to execute instruments and stock certificates in compliance with clause (2) of subsection (A) of Section 1.03, and Section 5.11 of this Act. One of the officers shall be appointed president, chief executive officer or other analogous title. One of the officers shall record all of the minutes of all meetings of the stockholders of the corporation and of the board of directors in a book to be kept for said purposes. An officer may simultaneously hold one or more of the offices established, unless the certificate of incorporation or the bylaws provide otherwise. To secure the performance of his/her duties, the board of directors may require any officer to post a bond, in the amount and with such surety or sureties as the board may provide.

B. The officers shall be chosen in the manner and for the term provided by the bylaws or the board of directors or other directing or governing body. Every officer shall continue to hold office until replaced by his/her successor or until he/she resigns or is removed, whichever occurs first. Any officer may resign at any time through written notice or electronic communication to the corporation.

C. The fact that the annual election of the president, secretary, treasurer and other officers is omitted shall not cause the dissolution of the corporation nor otherwise affect it.

D. Any vacancy occurring in the corporation by death, resignation, removal or other cause shall be filled in the manner provided in the bylaws of the corporation. If such provision does not exist, the board of directors or other governing body shall fill the vacancy.

Section 4.03.—Obligation of the Directors or Officers in the Discharge of their Functions.—

The directors and officers shall be bound to dedicate to the affairs of the corporation and to the exercise of their duties the attention and care which in a similar position and under analogous circumstances a responsible and competent director or officer would execute in applying his/her business judgment in good faith or his/her best judgment in the case of nonprofit corporations. Only gross negligence in the exercise of the duties and obligations mentioned above shall result in personal liability.

Section 4.04.—Duty of Loyalty of Directors, Officers and Majority Shareholders.—

Whenever the directors, officers and majority stockholders have personal interests in matters affecting the corporation, they shall be subject to a duty of loyalty which bounds them to act fairly in relation to corporate issues.

Section 4.05.—Interested Directors; Quorum.—

A. No contract or transaction between a corporation and one or more of its directors or officers, or between a corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers, or in which they may have a financial or economic interest shall be null or nullified solely for such reason, or for the simple fact that the director or officer attends a meeting of the board of directors or of a committee of such board, or participates therein, at which the contract or transaction is authorized, or because his/her vote or votes have been counted for such purposes, if any of the following alternatives is present:

1. Influencing, material or significant facts of the relationship or interest, or relating to the contract or transaction, are disclosed to the board of directors; or these are known to the board of directors or to the committee of the board, and the

board of directors or the committee authorizes the contract or transaction in good faith by the affirmative vote of the majority of the disinterested directors, even when these do not constitute a quorum; or

2. The stockholders entitled to vote know or are disclosed the influencing, material or significant facts of the relationship or interest relating to the contract or transaction, and specifically approve the contract or transaction with their votes in good faith; or

3. The contract or transaction in question is fair and reasonable for the corporation at the time it is authorized, adopted or ratified by the board of directors, by the committee designated by the board of directors or by the stockholders.

B. For purposes of determining a quorum, the directors interested in the contract or transaction and who participate in the board meeting (meeting as a whole or in committee), at which the aforementioned contract or transaction is approved, may be counted.

Section 4.06.—Loans to Officers or Directors; Loans Secured by the Corporation's Stocks.—

Any corporation may make loans to any director, officer or employee of the corporation or of its subsidiaries, secure their obligations or otherwise assist them when the board of directors deems it reasonable to expect that such loan, surety or assistance shall benefit the corporation. The loan, surety or assistance may accrue no interest, lack collateral or be secured in the manner approved by the board of directors, including, without limitations, the pledge of the stock of the corporation.

Section 4.07.—False Statements Regarding the Situation or the Business; Responsibility of the Directors or Officers.—

If the directors or officers of any corporation organized in accordance with the laws of the Commonwealth of Puerto Rico knowingly cause the publication of or

furnish any false written statement or report with respect to any important issue regarding the condition or business of the corporation, such directors or officers who shall have caused the publication or shall have furnished or approved such report or statement shall each be jointly liable for any loss or damage resulting therefrom.

Section 4.08.—Officers, Directors, Employees, and Agents; Insurance.—

A. A corporation may compensate any person who is, has been a party, or is under threat of becoming a party to any imminent, pending or resolved civil, criminal, administrative or investigative action, suit or proceeding (except an action initiated by the corporation or initiated to protect the interests of the corporation), because the person has been or is a director, officer, employee or agent of the corporation, or had been or is acting by request of the corporation as director, officer, employee, or agent of another corporation, partnership, joint venture, trust or any other enterprise. The compensation may include the expenses incurred in a reasonable manner, including attorney fees, adjudication or judgments, fines and amounts paid upon settling such action, suit or proceeding, if the person acted in good faith and in a manner which the person deemed to be reasonable and consistent with the best interests of the corporation and not opposed thereto, and that with respect to any criminal action or proceeding, the person did not have reasonable cause to believe that his conduct was unlawful. The termination of any legal action, suit or proceeding by judgment, order, settlement or conviction or by a plea of *nolo contendere*, or its equivalent, shall not in itself create the presumption that the person did not act in good faith nor in a manner which he reasonably believed to be consistent with the best interests of the corporation or not opposed thereto and that, with respect to any criminal action or proceeding, the person did not have reasonable cause to believe that his conduct was unlawful.

B. A corporation may compensate any person who is, has been a party, or is under threat of becoming a party to any imminent, pending or resolved action or suit initiated by the corporation or initiated to protect the interests of the corporation to procure a judgment in its favor because the person is or has been a director, officer, employee or agent of the corporation, or is or has been acting by request of the corporation as director, officer, employee or agent of another corporation, partnership, joint venture, trust or any other enterprise. The compensation may include the expenses incurred in a reasonable manner, including attorney fees, with respect to the defense or settlement of such action or suit, if the person acted in good faith and in a manner he/she reasonably deemed to be consistent with the best interests of the corporation and not opposed thereto.

Notwithstanding the foregoing, no compensation shall be made with respect to a claim, matter or controversy in which it has been determined that such person is liable to the corporation, except that through a motion to that effect, the court presiding in such action or suit determines that in spite of the adjudication of liability against, and in light of all of the circumstances of the case, such person has the fair and reasonable right to be compensated for those expenses which the court deems proper and only insofar as said court so deems.

C. To the extent that a director, officer, employee or agent of the corporation has prevailed on the merits, or otherwise, in the defense of the action, suit or proceeding referred to in subsections (A) and (B) of this Section, or in the defense of any claim, issue or controversy relating thereto, he/she shall be compensated for reasonable expenses incurred (including attorney fees) by reason of such action, suit or proceeding.

D. Any compensation pursuant to subsections (A) and (B) of this Section (except that ordered by the court) shall be made by the corporation only as authorized in the specific case, after determining that the compensation to the

director, officer, employee or agent is proper under the circumstances because he/she has met the applicable norms of conduct established in subsections (A) and (B) of this Section. Such determination shall be made:

1. By the board of directors, through a majority vote of the directors who were not parties to such action, suit or proceeding, even if such directors constitute less than the quorum; or

2. By a committee of directors designated through a majority vote of the directors who were not parties to such action, suit or proceeding, even if they constitute less than the quorum; or

3. If there are no such directors or if such directors so determine, by independent legal counsels through a written opinion to that effect; or

4. By the stockholders.

E. Prior to final resolution of such action, suit or proceeding, the corporation may pay the expenses incurred by a director or officer in the defense of a civil or criminal action, suit or proceeding, in advance, after obtaining a payment commitment by or on behalf of such director or officer that he/she will reimburse such amount if it is finally determined that he/she is not entitled to such compensation by the corporation, as authorized in this Section. The expenses incurred by other directors, officers and other employees or agents may be paid in this manner, pursuant to the terms and conditions which the board of directors deems convenient.

F. The compensation and advance of expenses provided in this Section shall not be deemed to exclude any other right which those seeking the compensation or advance may have, pursuant to any bylaws, agreement, vote of uninterested stockholders or directors, or otherwise, with regard to their actions, both in their official capacity or otherwise, while discharging the functions of said office.

G. Every corporation shall be empowered to purchase and maintain insurance in the name of any person who is or has been a director, officer, employee or agent of the corporation, or who is or has been acting as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or any other enterprise by request of the corporation, against any liability claimable against such person, or which he/she has incurred in such capacity, or which arises out of his/her status as such, whether or not the corporation has the power to compensate such person against such liability pursuant to this Section.

H. For purposes of this Section, it shall be deemed that the term “the corporation” includes in addition to the resulting corporations, any constituent corporation of a consolidation or merger that was absorbed in said consolidation or merger, which, if it had continued its independent juridical personality, would have had the power and the authority to compensate its directors, officers, and employees or agents. Therefore, every person who is or has been a director, officer, employee or agent of any constituent corporation of a consolidation or merger, or is or has been acting as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or any other enterprise, by request of said corporation, shall be, pursuant to this Section, in identical position with respect to the resulting or originating corporation as such person would have been in relation to the original corporation had the independent juridical personality thereof continued.

I. For purposes of this Section, the term “other enterprises” shall include employee-benefit plans. The term “fines” shall include taxes imposed on any person with regard to any benefit plan or for employees. The term “acting by request of the corporation” shall include any service as director, officer, employee or agent of the corporation which imposes duties on such director, officer, employee or agent, or implies services rendered by them in relation with an

employee pension plan, its participants or beneficiaries. In addition, it shall be deemed that every person who has acted in good faith and in a manner which appeared to be consistent with the interests of the participants and beneficiaries of an employee pension plan has, acts in a manner which “is not opposed to the best interests of the corporation,” as used in this Section.

J. The compensation and payment advance, as provided by the present Section, must continue for those persons who ceased holding office as director, officer, employee or agent and must continue for the benefit of heirs, executors or administrators of such person, except otherwise provided when the compensation or payment advance is authorized or ratified.

K. The Court of First Instance may see and rule on any action with respect to payment advances and compensation, as provided by this Section, or on the regulations, agreements, stockholder or uninterested directors vote or in any other manner. The Court may summarily determine the obligation of the corporation to pay the expense advances, including attorney fees.

CHAPTER V

CORPORATE CAPITAL STOCK AND DIVIDENDS

Section 5.01.—Classes and Series of Corporate Capital Stock; Dividends.—

A. Every corporation may issue one or more classes of corporate capital stock or one or more series of any of the classes of stock. All of the classes or any of them may be stock with or without par value and with the full or restricted right to vote, or without the right to vote, and with such denominations, preferences, and relative rights of participation, option or other special rights as are stated in the certificate of incorporation, in any amendment thereto or in the resolution or resolutions providing for the issue of such stock and adopted by the board of directors pursuant to the powers expressly conferred thereon by the provisions of the certificate of incorporation of the corporation.

Any circumstance or detail related to the right to vote, to the designations, preferences, limitations or restrictions of any class of stock or any series of stock may be made dependent upon facts ascertainable aside from the certificate of incorporation or any of the amendments thereto, or aside from the resolution or resolutions providing for the issue of stock approved by the board of directors pursuant to the power expressly conferred thereon by the certificate of incorporation; provided that the manner in which such facts are to affect such right to vote and the designations, preferences, rights and qualifications, limitations or restrictions upon such class or series of classes of stock are clearly and expressly set forth in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock and which is adopted by the board of directors. The term “fact”, as used in this subsection, includes but is not limited to the occurrence of any event, including but not limited to the determination or action of any person or entity, including the corporation itself. The power to increase, decrease or otherwise adjust the shares of capital stock of the corporation, as provided in this Act, shall extend to all or any of such classes of stock.

B. The stock of any class or series may be redeemable by the corporation, at the latter’s option or at the option of the holders of such stock or by the occurrence of a certain event; provided that at the time of such redemption the corporation has outstanding shares of at least one class or series of stock with full voting powers and not subject to redemption.

Any stock which is redeemable pursuant to this Section may be redeemed for cash, properties or rights, including securities of the same or another corporation, at such term or terms, price or prices, rate or rates and with such adjustments as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock and adopted by the board of directors pursuant to the provisions of this Act.

C. The holders of preferred or special stock of any class or series shall be entitled to dividends at the rate and on the conditions and terms which shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock and adopted by the board of directors pursuant to the provisions of this Act. Such dividends shall be paid with preference over or in relation to the dividends payable on any other class or classes of stock, and shall be cumulative or noncumulative as shall be so stated. When dividends have been paid on preferred or special shares, if any, in accordance with the preferences to which they are entitled, or when such dividends have been declared and set aside for payment, then dividends may be paid on the remaining classes or series of stock from the remaining assets of the corporation which are available for the payment of dividends, pursuant to the provisions of Section 5.15.

D. The holders of the preferred or special stock of any class or series shall have, upon the dissolution of the corporation, or upon any distribution of its assets, the rights stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock and approved by the board of directors pursuant to the above provisions of this Act.

E. Any stock of any class or series within such class may be exchanged for or converted into, at the option of the holder or the corporation, or upon the occurrence of a specified event, shares of any other class or classes or any other series thereof or for another class or classes of corporate capital stock, at such prices or rates of exchange and with the adjustments stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock and adopted by the board of directors.

F. If a corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative rights of participation, of option or other special rights of each class or

series, as well as the conditions, limitations and restrictions of such preferences or rights shall be stated in full or summarized on the face or the back of the stock certificate or certificates which the corporation shall issue to represent such classes or series of stock. Unless otherwise provided in Section 2.02 of this Act, in lieu of the aforementioned requirements, the face or back of the certificates which the corporation shall issue to represent such class or series of stock may contain a statement that the corporation shall furnish without charge to each stockholder who so requests a list of such rights, designations, preferences and relative rights of participation, of option or other special rights of each class of such stock and the conditions, limitations and restrictions of such preferences or rights. After the elapse of a reasonable period of time from the issuance or transfer of uncertificated stock, the corporation shall send to the registered holder thereof a written notice containing the information which this Section or Section 5.07, subsection (A) of Section 6.02 or subsection (A) of Section 7.08 of this Act, require to be stated on the certificates, or as provided in this Section, a statement to the effect that the corporation shall furnish without cost to each stockholder who so requests, a list of such powers, denominations, preferences and relative rights of participation, option or any other special rights of each class or series of stock, and the conditions, limitations and restrictions of such preferences or rights. Except as otherwise provided by this Act, the rights and obligations of the holders of uncertificated stock shall be identical to the rights and obligations of the holders of certificates representing stock of the same class and series.

G. When a corporation wants to issue any shares of stock of any class or series of any class whose voting powers, denominations, preferences and relative rights of participation, option or other special rights, if any, or its conditions, limitations and restrictions, if any, have not been set forth in the certificate of incorporation or in its amendments, but shall be provided in a resolution or

resolutions adopted by the board of directors pursuant to the authority expressly conferred upon it by the provisions of the certificate of incorporation or any amendment thereto, a certificate in which a copy of such resolution or resolutions shall be set forth and the number of shares of each class or series of stock shall be executed, acknowledged, filed, and recorded and shall be effective as provided in Section 1.03 of this Act. Unless otherwise provided in any resolution or resolutions with respect thereto, the number of shares of any of the classes or series of stock set forth in this manner in such resolution or resolutions may be increased or decreased, but never to a number less than the number of shares then outstanding, by a certificate likewise executed, acknowledged, filed, and recorded, and which shall state that a specified increase or decrease of such number of shares had been authorized and ordered by resolution or resolutions adopted in the same manner by the board of directors.

In the event that the number of shares shall be decreased, the number of shares so specified in the certificate of incorporation shall reassume the condition and status which it had prior to the approval of the first resolution or resolutions. When none of the shares of such classes or series are outstanding, whether because they were not issued or because none of the shares of such issued classes or series remain outstanding, a certificate may be executed, acknowledged, filed and recorded pursuant to Section 1.03 of this Act setting forth the resolution or resolutions adopted by the board of directors stating that none of the authorized shares of such classes or series remain outstanding and that none of these will be issued subject to the certificate of designation previously filed with respect to such class or series. When such certificate becomes effective, it shall have the effect of eliminating from the certificate of incorporation all reference to that class or series of stock. When any certificate filed pursuant to this Section becomes effective, it shall have the effect of amending the certificate of incorporation.

Section 5.02.—Corporate Capital Stock Issue; Payments; Stocks Paid in Full.—

The price of subscription or purchase of the corporate capital stock to be issued by a corporation, as determined in subsections (A) and (B) of Section 5.03 of this Act shall be paid in such form and manner as determined by the board of directors. The board of directors may authorize the payment of capital stock issue in cash, with any tangible or intangible property or any other benefit for the corporation or a combination thereof. In the absence of actual fraud in the transaction, the judgment of the directors as to the appraisal of the price shall be conclusive. The corporate capital stock issued in this manner shall be declared and deemed fully paid and shall not be subject to subsequent obligations once the corporation has received the agreed price; provided, however, that nothing stated herein shall prevent the board of directors from issuing partially-paid shares under the provisions of Section 5.07 of this Act.

Section 5.03.—Corporate Capital Stock Price.—

A. The corporation may issue stock at par value for the price determined by the board of directors from time to time, or if the certificate of incorporation so provides, the stockholders, provided that such price is not less than the par value of such shares.

B. The corporation may issue stock without par value for the price determined by the board of directors from time to time, or if the certificate of incorporation so provides, the stockholders.

C. The corporation may dispose of the treasury stock at the price determined by the board of directors from time to time or, if the certificate of incorporation so provides, the stockholders.

D. In the event that the certificate of incorporation has reserved to the stockholders the power to determine the prices for the issues of corporate capital stock, the stockholders shall so determine by the majority vote of the holders of the outstanding stock entitled to vote thereon, provided the certificate of incorporation does not require a larger vote.

Section 5.04.—Determination of Capital Stock Amount; Capital Stock Definition; Surplus and Net Shares.—

Every corporation may determine, by resolution of the board of directors, that only a part of the proceeds of the sale of the corporate capital stock which it may from time to time issue shall constitute the capital of the corporation. In case any of the shares issued have par value, the part of the price in this manner determined to constitute capital shall exceed the aggregate par value of the shares with par value which are issued at that price, except when all shares issued have par value, in which case only the part of the price in this manner determined to constitute capital is required to be equal to the aggregate par value of such shares. In each of these cases, the board of directors shall specify in terms of dollars the part of the price which shall constitute capital.

If the board of directors has not determined which part of the price of an issue of stock shall constitute capital:

1. At the time shares are issued for cash, or
2. Within the sixty (60) days following the issue of shares for assets other than cash, the corporate capital with respect to such shares shall be an amount equal to the aggregate par value of the shares with par value, plus the amount received by the corporation as the proceeds of the issue of shares without par value. The amount of the price which is determined in this manner to constitute capital with respect to any shares without par value shall be the stated capital of such shares.

The capital of the corporation may be increased from time to time by resolution of the board of directors directing that a portion of the net assets of the corporation in excess of the amount which in this manner has been constituted as capital be transferred to the capital account. The board of directors may direct that this portion of the net assets so transferred shall be treated as capital regarding any shares of the corporation of any designated class or classes. The excess, if any, of the net assets of the corporation over the amount as determined in the foregoing manner to be capital, shall constitute surplus. Net assets shall be the excess of total assets over total liabilities of the corporation. Capital and surplus shall not be deemed as liabilities for these purposes.

Section 5.05.—Fractions of Shares.—

A corporation may, in its discretion, issue fractions of shares. If it does not issue the same, it shall:

1. Take steps so that those entitled to fractional interests dispose of them;
2. Pay in cash the fair value of fractions of shares as of the time when those entitled to such fractions are determined, or
3. Issue scrip or a warrant of fractional share in registered form (whether or not represented by a certificate) or in bearer form (represented by a certificate) entitling the holder to receive a full share upon the surrender of such scrip or warrants aggregating a full share.

A certificate for a fractional share or an uncertificated fractional share (but no scrip or warrants, unless otherwise provided therein) shall entitle the holder to exercise voting rights, to receive dividends and to participate in any of the assets of the corporation in case of liquidation.

The board of directors may cause scrip or warrants to be issued conditioned on the same becoming void if they are not exchanged for certificates representing full shares or for uncertificated full shares before a specified period; or conditioned on

the fact that the corporation can sell the shares for which the scrip or warrants are exchangeable and the proceeds thereof distributed among the holders of scrip or warrants; or subject to any other conditions which the board of directors may deem proper to impose.

Section 5.06.—Rights and Options with Respect to Capital Stock.—

Subject to any provisions of the certificate of incorporation, every corporation may create and issue, whether or not in connection with the issue and sale of any shares of capital stock or other securities of the corporation, rights or options entitling the holders thereof to purchase from the corporation any shares of capital stock of any class or classes. Such rights or options shall be evidenced by the instrument or instruments as shall be approved by the board of directors.

The terms upon which such shares may be purchased upon the exercise of any of the rights or options, the term or terms of duration of such rights or options, limited or unlimited, and the price or prices of the shares, shall be those fixed and stated in the certificate of incorporation or in a resolution adopted by the board of directors authorizing the creation and issue of such rights or options and, in every case, stated or incorporated by reference thereto in the instrument or instruments evidencing such rights or options. In the absence of actual fraud in the transaction, the judgment of the directors regarding the price or consideration for the issuance of such rights or options and the sufficiency thereof shall be conclusive.

The board of directors may authorize, through a resolution adopted by itself, one or more officers of the corporation to perform any of the following:

- a. Decide on the officers or employees of the corporation or of any subsidiary who shall receive the rights or options created by the corporation; and
- b. Determine on the number of rights or option to be received by these officers or employees; provided, however, that the resolution authorizing the officers specifically establishes the total number of rights or options that these

officers may grant, including the price to exercise the right or option. The board of directors may not authorize any officer to be self-designated as recipient of the rights or options.

In case the shares of the corporation issued in accordance with such rights or options are shares having par value, the price to be received in exchange therefor shall not be less than the par value thereof. In case the shares to be issued in this manner are shares without par value, the price thereof shall be determined as provided in Section 5.03 of this Act.

Section 5.07.—Partially Paid Shares.—

Any corporation may issue the whole or any part of its shares as partly paid shares which shall be subject to the balance of the price to be paid for the same. On the face or back of the certificate issued to represent partially paid shares or in the books and records of the corporation in the case of uncertificated partially paid shares, the total amount of the purchase price and the amount which has been paid thereon shall be stated. Upon declaring dividends on fully paid shares, the corporation shall declare dividends on partially paid shares of the same class, but only on the basis of the percentage of the purchase price which has been paid.

Section 5.08.—Partially Paid Shares Stockholder or Subscriber Liabilities.—

A. When the total price of the shares has not been paid to the corporation and the assets are insufficient to satisfy the claims of the creditors of the corporation, every holder or subscriber of such shares shall be bound to pay for each share held or subscribed by him/her the sum necessary to complete the amount of the unpaid balance of the price for which the corporation issued or shall issue such shares.

B. The amounts which shall be payable as provided in subsection (A) of this Section may be recovered as provided in Section 12.04 of this Act after a writ of execution has been returned unsatisfied, as provided in said Section.

C. No assignee of shares or subscriptions of shares in good faith and without knowledge or notice that the full price of the shares has not been paid, shall be personally liable for any unpaid portion of such price, but the transferor shall be liable for the same.

D. No person holding shares in any corporation as collateral security shall be personally liable as a stockholder, but the person who has pledged such shares shall be deemed the holder thereof and shall be liable for the same. No executor, administrator, guardian or trustee shall be personally liable as a stockholder, but the property or funds held by the executor, administrator, guardian or trustee or other trustee in such capacity shall be liable for such obligations.

E. No liability shall be asserted under this Section nor Section 12.04 of this Act after six (6) years from the issue of the shares or the date of subscription for the shares upon which liability is asserted.

F. In any action brought by a receiver or trustee of an insolvent corporation or by a judgment creditor to obtain the performance of an obligation, as provided in this Section, any stockholder or subscriber of shares of an insolvent corporation may appear and contest the claim or claims of such receiver or trustee.

Section 5.09.—Payment for Partially Paid Shares.—

The capital stock of a corporation shall be paid in the amounts and on the dates the directors may require. The directors may, from time to time, demand payment with respect to each partially paid share of such sum of money which in the judgment of the directors may be required by the needs of the business, which shall not exceed the balance pending payment on such stock. The sum so demanded shall be paid to the corporation on such dates and in such installments as the directors shall set forth. The directors shall notify in writing the place and date of such payments and such notice shall be sent by mail not less than thirty (30) days

prior to the date of such payment to the holders or subscribers of partially paid shares to their last known postal address.

Section 5.10.—Shares Payment Arrears; Remedies.—

When a stockholder fails to satisfy any payment installment or requirement with respect to his/her stock, duly demanded by the directors upon maturity of such obligation, the directors may collect the amount of such installment or payment demanded, or any balance thereof remaining unpaid, through a judicial proceeding against the delinquent stockholder or through a sale at public auction of such part of the shares of the delinquent stockholder as will pay the amounts due which had been assigned to such shares, as well as the interests and any incidental expenses. The shares sold in this manner shall be transferred to the buyer, who shall be entitled to the corresponding shares certificate.

The notice of the date and place of the sale and the amount owed per share shall be published in a newspaper of general circulation in the Commonwealth of Puerto Rico, at least one week before the date of the sale, and the corporation shall send such notice to the delinquent stockholder at his/her last known mailing address at least twenty (20) days before the sale.

If there is no bidder to pay the amount due on the stock and if the amount is not collected through judicial proceedings in the Commonwealth of Puerto Rico within one year of the commencement thereof, the corporation shall acquire title to such stock and the rights corresponding to the amount paid by the delinquent stockholder.

Section 5.11.—Stock Certificates; Uncertificated Shares.—

The shares of a corporation shall be represented by certificates; provided, however, that the board of directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Such resolution shall not apply to shares represented by

certificates until the certificate is surrendered to the corporation. Every stockholder represented by certificates shall be entitled to have a certificate signed by, or in the name of the corporation, by the chair or vice chair of the board of directors or by the president or vice president and by the treasurer or assistant treasurer, or the secretary or assistant secretary of such corporation representing the number of shares registered in certificate form. Each and every one of the signatures on the certificate may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature appears on the certificate shall have ceased in his/her duties as such before the aforesaid certificate is issued, the corporation may issue such certificate with the same effect as if such officer, transfer agent or registrar held his/her office on the date of issuance.

No corporation shall issue certificates of shares to the bearer.

Section 5.12.—Corporate Capital Stock; Personal Property; Transfer.—

The capital stock of every corporation shall be deemed personal property and transferable as provided in Chapter VI. Whenever any transfer of shares shall be made as collateral security, and not in absolute manner, it shall be so stated in the entry of transfer thereof, if when the certificates are presented to the corporation for transfer, or when the transfer of uncertificated shares is requested, both the transferor and transferee so request.

Section 5.13.—Loss, Misappropriation, Theft or Destruction of Shares Certificate; Issuance of New Certificated or of Uncertificated Shares.—

The corporation may issue new share certificates or new uncertificated shares in lieu of any certificate issued by the same which has allegedly disappeared by loss, misappropriation, theft or destruction. The corporation may require the owner of the lost, misappropriated, stolen, or destroyed certificates, or the legal representative of such owner, to post a bond sufficient to compensate the

corporation in the event that any claim may arise on account of the alleged loss, misappropriation, theft or destruction of such certificates or from the issuance of new certificates or uncertificated shares.

Section 5.14.—Corporate Powers Regarding Ownership, Etc., of its Shares.—

A. Every corporation organized pursuant to the provisions of this Act may purchase, receive, take or acquire, own and hold, sell, exchange, transfer and dispose, pledge, use and negotiate its own shares. No corporation organized in such manner may, however:

1. Use its funds or assets for the purpose of acquiring its own corporate capital stock when the capital of the corporation has been impaired or when such use results in the impairment of the corporate capital; except, that the corporation may purchase or redeem with its own capital its preferred or special shares or, should there be no preferred or special outstanding shares, any of its own shares, should said shares were to be retired from circulation, once acquired by the corporation and the corporate capital is reduced pursuant to the provisions of Sections 8.03, and 8.04 of this Act;

2. Purchase, for a price higher than that for which they could then be redeemed at that time, any of its shares which are redeemable at the option of the corporation; or

3. Redeem any of its shares unless such redemption is authorized by subsection (B) of Section 5.01 of this Act, and the same is carried out as provided in said Section and in the certificate of incorporation.

B. Nothing set forth in this Section limits or affects the right of a corporation to resell any of its shares purchased or redeemed with its surplus funds, and which have not been retired, on the terms fixed by the board of directors.

C. The shares of its own capital stock which belong to the corporation or to any other corporation, if the majority of the voting shares in the election of directors of such other corporation is held directly or indirectly by the corporation, shall neither be voting shares nor count to determine quorum. Nothing contained in this Section shall be construed as limiting the right of any corporation to vote in representation of its own stock, including, but not limited to, its own stock held by it in a fiduciary capacity.

D. The shares which have been designated for redemption shall not be deemed as outstanding shares for voting purposes or for determining the total number of voting shares on any matter as of the date on which written notice of the redemption is sent to the holders of such shares and a sum sufficient to pay the redemption price of such shares is irrevocably deposited or reserved.

Section 5.15.—Additional Shares Issue.—

The directors of a corporation may at any time and from time to time, if all of the shares of capital stock authorized by the certificate of incorporation of such corporation have not been issued, accept subscriptions, issue, or otherwise commit to issue, additional shares of its capital stock, up to the amount authorized in its certificate of incorporation.

Section 5.16.—Subscriptions' Revocability.—

Unless otherwise provided by the terms of the subscription, a subscription for stock of a corporation to be created shall be irrevocable, except by the consent of all other subscribers or the corporation, for a period of six (6) months from its date.

Section 5.17.—Subscriptions' Requirements.—

A subscription for stock of a corporation, made before or after the creation of the corporation, may not be enforced against the subscriber, unless the same is in writing and signed by the subscriber or his/her agent.

Section 5.18.—Dividends; Payment of Dividends; Depletable Resources Corporations.—

A. Subject to the restrictions contained in the certificate of incorporation, the directors of any corporation created pursuant to the provisions of this Act may declare and pay dividends upon the shares of capital stock, or to its members in the case of a non-stock for-profit corporation, either:

1. Charged to surplus, as defined and computed in accordance with Sections 5.04 and 8.04 of this Act; or

2. In absence of such surplus, charged to the net profits of the fiscal year in which the dividend is declared, of the preceding fiscal year, or of both years.

If the capital of the corporation, computed pursuant to Sections 5.04 and 8.04 of this Act, has diminished because of the depreciation in the value of its assets, or because of losses or otherwise, to an amount less than the aggregate amount of capital represented by the issued and outstanding shares of all classes having a preference upon the distribution of assets, the directors of such corporation shall not declare nor pay dividends out of such net assets on no class of shares of their corporate capital until the deficiency in the amount of capital represented by the issued and outstanding shares of all classes, having a preference with respect to the distribution of assets, have been corrected. None of the provisions of this Section shall invalidate or affect a note, bond or obligation of the corporation paid by the same as a dividend to its shareholders, or any subsequent payment made according to the instrument paid as dividend, if at the time in which such note, bond or obligation was to be paid by the corporation, the latter had a surplus or net profit, as provided in paragraphs (1) and (2) of this Section, from which the corporation could have been able to pay the dividend pursuant to the law.

B. Subject to the restrictions contained in its certificate of incorporation, the directors of any corporation engaged in the exploitation of depletable assets (including, but not limited to, corporations engaged in the exploitation of natural resources and other depletable resources, including patents, or engaged primarily in the liquidation of specific assets) may determine the net profits derived from such liquidations without taking into consideration the depletion of such resources resulting from the lapse of time, the consumption, the liquidation, and the exploitation of such assets.

Section 5.19.—Reserves for Special Purposes.—

The directors of a corporation may set apart or reserve funds for any proper purpose from any funds which the corporation has available for dividends and may eliminate any of the reserves created in this manner.

Section 5.20.—Directors' Liability as to the Dividends and Redemption of Shares.—

Any director or member of any committee designated by the board of directors who relies on the accounting books and records of the corporation or on the financial statements prepared by any of its officers or by independent certified public accountants or by an appraiser selected with reasonable care by the board of directors, shall be fully protected as to the value or amount of the assets, liabilities and its net profits, or any thereof, or of any fact pertinent to the existence or amount of surplus or other funds from which dividends might properly be declared and paid; or from which the stock of the corporation might properly be purchased or redeemed.

Section 5.21.—Declaration and Payment of Dividends.—

No corporation shall pay dividends except as provided in this Act. The dividends may be paid in cash, with assets or in shares of corporate capital stock. If the dividend is to be paid in unissued shares of the capital stock, the board of

directors shall, by resolution, direct that there be designated as capital in respect of such shares, an amount which shall not be less than the aggregate par value of the shares with par value being declared as dividends and, in the case of shares without par value being declared as dividends, such amount as shall be designated by the board of directors. If the shares have been distributed by a corporation pursuant to a stock split, rather than as payment of dividends payable in stock, such designation of capital is not necessary.

Section 5.22.—Directors' Liability for Illegal Payments of Dividends or Purchase or Redemption of Shares; Discharge of Liability; Contribution Among Directors; Subrogation.—

A. Whenever, intentionally or by negligence, the provisions of Sections 5.14 and 5.18 of this Act are violated, the directors under whose administration the violation was committed shall, within six (6) years after the payment of the unlawful dividend, be jointly liable to the corporation and to the creditors of the corporation in case of dissolution or insolvency, for the full amount of the unlawfully paid dividend or for the amount unlawfully paid in the purchase or redemption of the stock of the corporation, plus the interest accrued by said amount from the time such liability arose. Any director absent when the same was incurred, or who had dissented from the act or resolution by which such liability was incurred, shall be acquitted from such liability if he/she states his/her opposition at the time it occurred or immediately thereafter in the minutes corresponding to the sessions of the directors whereat such act took place.

B. Any director against whom liability is imposed in accordance with this Section shall be entitled to receive a contribution from the other directors who may have voted in favor of the unlawful dividend, stock purchase or redemption or concurred in the approval thereof.

C. All directors against whom liability is imposed in accordance with this Section shall, to the extent of the amount paid by him/her as the result of such claim, be entitled to subrogate to the rights of the corporation against the stockholders who received the dividends paid on the stock, the proceeds of the sale or the redemption of his/her stock with knowledge of the facts stating that such dividend, sale or redemption was illegal, pursuant to the provisions of this Act, in proportion to the amounts received by each one of such stockholders, respectively.

CHAPTER VI

TRANSFER OF CORPORATE CAPITAL STOCK

Section 6.01.—Transfer of Stocks, Shares Certificate and Uncertificated Shares.—

Except as otherwise provided in this Chapter, the transfer of stocks, and the certificates representing such shares, or of uncertificated shares shall be governed by the provisions of Chapter 8 of the Commercial Transactions Act, Act No. 208 of August 17, 1995, as amended. To the extent that any of the provisions of this Chapter is inconsistent with any of the provisions of the Commercial Transactions Act, Act No. 208 of August 17, 1995, as amended, the provisions of this Chapter shall prevail.

Section 6.02.—Restrictions on Transfer of Stocks.—

A. A written restriction on the transfer or registration of transfer of the shares or other securities of a corporation, if permitted by this Section and noted conspicuously on the certificate representing such shares or, in the case of uncertificated shares, contained in the notice sent pursuant to subsection (F) of Section 5.01 of this Act, may be enforced against the holder of the restricted security or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility

for the person or estate of the holder. Unless noted conspicuously on the certificate representing the security or, in the case of uncertificated shares, contained in the notice sent pursuant to subsection (F) of Section 5.01 of this Act, a restriction shall be ineffective except against a person with actual knowledge of the restriction.

B. A restriction on the transfer or registration of transfer of the shares of a corporation may be imposed by the certificate of incorporation or by the bylaws or by an agreement among any number of shareholders or among such holders and the corporation. No restrictions so imposed shall be binding with respect to shares issued prior to the adoption of the restriction unless the holders of the securities are parties to an agreement or voted in favor of the restriction.

C. A restriction on the transfer of securities of a corporation is permitted by this Section if it:

1. Obligates the holder of the restricted securities to offer to the corporation or to any other holder of shares of the corporation or to any other person or to any combination of the foregoing, a prior opportunity, to be exercised within a reasonable time, to acquire the restricted securities; or

2. Obligates the corporation or any holder of securities of the corporation or any other person or any combination of the foregoing, to purchase the securities which are the subject of an agreement respecting the purchase and sale of the restricted securities; or

3. Requires the corporation or the holders of any class of securities of the corporation to consent to any proposed transfer of the restricted securities or to approve the proposed transferee of the restricted securities, or to approve the amount of securities of the corporation that may be owned by any person or group of persons; or

4. Prohibits the transfer of the restricted securities to designated persons or classes of persons and such designation is not manifestly unreasonable.

D. Any restriction on the transfer, holding or ownership of the stocks of a corporation, or shares on limited liability companies shall be conclusively presumed to be for the purpose of keeping its qualification as:

1. Electing “Corporation of Individuals” pursuant to SubChapter N of the Puerto Rico Internal Revenue Code of 1994, Sections 1390 to 1399 of Act No. 120 of 1994, as amended or any other previous or subsequent similar Act.

2. “Real Estate Investment Trust” pursuant to SubChapter P of the Puerto Rico Internal Revenue Code of 1994, Sections 1500 to 1502 of Act No. 120 of October 31, 1994, as amended, or any other previous or subsequent similar Act.

3. Maintaining any tax advantage to the corporation.

E. Any other lawful restriction on transfer or registration of transfer of shares or other securities of a corporation is permitted by this Section.

F. None of the provisions of this Chapter may be construed as to broaden the powers of minors or other persons who lack full civil capacity, or those of the trustees, executors or judicial administrators or other fiduciaries so as to validly endorse, transfer or grant power.

CHAPTER VII

MEETINGS, ELECTIONS, VOTING AND NOTICE

Section 7.01.—Meetings of Stockholders.—

A. Meetings of stockholders may be held at such place, either within or without the Commonwealth Puerto Rico as may be designated by or in the manner provided in the certificate of incorporation or bylaws, or if not so provided, as determined by the board of directors. If, pursuant to subsection (B) (1), the bylaws, or the certificate of incorporation, the board of directors is authorized to determine the place of a meeting of stockholders, the board of directors may, in its sole

discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by subsection (B) (2) of this Section.

B. If authorized by the board of directors in its sole discretion, and subject to such guidelines and procedures as the board of directors may adopt, stockholders and proxies not physically present at a meeting of stockholders may, by means of remote communication:

1. Participate in a meeting of stockholders; and

2. Be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxy, (ii) the corporation shall implement reasonable measures to provide such stockholders and proxies a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxy votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

C. Unless directors are elected by stockholders' consent in lieu of an annual meeting as permitted by this subsection, an annual meeting of stockholders shall be held for the election of directors on a date and at a time designated by or in the manner provided in the bylaws. Stockholders may, unless the certificate of incorporation otherwise provides, act by unanimous consent to elect directors; provided, however, that, if such consent is less than unanimous, such action by consent may be in lieu of holding an annual meeting only if all of the directorships

to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action. An election of directors by stockholders' consent in lieu of an annual meeting that is contrary to the provisions of subsection (B), shall not be sufficient to satisfy the annual stockholders' meeting requirement. Any other proper business may be transacted at the annual meeting.

D. A failure to hold the annual meeting at the designated time or to elect a sufficient number of directors to conduct the business of the corporation shall not affect otherwise valid corporate acts or work a forfeiture or dissolution of the corporation except as may be otherwise specifically provided in this Act. If the annual meeting for election of directors is not held on the date designated therefor or action by stockholders' consent to elect directors in lieu of an annual meeting has not been taken, the directors shall cause the meeting to be held as soon as is convenient. If there be a failure to hold the annual meeting or to take action by stockholders' consent in lieu of an annual meeting for a period of thirty (30) days after the date designated for the annual meeting, or if no date has been designated, for a period of thirteen (13) months after the latest to occur of the organization of the corporation, its last annual meeting or the last action by stockholders' consent to elect directors in lieu of an annual meeting, the Court of First Instance (Superior Parts) may summarily order a meeting to be held upon the application of any stockholder or director. The shares of stock represented at such meeting, either in person or by proxy, and entitled to vote thereat, shall constitute a quorum for the purpose of such meeting, notwithstanding any provision of the certificate of incorporation or bylaws to the contrary. The Court of First Instance (Superior Parts) may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of such meeting, the record date or dates for determination of stockholders entitled to notice of the meeting and to vote thereat.

E. Special meetings of the stockholders may be called by the board of directors or by such person or persons as may be authorized by the certificate of incorporation or by the bylaws.

F. All elections of directors shall be by written ballot unless otherwise provided in the certificate of incorporation; if authorized by the board of directors, such requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxy.

Section 7.02.—Voting Rights of Stockholders; Proxies; Limitations.—

A. Unless otherwise provided in the certificate of incorporation and subject to Section 7.03 of this Act, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder. If the certificate of incorporation provides for more or less than one vote for any share, on any matter, every reference in this Act to a majority or other proportion of stock, voting stock or shares shall refer to such majority or other proportion of the votes of such stock, voting stock or shares.

B. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy. No such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period.

C. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy pursuant to subsection (B) of this Section, the following shall constitute a valid means by which a stockholder may grant such authority:

1. A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature.

2. A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram, or other means of electronic transmission to the person who will be the holder of the proxy or another person or an agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information upon which they relied.

D. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to subsection (C) of this Section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

E. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally.

Section 7.03.—Fixing Date for Determination of Stockholders of Record.—

A. In order that the corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the board of directors may fix a record date, which record date shall not:

1. Precede the date upon which the resolution fixing the record date is adopted by the board of directors; and

2. Be more than sixty (60) days nor less than ten (10) days before the date of such meeting. If no record date is fixed by the board of directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting.

B. In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the board of directors may fix a record date, which record date shall not:

1. Precede the date upon which the resolution fixing the record date is adopted by the board of directors; and

2. Be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the board of directors is required by this Act, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the Commonwealth of Puerto Rico, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the board of directors and prior action by the board of directors is required by this Chapter, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the board of directors adopts the resolution taking such prior action.

C. In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the board of directors may fix a record date, which record date shall not:

1. Precede the date upon which the resolution fixing the record date is adopted by the board of directors; and

2. More than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

Section 7.04.—Cumulative Voting.—

The certificate of incorporation of any corporation may provide that at all elections of directors of the corporation, or at elections held under specified circumstances, each holder of stock or of any class or classes or of a series or series thereof shall be entitled to as many votes as shall equal the number of votes which such holder would be entitled to cast for the election of directors with respect to such holder's voting shares multiplied by the number of directors to be elected. The number of votes so determined may be casted for a single director or may distribute them among the number to be voted for, or for any two (2) or more of them as such holder may see fit.

Section 7.05.—Voting Rights of Members of Nonstock Corporations; Quorum; Proxies.—

A. Sections 7.01 to 7.04, and 7.06 of this Act shall not apply to corporations not authorized to issue stock, except that subsection (A) of Section 7.01, and subsections (C) and (D) of Section 7.02 shall apply to such corporations, and, when so applied, all references therein to stockholders and to the board of directors shall be deemed to refer to the members and the governing body of a nonstock corporation, respectively.

B. Unless otherwise provided in the certificate of incorporation of a nonstock corporation, each member shall be entitled at every meeting of members to vote in person or by proxy, but no proxy shall be voted on after three (3) years from its date, unless the proxy provides for a longer period.

C. Unless otherwise provided in this Act, the certificate of incorporation or bylaws of a nonstock corporation may specify the number of members having voting power who shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction

of any business. In the absence of such specification in the certificate of incorporation or bylaws of a nonstock corporation:

1. One-third (1/3) of the members of such corporation shall constitute a quorum at a meeting of such members;

2. In all matters other than the election of the governing body of such corporation, the affirmative vote of a majority of such members present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the members, unless the vote of a greater number is required by this Act; and

3. Members of the governing body shall be elected by a majority of the votes of the members of the corporation present in person or represented by proxy at the meeting and entitled to vote thereon.

D. If the election of the governing body of any nonstock corporation shall not be held on the day designated by the corporation's bylaws, the governing body shall cause the election to be held as soon thereafter as convenient. The failure to hold such an election at the designated time shall not work any forfeiture of rights or dissolution of the corporation, but the Court of First Instance (Superior Parts) may summarily order such an election to be held upon the application of any member of the corporation. At any election pursuant to such order the persons entitled to vote in such election who shall be present at such meeting, either in person or by proxy, shall constitute a quorum for such meeting, notwithstanding any provision of the certificate of incorporation or the bylaws of the corporation to the contrary.

E. If authorized by the governing body, any requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission, provided that any such electronic transmission must either set forth or be submitted with

information from which it can be determined that the electronic transmission was authorized by the member or proxy holder.

Section 7.06.—Quorum and Required Vote for Stock Corporations.—

Subject to the provisions of this Act in respect of the vote that shall be required for a specified action, the certificate of incorporation or bylaws of any corporation authorized to issue stock may specify the number of shares and/or the amount of other securities having voting power the holders of which shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business. In no event shall a quorum consist of less than one-third (1/3) of the shares entitled to vote at the meeting, except that, where a separate vote by a class or series or classes or series is required, a quorum shall consist of not less than one-third (1/3) of the shares of such class or series or classes or series. In the absence of such specification in the certificate of incorporation or bylaws of the corporation:

A. A majority of the shares entitled to vote, whose holders are present in person or represented by proxy, shall constitute a quorum at a meeting of stockholders;

B. In all matters other than the election of directors, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders;

C. Directors shall be elected by a majority of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors; and

D. Where a separate vote by a class or series or classes or series is required, a majority of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to

vote on that matter and the affirmative vote of the majority of shares of such class or series or classes or series present in person or represented by proxy at the meeting shall be the act of such class or series or classes or series.

Section 7.07.—Voting Rights of Fiduciaries, Pledgors.—

Persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the corporation such person has expressly empowered the pledgee to vote thereon. In which case only the pledgee, or such pledgee's proxy, may represent such stock and vote thereon.

Section 7.08.—Voting Trusts and Other Voting Agreements.—

A. One stockholder or any other number of them may by agreement in writing deposit capital stock of an original issue with or transfer capital stock to any person or persons, or entity or entities authorized to act as trustee, for the purpose of vesting in such person or persons, entity or entities, who may be designated voting trustee, or voting trustees, the right to vote thereon for any period of time determined by such agreement, upon the terms and conditions stated in such agreement. The agreement may contain any other lawful provisions not inconsistent with such purpose. A copy of the agreement shall be filed in the registered office of the corporation in the Commonwealth of Puerto Rico, which copy shall be open to the inspection of any stockholder of the corporation or any beneficiary of the trust under the agreement daily during business hours. After the filing of such copy, the certificates of stock or uncertificated stock shall be issued to the voting trustee or trustees to represent any stock of an original issue so deposited with such voting trustee or trustees. Any certificates of stock or uncertificated stock so transferred to the voting trustee or trustees shall be surrendered and cancelled and new certificates or uncertificated stock shall be issued therefore to the voting trustee or trustees. In the certificate so issued, if any,

it shall be stated that it is issued pursuant to such agreement, and that fact shall also be stated in the stock ledger of the corporation as part of the notes made of voting trustees as stockholders. The voting trustees may vote the stock so issued or transferred during the period specified in the agreement. Stock standing in the name of the trustees may be voted either in person or by proxy, and in voting the stock, the voting trustee or trustees shall incur no responsibility as stockholder, trustee or otherwise, except for their own individual malfeasance. In any case where two (2) or more persons or entities are designated as voting trustees, and the right and method of voting any stock standing in their names at any meeting of the corporation are not fixed by the agreement appointing the trustees, the right to vote the stock and the manner of voting it at the meeting shall be determined by a majority of the trustees. If they be equally divided as to the right and manner of voting the stock in any particular case, the vote of the stock in such case shall be divided equally among the trustees.

B. Any amendment to a voting trust agreement shall be made by a written agreement, a copy of which shall be filed in the registered office of the corporation in the Commonwealth of Puerto Rico.

C. A written agreement between two (2) or more stockholders, and signed by the parties thereto, may provide that in exercising any voting rights, the shares held by them shall be voted as provided by the agreement, or as the parties may agree, or as determined in accordance with a procedure agreed upon by them.

D. This Section shall not be deemed to invalidate any voting or other agreement among stockholders or any irrevocable proxy which is not otherwise illegal.

Section 7.09.—List of Stockholders Entitled to Vote; Penalty for Refusal to Produce; Stock Ledger.—

A. The officer who has charge of the stock ledger of a corporation shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Nothing contained in this Section shall require the corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then such list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

B. Negligence or intentional denial of the directors to present such list at any meeting for the election of directors held at a place or to make such list available for examination on a reasonably accessible electronic network during the election of directors held solely by means of remote communication, shall disable the directors to be elected to any office in such meeting.

C. The stock ledger shall be the only evidence as to who are the stockholders entitled by this Section to examine the list required by this Section or to vote in person or by proxy at any meeting of stockholders.

Section 7.10.—Inspection of Books and Records.—

A. As used in this Section:

1. “Stockholder” means a holder of record of stock in a stock corporation, or a person who is the beneficial owner of shares of such stock held either in a voting trust or a member of a nonstock corporations.

2. “List of stockholders” also includes lists of members in a nonstock corporation.

3. “Under Oath” includes statements the declarant affirms to be true under penalty of perjury under the laws of the Commonwealth of Puerto Rico.

4. “Subsidiary” means any entity directly or indirectly owned, in whole or in part, by the corporation of which the stockholder is a stockholder and over the affairs of which the corporation directly or indirectly exercises control, and includes, without limitation, corporations, partnerships, limited partnerships, limited liability partnerships, limited liability companies, statutory trusts and/or joint ventures.

B. Any stockholder, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose, and to make copies and extracts from:

1. The corporation's stock ledger, a list of its stockholders, and its other books; and

2. A subsidiary's books, to the extent that:

(i) The corporation has actual possession and control of such records of such subsidiary; or

(ii) The corporation could obtain such records through the exercise of control over such subsidiary, provided that as of the date of the making of the demand:

a. The stockholder inspection of such books and records of the subsidiary would not constitute a breach of an agreement between the corporation or the subsidiary and a person or persons not affiliated with the corporation; and

b. The subsidiary would not have the right under the law applicable to it to deny the corporation access to such books and records upon demand by the corporation.

In every instance where the stockholder is other than a record holder of stock in a stock corporation or a member of a nonstock corporation, the demand under oath shall state the person's status as a stockholder, be accompanied by documentary evidence of beneficial ownership of the stock, and state that such documentary evidence is a true and correct copy of what it purports to be. A "proper purpose" shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in the Commonwealth of Puerto Rico.

C. If the corporation, or an officer or agent thereof, refuses to permit an inspection sought by a stockholder or attorney or other agent acting for the stockholder pursuant to subsection (B) of this Section or does not reply to the demand within five (5) business days after the demand has been made, the stockholder may apply to the Court of First Instance (Superior Part) for an order to compel such inspection. The Court of First Instance (Superior Part) is hereby vested with exclusive jurisdiction to determine whether or not the person seeking inspection is entitled to the inspection sought. The Court may summarily order the corporation to permit the stockholder to inspect the corporation's stock ledger, an existing list of stockholders, and its other books, and to make copies or extracts therefrom; or the Court may order the corporation to furnish to the stockholder a list of its stockholders as of a specific date on condition that the stockholder first pay to the corporation the reasonable cost of obtaining and furnishing such list and on such other conditions as the Court deems appropriate. Where the stockholder seeks to inspect the corporation's books and records, other than its stock ledger or list of stockholders, such stockholder shall first establish that:

1. Such stockholder is a stockholder;
2. Such stockholder has complied with this Section respecting the form and manner of making demand for inspection of such documents; and
3. The inspection such stockholder seeks is for a proper purpose.

Where the stockholder seeks to inspect the corporation's stock ledger or list of stockholders and establishes that such stockholder is a stockholder and has complied with this Section respecting the form and manner of making demand for inspection of such documents, the burden of proof shall be upon the corporation to establish that the inspection such stockholder 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 just and proper. The Court may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within the Commonwealth of Puerto Rico and kept in this jurisdiction upon such terms and conditions as the order may prescribe.

D. Any director shall have the right to examine the corporation's stock ledger, a list of its stockholders and its other books and records for a purpose reasonably related to the director's position as a director. The Court of First Instance (Superior Part) is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The Court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger and the list of stockholder's and to make copies or extracts therefrom. The burden of proof shall be upon the corporation to establish that the inspection such director 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 and further relief as the Court may deem just and proper.

Section 7.11.—Voting, Inspection of Books, and Other Rights of Bondholders and Debenture Holders.—

Every corporation may in its certificate of incorporation confer upon the holders of any bonds, debentures or other obligations issued or to be issued by the corporation the power to vote in respect to the corporate affairs and management of the corporation to the extent and in the manner provided in the certificate of incorporation. The corporation may confer upon such holders of bonds, debentures or other obligations the same right of inspection of its books, accounts and other records, and also any other rights, which the stockholders of the corporation have or may have by reason of the laws of the Commonwealth of Puerto Rico or of the

provisions of the certificate of incorporation. If the certificate of incorporation so provides, such holders of bonds, debentures or other obligations shall be deemed to be stockholders, and their bonds, debentures or other obligations shall be deemed to be shares of stock, for the purpose of any provision of this Act which requires the vote of stockholders as a prerequisite to any corporate action and the certificate of incorporation may divest the holders of capital stock, in whole or in part, of their right to vote on any corporate matter whatsoever, except as set forth in paragraph (2) of subsection (B) of Section 8.02 of this Act.

Section 7.12.—Notice of Meetings and Adjourned Meetings.—

A. Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxies may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

B. Unless otherwise provided in this Act, the written notice of any meeting shall be given not less than ten (10) or more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. An affidavit of the secretary or an assistant secretary or of the transfer agent of the corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

C. When a meeting is adjourned to another time or place, unless the bylaws otherwise require, notice need not be given of the adjourned meeting if the time,

place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxies may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 7.13.—Board of Directors; Vacancies and Newly Created Directorships.—

A. Unless otherwise provided in the certificate of incorporation or bylaws:

1. Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by the vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director;

2. Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by the vote of a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, a corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call

a special meeting of stockholders in accordance with the certificate of incorporation or the bylaws, or may apply to the Court of First Instance (Superior Parts) for a decree summarily ordering an election as provided in Section 7.01 of this Act.

B. In the case of a corporation, the directors of which are divided into classes, any directors chosen under subsection (A) of this Section shall hold office until the next election of the class for which such directors shall have been chosen, and until their successors shall be elected and qualified.

C. If, at the time of filling any vacancy or any newly created directorship, the directors then in office shall constitute less than a majority of the whole board as constituted immediately prior to any such increase, the Court of First Instance (Superior Parts) may, upon application of any stockholder or stockholders holding at least ten percent (10%) of the outstanding voting stock, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid. Such election shall be governed by the provisions of Section 7.01 of this Act, as far as applicable.

D. Unless otherwise provided in the certificate of incorporation or bylaws, when one (1) or more directors shall resign from the board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective. Each director so chosen shall hold office as provided in this Section in the filling of other vacancies.

Section 7.14.—Forms of Records.—

Any records maintained by a corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device, or method provided that the records so kept can be converted into clearly legible paper form within a reasonable time. Any corporation shall so convert any records so kept upon the request of any person entitled to inspect such records pursuant to any provision of this Act.

Section 7.15.—Contested Election of Directors; Proceedings to Determine Validity.—

A. Upon application of any stockholder or director, or any officer whose title to office is contested, or any member of a corporation without capital stock, the Court of First Instance (Superior Part) may hear and determine the validity of any election, appointment, removal or resignation of any director, member of the governing body, or officer of any corporation, and the right of any person to hold or continue to hold such office, and, in case any such office is claimed by more than one person, may determine the person entitled thereto. In any of the above cases and to that end, the Court of First Instance (Superior Part) may make such order or decree as may be just and proper, with power to enforce the production of any books, papers and records of the corporation relating to the issue. In case it should be determined that no valid election has been held, the Court of First Instance (Superior Part) may order an election to be held in accordance with Section 7.01 of this Act. With respect to any application pursuant to this Section, service of copies of the application upon the registered agent of the corporation shall be deemed to be service upon the corporation and upon the person whose title to office is contested and upon the person, if any, claiming such office. The

registered agent shall forward immediately a copy of the application to the corporation and to the person whose title to office is contested and to the person, if any, claiming such office, in a postpaid, sealed, registered letter addressed to such corporation and such person at their post-office addresses last known to the registered agent or furnished to the registered agent by the applicant stockholder. The Court of First Instance (Superior Part) may make such order respecting further or other notice of such application as it deems proper under the circumstances.

B. Upon application of any stockholder or any member of a corporation without capital stock, the Court of First Instance (Superior Part) may hear and determine the result of any vote of stockholders or members, as the case may be, upon matters other than the election of directors, officers or members of the governing body. Service of the application upon the registered agent of the corporation shall be deemed to be service upon the corporation, and no other party need be joined in order for the Court to adjudicate the result of the vote. The Court may make such order respecting notice of the application as it deems proper under the circumstances.

Section 7.16.—Appointment of Custodian or Receiver of Corporation on Deadlock or for Other Causes.—

A. The Court of First Instance (Superior Part), upon application of any stockholder, may appoint one (1) or more persons to be custodian or custodians, and, if the corporation is insolvent, to be receiver or receivers, of and for any corporation when:

1. At any meeting held for the election of directors the stockholders are so divided that they have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors; or

2. The business of the corporation is suffering or is threatened with irreparable injury because the directors are so divided respecting the management of the affairs of the corporation that the required vote for action by the board of directors cannot be obtained and the stockholders are unable to terminate this division; or

3. The corporation has abandoned its business and has failed within a reasonable time to take steps to dissolve, liquidate or distribute its assets.

B. A custodian appointed under this Section shall have all the powers to continue the business of the corporation and not to liquidate its affairs and distribute its assets, except when the Court of First Instance (Superior Parts) shall otherwise order and except in cases arising under paragraph (3) of subsection (A) of this Section or paragraph (2) of subsection (A) of Section 14.15 of this Act.

Section 7.17.—Consent of Stockholders or Members in Lieu of Meeting.—

A. Unless otherwise provided in the certificate of incorporation, any action required by this Act to be taken at any annual or special meeting of stockholders of a corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all share holders entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its designated office, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

B. Unless otherwise provided in the certificate of incorporation, any action required by this Act to be taken at an annual or special meeting of the members of a nonstock corporation, or any action which may be taken at any meeting of the members of a nonstock corporation, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members having a right to vote thereon were present and voted. Such consent shall be delivered to the corporation in the manner described on subsection (A) of this Section.

C. Every written consent shall bear the date of signature of each stockholder or member who signs the consent, and no written consent shall be effective unless, within sixty (60) days of the earliest dated consent delivered, sufficient signed written consents are delivered to the corporation to its designated office, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's designated office shall be by hand or by certified or registered mail, return receipt requested.

D. A remote communication or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxy, or by a person or persons authorized to act for a stockholder or proxy, shall be deemed to be written, signed and dated for the purposes of this Section, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the corporation can determine:

1. That the remote communication or other electronic transmission was transmitted by the stockholder or proxy or by a person or persons authorized to act for the stockholder or proxy; and

2. The date on which such stockholder or proxy or authorized person transmitted such remote or electronic transmission. The date on which such remote or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by remote or electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the corporation by delivery to its registered agent, its main office or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered agent shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by remote or other electronic transmission, may also be delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded if, to the extent and in the manner provided by resolution of the board of directors of the corporation.

E. Any copy, facsimile or other reliable reproduction of a written consent may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

F. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders or members who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that written consents signed by a sufficient number of holders or members to take the action were delivered to the corporation as provided in subsection (C) of this Section. In the event that the action which is consented to is such as would have required the filing of a

certificate under any other Section of this Act, if such action had been voted on by stockholders or by members at a meeting thereof, the certificate filed under such other Section shall state, in lieu of any statement required by such Section concerning any vote of stockholders or members, that written consent and notice have been given in accordance with this Section.

Section 7.18.—Waiver of Notice.—

Whenever notice is required to be given under any provision of this Act or the certificate of incorporation or bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance or participation of a person at a meeting, pursuant to Section 4.01 (H), shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting because the meeting was not called or convened pursuant to this Act. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or members of a committee of directors need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the certificate of incorporation or the bylaws.

Section 7.19.—Exception to Requirements of Notice.—

A. Whenever notice is required to be given, under any provision of this Act or of the certificate of incorporation or bylaws of any corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as

to require the filing of a certificate under any of the other Sections of this Act, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

B. Notwithstanding any of the provisions of this Act, the certificate of incorporation or the bylaws of any corporation, it shall not be required to give notice to any stockholder or, if the corporation is a nonstock corporation, to any member, to whom:

1. Notice of two (2) consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting has been given during the period between such two (2) annual meetings, or

2. All, and at least two (2), payments (if sent by first-class mail) of dividends or interest on securities during a twelve (12)-month period, have been mailed to such person at his/her address as shown on the records of the corporation and have been returned undeliverable.

Any action or meeting which shall be taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the corporation a written notice setting forth such person's current address, the requirement that notice be given to such person shall be reinstated. In the event that the action taken by the corporation is such as to require the filing of a certificate under any of the other Sections of this Act, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to this Section.

C. The exception in paragraph (B)(1) of this Section shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.

Section 7.20.—Powers of Court in Elections of Directors.—

A. The Court of First Instance (Superior Part), in any proceeding instituted under Sections 7.01, 7.04 or 7.15 of this Act may determine the right and power of persons claiming to own stock, or in the case of nonstock corporations, persons claiming to be members thereof, to vote at any meeting of the stockholders.

B. The Court of First Instance (Superior Part) may appoint a person to hold any election provided for in Sections 7.01, 7.04 or 7.15 of this Act under such orders and powers as it deems proper; and it may punish any officer or director for contempt in case of noncompliance with any order made by the Court of First Instance (Superior Part); and, in case of disobedience by a corporation of any order made by the Court of First Instance (Superior Part), may enter a decree against such corporation for a penalty of not more than five thousand dollars (\$5,000).

Section 7.21.—Notice by Electronic Transmission.—

A. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the corporation under any provision of this Chapter, the certificate of incorporation, or the bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any such consent as to this Section shall be deemed revoked if:

1. The corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent;

2. Such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice; provided, that the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

B. Notice given pursuant to subsection (A) of this Section shall be deemed given:

1. If by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;

2. If by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice;

3. If by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (a) such posting and (b) the giving of such separate notice; and

4. If by any other form of electronic transmission, when directed to the stockholder. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

C. For purposes of this Chapter, “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

D. This Section shall apply to any corporation organized under this Chapter that is not authorized to issue capital stock, and when so applied, all references to stockholders shall be deemed to refer to members of such a corporation.

E. This Section shall not apply to Sections 5.10, 11.01, 11.02, and 12.03 of this Act.

Section 7.22.—Notice to Stockholders Sharing an Address.—

A. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the corporation under any provision of this Chapter, the certificate of incorporation, or the bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation.

B. Any stockholder who fails to object in writing to the corporation, within 60 days of having been given written notice by the corporation of its intention to send the single notice permitted under subsection (A) of this Section, shall be deemed to have consented to receiving such single written notice.

C. This Section shall apply to any corporation organized under this Chapter that is not authorized to issue capital stock, and when so applied, all references to stockholders shall be deemed to refer to members of such a corporation.

D. This Section shall not apply to Sections 5.10, 11.01, 11.02, and 12.03 of this Act.

CHAPTER VIII

AMENDMENTS TO THE CERTIFICATE OF INCORPORATION

CHANGES IN CORPORATE CAPITAL

Section 8.01.—Amendment to the Certificate of Incorporation Before Receipt of Payment for Stock.—

A. Before a corporation has received any payment for any of its stock, it may amend its certificate of incorporation at any time or times, in any and as many respects as may be desired, so long as its certificate of incorporation as amended would contain only such provisions as it would be lawful insert in an original certificate of incorporation filed at the time of adoption of the amendment.

B. The amendment of a certificate of incorporation authorized by this Section shall be adopted by a majority of the incorporators, if directors or members of any body or governing body were not named in the original certificate of incorporation or have not yet been elected, or, if directors were named in the original certificate of incorporation or have been elected and are holding office, by a majority of the directors. A certificate setting forth the amendment and certifying that the corporation has not received any payment for any of its stock, or that the corporation has no members, as applicable, and that the amendment has been duly adopted in accordance with this Section shall be executed, acknowledged, filed and recorded in accordance with Section 1.03 of this Act. Upon such filing, the corporation's certificate of incorporation shall be deemed to be amended accordingly as of the date on which the original certificate of incorporation became effective, except as to those persons who are substantially and adversely affected by the amendment and as to those persons the amendment shall be effective from its filing date.

Section 8.02.—Amendment of Certificate of Incorporation After Receipt of Payment for Stock; Nonstock Corporations.—

A. After a corporation has received payment for any of its capital stock, it may at any time amend its certificate of incorporation, from time to time, in any and as many respects as may be desired, provided that its certificate of incorporation as amended would contain only such provisions as it would be lawful to insert in an original certificate of incorporation filed at the time of the adoption of such amendment. In the event that a change in stock or the rights of stockholders, or an exchange, reclassification, subdivision, combination or cancellation of stock or rights of stockholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, subdivision,

combination or cancellation must be included in the certificate. In particular, and without limitation upon such general power of amendment, a corporation may amend its certificate of incorporation, from time to time, so as:

1. To change its corporate name; or
2. To change, substitute, enlarge or diminish the nature of its business or its corporate powers and purposes; or
3. To increase or decrease its authorized capital stock or to reclassify the same, by changing the number, par value, designations, preferences, or relative, participating, optional, or other special rights of the shares, or the qualifications, limitations or restrictions of such rights, or by changing shares with par value into shares without par value, or shares without par value into shares with par value either with or without increasing or decreasing the number of shares, or by subdividing or combining the outstanding shares of any class or series of a class of shares into a greater or lesser number of outstanding shares; or
4. To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared; or
5. To create new classes of stock having rights and preferences either prior and superior or subordinate and inferior to the stock of any class then authorized, whether issued or unissued; or
6. To change the period of its duration.

Any or all such changes or alterations may be effected by one certificate of amendment.

B. Every amendment authorized by subsection (A) of this Section shall be made in the following manner:

1. If the corporation has capital stock, its board of directors shall adopt a resolution setting forth the amendment proposed, declaring its advisability, and either calling a special meeting of the stockholders entitled to vote in respect

thereof for the consideration of such amendment or directing that the amendment proposed be considered at the next annual meeting of the stockholders. Such special or annual meeting shall be called and held upon notice in accordance with Section 7.12 of this Act. The notice shall set forth such amendment in full or a brief summary of the changes to be effected thereby, as the directors shall deem advisable. At the meeting a vote of the stockholders entitled to vote thereon shall be taken for and against the proposed amendment. If a majority of the outstanding stock entitled to vote thereon, and a majority of the holders of outstanding stock of each class entitled to vote thereon as a class has been voted in favor of the amendment, a certificate setting forth the amendment and certifying that such amendment has been duly adopted in accordance with this Section shall be executed, acknowledged, filed, and recorded and shall become effective in accordance with Section 1.03 of this Act.

2. The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment to the certificate of incorporation, whether or not entitled to vote thereon by the certificate of incorporation, if the amendment would increase or decrease the aggregate number of authorized shares of such class, increase or decrease the par value of the shares of such class, or alter or change the preferences, special powers or rights of the shares of such class so as to affect them adversely. If any proposed amendment would alter or change the powers, preferences, or special rights of one or more series of any class of shares so as to affect them adversely, but shall not so affect the entire class, then only the shares of the series so affected by the amendment shall be considered a separate class for the purposes of this paragraph. The number of authorized shares of any such class or classes of stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the corporation entitled to vote irrespective of this

subsection, if so provided in the original certificate of incorporation, in any amendment thereto which created such class or classes of stock or which was adopted prior to the issuance of any shares of such class or classes of stock, or in any amendment thereto which was authorized by a resolution or resolutions adopted by the affirmative vote of the holders of a majority of such class or classes of stock.

3. If the corporation has no capital stock, then the governing body thereof shall adopt a resolution setting forth the amendment proposed and declaring its advisability. If a majority of all the members of the governing body shall vote in favor of such amendment, a certificate thereof shall be executed, acknowledged, and filed and shall become effective in accordance with Section 1.03 of this Act. The certificate of incorporation of any such corporation not issuing capital stock may contain a provision requiring any amendment thereto to be approved by a specified number or percentage of the members or by any specified class of members of such corporation. In such case the proposed amendment shall be submitted to the consideration of the members or to any specified class of members of such corporation without capital stock in the same manner, so far as applicable, as is provided in this Section for an amendment to the certificate of incorporation of a stock corporation. In the event of the adoption of the proposed amendment by such members, a certificate evidencing such amendment shall be executed, acknowledged and filed in accordance with Section 1.03 of this Act.

4. Whenever the certificate of incorporation shall require for action by the board of directors, by the holders of any class or series of shares or by the holders of any other securities having voting power, the vote of a greater number or proportion than is required by any Section of this Act, the provision of the certificate of incorporation requiring such greater vote shall not be altered, amended or repealed except by such greater vote.

C. The resolution authorizing a proposed amendment to the certificate of incorporation may provide that at any time prior to the effectiveness of the filing of the amendment at the Secretary of State, notwithstanding authorization of the proposed amendment by the stockholders of the corporation or by the members of a nonstock corporation, the board of directors or governing body may abandon such proposed amendment without further action by the stockholders or members.

Section 8.03.—Retirement of Stock.—

A. A corporation, by resolution of its board of directors, may retire any shares of its capital stock that are issued but are not outstanding.

B. Whenever any shares of the capital stock of a corporation are retired, they shall resume the status of authorized and unissued shares of the class or series to which they belong unless the certificate of incorporation otherwise provides. If the certificate of incorporation prohibits the reissuance of such shares, or prohibits the reissuance of such shares as a part of a specific series only, a certificate stating that reissuance of the shares is prohibited identifying the shares and reciting their retirement shall be executed, acknowledged, and filed in accordance with Section 1.03 of this Act. When such certificate becomes effective, it shall have the effect of amending the certificate of incorporation so as to reduce accordingly the number of authorized shares of the class or series to which such shares belong or, if such retired shares constitute all of the authorized shares of the class or series to which they belong, of eliminating from the certificate of incorporation all reference to such class or series of stock.

C. If the capital of the corporation shall be reduced by or in connection with the retirement of shares, the reduction of capital shall be effected pursuant to Section 8.04 of this Act.

Section 8.04.—Reduction of Capital.—

A. A corporation, by resolution of its board of directors, may reduce its capital in any of the following ways:

1. By reducing or eliminating the capital represented by shares of capital stock which have been retired;

2. By applying to an otherwise authorized purchase or redemption of outstanding shares of its capital stock some or all of the capital represented by the shares being purchased or redeemed, or any capital that has not been allocated to any particular class of its capital stock;

3. By applying to an otherwise authorized conversion or exchange of outstanding shares of its capital stock some or all of the capital represented by the shares being converted or exchanged, or some or all of any capital that has not been allocated to any particular class of its capital stock, or both. Such application shall be made insofar as such capital in the aggregate exceeds the total aggregate par value or the stated capital of any previously unissued shares issuable upon such conversion or exchange; or

4. By transferring to surplus

i. some or all of the capital not represented by any particular class of its capital stock;

ii. some or all of the capital represented by issued shares of its par value capital stock, which capital is in excess of the aggregate par value of such shares; or

iii. some of the capital represented by issued shares of its capital stock without par value.

B. Notwithstanding the other provisions of this Section, no reduction of capital shall be made or effected unless the assets of the corporation remaining after such reduction shall be sufficient to pay any debts of the corporation for which payment has not been otherwise provided. No reduction of capital shall release any liability of any stockholder whose shares have not been fully paid.

Section 8.05.—Restated Certificate of Incorporation.—

A. A corporation may, whenever desired, integrate into a single instrument all of the provisions of its certificate of incorporation which are then in effect and operative as a result of there having theretofore been filed at the Department of State one or more certificates or other instruments pursuant to any of the subsections referred to in Section 1.04 of this Act, and it may at the same time also further amend its certificate of incorporation by adopting a restated certificate of incorporation.

B. If the restated certificate of incorporation merely restates and integrates but does not further amend the certificate of incorporation, as theretofore amended or supplemented by any instrument that was filed pursuant to any of the subsections related to Section 1.04 of this Act, it may be adopted by the board of directors without a vote of the stockholders, or it may be proposed by the directors and submitted by them to the stockholders for adoption, in which case the procedure and vote required by Section 8.02 of this Act for amendment of the certificate of incorporation shall be applicable. If the restated certificate of incorporation restates and integrates and also further amends in any respect the certificate of incorporation, as theretofore amended or supplemented, it shall be proposed by the directors and adopted by the stockholders in the manner and by the vote prescribed by Section 8.02 of this Act or, if the corporation has not received any payment for any of its stock, in the manner and by the vote prescribed by Section 8.01 of this Act.

C. Any restated certificate of incorporation shall be specifically designated as such in its heading. It shall state, either in its heading or in an introductory paragraph, the corporation's present name, and, if it has been changed, the name under which it was originally incorporated, and the date of filing of its original certificate of incorporation at the Department of State. A restated certificate shall also state that it was duly adopted in accordance with this Section. If it was adopted by the board of directors without a vote of the stockholders (unless it was adopted pursuant to Section 8.01), it shall state that it only restates and integrates and does not further amend the provisions of the corporation's certificate of incorporation as theretofore amended or supplemented, and that there is no discrepancy between those provisions and the provisions of the restated certificate. A restated certificate of incorporation may omit:

1. Such provisions of the original certificate of incorporation which named the incorporator or incorporators, the initial board of directors and the original subscribers for shares, and

2. Such provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, subdivision, combination or cancellation of stock, if such change, exchange, reclassification, subdivision, combination or cancellation has become effective.

Any such omissions shall not be deemed a further amendment.

D. A restated certificate of incorporation shall be executed, acknowledged, and filed in accordance with Section 1.03 of this Act. Upon its filing with the Secretary of State, the original certificate of incorporation, as theretofore amended or supplemented, shall be superseded. Thenceforth, the restated certificate of incorporation, including any further amendments or changes made thereby, shall be the certificate of incorporation of the corporation, but the original date of incorporation shall remain unchanged.

E. Any amendment or change effected in connection with the restatement and integration of the certificate of incorporation shall be subject to any other provision of this Act, not inconsistent with this Section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

CHAPTER IX

SALE OF ASSETS; DISSOLUTION

Section 9.01.—Sale, Lease or Exchange of Assets; Consideration; Procedure.—

A. Every corporation may at any meeting of its board of directors or governing body sell, lease or exchange all or substantially all of its property and assets, including its goodwill and its corporate franchises, upon such terms and conditions and for such consideration, which may consist in whole or in part of money or other property (including shares of stock in, and other securities of, any other corporation or corporations) as its board of directors or governing body deems convenient and for the best interests of the corporation. The sale, lease or exchange may be conducted when and as authorized by a resolution adopted by the holders of a majority of the outstanding stock of the corporation entitled to vote thereon or, if the corporation is a nonstock corporation, by a majority of the members having the right to vote for the election of the members of the governing body. The meeting of the stockholders of a nonstock corporation shall be duly called upon at least twenty (20) days' notice. The notice of the meeting shall state that such a resolution will be considered.

B. Notwithstanding authorization or consent to a proposed sale, lease or exchange by the stockholders or members, the board of directors or governing body may abandon such proposed sale, lease or exchange without further action by the stockholders or members, subject to the rights, if any, of third parties under any contract relating thereto.

C. For purposes of this Section only, the property and assets of the corporation include the property and assets of any subsidiary of the corporation. As used in this subsection, “subsidiary” means any entity wholly-owned and controlled, directly or indirectly, by the corporation and includes, without limitation, corporations, partnerships, limited partnerships, limited liability partnerships, limited liability companies, and/or statutory trusts. Notwithstanding subsection (A) of this Section, except to the extent the certificate of incorporation otherwise provides, no resolution by stockholders or members shall be required for a sale, lease or exchange of property and assets of the corporation to a subsidiary.

Section 9.02.—Mortgage or Pledge of Assets.—

The authorization or consent of stockholders to the mortgage or pledge of any and all of the property and assets of a corporation shall not be necessary, except to the extent that the certificate of incorporation otherwise provides.

Section 9.03.—Dissolution of Joint Venture Corporation Having Two Stockholders.—

A. If the stockholders of a corporation duly organized pursuant to the laws of the Commonwealth of Puerto Rico, having only two (2) stockholders each of which own fifty percent (50%) of the stock therein, shall be engaged in the prosecution of a joint venture and if such stockholders shall be unable to agree upon the desirability of discontinuing such joint venture and disposing of the assets used in such venture, either stockholder may, unless otherwise provided in the certificate of incorporation of the corporation or in a written agreement between the stockholders, file with the Court of First Instance (Superior Part) a petition stating that it desires to discontinue such joint venture and to dispose of the assets used in such venture in accordance with a plan to be agreed upon by both stockholders or that, if no such plan shall be agreed upon by both stockholders, the corporation be dissolved. Such petition shall have attached thereto a copy of the

proposed plan of discontinuance and distribution and a certificate stating that copies of such petition and plan have been transmitted in writing to the other stockholder and to the directors and officers of such corporation. The petition and certificate shall be executed and acknowledged in accordance Section 1.03 of this Act.

B. Unless both stockholders file with the Court of First Instance (Superior Part) a certificate concurrently executed and acknowledged stating that they have agreed on such plan, or a modification thereof within three (3) months of the date of the filing of such petition, and a certificate similarly executed and acknowledged within one (1) year from the date of the filing of such petition, stating that the distribution provided by such plan had been completed, the Court of First Instance (Superior Part) may dissolve such corporation and may by appointment of one or more trustees or receivers with all the powers and title of a trustee or receiver appointed under Section 9.09 of this Act, administer and wind up its affairs. Either or both of the above periods may be extended by agreement of the stockholders, evidenced by a certificate executed, acknowledged, and filed with the Court of First Instance (Superior Part) prior to the expiration of such period.

Section 9.04.—Dissolution Before Issuance of Shares or Beginning of Business; Procedure.—

If a corporation has not issued shares or has not commenced the business for which the corporation was organized, a majority of the incorporators, or, if directors were named in the certificate of incorporation or have been elected, a majority of the directors, may surrender all of the corporation's rights and franchises by filing in the office of the Department of State a certificate, executed and acknowledged by a majority of the incorporators or directors. The certificate shall state:

1. That no shares have been issued or that the business or activity for which the corporation was organized has not been begun;

2. That no part of the corporate capital has been paid, or, if some capital has been paid, that the amount actually paid in for the corporation's shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;

3. That all issued stock certificates, if any, have been surrendered and cancelled; and

4. That all rights and franchises of the corporation are surrendered.

Upon such certificate becoming effective in accordance with Section 1.03 of this Act, the corporation shall be dissolved.

Section 9.05.—Dissolution Procedure.—

- A. If it should be deemed advisable in the judgment of the board of directors that it should be dissolved, the board, after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, shall cause notice of the adoption of the resolution and of a meeting of stockholders to take action upon the resolution to be mailed to each stockholder entitled to vote thereon.

- B. At the stockholders meeting a vote shall be taken upon the proposed dissolution. If a majority of the outstanding stock of the corporation entitled to vote thereon shall vote for the proposed dissolution, a certification of dissolution shall be executed, acknowledged and filed at the offices of the Department of State pursuant to Section 1.03 of this Act. Such certificate of dissolution shall set forth:

1. The name of the corporation;
2. The date dissolution was authorized;

3. That the dissolution has been authorized in accordance with this Section; and

4. The names and addresses of the directors and officers of the corporation.

Upon a certificate of dissolution becoming effective in accordance with the provisions of Section 1.03 of this Act, the corporation shall be dissolved.

C. Dissolution of a corporation may also be authorized without action of the directors if all the stockholders entitled to vote thereon shall consent in writing. In such case, a certificate of dissolution stating that the dissolution was authorized by the stockholders as provided in this paragraph shall be filed at the offices of the Department of State as provided in subsection (B) of this Section. Upon a certificate of dissolution becoming effective in accordance with Section 1.03 of this Act, the corporation shall be dissolved.

D. The resolution authorizing a proposed dissolution may provide that notwithstanding authorization or consent to the proposed dissolution by the stockholders, or the members of a nonstock corporation pursuant to Section 9.06 of this Act, the board of directors or governing body may abandon such proposed dissolution without further action by the stockholders or members.

E. The corporation shall cause notice of the dissolution by mail to each known creditor of the corporation, whether before or at the time of filing of the certificate of dissolution.

Section 9.06.—Dissolution of Nonstock Corporation; Procedure.—

A. Whenever it shall be desired to dissolve any corporation having no capital stock, the governing body shall perform all the acts necessary for dissolution which are required by Section 9.05 of this Act to be performed by the board of directors of a corporation having capital stock. If the members of a corporation having no

capital stock are entitled to vote for the election of members of its governing body, they shall perform all the acts necessary for dissolution which are required by Section 9.05 of this Act to be performed by the stockholders of a corporation having capital stock. If there are no members entitled to vote thereon, the dissolution of the corporation shall be authorized at a meeting of the governing body, upon the adoption of a resolution to dissolve by the vote of a majority of members of its governing body then in office. In all other respects, the method and proceedings for the dissolution of a corporation having no capital stock shall conform as nearly as may be to the proceedings prescribed by Section 9.05 of this Act for the dissolution of corporations having capital stock.

B. If a corporation having no capital stock has not commenced the business for which the corporation was organized, a majority of the governing body or, if none, a majority of the incorporators may surrender all of the corporation rights and franchises by filing in the office of the Department of State a certificate, executed and acknowledged by a majority of the incorporators or governing body, conforming as nearly as may be to the certificate prescribed by Section 9.04 of this Act.

Section 9.07.—Payment of Taxes Before Dissolution or Merger.—

Under no circumstances, the issuance of a certificate of dissolution or the automatic extension of the corporate existence shall extinguish the taxes, penalties or fees due to the Commonwealth of Puerto Rico, or each municipality in which such entities operate.

Section 9.08.—Limited Continuation of Corporation After Dissolution.—

All corporations, whether they expire by their own limitation or are otherwise dissolved, shall continue for a three (3)-year term from such expiration or dissolution or for such longer period as the Court of First Instance (Superior Part) shall in its discretion direct for the purpose of prosecuting and defending suits,

whether civil, criminal or administrative, by or against them, and of enabling them to settle and close their business, to discharge their liabilities and to distribute to their stockholders any remaining assets; however, not for the purpose of continuing the business for which the corporation was organized.

With respect to any action, suit or proceeding begun by or against the corporation either prior to or within three (3) years after the date of its expiration or dissolution, the corporation shall, solely for the purpose of such action, suit or proceeding, be continued as a body corporate beyond the three (3)-year period and until any judgments, orders or decrees therein shall be fully executed, without the necessity for any special direction to that effect by the Court of First Instance (Superior Part).

Section 9.09.—Trustees or Receivers for Dissolved Corporations; Appointment; Powers; Duties.—

When any corporation organized under this Act shall be dissolved in any manner whatever, the Court of First Instance (Superior Part), on application of any creditor, stockholder or director of the corporation, or any other person who shows good cause therefor, at any time, may either appoint one or more of the directors of the corporation to be trustees, or appoint one or more persons to be receivers, of and for the corporation, to take charge of the corporation's property, and to collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by the corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation. The powers of the trustees or receivers may be continued as long as the Court of First Instance (Superior Part) shall deem necessary for the purposes aforesaid.

Section 9.10.—Trustee or Receivers Duties; Payments and Distributions to Creditors or Stockholders.—

The trustees or receivers of the dissolved corporation, after paying all charges, expenses and costs, and satisfying, within the scope of their legal priority, all special and general liens weighing on the funds of the corporation, shall pay all other corporate debts pending payment if the funds in custody are sufficient to pay. If the funds are not sufficient, these shall be distributed pro rata among all of the creditors who confirm the credit in the manner ordered or decreed by the Court. If after payment of the debts any surplus remains, the trustees or receivers shall distribute it and make the appropriate payments among those justly entitled thereto because they were stockholders of the corporation or the legal representatives thereof.

Section 9.11.—Effect on Pending Suits.—

If, for any reason, a corporation is dissolved prior to an entry of judgment in any pending or inchoate suit filed against the corporation in any court of the Commonwealth, the litigation shall not become moot by virtue of such dissolution. However, once the dissolution of the corporation and the names of the trustees or receivers are stated on the file of the case, the suit against the corporation shall continue against them until entry of final and binding judgment, with prior notice to such trustees or receivers. If this method is not practical, such notice shall be made to the attorney representing them in the suit.

Section 9.12.—Liability of Stockholders of Dissolved Corporations.—

A. A stockholder of a dissolved corporation the assets of which were distributed among stockholders shall not be liable for any claim against the corporation in an amount in excess of such stockholder's pro rata share of the claim or the amount so distributed to such stockholder, whichever is less.

B. A stockholder of a dissolved corporation the assets of which were distributed among stockholders shall not be liable for any claim against the corporation on which an action, suit or proceeding is not begun prior to the expiration of the period described in Section 9.08 of this Act.

C. The aggregate liability of any stockholder of a dissolved corporation for claims against the dissolved corporation shall not exceed the amount distributed to such stockholder in dissolution.

Section 9.13.—Revocation or Forfeiture of Certificate of Incorporation.—

A. The Court of First Instance (Superior Part) shall have power to revoke or forfeit the certificate of incorporation of any corporation organized in accordance with the laws of the Commonwealth for abuse, misuse or nonuse of the state powers, privileges or franchises. The Secretary of Justice, on his/her own initiative or at the request of a party, shall act for this purpose by filing the appropriate complaint in the Court of First Instance (Superior Part).

B. The Court of First Instance (Superior Part) shall have the power to appoint receivers or take other measures to administer and liquidate the affairs of any corporation whose certificate of incorporation is revoked or forfeited by any court pursuant to the provisions of this Act, or otherwise. In addition, it shall have the power to enter such orders and decrees with respect thereto which are fair and equitable respecting the affairs and assets and the rights of the stockholders and creditors thereof.

C. No proceedings shall be instituted in accordance with this Section for nonuse of the powers, privileges or franchises of the corporation during the first two (2) years following the incorporation of the corporation.

Section 9.14.—Salaries; Preferred Credits.—

In the management, liquidation or distribution of the assets of any corporation upon dissolution thereof, whether voluntary or involuntary, or upon the revocation of the certificate of incorporation or upon cancellation of its corporate existence, once the costs and expenses necessary for the preservation of the assets shall have been paid, the salaries or commissions accrued by the employees or sales representatives of the corporation during the six (6) months before the dissolution, revocation or cessation of corporate existence shall have priority with respect to other unsecured creditors. The terms “employees” and “salesmen” shall not be construed to include any official of the corporation.

Section 9.15.—Dissolution or Forfeiture of Charter by Decree of Court; Filing.—

Whenever any corporation is dissolved or its certificate of incorporation is forfeited by decree or judgment of a competent Court, the Clerk of the Court entering the decree or judgment shall file it without delay at the office of the Department of State. The Secretary of State shall make a note on the certificate of incorporation and on the index thereof.

CHAPTER X

MERGER OR CONSOLIDATION

Section 10.01.—Merger or Consolidation of Domestic Corporations.—

A. Two (2) or more corporations organized under the laws of the Commonwealth may merge into a single corporation, which may be any of the constituent corporations, or may consolidate into a new corporation, as stated in the agreement of merger or consolidation, as the case may be, in compliance with this Section and approved as provided herein. For purposes of this Act, “domestic corporation” shall be deemed to be a corporation organized under the laws of the Commonwealth.

B. The board of directors of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation and declaring its advisability. The agreement shall state:

1. The terms and conditions of the merger or consolidation;
2. The mode of carrying the same into effect;
3. In case of a merger, the amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
4. In case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as provided in an attachment to the agreement;
5. The manner, if any, of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation, or of cancelling some or all of such shares, and, if any shares of any of the constituent corporations are not to remain outstanding, to be converted solely into shares or other securities of the surviving or resulting corporation or to be cancelled, the cash, property, rights or securities of any other corporation or entity which 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 cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares or other securities of the surviving or resulting corporation; and
6. Such other details or provisions as are deemed desirable, including, without limiting of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, interests or rights, or any other agreement with respect thereto, as required by Section 5.05 of this Act.

The agreement so adopted shall be executed and acknowledged in accordance with Section 1.03 of this Act. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement; provided, that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

The term “facts,” as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

C. The agreement required by subsection (B) of this Section shall be submitted to the stockholders of each constituent corporation at an annual or special meeting for the purpose of acting on the agreement. Due notice of the time, place and purpose of the meeting shall be mailed to each holder of stock, whether voting or nonvoting, of the corporation at the stockholder’s address as it appears on the records of the corporation, at least twenty (20) days prior to the date of the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as the directors shall deem advisable. At the meeting, the agreement shall be considered and a vote taken for its adoption or rejection. If a majority of the outstanding stock of the corporation entitled to vote thereon shall be voted for the adoption of the agreement, that fact shall be certified on the agreement by the Secretary or assistant Secretary of the corporation. If the agreement shall be so adopted and certified by each constituent corporation, it shall then be filed and shall become effective, in accordance with Section 1.03 of this Act. In lieu of filing the agreement of merger or consolidation, the surviving or resulting corporation may file in the Department of State a certificate of merger or consolidation, executed in accordance with Section 1.03 of this Act, which states:

1. The name and place of incorporation of each of the constituent corporations;

2. That an agreement of merger or consolidation has been approved, adopted, executed, and acknowledged by each of the constituent corporations in accordance with this subsection;

3. The name of the surviving or resulting corporation;

4. In the case of a merger, such amendments or changes, if any, in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;

5. In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as set forth in an attachment to the certificate;

6. That the executed agreement of consolidation or merger is on file at an office of the surviving or resulting corporation, stating the address thereof; and

7. That a copy of the agreement of consolidation or merger will be furnished by the surviving corporation, on request and without cost, to any stockholder of any constituent corporation.

D. Any agreement of merger or consolidation may contain a provision that at any time prior to the time that the agreement (or a certificate in lieu thereof) filed with the Department of State becomes effective in accordance with Section 1.03 of this Act, the agreement may be terminated by the board of directors of any constituent corporation notwithstanding approval of the agreement by the stockholders of all or any of the constituent corporations. In the event the agreement of merger or consolidation is terminated after the filing of the agreement (or a certificate in lieu thereof) with the Department of State but before the agreement has become effective, a certificate of termination of merger or

consolidation shall be filed in accordance with Section 1.03 of this Act. Any agreement of merger or consolidation may contain a provision that the boards of directors of the constituent corporations may amend the agreement at any time prior to the time that the agreement (or a certificate in lieu thereof) filed with the Department of State becomes effective in accordance with Section 1.03 of this Act, provided, that an amendment made subsequent to the adoption of the agreement by the stockholders of any constituent corporation shall not:

1. change the amount or kind of shares, securities, cash, property or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such constituent corporation,

2. change any term of the certificate of incorporation of the surviving or resulting corporation to be effected by the merger or consolidation, or

3. change any of the terms and conditions of the agreement if such alteration or change would adversely affect the holders of any class or series thereof of such constituent corporation. In the event the agreement of merger or consolidation is amended after the filing thereof with the Department of State but before the agreement has become effective, a certificate of amendment of merger or consolidation shall be filed in accordance with Section 1.03 of this Act.

E. In the case of a merger, the certificate of incorporation of the surviving corporation shall automatically be amended to the extent, if any, that changes in the certificate of incorporation are set forth in the agreement of merger.

F. Notwithstanding the requirements of subsection (C) of this Section, unless required by its certificate of incorporation, no vote of stockholders of a constituent corporation surviving a merger shall be necessary to authorize a merger if:

1. the agreement of merger does not amend in any respect the certificate of incorporation of such constituent corporation;

2. each share of stock of such constituent corporation outstanding immediately prior to the effective date of the merger is to be an identical outstanding or treasury share of the surviving corporation after the effective date of the merger; and

3. either no shares of common stock of the surviving corporation and no shares, securities or obligations convertible into such stock are to be issued or delivered under the plan of merger, or the authorized unissued shares or the treasury shares of common stock of the surviving corporation to be issued or delivered under the plan of merger plus those initially issuable upon conversion of any other shares, securities or obligations to be issued or delivered under such plan do not exceed twenty percent (20%) of the shares of common stock of such constituent corporation outstanding immediately prior to the effective date of the merger.

No vote of stockholders of a constituent corporation shall be necessary to authorize a merger or consolidation if no shares of the stock of such corporation shall have been issued prior to the adoption by the board of directors of the resolution approving the agreement of merger or consolidation. If an agreement of merger is adopted by the constituent corporation surviving the merger, by action of its board of directors and without any vote of its stockholders pursuant to this subsection, the secretary or assistant secretary of that corporation shall certify on the agreement that the agreement has been adopted pursuant to this subsection and:

i. if it has been adopted pursuant to subsection F(1), that the conditions specified in that sentence have been satisfied, or

ii. if it has been adopted pursuant to subsection F(2) of this Section, that shares of stock of such corporation were issued prior to the adoption by the board of directors of the resolution approving the agreement of merger or consolidation. The agreement so adopted and certified shall then be filed and shall become

effective, in accordance with Section 1.03 of this Act. Such filing shall constitute a representation by the person who executes the agreement that the facts stated in the certificate remain true immediately prior to such filing.

Section 10.02.—Merger or Consolidation of Domestic and Foreign Corporations; Service of Process Upon Surviving or Resulting Corporation.—

A. Any corporation or corporations organized under the laws of the Commonwealth may merge or consolidate with one or more other corporations organized under any state of the United States, or of the District of Columbia if the laws of the state or other states, or of the District of Columbia permit a corporation of such jurisdiction to merge or consolidate with a corporation organized under another jurisdiction. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new corporation formed by the consolidation, which may be a corporation of the state of incorporation of any of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this Section.

In addition, any corporation or corporations existing under the laws of any jurisdiction other than the United States, may merge or consolidate with one or more corporations organized under the laws of the Commonwealth if the laws under which the other corporation or corporations are organized permit a corporation of such jurisdiction to merge or consolidate with a corporation of another jurisdiction. The surviving or resulting corporation from the merger or consolidation may be organized under the laws of the Commonwealth or organized under the laws of any other jurisdiction.

B. All the constituent corporations shall enter into an agreement of merger or consolidation. The agreement shall state:

1. The terms and conditions of the merger or consolidation;
2. The mode of carrying the same into effect;
3. The manner, if any, of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation, or of cancelling some or all of such shares, and, if any shares of any of the constituent corporations are not to remain outstanding, to be converted solely into shares or other securities of any other corporation or entity which 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. Any cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of the shares or other securities of the surviving or resulting corporation;

4. such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares of the surviving or resulting corporation or of any other corporation the securities of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto consistent with Section 5.05; and

5. such other provisions or facts as shall be required to be set forth in certificates of incorporation by the laws of the state which are stated in the agreement to be the laws that shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term "facts," as used in the

preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

C. The agreement shall be adopted, approved, certified, executed, and acknowledged by each of the constituent corporations in accordance with the laws under which it is organized, and, in the case of a corporation organized under the laws of the Commonwealth, in the same manner as is provided in Section 10.01 of this Act. The agreement shall be filed and shall become effective for all purposes of the laws of the Commonwealth when and as provided in Section 10.01 of this Act with respect to the merger or consolidation of corporations organized in the Commonwealth. In lieu of filing the agreement of merger or consolidation, the surviving or resulting corporation may file a certificate of merger or consolidation, executed in accordance with Section 1.03 of this Act, which states:

1. The name and the place of incorporation of each of the constituent corporations;

2. That an agreement of merger or consolidation has been approved, adopted, certified, executed, and acknowledged by each of the constituent corporations in accordance with this subsection;

3. The name of the surviving or resulting corporation;

4. In the case of a merger, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;

5. In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;

6. That the executed agreement of consolidation or merger is on file at the designated office of the surviving corporation and the address thereof;

7. That a copy of the agreement of consolidation or merger shall be furnished by the surviving corporation, on request and without cost, to any stockholder of any constituent corporation;

8. If the surviving or resulting corporation is to be organized under the laws of the Commonwealth, the authorized capital stock of each constituent corporation which is not a corporation organized under the laws of the Commonwealth; and

9. The agreement, if any, required by subsection (D) of this Section.

D. If the surviving or resulting corporation is to be governed by the laws of the District of Columbia, any state of the United States of America or of any other foreign jurisdiction, it shall agree that it may be served with process in the Commonwealth in any proceeding for enforcement of any obligation of any constituent corporation of the Commonwealth, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation. This includes any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to Section 10.13 of this Act. Furthermore, it shall irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. In the event of such service upon the Secretary of State in accordance with this subsection, shall forthwith notify such surviving or resulting corporation thereof by certified mail, return receipt requested, directed to such surviving or resulting corporation at its address so specified, unless such surviving or resulting corporation shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last

address so designated. Such mail shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of State the sum payable as provided in Chapter XVII, which sum shall be imposed as part of the costs in the proceeding. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall not be required to retain such information longer than five (5) years from receipt of the service of process.

E. Subsection (D) of Section 10.01 of this Act shall apply to any merger or consolidation under this Section. Subsection (E) of Section 10.01 of this Act shall apply to a merger under this Section in which the surviving corporation is a corporation organized under the Commonwealth. Subsection (F) of Section 10.01 of this Act shall apply to any merger under this Section.

Section 10.03.—Merger of Parent Corporation and Subsidiary or Subsidiaries.—

A. In any case in which at least ninety percent (90%) of the outstanding shares of each class of the stock of a corporation or corporations of which class there are outstanding shares that, absent this subsection, would be entitled to vote on such merger, is owned by another corporation and one of the corporations is a corporation organized under the Commonwealth and the other or others are corporations organized under the Commonwealth, any other state or states of the United States of America, the District of Columbia or of other foreign jurisdiction,

and the laws of such other jurisdictions permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction, the corporation having such stock ownership may either merge the other corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and one or more of such other corporations into one of the other corporations. To such effect, the corporation with ownership shall execute, acknowledge, and file, in accordance with Section 1.03 of this Act, a certificate of such ownership and merger setting forth a copy of the resolution of its board of directors to such merger and the date of the adoption. In case the parent corporation shall not own all the outstanding stock of all the subsidiary corporations, parties to a merger as aforesaid, the resolution of the board of directors of the parent corporation shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by the surviving corporation upon surrender of each share of the subsidiary corporation or corporations not owned by the parent corporation, or the cancellation of some or all of such shares. Any of the terms of the resolution of the board of directors may be made dependent upon facts ascertainable outside of such resolution, provided that the manner in which such facts shall operate upon the terms of the resolution is clearly and expressly set forth in the resolution. The term "facts," as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

If the parent corporation be not the surviving corporation, the resolution shall include provision for the pro rata issuance of stock of the surviving corporation to the holders of the stock of the parent corporation on surrender of any certificates therefor. If the parent corporation is not the surviving corporation and it were a domestic corporation, the certificate of ownership and merger shall

state that the proposed merger has been approved by a majority of the outstanding stock of the parent corporation entitled to vote thereon at a meeting duly called and held after twenty (20) days' notice of the purpose of the meeting mailed to each such stockholder at the stockholder's address as it appears on the records of the corporation. If the parent corporation not surviving has not been organized under the Commonwealth, the resolution shall state that the proposed merger has been adopted, approved, executed, and acknowledged in accordance with the laws of the jurisdiction where it was incorporated.

A certified copy of the certificate shall be filed with the Department of State of the Commonwealth. If the surviving corporation is organized under the laws of the District of Columbia, any state of the United States of America or of any other foreign jurisdiction, subsection (D) of Section 10.02 of this Act shall also apply to a merger under this Section.

B. If the surviving corporation is a domestic corporation, it may change its corporate name by the inclusion of a provision to that effect in the resolution of merger adopted by the directors of the parent corporation and set forth in the certificate of ownership and merger, and upon the effective date of the merger, the name of the corporation shall be so changed.

C. Subsection (D) of Section 10.01 of this Act shall apply to a merger under this Section. Subsection (E) of Section 10.01 of this Act shall apply to a merger under this Section in which the surviving corporation is the subsidiary corporation and is a corporation of the Commonwealth. References to "agreement of merger" in subsections (D) and (E) of Section 10.01 of this Act shall mean for purposes of this Section the resolution of merger adopted by the board of directors of the parent corporation. Any merger which effects any changes other than those authorized by this Section or made applicable by this subsection shall be accomplished under

Section 10.01 or Section 10.02 of this Act. Section 10.13 of this Act shall not apply to any merger effected under this Section, except as provided in subsection (D) of this Section.

D. In the event all of the stock of a subsidiary domestic corporation party to a merger effected under this Section is not owned by the parent corporation immediately prior to the merger, the stockholders of the subsidiary domestic corporation party to the merger shall have appraisal rights as set forth in Section 10.13 of this Act.

E. A merger may be effected under this Section although one or more of the corporations parties to the merger is a corporation organized under the laws of a jurisdiction outside of United States of America; provided that the laws of such other jurisdiction permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction.

Section 10.04.—Merger or Consolidation of Domestic Corporations and Limited Liability Companies; Service of Process Upon Surviving or Resulting Corporation.—

A. Any corporation or corporations organized under the laws of the Commonwealth may merge or consolidate with one or more limited liability companies organized under any other state of the United States of America, or of the District of Columbia, if the laws of the state or states or the District of Columbia permit that a limited liability company from such jurisdiction merges or consolidates with a corporation organized under other jurisdiction. The constituent limited liability companies or corporations may merge into a single limited liability company or corporation or may consolidate into a new limited liability company or corporation formed by the consolidation, which may be a limited liability company or corporation organized under the state of incorporation of any of the constituent

limited liability companies or corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this Section.

In addition, any corporation or corporations organized under the laws of a jurisdiction outside of the United States of America may merge or consolidate with one or more limited liability companies organized under the laws of the Commonwealth, if the laws of such other jurisdiction permit a limited liability corporation or company of such jurisdiction to merge or consolidate with a limited liability company or corporation of another jurisdiction. The limited liability company or corporation surviving or resulting from such merger or consolidation may be one organized under the laws of the Commonwealth or the laws of any other jurisdiction.

B. Each such constituent limited liability companies or corporations shall enter into a written agreement of merger or consolidation. The agreement shall state:

1. The terms and conditions of the merger or consolidation;
2. The mode of carrying the same into effect;
3. The manner, if any, of converting the shares of each of the constituent corporations and limited liability companies into shares, interest or other securities of the corporation or limited liability company surviving or resulting from the merger or consolidation, or of cancelling some or all of such shares, and, if any shares of any of the constituent corporations or limited liability companies are not to remain outstanding, to be converted solely into shares, interest or other securities of any other corporation, limited liability company or entity which the holders of such shares are to receive in exchange for, or upon conversion of, such shares or interest and the surrender of any certificates evidencing them. Such cash,

property, rights or securities of any other corporation limited liability company or entity may be in addition to or in lieu of the shares, interest or other securities of the surviving or resulting corporation or limited liability company; and

4. Such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or acknowledgment of fractional shares or interests of the surviving or resulting corporation or limited liability company, or of any corporation or limited liability company which shares or interests are to be received in the merger or consolidation, or for some other arrangement with respect thereto consistent with Section 5.05; and

5. Such other provisions or facts as shall be required to be set forth in the certificate of incorporation by the laws of the jurisdiction which are stated in the agreement to be the laws that shall govern the corporation and that can be stated in the case of a merger or consolidation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term “facts,” as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation or limited liability company.

C. The agreement shall be adopted, approved, certified, executed and acknowledged by each of the constituent corporations or limited liability companies in accordance with the laws under which they are organized, and, in the case of a corporation or limited liability company organized under the laws of the Commonwealth, in the same manner as provided in Section 10.01 of this Act. The agreement shall be filed and recorded, and shall become effective for all purposes

of the laws of the Commonwealth when and as provided in Section 10.01 of this Act with respect to the merger or consolidation of corporations organized under the Commonwealth. In lieu of filing and recording the agreement of merger or consolidation, the surviving or resulting corporation may file a certificate of merger or consolidation, executed in accordance with Section 1.03 of this Act, which states:

1. The name and place of incorporation of each of the constituent corporations or limited liability companies;

2. That an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations or limited liability companies in accordance with this subsection;

3. The name of the surviving or resulting corporation;

4. In the case of a merger, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;

5. In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;

6. That the executed agreement of consolidation or merger is on file at the registered office of the surviving or resulting corporation and the address thereof;

7. That a copy of the agreement of consolidation or merger shall be furnished by the surviving or resulting corporation, on request and without cost, to any stockholder of any constituent corporation;

8. The agreement, if any, required by subsection (D) of this Section.

D. If the entity surviving or resulting is to be governed by the laws of the District of Columbia, any state of the United States of America or of any other foreign jurisdiction, said entity shall agree that it may be served with process in the Commonwealth in any proceeding for enforcement of any obligation of any constituent corporation of the Commonwealth, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation. This includes any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to Section 10.13 of this Act. Furthermore, it shall irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. In the event of such service upon the Secretary of State in accordance with this subsection, shall forthwith notify such surviving or resulting corporation thereof by certified mail, return receipt requested, directed to such surviving or resulting corporation at its address so specified, unless such surviving or resulting corporation shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated. Such mail shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of State the sums payable as provided in Chapter XVII for use of the Commonwealth, which sum shall be imposed as part of the costs in the proceeding. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been

served, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall not be required to retain such information longer than five (5) years from receipt of the service of process.

E. The second sentence of subsection (C) of Section 10.01, Sections 10.10, 10.11, 10.12, and 12.07 of this Act shall apply, to the extent the same are applicable, to any merger or consolidation between corporations and limited liability companies.

Section 10.05.—Merger or Consolidation of Domestic Corporations and Joint-Stock or Other Associations.—

A. The term “joint-stock association,” as used in this Section, includes any association of the kind commonly known as a joint-stock association and any trust or enterprise having members or having outstanding shares of stock or other evidences of financial or beneficial interest therein, whether established by agreement, by law or otherwise, without including a limited liability corporation, partnership or company . The term “stockholder,” as used in this Section, includes every member of such joint-stock association or holder of a share of stock or other evidence of financial or beneficial interest therein.

B. One or more corporations of the Commonwealth may merge or consolidate with one or more joint-stock associations, except for those organized under the laws of a state of the United States of America, the District of Columbia or any other foreign jurisdiction which forbids such merger or consolidation. Such corporation or corporations and such joint-stock association or associations may merge into a single corporation, or joint-stock association, which may be any one of such corporations or joint-stock associations, or they may consolidate into a new corporation or joint-stock association organized under the laws of the

Commonwealth, pursuant to an agreement of merger or consolidation, as the case may be, executed and approved in accordance with this Section. If the surviving or resulting entity is a corporation, it may be a stock corporation or a nonstock corporation, whether or not for profit.

C. Each such corporation and joint-stock association shall enter into a written agreement of merger or consolidation. The agreement shall state:

1. The terms and conditions of the merger or consolidation;
2. The mode of carrying the same into effect;

3. The manner, if any, of converting the shares of stock of each stock corporation, the interest of members of each nonstock corporation, and the shares, membership or financial or beneficial interests in each of the joint-stock associations into shares or other securities of a stock corporation or membership interests of a nonstock corporation or into shares, memberships or financial or beneficial interests of the joint-stock association surviving or resulting from such merger or consolidation, or of cancelling some or all of such shares, memberships or financial or beneficial interests, and, if any shares of any such stock corporation, any membership interests of any such nonstock corporation or any shares, memberships or financial or beneficial interests in any such joint-stock association are not to remain outstanding, to be converted solely into shares or other securities of the stock corporation or membership interests of the nonstock corporation or into shares, memberships or financial or beneficial interests of the joint-stock association surviving or resulting or to be cancelled, the cash, property, rights or securities of any other corporation or entity which the holders of shares of any such stock corporation, membership interests of any such nonstock corporation, or shares, memberships or financial or beneficial interests of any such joint-stock association are to receive in exchange for, or upon conversion of such shares, membership interests or shares, memberships or financial or beneficial interests,

and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares or other securities of the stock corporation or membership interests of the nonstock corporation or shares, memberships or financial or beneficial interests of the joint-stock association surviving or resulting from such merger or consolidation; and

4. Such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance of fractional shares where the surviving or resulting entity from a merger is a corporation. There shall also be set forth in the agreement such other matters or provisions as shall then be required to be set forth in certificates of incorporation or documents required to establish and maintain a joint-stock association by the laws of the Commonwealth and that can be stated in the case of such merger or consolidation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, but may not be dependent upon the control of the constituent corporations or its affiliates, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term “facts,” as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

D. The agreement shall be adopted, approved, certified, executed and acknowledged by each of the stock or nonstock corporations in the same manner as is provided in Section 10.01 or Section 10.06 of this Act, respectively, and in the case of the joint-stock associations in accordance with their articles of association or other instrument containing the provisions by which they are organized or regulated or in accordance with the laws of the jurisdiction under which they are

established, as the case may be. Where the surviving or resulting entity is a corporation, the agreement shall be filed and recorded, and shall become effective for all purposes of the laws of the Commonwealth when and as provided in Section 10.01 of this Act with respect to the merger or consolidation of corporations of the Commonwealth. In lieu of filing the agreement of merger or consolidation, where the surviving or resulting entity is a corporation it may file with the Department of State a certificate of merger or consolidation, executed in accordance with Section 1.03 of this Act, which states:

1. The name and domicile of each of the constituent entities;
2. That an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent entities in accordance with this subsection;
3. The name of the surviving or resulting corporation;
4. In the case of a merger, such amendments or changes in the certificate of incorporation of the surviving corporation, if any, as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
5. In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;
6. That the executed agreement of consolidation or merger is on file at the registered office of the surviving or resulting corporation and the address thereof; and
7. That a copy of the agreement of consolidation or merger shall be furnished by the surviving or resulting corporation, on request and without cost, to any stockholder of any constituent entity.

E. Subsections (D), (E), and (F) of Section 10.01 and Sections 10.10 through 10.13, inclusive, and Section 12.07 of this Act shall, insofar as they are applicable, apply to mergers or consolidations between corporations and joint-stock associations; the word “corporation” where applicable, as used in those Sections, being deemed to include joint-stock associations as defined in this Section. Where the surviving or resulting entity is a corporation, the personal liability, if any, of any stockholder of a joint-stock association existing at the time of such merger or consolidation shall not be thereby extinguished. The personal liability shall remain personal to such stockholder and shall not become the liability of any subsequent transferee of any share of stock in such surviving or resulting corporation or of any other stockholder of such surviving or resulting corporation.

Nothing in this Section shall be deemed to authorize the merger of a charitable nonstock corporation or charitable joint-stock association into a stock corporation or joint-stock association if the charitable status of such nonstock corporation or joint-stock association would be thereby lost or impaired; but a stock corporation or joint-stock association may be merged into a charitable nonstock corporation or charitable joint-stock association which shall continue as the surviving corporation or joint-stock association.

Section 10.06.—Merger or Consolidation of Domestic Nonstock Corporations.—

A. Two (2) or more nonstock corporations of the Commonwealth, whether or not organized for profit, may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new nonstock corporation, whether or not organized for profit, organized by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, executed and approved in accordance with this Section.

B. The governing body of each corporation which desires to merge or consolidate shall adopt a resolution approving the merger or consolidation. The agreement shall state:

1. The terms and conditions of the merger or consolidation;
2. The mode of carrying the same into effect;
3. Such other provisions or facts required or permitted by this Act to be stated in a certificate of incorporation for nonstock corporations as can be stated in the case of a merger or consolidation, stated in such altered form as the circumstances of the case require;
4. The manner, if any, of converting the membership interests of each of the constituent corporations into memberships interests of the corporation surviving or resulting from the merger or consolidation, or of cancelling some or all of such membership interests; and
5. Such other details or provisions as are deemed desirable.

Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term "facts," as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

C. The agreement shall be submitted to the members of each constituent corporation who have the right to vote for the election of the members of the governing body of their corporation, at an annual or special meeting thereof for the purpose of acting on the agreement. Due notice of the time, place and purpose of the meeting shall be mailed to each member of each such corporation who has the

right to vote for the election of the members of the governing body of the corporation, at the member's address as it appears on the records of the corporation, at least twenty (20) days prior to the date of the meeting. At the meeting the agreement shall be considered and a vote, in person or by proxy, taken for the adoption or rejection of the agreement. Each member who has the right to vote for the election of the members of the governing body of the corporation shall be entitled to cast one vote. If a majority of the voting power of members of each such corporation shall be for the adoption of the agreement, then that fact shall be certified on the agreement by the officer of each such corporation performing the duties ordinarily performed by the secretary or assistant secretary of a corporation. The agreement so adopted and certified shall be executed, acknowledged and filed, and shall become effective, in accordance with Section 1.03 of this Act. The agreement shall be filed in the Department of State. The provisions set forth in the last sentence of subsection (C) of Section 10.01 of this Act shall apply to a merger under this Section, and the reference therein to "stockholder" shall be deemed to include "member" hereunder.

D. If, under the certificate of incorporation of one or more of the constituent corporations, there shall be no members entitled to vote for the election of the members of the governing body of the corporation, other than the members of the governing body themselves, the agreement duly executed pursuant to the provisions of subsection (B) of this Section shall be submitted to the members of the governing body of the corporation or corporations in a meeting to such effect. The notice of such meeting shall be mailed to the members of the governing body. If the vote casted in person for the adoption of the agreement constitutes two-thirds (2/3) of the total of members of the governing body entitled to vote above mentioned, then that fact shall be certified in the agreement, as provided in the case

of the adoption of the agreement by vote of the members of the corporation, and the same procedures for completing the merger or consolidation shall be conducted henceforth.

E. Subsection (E) of Section 10.01 of this Act shall apply to a merger under this Section.

F. Nothing in this Section shall be deemed to authorize the merger of a charitable nonstock corporation or a charitable joint-stock association into a stock corporation or a joint-stock association if such charitable nonstock corporation or charitable joint-stock association would thereby have its charitable status lost or impaired as a result of such merger; but a stock corporation or joint-stock association may be merged into a charitable nonstock corporation or a charitable joint-stock association which shall continue as the surviving corporation or joint-stock association.

Section 10.07.—Merger or Consolidation of Domestic and Foreign Nonstock Corporations; Service of Process Upon Surviving or Resulting Corporation.—

A. One or more nonstock corporations organized under the Commonwealth may merge or consolidate with one or more other nonstock corporations of any state of the United States, the District of Columbia, or of any other foreign jurisdiction, if the laws of such other jurisdictions permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new nonstock corporation established by the consolidation, which may be a corporation of the place of incorporation of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, executed and approved in accordance with this Section.

B. All the constituent corporations shall enter into an agreement of merger or consolidation. The agreement shall state:

1. The terms and conditions of the merger or consolidation;
2. The mode of carrying the same into effect;
3. The manner, if any, of converting the memberships of each of the constituent corporations into memberships of the corporation surviving or resulting from such merger or consolidation or of cancelling some or all of such memberships;
4. Such other details and provisions as shall be deemed desirable; and
5. Such other provisions or facts as shall then be required to be stated in a certificate of incorporation by the laws of the state which are stated in the agreement to be the laws that shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation.

Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term “facts,” as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

C. The agreement shall be adopted, approved, executed, and acknowledged by each of the constituent corporations in accordance with the laws of the place of incorporation and, in the case of a domestic corporation, as provided in Section 10.06 of this Act. The agreement shall be filed and recorded, and shall become effective for all purposes of the laws of the Commonwealth when and as provided in Section 10.06 of this Act with respect to the merger of nonstock corporations of

the Commonwealth. Insofar as they may be applicable, the provisions set forth in the last sentence of subsection (C) of Section 10.02 of this Act, and the reference therein to “stockholder” shall be deemed to include “member” hereunder.

D. If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of any jurisdiction other than the Commonwealth, it shall agree that it may be served with process in the Commonwealth in any proceeding for enforcement of any obligation of any constituent corporation organized under the Commonwealth, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation. Furthermore, it shall irrevocably appoint the Secretary of State as its agent to accept service of process in any suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. In the event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such surviving or resulting corporation thereof by certified mail, return receipt requested, directed to such corporation at its address so specified, unless such surviving or resulting corporation shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated. Such mail shall enclose a copy of the process and any other document or documents served upon the Secretary of State. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being made pursuant to this subsection, and to pay the Secretary of State the sum payable as provided in Chapter XVII of this Act, which sum shall be imposed as a part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been

served, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than five (5) years from receipt of the service of process.

E. The provisions of subsection (E) of Section 10.01 of this Act shall apply to a merger under this Section if the corporation surviving the merger is a domestic corporation.

Section 10.08.—Domestic Stock and Nonstock Corporations.—

A. One or more nonstock corporations of the Commonwealth, whether or not organized for profit, may merge or consolidate with one or more stock corporations organized under the Commonwealth, whether or not organized for profit. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new corporation established by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, executed and approved in accordance with this Section.

The surviving constituent corporation or the new corporation may be organized for profit or not organized for profit and may be a stock corporation or a nonstock corporation.

B. The board of directors of each stock corporation which desires to merge or consolidate and the governing body of each nonstock corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state:

1. The terms and conditions of the merger or consolidation;
2. The mode of carrying the same into effect;

3. Such other provisions or facts required or permitted by this Act to be stated in a certificate of incorporation as can be stated in the case of a merger or consolidation, stated in such altered form as the circumstances of the case require;

4. The manner, if any, of converting the shares of stock of a stock corporation and the membership interests of a nonstock corporation into shares or other securities of a stock corporation or membership interests of a nonstock corporation surviving or resulting from such merger or consolidation or of cancelling some or all of such shares or membership interests, and, if any shares of any such stock corporation or membership interests of any such nonstock corporation are not to remain outstanding, to be converted solely into shares or other securities of the stock corporation or membership interests of the nonstock corporation surviving or resulting from such merger or consolidation or to be cancelled, the cash, property, rights or securities of any other corporation or entity which the holders of shares of any such stock corporation or membership interests of any such nonstock corporation are to receive in exchange for, or upon conversion of such shares or membership interests, and the surrender of any certificates evidencing them. Such cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares or other securities of any stock corporation or membership interests of any nonstock corporation surviving or resulting from such merger or consolidation; and

5. Such other details or provisions as are deemed desirable.

In such merger or consolidation the membership interests of a constituent nonstock corporation may be treated in various ways so as to convert such membership interests into interests of value, other than shares of stock, in the surviving or resulting stock corporation or into shares of stock in the surviving or resulting stock corporation, voting or nonvoting, or into creditor interests or any other interests of value equivalent to their membership interests in their nonstock

corporation. The voting rights of members of a constituent nonstock corporation need not be considered an element of value in measuring the reasonable equivalence of the value of the interests received in the surviving stock corporation by members of a constituent nonstock corporation; nor need the voting rights of shares of stock in a constituent stock corporation be considered as an element of value in measuring the equivalence of the value of the interests in the surviving or resulting nonstock corporations received by stockholders of a constituent stock corporation. The voting or nonvoting shares of a stock corporation may be converted into a membership interest (voting or nonvoting) whether life, general, special or other kinds of membership interest however designated, into creditor interests or participating interests, in the nonstock corporation surviving or resulting from such merger or consolidation of a stock corporation and a nonstock corporation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term “facts,” as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

C. In the case of constituent stock corporations, the agreement required by subsection (B) of this Section shall be adopted, approved, certified, executed, and acknowledged by each constituent corporation as provided in Section 10.01 of this Act. In the case of constituent nonstock corporations, shall be adopted, approved, certified, executed and acknowledged by each of said constituent corporations as provided in Section 10.06 of this Act. The agreement shall be filed and recorded, and shall become effective for all purposes of the laws of the Commonwealth when and as provided in Section 10.01 of this Act with respect to the merger of stock

corporations of the Commonwealth. Insofar as they may be applicable, the provisions set forth in the last sentence of subsection (C) of Section 10.01 of this Act shall apply to a merger under this Section, and the reference therein to “stockholder” shall be deemed to include “member” hereunder.

D. Subsection (E) of Section 10.01 of this Act shall apply to a merger under this Section, if the surviving corporation is a corporation organized under the laws of the Commonwealth. Subsection (D) and the second sentence of subsection (C) of Section 10.01 of this Act shall apply to any constituent stock corporation party to a merger or consolidation under this Section. Subsection (E) of Section 10.01 of this Act shall apply to any constituent stock corporation party to a merger under this Section.

E. Nothing in this Section shall be deemed to authorize the merger of a charitable nonstock corporation into a stock corporation, if the charitable status of such nonstock corporation would thereby be lost or impaired; but a stock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

Section 10.09.—Domestic and Foreign Stock and Nonstock Corporations.—

A. One or more corporations organized under the laws of the Commonwealth, whether stock or nonstock corporations and whether or not organized for profit, may merge or consolidate with one or more other corporations of any other state of the United States of America, the District of Columbia or of other foreign jurisdiction whether stock or nonstock corporations and whether or not organized for profit, if the laws under which the other corporations are established shall permit such a corporation of such jurisdiction to merge with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation, which may be any of the constituent corporations, or they may consolidate into a new corporation established by the consolidation, which may be

a corporation of the place of incorporation of any of the constituent corporations, pursuant to an agreement of merger or consolidation executed and approved in accordance with this Section. The surviving or resulting corporation may be either a stock corporation or a nonstock corporation, as shall be specified in the agreement of merger required by subsection (B) of this Section.

B. In the case of domestic corporations, the method and procedure to be followed by the constituent corporations so merging or consolidating shall be as prescribed in Section 10.08 of this Act. The agreement of merger or consolidation shall also set forth such other matters or provisions as shall then be required to be set forth in certificates of incorporation by the laws of the jurisdiction of the surviving or resulting corporation and that can be stated in the case of a merger or consolidation. The agreement, in the case of foreign corporations, shall be adopted, approved, executed, and acknowledged by each of the constituent foreign corporations in accordance with the laws under which each is established.

C. The requirements of subsection (D) of Section 10.02 of this Act as to the appointment of the Secretary of State to receive process and the manner of serving the same in the event the surviving resulting corporation or new corporation is to be governed by the laws of any other jurisdiction shall also apply to mergers or consolidations effected under this Section. Subsection (E) of Section 10.01 of this Act shall apply to mergers effected under this Section if the surviving corporation is a corporation organized under the Commonwealth. Subsection (D) of Section 10.01 of this Act shall apply to any constituent stock corporation party to a merger or consolidation under this Section. Subsection (E) of Section 10.01 of this Act shall apply to any constituent stock corporation party to a merger under this Section.

D. Nothing in this Section shall be deemed to authorize the merger of a charitable nonstock corporation into a stock corporation, if the charitable status of such nonstock corporation would thereby be lost or impaired; but a stock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

Section 10.10.—Status, Rights, Liabilities of Constituent and Surviving or Resulting Corporations Following Merger or Consolidation.—

A. When any merger or consolidation shall have become effective under this Act, for all purposes of the laws of the Commonwealth the separate existence of all the constituent corporations, or of all such constituent corporations except the one into which the other or others of such constituent corporations have been merged, as the case may be, shall cease. The constituent corporations shall become a new corporation, or be merged into one of such corporations, as the case may be, possessing all the rights, privileges, powers, and franchises as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so merged or consolidated. All rights, privileges, powers, and franchises of each of said corporations, and all property, real and personal, and all debts due to any of said constituent corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations shall be vested in the corporation surviving or resulting from such merger or consolidation. All property, rights, privileges, powers, and franchises, and without exception, any and all other interest shall be thereafter as effectually the property of the surviving or resulting corporation as they were of the several and respective constituent corporations. The title to any real estate vested by deed or otherwise, under the laws of the Commonwealth, in any of such constituent corporations, shall not revert or be in any way impaired by reason of this Section.

Likewise, all rights of creditors and all liens upon any property of any of said constituent corporations shall be preserved unimpaired. All debts, liabilities, and duties of the respective constituent corporations shall thenceforth attach to said corporation surviving or resulting from the merger or consolidation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

Section 10.11.—Powers of the Corporation Surviving or Resulting from Merger or Consolidation.—

When two (2) or more corporations are merged or consolidated, the corporation surviving or resulting from the merger or consolidation may issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all the payments it shall be required to make, or obligations it shall be required to assume, in order to effect the merger or consolidation. For the purpose of securing the payment of any such bonds and obligations, it shall be lawful for the surviving or resulting corporation to mortgage its corporate franchise, rights, privileges, and real and personal property. The surviving or resulting corporation may issue certificates of its capital stock or uncertificated stock if authorized to do so and other securities to the stockholders of the constituent corporations in exchange or payment for the original shares, in such amount as shall be necessary in accordance with the terms of the agreement of merger or consolidation in order to effect such merger or consolidation in the manner and on the terms specified in the agreement.

Section 10.12.—Effect of Merger Upon Pending Actions.—

Any action or proceeding, whether civil, criminal or administrative, pending by or against any corporation which is a party to a merger or consolidation shall be prosecuted as if such merger or consolidation had not taken place, or the corporation surviving or resulting from such merger or consolidation may be substituted in such action or proceeding.

Section 10.13.—Appraisal Rights.—

A. Any stockholder of a corporation organized under the Commonwealth who:

1. holds shares of stock on the date of the making of a demand pursuant to subsection (D) of this Section with respect to such shares;
2. continuously holds such shares through the effective date of the merger or consolidation;
3. has otherwise complied with subsection (D) of this Section; and
4. has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to Section 7.17 of this Act shall be entitled to an appraisal by the Court of First Instance (Superior Part) of the fair value of the stockholder's shares of stock under the circumstances described in subsections (B) and (C) of this Section.

As used in this Section, the word “stockholder” means a holder of record of stock in a stock corporation and also a member of record of a nonstock corporation. The words “stock” and “share” mean and include what is ordinarily meant by those words and also membership or membership interest of a member of a nonstock corporation. The words “depository receipt” mean a receipt or other instrument issued by a depository representing an interest in one or more shares, or fractions thereof, of stock of a corporation, which stock is deposited with the depository.

B. Appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger to be effected pursuant to Section 10.01, 10.02, 10.05, 10.08, and 10.09; provided,

1. that no appraisal rights under this Section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to receive notice of the meeting of stockholders to act upon the agreement of merger or consolidation, were either:

a) listed on a National Stock Exchange or the National Association of Securities Dealers Automated Quotation System National Market (NASDAQ-NMS), or

b) held of record by more than two thousand (2,000) holders. No appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation as provided in subsection (F) of Section 10.01 of this Act.

2. Notwithstanding paragraph (1) of this subsection, appraisal rights under this Section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to Section 10.01, 10.02, 10.05, 10.08, and 10.09 of this Act to accept for such stock anything except:

a) Shares of stock of the corporation surviving or resulting from such merger or consolidation, or depository receipts in respect thereof;

b) Shares of stock of any other corporation, or depository receipts in respect thereof, which at the effective date of the merger or consolidation shall be either listed on a National Stock Exchange or the National Market System or the

National Association of Securities Dealers Automated Quotation System (NASDAQ-NMS) or held of record by more than two thousand (2,000) holders;

c) Cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs (A) and (B) of this paragraph; or

d) Any combination of the shares of stock and cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs (A) through (C) of this paragraph.

3. In the event all of the stock of a subsidiary domestic corporation party to a merger effected under Section 10.02 of this Act is not owned by the parent corporation immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary domestic corporation.

C. Any corporation may provide in its certificate of incorporation that appraisal rights under this Section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the procedures of this Section, including those set forth in subsections (D) and (E) of this Section, shall apply as nearly as is practicable.

D. Appraisal rights shall be perfected as follows:

1. If a proposed merger or consolidation for which appraisal rights are provided under this Section is to be submitted for approval at a meeting of stockholders, the corporation, not less than twenty (20) days prior to the meeting, shall notify each of its stockholders who was such on the record date for notice of such meeting with respect to shares for which appraisal rights are available pursuant to subsection (B) and (C) of this Section that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in such

notice a copy of this Section. Each stockholder electing to demand the appraisal of such stockholder's shares shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal of such stockholder's shares. Such demand shall be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such stockholder's shares. A proxy or vote against the merger or consolidation shall not constitute such a demand. A stockholder electing to take such action must do so by a separate written demand as herein provided. Within ten (10) days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each stockholder of each constituent corporation who has complied with this subsection and has not voted in favor of or consented to the merger or consolidation of the date that the merger or consolidation has become effective; or

2. If the merger or consolidation was approved pursuant to Section 7.17 and Section 10.03 of this Act, then either a constituent corporation before the effective date of the merger or consolidation or the surviving or resulting corporation within ten (10) days thereafter shall notify each of the holders of any stock of such constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all shares of stock of such constituent corporation. Such notice shall include a copy of this Section. Such notice may, and, if given on or after the effective date of the merger or consolidation, also notify such stockholders of the effective date of the merger or consolidation. Any stockholder entitled to appraisal rights may, within twenty (20) days after the date of mailing of such notice, demand in writing from the surviving or resulting corporation the appraisal of such holder's shares. Such demand shall be sufficient if it reasonably informs the corporation of the

identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such holder's shares. If such notice did not notify stockholders of the effective date of the merger or consolidation, either each such constituent corporation shall:

a) send a second notice before the effective date of the merger or consolidation notifying each of the holders of stock of such constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation; or

b) the corporation surviving or resulting from the merger or consolidation shall send such a second notice to all such holders on or within ten (10) days after such effective date.

Provided, however, that if such second notice is sent more than twenty (20) days following the sending of the first notice, such second notice need only be sent to each stockholder who is entitled to appraisal rights and who has demanded appraisal of such holder's shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that such notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the stockholders entitled to receive either notice, as the case may be, each constituent corporation may fix, in advance, a record date that shall be not more than ten (10) days prior to the date the notice is given, provided, that if the notice is given on or after the effective date of the merger or consolidation, the record date shall be such effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the next day preceding the day on which the notice is given.

E. Within one hundred and twenty (120) days after the effective date of the merger or consolidation, the surviving or resulting corporation or any stockholder

who has complied with subsections (A) and (D) of this Section and is otherwise entitled to appraisal rights, may commence an appraisal proceeding by filing a petition in the Court of First Instance (Superior Part) demanding a determination of the value of the stock of all such stockholders. Notwithstanding the foregoing, at any time within sixty (60) days after the effective date of the merger or consolidation, any stockholder shall have the right to withdraw his/her demand for appraisal and to accept the terms offered upon the merger or consolidation. Within one hundred and twenty (120) days after the effective date of the merger or consolidation, any stockholder who has complied with the requirements of subsections (A) and (D) of this Section, upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to the stockholder within ten (10) days after such stockholder's written request for such a statement is received by the surviving or resulting corporation or within ten (10) days after expiration of the period for delivery of demands for appraisal under subsection (D) of this Section, whichever is later.

F. Upon the filing of any such petition by a stockholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which shall within twenty (20) days after such service file in the office of the Department of State in which the petition was filed a duly verified list containing the names and addresses of all stockholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the surviving or resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list.

The Department of State, if so ordered by the Court, shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving or resulting corporation and to the stockholders shown on the list at the addresses therein stated. Such notice shall also be published at least one (1) week before the day of the hearing, in one or more newspapers of general circulation in the City of San Juan, Puerto Rico, or such other publication as the Court deems advisable. The forms of the notices by mail and by publication shall be approved by the Court, and the costs thereof shall be borne by the surviving or resulting corporation.

G. At the hearing on such petition, the Court of First Instance (Superior Part) shall determine the stockholders who have complied with this Section and who have become entitled to appraisal rights. The Court may require the stockholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Department of State for notation thereon of the pendency of the appraisal proceedings. If any stockholder fails to comply with such direction, the Court may dismiss the proceedings as to such stockholder.

H. After the Court determines the stockholders entitled to an appraisal, the Court of First Instance (Superior Part) shall determine the fair value of the shares taking into account a fair interest rate if any is to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take into account all relevant factors. In determining a fair rate of interest, the Court shall take into account all relevant factors, including the interest rate that the surviving or resulting corporation would have had to pay to borrow money on loan during the course of the proceedings. When the court determines the value of the shares, it shall not take into account any element of value arising from the accomplishment or expectation of the merger or consolidation. Upon application

by the surviving or resulting corporation or by any stockholder entitled to participate in the appraisal proceeding, the Court may, in its discretion, allow discovery or any other pre trial proceeding and may proceed to judge the matter of appraisal prior to the final determination of the stockholders entitled to the appraisal of his/her shares. Any stockholder whose name appears on the list filed by the surviving or resulting corporation pursuant to subsection (F) of this Section and who has submitted such stockholder's certificates of stock to the Department of State, if such is required, may participate fully in all proceedings until it is finally determined that such stockholder is not entitled to appraisal rights under this Section.

I. The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the stockholders entitled thereto. In the case of holders of uncertificated stock, payment shall be so made to each such stockholder, and in the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing such stock. The Court's ruling may be enforced as other decrees in the Court of First Instance (Superior Part) may be enforced, whether such surviving or resulting corporation be a domestic or foreign corporation.

J. The costs of the proceeding may be determined by the Court and imposed upon the parties as the Court deems equitable in the circumstances. Upon application of a stockholder, the Court may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney fees and the fees and expenses of experts, to be charged pro rata against the value of all the shares entitled to an appraisal.

K. As of the effective date of the merger or consolidation, no stockholder who has demanded appraisal rights as provided in subsection (D) of this Section shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock (except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger or consolidation). Provided, that if no petition for an appraisal shall be filed within the time provided in subsection (E) of this Section, or if such stockholder shall deliver to the surviving or resulting corporation a written withdrawal of such stockholder's demand for an appraisal and an acceptance of the merger or consolidation, either within sixty (60) days after the effective date of the merger or consolidation as provided in subsection (E) of this Section or thereafter with the written approval of the corporation, then the right of such stockholder to an appraisal shall cease. Notwithstanding the foregoing, no appraisal proceeding in the Court of First Instance (Superior Part) shall be dismissed as to any stockholder without the approval of the Court, and the Court may be condition such approval upon such terms as it deems just.

L. The shares of the surviving or resulting corporation to which the shares of such objecting stockholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.

Section 10.14.—Domestic Corporations and Partnerships.—

A. Any corporation or corporations organized under the laws of the Commonwealth, any state of the United States America or the District of Columbia, may merge or consolidate with one or more partnerships, whether general (including a limited liability partnership) or limited (including a limited liability limited partnership), organized under any other state of the United States of America or the District of Columbia, if the laws of such other state or states or

the District of Columbia permit a corporation or partnership of such jurisdiction to merge or consolidate with a corporation or partnership organized under another jurisdiction the merger or consolidation. The constituent corporations may merge into a single corporation or partnership, or they may consolidate into a new corporation or partnership organized by the consolidation, which may be a corporation or partnership of the state of incorporation of any of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this Section.

B. Each constituent corporation shall enter into a written agreement of merger or consolidation. The agreement shall state:

1. The terms and conditions of the merger or consolidation;
2. The mode of carrying the same into effect;
3. The manner, if any, of converting the shares of stock of each such corporation and the partnership interests of each such partnership into shares, partnership interests or other securities of the corporation surviving or resulting from such merger or consolidation or of cancelling some or all of such shares or interests, and if any shares of any such corporation or any partnership interests of any such partnership are not to remain outstanding, to be converted solely into shares, partnership interests or other securities of the entity surviving or resulting from such merger or consolidation or to be cancelled, the cash, property, rights or securities of any other corporation or entity which the holders of such shares or partnership interests are to receive in exchange for, or upon conversion of such shares or partnership interests and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares, partnership interests or other securities of the entity surviving or resulting from such merger or consolidation; and

4. Such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or acknowledgement of fractional shares or interests of the surviving or resulting corporation or partnership from the merger or consolidation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such merger or consolidation agreement, provided, that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term “facts,” as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

C. The agreement required by subsection (B) of this Section shall be adopted, approved, certified, executed, and acknowledged by each of the constituent corporations as provided in Section 10.01 of this Act and, in the case of the partnerships, in accordance with their partnership agreements and in accordance with the laws under which they are organized, as the case may be. If the surviving or resulting entity is a partnership, in addition to any other approvals, each stockholder of a merging corporation who will become a partner of the surviving or resulting partnership must approve the agreement of merger or consolidation. The agreement shall be filed and shall become effective for all purposes of the laws of the Commonwealth when and as provided in Section 10.01 or of this Act with respect to the merger or consolidation of corporations organized in the Commonwealth. In lieu of filing the agreement of merger or consolidation, the surviving or resulting corporation or partnership may file a certificate of merger or consolidation, executed in accordance with Section 7.02 of this Act, if the surviving or resulting entity is a corporation, or by a partner, if the surviving or resulting entity is a partnership, which states:

1. The name and domicile of each of the constituent entities;
2. That an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent entities in accordance with this subsection;
3. The name of the surviving or resulting corporation or partnership;
4. In the case of a merger in which a corporation is the surviving entity, such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
5. In the case of a consolidation in which a corporation is the resulting entity, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;
6. That the executed agreement of consolidation or merger is on file at the designated office of the surviving corporation or partnership and the address thereof;
7. That a copy of the agreement of consolidation or merger shall be furnished by the surviving or resulting entity, on request and without cost, to any stockholder of any constituent corporation or any partner of any constituent partnership; and
8. The agreement, if any, required by subsection (D) of this Section.

D. If the surviving or resulting entity is to be governed by the laws of the District of Columbia, any state of the United States of America or any other foreign jurisdiction, it shall agree that it may be served with process in the Commonwealth in any proceeding for enforcement of any obligation of any constituent corporation or partnership of the Commonwealth, as well as for enforcement of any obligation of the surviving or resulting corporation or

partnership arising from the merger or consolidation. This includes any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to Section 10.13 of this Act. Furthermore, it shall irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. In the event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such surviving or resulting corporation or partnership thereof by certified mail, return receipt requested, directed to such surviving or resulting corporation or partnership at its address so specified, unless such surviving or resulting corporation or partnership shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated. Such mail shall enclose a copy of the process and any other document or documents served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of State the sum payable as established in Chapter XVII, which sum shall be imposed as part of the costs in the proceeding. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary of State, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall not be required to retain such information longer than five (5) years from receipt of the service of process.

E. The second sentence of subsection (C) and subsections (D) through (F) of Section 10.01 and Sections 10.10 through 10.12 and 12.07 of this Act shall, insofar as they are applicable, apply to mergers or consolidations between corporations and partnerships.

Section 10.15.—Conversion of Other Entities to Domestic Corporations.—

A. As used in this Section, the term “other entity” means a limited liability company, trust, business trust or association, real estate investment trust, or any other unincorporated business including a partnership (whether general, including a limited liability partnership) or limited (including a limited liability limited partnership) or a foreign corporation.

B. Any other entity may convert to a domestic corporation of the Commonwealth by complying with subsection (H) of this Section and filing in the office of the Secretary of State:

1. A certificate of conversion to a domestic corporation that has been executed in accordance with subsection (I) of this Section and filed in accordance with Section 1.03 of this Act; and

2. A certificate of incorporation that has been executed, acknowledged, and filed in accordance with Section 1.03 of this Act.

C. The certificate of conversion to a domestic corporation shall state:

1. The date on which and jurisdiction where the other entity was first created, incorporated, organized or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic corporation;

2. The name of the other entity immediately prior to the filing of the certificate of conversion to a domestic corporation; and

3. The name of the domestic corporation as set forth in its certificate of incorporation filed in accordance with subsection (B) of this Section.

D. Upon filing before the Secretary of State a certificate of conversion to a domestic corporation and the certificate of incorporation, the other entity shall be converted to a domestic corporation and it shall thereafter be subject to all of the provisions of this Act, except that notwithstanding Section 1.03 of this Act, the existence of the corporation shall be deemed to have commenced on the date the other entity commenced its existence in the jurisdiction in which the other entity was first organized, incorporated, created or otherwise came into being.

E. The conversion of any other entity to a domestic corporation shall not be deemed to affect any obligations or liabilities of the other entity incurred prior to its conversion to a domestic corporation or the personal liability of any person incurred prior to such conversion.

F. When another entity has been converted to a domestic corporation pursuant to this Section, the domestic corporation shall, for all purposes of the laws of Puerto Rico, be deemed to be the same entity as the converting entity. When any conversion shall have become effective under this Section, for all purposes of the laws of Puerto Rico, all of the rights, privileges, and powers of the other entity that has converted, and all property, real, personal, and mixed, and all debts due to such other entity, as well as all other things and causes of action belonging to such other entity, shall be the property of such domestic corporation to which such other entity has converted. The title to any real property vested by deed or otherwise in such other entity shall not revert or be in any way impaired by reason of this Act; but all rights of creditors and all liens upon any property of such other entity shall be preserved unimpaired, and all debts, liabilities and duties of the other entity that has converted shall remain attached to the domestic corporation to which such other entity has converted, and may be enforced against it to the same extent as if said debts, liabilities, and duties had originally been incurred or contracted by it in its capacity as a domestic corporation. The rights, privileges, powers and interests

in property of the other entity, as well as the debts, liabilities, and duties of the other entity, shall not be deemed, as a consequence of the conversion, to have been transferred to the domestic corporation to which such other entity has converted for any purpose of the laws of Puerto Rico.

G. Unless otherwise agreed for all purposes of the laws of Puerto Rico or as required under applicable non-Puerto Rico law, the converting other entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such other entity and shall constitute a continuation of the existence of the converting other entity in the form of a domestic corporation.

H. Prior to filing a certificate of conversion to corporation with the office of the Secretary of State, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate, and a certificate of incorporation shall be approved by the same authorization required to approve the conversion.

I. The certificate of conversion to corporation shall be signed by any person who is authorized to sign the certificate of conversion to corporation on behalf of the other entity.

J. In connection with a conversion hereunder, rights or securities of, or interests in, the other entity which is to be converted to a domestic corporation may be exchanged for or converted into cash, property, rights or shares of stock or securities of such domestic corporation or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or shares of stock or securities of or interests in another domestic corporation or other entity.

Section 10.16.—Conversion of a Domestic Corporation to Other Entities.—

A. Upon the authorization of such conversion in accordance with this Section, a domestic corporation may convert to a limited liability company, trust, business trust or association, real estate investment trust or any other unincorporated business including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)) or a foreign corporation.

B. The board of directors of the corporation which desires to convert under this Section 1.03 shall adopt a resolution approving such conversion, specifying the type of entity into which the corporation shall be converted and recommending the approval of such conversion by the stockholders of the corporation. Such resolution shall be submitted to the stockholders of the corporation at an annual or special meeting. Due notice of the date, time, and purpose of the meeting shall be mailed to each holder of stock, whether voting or nonvoting, of the corporation at the address of the stockholder as it appears on the records of the corporation, at least twenty (20) days prior to the date of the meeting. At the meeting, the resolution shall be considered and a vote taken for its adoption or rejection. If all outstanding shares of stock of the corporation, whether voting or nonvoting, shall be voted for the adoption of the resolution, the conversion shall be authorized.

C. If a corporation shall convert to another entity organized, formed or created under the laws of a jurisdiction other than Puerto Rico, the corporation shall file with the Department of State a certificate of conversion executed in accordance with Section 1.03 of this Act, which certifies:

1. The name of the corporation, and if it has been changed, the name under which it was originally incorporated;
2. The date of filing of its original certificate of incorporation with the Secretary of State;

3. The name and jurisdiction of the entity to which the corporation shall be converted;

4. That the conversion has been approved in accordance with the provisions of this Section;

5. The agreement of the corporation that it may be served with process in the Commonwealth of Puerto Rico in any action, suit or proceeding for enforcement of any obligation of the corporation arising while it was a domestic corporation, and that it irrevocably appoints the Secretary of State as its agent to accept service of process in any such action, suit or proceeding; and

6. The address to which a copy of the process referred to in paragraph (5) of subsection (C) of this Section shall be mailed to it by the Secretary of State. In the event of such service upon the Secretary of State in accordance with paragraph (5) of subsection (C) of this Section, the Secretary of State shall forthwith notify such corporation that has converted out of the Commonwealth of Puerto Rico by certified mail, return receipt requested, directed to such corporation that has converted out of the Commonwealth of Puerto Rico at the address so specified, unless such corporation shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address designated. Such mail shall enclose a copy of the process and any other document or documents served with the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other documents in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of State the sum payable established in Chapter XVII, which sum shall be imposed as part of the costs in the proceeding. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which

process has been served with the Secretary of State, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall not be required to retain such information longer than five (5) years from receipt of the service of process.

D. Upon the filing with the Secretary of State of a certificate of conversion of a domestic corporation into an entity from other jurisdiction in accordance with subsection (C) of this Section or upon the future effective date of the certificate of conversion and payment to the Secretary of State of all fees prescribed under this Act, the Secretary of State shall certify that the corporation has filed all documents and paid all fees required by this Act, and thereupon the corporation shall cease to exist as a domestic corporation at the time the certificate of conversion becomes effective in accordance with Section 1.03 of this Act.

E. The conversion of a corporation out of the Commonwealth of Puerto Rico in accordance with this Section and the resulting cessation of its existence as a domestic corporation pursuant to a certificate of conversion to an entity of another jurisdiction shall not be deemed to affect any obligations or liabilities of the corporation incurred prior to such conversion or the personal liability of any person incurred prior to such conversion, nor shall it be deemed to affect the choice of law applicable to the corporation with respect to matters arising prior to such conversion.

F. Unless otherwise provided in a resolution of conversion adopted in accordance with this Section, the converting corporation shall not be required to settle its affairs or pay its liabilities and distribute its assets, and the conversion shall not constitute dissolution of such corporation.

G. In connection with a conversion of a domestic corporation to another entity pursuant to this Section, shares of stock, of the domestic corporation which is to be converted may be exchanged for or converted into cash, property, rights or

securities of, or interests in, the entity to which the domestic corporation is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities, shares of stock of, or interests in, another domestic corporation or other entity or may be cancelled.

H. When a domestic corporation has been converted to another entity or business form pursuant to this Section, the other entity or business form shall, for all purposes of the laws of Puerto Rico, be deemed to be the same entity as the corporation. When any conversion shall have become effective under this Section, for all purposes of the laws of Puerto Rico, all of the rights, privileges and powers of the domestic corporation that has converted, and all property, real, personal and mixed, and all debts due to such corporation, as well as all other things and causes of action belonging to such corporation, shall be the property of such other entity or business form, and the title to any real property vested by deed or otherwise in such corporation shall not revert or be in any way impaired by reason of this Act; but all rights of creditors and all liens upon any property of such corporation shall be preserved unimpaired, and all debts, liabilities, and duties of the corporation that has converted shall remain attached to the other entity or business form to which such corporation has converted, and may be enforced against it to the same extent as if said debts, liabilities, and duties had originally been incurred or contracted by it in its capacity as such other entity or business form. The rights, privileges, powers, and interest in property of the corporation that has converted, as well as the debts, liabilities and duties of such corporation, shall not be deemed, as a consequence of the conversion, to have been transferred to the other entity or business form to which such corporation has converted for any purpose of the laws of Puerto Rico.

I. No vote of stockholders of a corporation shall be necessary to authorize a conversion if no shares of the stock of such corporation shall have been issued

prior to the adoption by the board of directors of the resolution approving the conversion.

CHAPTER XI
RENEWAL, REVIVAL, EXTENSION AND RESTORATION
OF THE CORPORATE LEGAL STATUS

Section 11.01.—Revocation of Voluntary Dissolution.—

A. For purposes of this Section, the term “stockholders” shall mean the stockholders of record on the date the dissolution became effective.

B. At any time prior to the expiration of three (3) years following the dissolution of a corporation pursuant to Section 9.05 of this Act, or, at any time prior to the expiration of such longer period as the Court of First Instance (Superior Part) may have directed pursuant to Section 9.08 of this Act, a corporation may revoke the voluntary dissolution theretofore effected by it in the following manner:

1. The board of directors shall approve a resolution recommending that the voluntary dissolution be revoked and directing that the question of the revocation be submitted to a vote at a special meeting of stockholders;

2. Notice of the special meeting of stockholders shall be given in accordance with Section 7.12 of this Act to each of the stockholders; and

3. At the meeting a vote of the stockholders shall be taken on a resolution to revoke the voluntary dissolution. If a majority of the stock of the corporation which was outstanding and entitled to vote upon a dissolution at the time of its dissolution shall be voted for the resolution, a certificate of revocation of dissolution shall be executed, and acknowledged in accordance with Section 1.03 of this Act, which shall state:

- i. The name of the corporation;
- ii. The names and respective addresses of its officers;
- iii. The names and respective addresses of its directors; and

iv. That a majority of the stock of the corporation which was outstanding and entitled to vote upon the matter at the time of the dissolution have voted in favor of a resolution to revoke the dissolution; or, if it be the fact, that, in lieu of a meeting and vote of stockholders, the stockholders have given their written consent to the revocation in accordance with Section 7.17 of this Act.

C. Upon the filing with the Department of State of the certificate of revocation of a voluntary dissolution, whether by vote of the stockholders or their written consent as provided in Section 7.17 of this Act, the Department of State, upon being satisfied that the requirements of this Section have been complied with, shall issue a certificate stating that that the voluntary dissolution previously effected by the corporation has been revoked, and the certificate so issued shall be filed and registered in the Department of State and henceforth, the revocation of the dissolution shall become effective and the corporation may resume its business.

D. Upon the issuance of the certificate to which subsection (C) of this Section refers, the provisions of Section 7.01 (D) of this Act shall govern, and the period of time the corporation was in dissolution shall be included within the calculation of the thirty (30)-day and thirteen (13)-month periods provided in said Section 7.01(D) of this Act. An election of directors, however, may be held at the special meeting of stockholders to which subsection (B) of this Section refers, and in that event, said meeting of stockholders shall be deemed an annual meeting of stockholders for purposes of Section 7.01(D) of this Act.

E. If after the dissolution became effective any other corporation organized under the laws of the Commonwealth shall have adopted the same name as the corporation, or shall have adopted a name so nearly similar thereto as to not distinguish it from the corporation, or any foreign corporation has been authorized to do business in Puerto Rico under the same name or a name so nearly similar

thereto as to not distinguish it from the corporation, then, in such case, the corporation shall not be reinstated under the same name which it bore when its dissolution became effective, but shall adopt and be reinstated under some other name. In such case the certificate to be filed under this Section shall set forth the name borne by the corporation at the time its dissolution became effective and the new name under which the corporation is to be reinstated.

F. Nothing in this Section shall be construed to affect the authority or power of the Court of First Instance (Superior Part) in any proceeding in connection with this Act.

Section 11.02.—Renewal, Revival, Extension, and Restoration of Certificate of Incorporation.—

A. Any corporation organized under the laws of the Commonwealth as well as any corporation whose certificate of incorporation has become void pursuant to the law and any corporation whose certificate of incorporation has expired by reason of failure to renew it or whose certificate of incorporation has been renewed, but, through failure to comply strictly with the provisions of this Act the validity of whose renewal has been brought into question, may, at any time before the expiration of the time limited for its existence and subject to all of its duties, debts, and liabilities which had been secured or imposed by its original certificate of incorporation and all amendments thereto, procure an extension, restoration, renewal or revival of its certificate of incorporation, together with all the rights, privileges, and immunities provided by the same.

B. The extension, restoration, renewal or revival of the certificate of incorporation may be procured by executing, acknowledging and filing and recording a certificate in accordance with Section 1.03 of this Act.

C. The certificate required by subsection (B) of this Section shall state:

1. The name of the corporation, which shall be the existing name of the corporation or the name it bore when its certificate of incorporation expired, except as provided otherwise in subsection (E) of this Section;

2. The address of the corporation's registered office in the Commonwealth and the name of its registered agent at such address;

3. Whether or not the renewal, restoration or revival is to be perpetual and if not perpetual the time for which the renewal, restoration or revival is to continue and, in case of renewal before the expiration of the time limited for its corporate existence, the date when the renewal is to commence. Such date shall be prior to the date of the expiration of the old certificate of incorporation which it is desired to renew;

4. That the corporation desiring to be renewed or revived and so renewing or reviving its certificate of incorporation was duly organized under the laws of the Commonwealth;

5. The date when the certificate of incorporation would expire, if such is the case, or such other facts as may show that the certificate of incorporation has become cancelled pursuant to subsection (B) of Section 3.06 of this Act, or that has become forfeited or void or the validity of any renewal has been brought into question;

6. That the certificate for renewal or revival is filed by authority of those who were directors or administrators of the corporation at the time its certificate of incorporation expired or who were elected directors or administrators of the corporation as provided in subsection (G) of this Section.

D. Upon the filing of the certificate in accordance with Section 1.03 of this Act the corporation shall be renewed and established with the same force and effect as if its certificate of incorporation had not been cancelled pursuant to subsection (B) of Section 3.06 of this Act, forfeited or void, or had not expired.

Such reinstatement shall validate all contracts, acts, matters and things made, done and performed within the scope of its certificate of incorporation by the corporation, its officers and agents during the time when its certificate of incorporation was cancelled pursuant to subsection (B) of Section 3.06 of this Act, or forfeited or void, or after its expiration, with the same force and effect and to all intents and purposes as if the certificate of incorporation had at all times remained in full force and effect. All real and personal property, rights and credits, which belonged to the corporation at the time its certificate of incorporation became cancelled pursuant to subsection (B) of Section 3.06 of this Act, or forfeited or void, or expired and which were not disposed of prior to the time of its revival and restoration, shall be vested in the corporation, after its revival and restoration, as they were held by the corporation at and before the time its certificate of incorporation became cancelled pursuant to subsection (B) of Section 3.06 of this Act, or forfeited or void, or expired. The corporation after its revival and restoration shall be as exclusively liable for all contracts, acts, matters and things made, done or performed on its behalf by its officers and agents prior to its revival, as if its certificate of incorporation had at all times remained in full force and effect.

E. If, after the certificate of incorporation became cancelled pursuant to subsection (B) of Section 3.06 of this Act, or forfeited or void, or expired, any other corporation organized under the laws of the Commonwealth that would have adopted the same name as the corporation sought to be renewed or revived under this Section or a name so nearly similar thereto as not to distinguish it or any foreign corporation registered under Section 13.01 of this Act that would have adopted the same name as the corporation sought to be renewed or revived or a name so nearly similar thereto as not to distinguish it from the corporation to be renewed or revived, then, in such case, the corporation to be renewed or revived

shall not be renewed under the same name which it bore when its certificate of incorporation became cancelled pursuant to subsection (B) of Section 3.06 of this Act, or forfeited or void or expired but shall adopt or be renewed under some other name that, pursuant to the laws in effect, may be adopted by a corporation established and organized in accordance with the provisions of this Act. In such case the certificate to be filed under the provisions of this Section shall set forth the name borne by the corporation at the time its certificate of incorporation became cancelled pursuant to subsection (B) of Section 3.06 of this Act, forfeited or void or expired and the new name under which the corporation is to be renewed or revived.

F. Any corporation that renews or revives its certificate of incorporation under this Act shall pay to the Commonwealth a sum equal to all annual duties and penalties due even though its certificate of incorporation became cancelled pursuant to subsection (B) of Section 3.06 of this Act forfeited or void or expired or otherwise. Any corporation whose certificate of incorporation has been cancelled, forfeited, void or expired for more than five (5) years and renews or revives such certificate under this Section, shall, in lieu of the payment of the annual duties and penalties otherwise required by this subsection, pay a sum equal to two times the amount of the annual duties that would be due and payable by such corporation for the year in which the renewal or revival is effected, computed at the then current rate of taxation. No payment made pursuant to this subsection shall reduce the amount of annual duties due.

G. If a sufficient number of the last acting officers of any corporation desiring to renew or revive its certificate of incorporation are not available by reason of death, unknown address or refusal or neglect to act, the directors of the corporation or those remaining on the board, even if only one, may elect successors to such officers. In any case where there shall be no directors of the corporation available

for the purposes aforesaid, the stockholders may elect a full board of directors, as provided by the bylaws of the corporation, and the board shall then elect such officers as are provided by law, by the certificate of incorporation or by the bylaws to carry on the business and affairs of the corporation. A special meeting of the stockholders for the purposes of electing directors may be called by any officer, director or stockholder upon notice given in accordance with Section 7.12 of this Act.

H. After renewal or revival of the certificate of incorporation of the corporation, the provisions of Section 7.01(D) of this Act shall govern and the period of time the certificate of incorporation of the corporation was cancelled pursuant to subsection (B) of Section 3.06 of this Act, or after its expiration, shall be included within the calculation of the thirty (30)-day and thirteen (13)-month periods to which Section 7.01(D) of this Act refers. Provided, that a special meeting of stockholders held in accordance with subsection (G) of this Section shall be deemed an annual meeting of stockholders for purposes of Section 7.01 (D) of this Act.

I. Whenever it shall be desired to renew or revive the certificate of incorporation of any nonprofit nonstock corporation organized under the laws of the Commonwealth before or after this Act takes effect, the governing body shall perform all the acts necessary for the renewal or revival of the certificate of incorporation of the corporation which are performed by the board of directors in the case of a corporation having capital stock. The members of any nonprofit nonstock corporation who are entitled to vote for the election of members of its governing body shall perform all the acts necessary for the renewal or revival of the certificate of incorporation of the corporation which are performed by the stockholders in the case of a corporation having capital stock. In all other respects, the method and the procedure for the renewal or revival of the certificate of

incorporation of any nonprofit nonstock corporation shall conform, as nearly as may be applicable, to the method and the procedure prescribed in this Section for the renewal or revival of the certificate of incorporation of a corporation having capital stock.

Section 11.03.—Renewal of Certificate of Incorporation of Religious, Charitable, Educational, Etc. Corporations.—

A. Every religious corporation, and every purely charitable or educational corporation, and every corporation, which by its certificate of incorporation, had, by operation of law, for its object the assistance of sick, needy or disabled members, or the defraying of funeral expenses of deceased members, or to provide for the wants of the widows and families after death of its members, whose certificate of incorporation has become inoperative and void, by operation of Section 15.02 of this Act for failure to file annual reports required, and for failure to pay annual taxes or penalties from which it would have been exempt if the reports had been filed, shall be deemed to have filed all the reports and be relieved of all the taxes and penalties, upon satisfactory proof submitted to the Secretary of State of its right to be classified under any of the classifications set forth in this subsection, and upon filing with the Secretary of State a certificate of renewal and revival in manner and form as required by Section 11.02 of this Act.

B. Upon the filing by the corporation of the proof of classification as required by subsection (A) of this Section, the filing of the certificate of renewal and revival and payment of the annual fees due, the Secretary of State shall issue a certificate stating that the corporation's certificate of incorporation or charter has been renewed and revived as of the date of the certificate. Upon filing of the certificate with the Department of State, the corporation shall be renewed and revived with the same force and effect as provided in subsection (E) of Section 11.02 of this Act for other corporations.

Section 11.04.—Legal Status of Corporation.—

Upon complying with the provisions of this chapter, any corporation desiring to renew, extend and continue its corporate existence shall, continue for the time stated in its certificate of renewal and shall, in addition to the rights, privileges and immunities conferred by its original certificate of incorporation, possess and enjoy all the benefits of this Act, which are applicable to the nature of its business, and shall be subject to the restrictions and liabilities imposed on such corporations by this Act.

CHAPTER XII
SUITS AGAINST CORPORATIONS, DIRECTORS,
OFFICERS OR STOCKHOLDERS

Section 12.01.—Service of Process on Corporations.—

A. Service of legal process upon any corporation of the Commonwealth shall be made by delivering a copy personally to any officer or director of the corporation in the Commonwealth, or the registered agent of the corporation in the Commonwealth, or by leaving it at the dwelling house or usual place of abode in the Commonwealth of any officer, director or registered agent (if the registered agent be an individual), or at the registered office or other place of business of the corporation in the Commonwealth. If the registered agent be a corporation, service of process upon it as such agent may be made by serving, in the Commonwealth, a copy thereof on the president, vice-president, secretary, assistant secretary or any director of the corporate registered agent. Service by copy left at the dwelling house or usual place of abode of any officer, director or registered agent, or at the registered office or other place of business of the corporation in the Commonwealth, to be effective must be delivered thereat at least six (6) days before the return date of the process, and in the presence of an adult person, and the officer serving the process shall distinctly state the manner of service in such

person's return thereto. Process returnable forthwith must be delivered personally to the officer, director or registered agent.

B. Whenever a corporation cannot be served by due diligence with process by delivery to any person authorized to receive it pursuant to the provisions of subsection (A) of this Section, process may be served in the manner provided in the Rules of Civil Procedure of the Commonwealth.

Section 12.02.—Failure of Corporation to Obey Order of Court; Appointment of Receiver.—

Whenever any corporation shall refuse, fail or neglect to obey any order or decree of any competent Court within the time fixed by the Court for its observance, such refusal, failure or neglect shall be a sufficient ground for the appointment of a receiver of the corporation. If the corporation be a foreign corporation, such refusal, failure or neglect shall be a sufficient ground for the appointment of a receiver of the assets of the corporation within the Commonwealth.

Section 12.03.—Attachment of Shares of Stock or any Option, Right, or Interest Therein; Procedure; Sale, Title Upon Sale, Proceeds of Sale.—

A. The shares of any person in any corporation with all the rights thereto belonging, or any person's option to acquire the shares, or such person's right or interest in the shares, may be attached under this Section for debt, or other demands, if such person appears on the books of the corporation to hold or own such stock or option, right or interest. By order of the court having entered the writ of attachment or prohibition to alienate, and after such notice as required by the attachment or prohibition proceedings contained in the Rules of Civil Procedure of the Commonwealth, an amount sufficient of such stock or option, right or interest therein may be sold at public auction to the highest bidder. Except as to an uncertificated security as defined in Section 8-102 of the Puerto Rico Commercial

Transactions Act, no writ of attachment or prohibition to alienate shall be deemed to be laid or imposed, and no order of sale shall be issued unless the requirements set forth in Section 8-112 of the Puerto Rico Commercial Transactions Act are satisfied. No order of sale shall be issued until after final judgment shall have been rendered in any case. If the debtor is not a resident of the Commonwealth or cannot be served, a copy of the order shall be sent by certified mail, return receipt requested, to such debtor's last known address and the same shall be published in a newspaper of general circulation in the Commonwealth at least two (2) times within a period of two (2) consecutive weeks and the last publication shall be at least ten (10) days before the sale.

If the shares of stock or any of them or the option to acquire shares or any such right or interest in shares, or any part of them, be so sold, any assignment, or transfer thereof, by the debtor, after attachment, shall be void.

B. When a writ of attachment or prohibition to alienate issues for shares of stock, or any option to acquire such or any right or interest in such, a certified copy of the process shall be left in the Commonwealth with any officer or director, or with the registered agent of the corporation. In the case of corporations with uncertificated stock, the corporation shall make an annotation in its stock ledger of the existence of the attachment or prohibition to alienate. Within twenty (20) days after service of process, the corporation shall deliver to the plaintiff a certificate stating the number of capital shares of the corporation of which the debtor is the holder or owner, with the number or any other mark distinguishing the same. In case the debtor appears on the books of the corporation as the holder of an option to acquire shares or any right or interest in any shares of the corporation, within twenty (20) days after service of process a certificate shall be delivered to the plaintiff stating the option, right or interest in the shares of the corporation as such option, right or interest appears on the books of the corporation, notwithstanding

any provision to the contrary in the certificate of incorporation or in the bylaws of the corporation. Service upon a corporate registered agent may be made in the manner provided in Section 12.01 of this Act.

C. If, after sale made and confirmed, a certified copy of the order of sale and return and the stock certificate, if any, be left with any officer or director or with the registered agent of the corporation, the purchaser shall be thereby entitled to the shares or any option to acquire shares or any right or interest in shares so purchased, and all income, or dividends which may have been declared, or become payable thereon since the attachment laid. Such sale, returned and confirmed, shall transfer the shares or the option to acquire shares or any right or interest in shares sold to the purchaser, as fully as if the debtor, or defendant, had transferred the same to such purchaser according to the certificate of incorporation or bylaws of the corporation, anything in the certificate of incorporation or bylaws to the contrary notwithstanding. The court which issued the levy or prohibition to alienate and confirmed the sale shall have the power to make an order compelling the corporation, the shares of which were sold, to issue new certificates or uncertificated shares to the purchaser at the sale and to cancel the registration of the shares attached on the books of the corporation upon the giving of a bond by such purchaser adequate to protect such corporation.

D. The money arising from the sale of the stock or of the option or right or interest shall be applied to the debt, and the public official receiving the same shall pay in accordance with the provisions of the Rules of Civil Procedure of the Commonwealth with respect to the sale of personal property in cases of attachment.

Section 12.04.—Actions Against Officers, Directors or Stockholders to Enforce Liability of Corporation, Unsatisfied Judgment Against Corporation.—

A. When the officers, directors or stockholders of any corporation shall be liable by the provisions of this Act, to pay the debts of the corporation, or any part thereof, any person to whom they are liable may initiate an action against any one or more of them. The complaint shall state the claim against the corporation, and the ground on which the plaintiff expects to charge the defendants personally.

B. No suit shall be brought against any officer, director or stockholder for any debt of a corporation of which such person is an officer, director or stockholder, until judgment be obtained therefor against the corporation and execution thereon returned unsatisfied nor after three (3) years from the date of such judgment, and any officer, director or stockholder may raise any defense which the corporation could have raised against such debt or liabilities. This subsection (B) shall not apply to suits brought against the officers or directors of a corporation which is in the process of dissolution for mismanagement in the performance of their duties in accordance with Chapter IX of this Act.

Section 12.05.—Action by Officer, Director or Stockholder Against the Corporation for Corporate Debt Paid.—

When any officer, director or stockholder shall pay any debt of a corporation for which such person is made liable by the provisions of this Act, such person may recover the amount so paid in an action against the corporation for money paid. In such action only the property of the corporation shall be liable to be taken, and not the property of any stockholder.

Section 12.06.—Derivative Action.—

In any derivative suit instituted by a stockholder of a corporation organized under the laws of the Commonwealth, it shall be averred in the complaint that the plaintiff was a stockholder of the corporation at the time of the transaction of

which such stockholder complains or that such stockholder's stock thereafter devolved upon such stockholder by operation of law.

Section 12.07.—Effect of Liability of Corporation; Impairment of Certain Transactions.—

The liability of a corporation organized under the laws of the Commonwealth, or the stockholders, directors or officers thereof, or the rights or remedies of the creditors thereof, or of persons doing or transacting business with the corporation, shall not in any way be lessened or impaired by the sale of its assets, or by the increase or decrease in the capital stock of the corporation, or by the merger or consolidation of two (2) or more corporations or by any change or amendment in its certificate of incorporation.

Section 12.08.—Defective Organization of Corporation as Defense.—

A. No corporation organized in accordance with this Act or organized pursuant to the laws of the Commonwealth shall be permitted to assert or maintain the want of legal organization as a defense in any litigation against the corporation. No person who is sued by the corporation shall be permitted to assert as a defense such want of legal existence.

B. This Section shall not be construed to prevent judicial inquiry into the regularity or validity of the organization of a corporation, or its lawful possession of any corporate power it may assert in any other suit or proceeding where its corporate existence or the power to exercise the corporate rights it asserts is challenged, and evidence tending to sustain the challenge shall be admissible in any such suit or proceeding.

Section 12.09.—Usury; Pleading by Corporation.—

Notwithstanding any limitation or penalty established by law, any corporation which takes money on loan may contract, incur liabilities and take money on loan, whether in the Commonwealth or in any other jurisdiction, at any interest rate

which it deems acceptable. No debtor of this class, whether a domestic corporation or foreign corporation, may plead any statute against usury in any proceeding or legal action instituted for the purpose of enforcing payment or performance of any obligation arising out of a loan of such nature, whether or not the obligation is represented by a bond, promissory note, contract or any other signed document, assumed or secured by said debtor or any successor or assignee thereof. In that regard, the demand or receipt of interest at any rate so agreed shall not be condemned as a crime, nor may any proceeding to recover any sum of money paid in excess of the maximum legal interest rate or to make effective any other civil penalty be interposed because of usury.

Section 12.10.—Legal Standing, Nonprofit Corporations.—

For the purpose of vindicating the interests of nonprofit corporations against wrongful actions of their directors or administrators, in addition to the legal standing set forth in Section 9.13 of this Act to the Secretary of Justice, the members of such corporations shall also have legal standing to resort to the Courts in derivative actions, pursuant to Section 12.06.

CHAPTER XIII

FOREIGN CORPORATIONS

Section 13.01.—Definition; Qualifications to do Business in Puerto Rico; Procedure.—

A. As used in this Act, the term “foreign corporation” shall mean a corporation organized in accordance with the laws of any jurisdiction other than the Commonwealth.

B. No foreign corporation shall do any business in Puerto Rico, directly or through an agent or representative located in Puerto Rico, until it has paid to the Secretary of State the fees payable established in Chapter XVII of this Act and filed with the office of the Secretary of State the following:

1. A certificate (or similar document) issued by the Secretary of State or other officer who has custody of the corporations registry of the jurisdiction of its incorporation evidencing its corporate existence. If such certificate is in a foreign language, a translation thereof, under oath of the translator, shall be attached thereto;

2. An application to do business in Puerto Rico executed by an authorized officer of each corporation setting forth the following:

a) The name of the foreign corporation;

b) Name of the jurisdiction of its incorporation;

c) Date of incorporation and term of its corporate existence;

d) Physical address of its corporate domicile;

e) Address of its registered office in the Commonwealth and the name of the registered agent in such office.

f) Usual business names and addresses of its present directors and officers.

g) A statement as of a date not earlier than one (1) year prior to the filing date of the assets and liabilities of the corporation; and

h) Description of the business it proposes to do in the Commonwealth, and a statement that it is authorized to do that business in the jurisdiction of its incorporation.

3. Once the requirements of subsection (B) of this Section are met, the Department of State under seal of office, shall issue to the registered agent a certificate authorizing the foreign corporation to transact business in the Commonwealth. The certificate shall be prima facie evidence of the right of the corporation to do business in the Commonwealth; provided, that the Secretary of State shall not issue such certificate unless the name of the corporation is such as to distinguish it upon the records in the Department of State from the names of any

other juridical entity organized, reserved or registered in the Department of State of Puerto Rico, except with the written consent of the juridical entity organized, reserved or registered, such written consent shall be registered in the Department of States in accordance with Section 1.03 of this Act. If the name of the foreign corporation conflicts with the name of any other juridical entity organized, reserved or registered in the Department of State of Puerto Rico, the foreign corporation may qualify to do business in the Commonwealth of Puerto Rico, if it adopts an assumed name, authorized under this Section, which shall be used when doing business in the Commonwealth of Puerto Rico.

Section 13.02.—Banking Powers Denied.—

A. No foreign corporation shall, within the limits of the Commonwealth, by any implication or construction, be deemed to possess the power of discounting bills, notes or other evidence of debt, of receiving deposits, of buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt upon loan for circulation as money, anything in its charter or articles of incorporation to the contrary notwithstanding, without having comply with the specific requirements set forth under the laws of the Commonwealth that regulate such industry.

B. All certificates issued by the Secretary of State under Section 13.01 of this Act shall expressly set forth the limitations and restrictions contained in this Section.

Section 13.03.—Consequences for Doing Business Without Having Complied with the Requirements Therefor—

A. Any foreign corporation required to comply with the provisions of Section 13.01 and 13.07 of this Chapter, that has been doing business in the Commonwealth without authorization, may not initiate any proceeding in any court of the Commonwealth, until such corporation has been authorized to do business in this jurisdiction and has paid to the Commonwealth any and all fees, penalties, and

taxes, for the years or fraction thereof during which such corporation was doing business in this jurisdiction without authorization.

B. The fact that a foreign corporation had failed to obtain an authorization to do business in the Commonwealth shall not impair the validity of any contract or action of the foreign corporation nor impede it from defending itself in any proceeding in the Commonwealth.

Section 13.04.—Foreign Corporations Doing Business Without Having Qualified; Injunctions.—

The Court of First Instance shall have jurisdiction to enjoin any foreign corporation, or any agent thereof, from transacting any business in this jurisdiction if such corporation has failed to comply with any Section of this subchapter applicable to it or if such corporation has secured a certificate of the Secretary of State under Section 13.01 of this Act on the basis of false or misleading representations. The Secretary of Justice, upon his/her own motion or upon the relation of proper parties, shall initiate an action in the Court of First Instance (Superior Part) corresponding to the location in which such corporation is doing business.

Section 13.05.—Activities Not Constituting Business Transactions in the Commonwealth.—

A. The following activities, without this list being thorough, shall not constitute doing business transactions in the Commonwealth:

1. Initiate, defend or settle any judicial process;
2. Conduct meetings of the board of directors, or shareholders, or other activities related to the internal corporate affairs;
3. Have bank accounts;

4. Keep offices and agencies for the transfer, exchange, and registration of the corporation's own securities or keep trustees or depositories with respect to such securities;

5. Sell through independent contractors;

6. Request or obtain orders, whether by mail or by employees or agents or otherwise, if such orders are to be accepted outside of the Commonwealth before the contractual obligation arises.

7. Create or acquire debts, mortgages, or real property securities;

8. Guaranty or collect debts or foreclose on mortgages, or securities on the properties which guaranty such debts;

9. Own title to real or personal property;

10. Conduct an isolated transaction which is completed within a thirty (30)-day period, which is not part of a series similar in nature.

B. The provisions of this Section shall not govern in determining whether a foreign corporation is subject to service of process and being sued in the Commonwealth pursuant to Section 13.11 of this Act or any other law of the Commonwealth. Furthermore, these provisions shall not govern in determining whether a corporation is engaged in trade or business in the Commonwealth to establish its tax liability under the Income Tax Act of 1954 or the Puerto Rico Internal Revenue Code of 1994, as the case may be.

Section 13.06.—Effect of the Certificate of Authorization.—

A. The certificate of authorization empowers the foreign corporation to which it is issued to do business in the Commonwealth, subject to the right of the Commonwealth to revoke such certificate of authorization pursuant to the provisions of this Act.

B. Every foreign corporation with a valid certificate of authorization shall have the same rights, privileges, duties, restrictions, penalties, and responsibilities which a domestic corporation of similar nature may presently have or those which may be imposed thereon in the future.

Section 13.07.—Additional Requirements in Case of Change of Name, Change of Business Purpose or Merger or Consolidation.—

A. Every foreign corporation admitted to do business in the Commonwealth which shall change its corporate name, or enlarge, limit or otherwise change the business which it proposes to do in the Commonwealth, shall, within thirty (30) days after the time said change becomes effective, file with the Department of State a certificate, which shall set forth:

1. The name of the foreign corporation as it appears on the records of the Department of State;

2. The jurisdiction of its incorporation;

3. The date it was authorized to do business in the Commonwealth;

4. If the name of the foreign corporation has been changed, a statement of the name relinquished, a statement of the new name and a statement that the change of name has been effected under the laws of the jurisdiction of its incorporation and the date the change was effected;

5. If the business it proposes to do in the Commonwealth is to be enlarged, limited or otherwise changed, a statement reflecting such change and a statement that it is authorized to do in the jurisdiction of its incorporation the business which it proposes to do in the Commonwealth.

B. Whenever a foreign corporation authorized to transact business in the Commonwealth shall be the survivor of a merger permitted by the laws of the state or country in which it is incorporated, it shall, within thirty (30) days after the merger becomes effective, file with the Department of State a certificate, issued by

the proper officer of the jurisdiction of its incorporation, attesting to the occurrence of such merger. If the merger has changed the corporate name of such foreign corporation or has enlarged, limited or otherwise changed the business it proposes to do in the Commonwealth, it shall also comply with subsection (A) of this Section.

C. Whenever a foreign corporation authorized to transact business in the Commonwealth ceases to exist because of a statutory merger or consolidation, it shall comply with Section 13.12 of this Act.

Section 13.08.—Books to be Kept by the Foreign Corporation.—

A. Every foreign corporation authorized to do business in the Commonwealth must keep and maintain in the Commonwealth such accounting books, documents and records (including inventory records) which according to accepted accounting practices are sufficient to:

1. Clearly establish the amount of gross income and deductions, credits and other details related to the operations in the Commonwealth which must be declared in the income tax returns filed in the Commonwealth; and

2. Clearly reflect the amount of its investments in the Commonwealth, the property owned by the corporation located in the Commonwealth, and the amount of its capital spent in conducting its business in the Commonwealth.

Section 13.09.—Annual Report.—

Every foreign corporation, for profit or nonprofit, authorized to transact business in Puerto Rico shall render a report pursuant to the provisions of Chapter XV of this Act.

Section 13.10.—Registered Office and Change of Registered Agent of a Foreign Corporation.—

A. Every corporation authorized to do business in the Commonwealth shall continuously maintain a registered office and a registered agent in the Commonwealth, as provided in Chapter III of this Act.

B. Any foreign corporation authorized to do business in the Commonwealth may change or substitute its registered agent by filing a certificate with the Department of State, in accordance with Chapter III of this Act, setting forth:

1. The name and address of the new registered agent and the written consent of the new registered agent accepting the new appointment (as part of the statement or attached thereto); and

2. A revocation of any previous appointments of registered agents.

Such registered agent shall be either an individual residing in the Commonwealth or a juridical person organized under the laws of the Commonwealth of Puerto Rico or authorized to do business in the Commonwealth.

C. The registered agent of any foreign corporation may resign to his/her office by filing with the Department of State a signed resignation. Such resignation shall become effective thirty (30) days after it is filed. The resignation shall include a statement indicating that written notice of resignation was given to the corporation at least thirty (30) days prior to the filing thereof with the Department of State by certified mail or delivery of such notice to the foreign corporation at its last address known by the registered agent.

D. If any agent certified as required by Section 13.01 of this Act shall die or remove from the Commonwealth, or resign, then the foreign corporation for which the agent had been so designated and certified shall, within ten (10) days after the death, removal or resignation of its agent, substitute, designate and certify to the Secretary of State, the name of another registered agent. All process, orders,

notices or claims mentioned in Section 13.11 of this Act which may be given to the new registered agent shall be deemed to be effected pursuant to this Section.

Section 13.11.—Service of Process on a Foreign Corporation.—

A. The registered agent of a foreign corporation authorized to do business in the Commonwealth shall be the agent of the corporation for purposes of any service of process on the foreign corporation, or delivery to such corporation of every order, notice or claim required or permitted by law. If there be no such agent, then any officer, director or other agent of the corporation then in the Commonwealth shall be deemed to be the agent of the corporation for purposes of any service of process on the foreign corporation or delivery to such corporation of every order, notice or claim required or permitted by law.

B. A foreign corporation may be served with process by registered or certified mail with return receipt requested, addressed to the secretary of the foreign corporation at the registered office appearing in its application for authorization to do business in the Commonwealth or in its most recent annual report, if the foreign corporation:

1. Does not have a registered agent or the registered agent cannot be served with due diligence;
2. Has ceased doing business in the Commonwealth pursuant to the provisions of Section 13.12 of this Act; or
3. Its certificate of incorporation has been revoked pursuant to Section 13.15 of this Act.

C. In case the foreign corporation cannot by due diligence serve the process in any manner provided for by subsection (A) of this Section, it shall be lawful to serve the process against the corporation upon the Secretary of State, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (A) of this Section. In the event that service is

effected through the Secretary of State, he/she shall forthwith notify the corporation by certified mail, return receipt requested, directed to the corporation at its main place of business as it appears on the last annual report filed pursuant to Section 13.09 of this Act or, if no such address appears, at its last registered office in the Commonwealth. Such letter shall enclose a copy of the process and any other papers served. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this Section, and to pay the Secretary of State the fees established in Chapter XVII of this Act, which sum shall be paid as a part of the costs in the action, suit or proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary of State, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain the information contained in such record of services for a period longer than five (5) years from receipt of such service.

Section 13.12.—Withdrawal of a Foreign Corporation from the Commonwealth; Procedure; Subsequent Service of Process.—

A. Any foreign corporation which shall have qualified to do business in the Commonwealth under Section 13.01 of this Act, may surrender its authority to do business in the Commonwealth and may withdraw therefrom by filing with the Secretary of State:

1. A certificate executed in accordance with Section 1.03 of this Act stating that it surrenders its authority to transact business in the Commonwealth and withdraws therefrom; and stating the address to which the Secretary of State

may mail any process against the corporation that may be served upon the Secretary of State; or

2. A copy of a certificate of dissolution issued by the proper official of the jurisdiction of its incorporation, duly certified to be a true and exact copy under the official seal of the official, together with a certificate, which shall be executed in accordance with subsection (1) of this Section, stating the address to which the Secretary of State may mail any process against the corporation that may be served upon the Secretary of State; or

3. A copy of an order or decree of dissolution made by any court with competent jurisdiction or other competent authority of the Commonwealth or other jurisdiction of its incorporation, duly certified to be a true and exact copy under the hand of the clerk of the Court or other official body, and the official seal of the Court or official body or clerk thereof, together with a certificate executed in accordance with subsection (1) of this Section, stating the address to which the Secretary of State may mail any process against the corporation that may be served upon the Secretary of State.

B. The Secretary of State shall, upon payment to the Secretary of State of the fees prescribed in Section 17.01 of this Act, issue a sufficient number of certificates, under the Secretary of State's hand and official seal, evidencing the surrender of the authority of the corporation to do business in the Commonwealth and its withdrawal therefrom. One of the certificates shall be furnished to the corporation withdrawing and surrendering its right to do business in the Commonwealth; the certificate shall be delivered to the agent of the corporation designated as such immediately prior to the withdrawal.

C. Upon the issuance of the certificates by the Secretary of State, the appointment of the registered agent of the corporation in this jurisdiction, upon whom process against the corporation may be served, shall be revoked, and the

corporation shall be deemed to have consented that service of process in any action, suit or proceeding based upon any cause of action arising in the Commonwealth, during the time the corporation was authorized to transact business in the Commonwealth, may thereafter be made by service upon the Secretary of State.

D. In the event of service upon the Secretary of State, the Secretary of State shall forthwith notify the corporation by certified mail, return receipt requested, directed to the corporation at the address stated in the certificate which was filed by the corporation with the Secretary of State pursuant to paragraph (1) of this Section, enclosed with a copy of the process and any other papers served upon the Secretary of State. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate to the Secretary of State, to notify the Secretary of State that service is being made pursuant to this Section, and to pay the Secretary of State the fees established in Chapter XVII, which sum shall be paid as part of the cost of the action, suit or proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which the process has been served, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain the information contained in such record of process for a period longer than five (5) years from receipt of the service of process.

Section 13.13.—Service of Process on a Nonqualifying Foreign Corporation.—

A. Any foreign corporation doing business in the Commonwealth without having authorization to do so pursuant to Section 13.01 of this Act, shall be deemed to have thereby appointed and constituted the Secretary of State as its agent for the acceptance of legal process in any action, suit or proceeding against it

in any Court of the Commonwealth arising or growing out of any business transacted by it within the Commonwealth. The transaction of business in the Commonwealth by such corporation shall be a signification of the agreement of such corporation that any such process when so served shall be of the same legal force and validity as if served upon an authorized officer or agent personally within the Commonwealth.

B. The provisions of Section 13.05 of this Act shall not apply in determining whether any foreign corporation is transacting business in the Commonwealth within the meaning of this Section. Whenever used in this Section, the terms “the transaction of business” or “business transacted in the Commonwealth,” by any such foreign corporation shall mean the course or practice of carrying on any business activities in the Commonwealth, including, without limiting the generality of the foregoing, the solicitation of business or orders in the Commonwealth. The provisions of this Section shall not apply to any insurance company doing business in the Commonwealth.

C. In the event of service upon the Secretary of State, the Secretary of State shall be responsible for notifying the corporation thereof by certified mail, return receipt requested, directed to the corporation at the address furnished to the Secretary of State by the plaintiff in such action, suit or proceeding, together with a copy of the process and any other papers served upon the Secretary of State. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate to the Secretary of State, to notify the Secretary of State that service is being made pursuant to this Section, and to pay the Secretary of State the fees payable established in Chapter XVII of this Act, which sum shall be paid as a part of the costs in the action, suit or proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such process setting forth the name of the plaintiff and defendant, the title, docket

number and nature of the proceeding in which the process has been served, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain the information contained in such record of process for a period longer than five (5) years from receipt of the service of process.

Section 13.14.—Violations and Penalties; Revocation.—

A. Any foreign corporation who violates the provisions of this Chapter shall be fined not less than two hundred dollars (\$200.00) for each violation, except for any violations to Section 13.09, which shall be addressed as provided in Chapter XV.

B. Any agent of any foreign corporation that shall do any business in the Commonwealth for any foreign corporation before the foreign corporation has complied with any Section of this Act applicable to it, shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).

C. The Secretary of State may initiate a proceeding pursuant to Section 13.15 of this Act to revoke the certificate of authorization of a foreign corporation authorized to do business in the Commonwealth if:

1. The foreign corporation fails to file its annual report pursuant to Section 13.09, or

2. The foreign corporation lacks a registered agent or office in the Commonwealth for a term of sixty (60) days or more.

Section 13.15.—Revocation Proceeding and Effect Thereof.—

A. If the Secretary of State shall determine that there exist one or more grounds to revoke the certificate of authorization, in accordance with Section 13.14 of this Act, he/she shall deliver to the foreign corporation a written notice of its determination in accordance with Section 13.11 of this Act.

B. If within a term of sixty (60) days after delivery of the notice in accordance with Section 13.11 of this Act, the foreign corporation does not make the appropriate corrections, or shows to the reasonable satisfaction of the Secretary of State that the grounds on which the determination of revocation was made have been eliminated, the Secretary of State may revoke the certificate of authorization of the foreign corporation by executing a certificate of revocation setting forth the ground or grounds for the revocation and the effective date thereof. The Secretary of State shall record the original of the certificate and deliver a copy to the foreign corporation pursuant to Section 13.11 of this Act.

C. The authorization of a foreign corporation to do business in the Commonwealth shall expire on the date appearing on the certificate of revocation.

D. The revocation of the certificate of authorization of a foreign corporation by the Secretary of State shall have the effect of designating the Secretary of State as agent of the corporation for purposes of service of process in any proceeding grounded on a cause of action which may have arisen during the time which the foreign corporation was authorized to do business in the Commonwealth. Service of the process upon the Secretary of State in accordance with this subsection shall constitute service of process upon the foreign corporation. Having received the service of process, the Secretary of State shall mail a copy thereof to the secretary of the foreign corporation at its registered office as it appears from the most recent annual report, or from any subsequent communication received from the corporation indicating its current mailing address or if no address appears in the record, at the office designated on the application for a certificate of authorization.

E. Any foreign corporation may appeal the revocation of its certificate by the Secretary of State, before the Court of First Instance (Superior Part) within the thirty (30) days following the date of delivery of the certificate of revocation

pursuant to Section 13.11 of this Act. The foreign corporation shall appeal by a petition to the Court to set aside the revocation, attaching its certificate of authorization and the certificate of revocation of the Secretary of State.

F. The Court may summarily order the Secretary of State to restore the certificate of authorization or take any other action the Court deems appropriate.

G. The final order of the Court may be reconsidered as in the case of other civil proceedings.

CHAPTER XIV

CLOSE CORPORATIONS

Section 14.01.—Law Governing Close Corporations.—

A. This Chapter XIV governs all close corporations, as defined in Section 14.03. Unless a corporation elects to become a close corporation under and in the manner prescribed in this Chapter XIV, it shall be subject in all respects to the provisions of this Act, except as provided in this Chapter.

B. The provisions of this Act shall be applicable to all close corporations, as defined in Section 14.03 of this Act, except insofar as this Chapter otherwise provides.

Section 14.02.—Effect of this Chapter on Other Laws.—

This Chapter shall not be deemed to repeal any statute or provision of law which governs or may govern any corporation organized pursuant to this Act that is not a close corporation.

Section 14.03.—Close Corporation, Definition, Contents of Certificate of Incorporation.—

A. A close corporation is a corporation organized under this Act whose certificate of incorporation contains the provisions required by Section 1.02 of this Act and, in addition, provides that:

1. All of the corporation's issued stock of all classes, exclusive of treasury shares, shall be represented by certificates and only a specified number of persons, not exceeding seventy-five (75) shall be the holders of the record thereof; and

2. All of the issued stock of all classes shall be subject to one or more of the restrictions on transfer permitted by Section 6.02 of this Act; and

3. The corporation shall make no offering of any of its stock of any class which would constitute a "public offering" within the meaning of the United States Securities Act of 1933 (15 USC § 77), as amended.

B. The certificate of incorporation of a close corporation may set forth the qualifications of stockholders, either by specifying classes of persons who shall be entitled to be holders of record of stock of any class, or by specifying classes of persons who shall not be entitled to be holders of stock of any class or both.

C. For purposes of determining the number of holders of record of the stock of a close corporation, stock which is held in common tenancy or by persons married to one another or by the conjugal partnership constituted among them shall be deemed held by a single stockholder.

Section 14.04.—Incorporation of Close Corporations.—

A close corporation shall be incorporated pursuant to Sections 1.01, 1.02, and 1.03 of this Act, except that:

A. Its certificate of incorporation shall contain a heading stating the name of the corporation and that it is a close corporation, and

B. Its certificate of incorporation shall contain the provisions required by Section 14.03 of this Act.

Section 14.05.—Election of Existing Corporation to Become a Close Corporation.—

Any corporation organized under the provisions of this Act may become a close corporation as provided in this Chapter by executing, authenticating, filing, and recording a certificate of amendment to its certificate of incorporation, pursuant to Section 1.03 of this Act, which shall contain the following:

A. A statement that such corporation has elected to become a close corporation;

B. The provisions required by Section 14.03 of this Act to be stated in the certificate of incorporation of a close corporation; and

C. A heading stating the name of the corporation and that it is a close corporation.

Such amendment shall be adopted in accordance with the requirements of Sections 8.01 and 8.02 of this Act, except that such amendment must be approved by the vote of the holders of record of at least two-thirds (2/3) of each class of capital stock of the corporation issued and outstanding.

Section 14.06.—Issuance or Transfer of Stock of a Close Corporation in Breach of Qualifying Conditions.—

A. If stock of a close corporation is issued or transferred to any person who is not entitled under any provision of the certificate of incorporation permitted by subsection (B) of Section 14.03 of this Act to be a holder of record of stock of such corporation; and if the certificate for such stock conspicuously notes the qualifications of the persons entitled to be holders of record thereof, such person is conclusively presumed to have notice of the fact of such person's ineligibility to be a stockholder of such close corporation.

B. If the certificate of incorporation of a close corporation states the number of persons, not in excess of seventy-five (75), who are entitled to be holders of record of its stock, and if the certificate for such stock conspicuously states such number, and if the issuance or transfer of stock to any person would cause the stock to be held by more than such number of stockholders, the person to whom such stock is issued or transferred is conclusively presumed to have notice of this fact.

C. If a stock certificate of any close corporation conspicuously notes the fact of a restriction on transfer of stock of the corporation, and the restriction is one which is permitted by Section 6.02 of this Act, the transferee of the stock is conclusively presumed to have notice of the fact that such person has acquired stock in violation of the restriction, if such acquisition violates the restriction.

D. The corporation, in its discretion, may refuse to record the transfer of stock to the transferee of the stock so transferred, whenever any person to whom stock of a close corporation has been issued or transferred has, or is conclusively presumed under this Section to have notice:

1. that such person is a person not eligible to be a holder of stock of the corporation, or

2. that transfer of stock to such person would cause the stock of the corporation to be held by more than the number of persons permitted by its certificate of incorporation to be stockholders of the corporation, or

3. that the transfer of stock is in violation of a restriction on transfer of stock.

E. Even though the transfer of stock is otherwise contrary to subsection (A), (B) and (C) of this Section, the provisions of subsection (D) shall not be applicable if the transfer of stock has been consented to by all the stockholders of the close

corporation, or if the close corporation has amended its certificate of incorporation in accordance with Section 14.11 of this Act.

F. The term “transfer,” as used in this Section, is not limited to a transfer for value.

G. The provisions of this Section do not in any way impair any rights of a transferee regarding any right to rescind the transaction or to recover under any applicable warranty express or implied.

Section 14.07.—Corporate Option Where a Restriction on Transfer of a Security is Held Invalid.—

If a restriction on transfer of a security of a close corporation is held not to be authorized by Section 6.02 of this Act, the corporation shall nevertheless have an option, for a period of thirty (30) days after the judgment setting aside the restriction becomes final, to acquire the restricted security at a price which is agreed upon by the parties, or if no agreement is reached as to price, then at the fair value as determined by the Court of First Instance (Superior Part). In order to determine fair value, the Court of First Instance (Superior Part) may appoint an appraiser to receive evidence and report to the Court such appraiser’s findings and recommendation as to fair value of the securities.

Section 14.08.—Management by Stockholders.—

The certificate of incorporation of a close corporation may provide that the business of the corporation shall be managed by the stockholders of the corporation rather than by a board of directors. So long as this provision continues in effect:

A. No meeting of stockholders need be called to elect directors;

B. Unless the context clearly requires otherwise, the stockholders of the corporation shall be deemed to be directors for purposes of applying provisions of this Act; and

C. The stockholders of the corporation shall be subject to all liabilities imposed by law upon directors.

Such a provision may be included in the certificate of incorporation by amendment if all incorporators and subscribers or all holders of record of all of the outstanding stock, whether or not having voting power, authorize such a provision. An amendment to the certificate of incorporation to delete such a provision shall be adopted by a vote of the holders of a majority of all issued stock of the corporation, whether or not otherwise entitled to vote. If the certificate of incorporation contains a provision authorized by this Section, the existence of such provision shall be noted conspicuously on the face or back of every stock certificate issued by such corporation.

Section 14.09.—Agreements Restricting Discretionary Powers of Directors.—

A written agreement among the stockholders of a close corporation holding a majority of the issued and outstanding stock entitled to vote, whether solely among themselves or with a party not a stockholder, is not invalid, as between the parties to the agreement, on the ground that it so relates to the conduct of the business and affairs of the corporation as to restrict or interfere with the discretionary powers of the board of directors. The effect of any such agreement shall be to relieve the directors and impose upon the stockholders who are parties to the agreement the liability for managerial acts or omissions which is imposed on directors to the extent and so long as the discretionary powers of the board is controlled by such agreement.

Section 14.10.—Operating Corporation as Partnership.—

No written agreement among stockholders of a close corporation, nor any provision of the certificate of incorporation or of the bylaws of the corporation, which agreement or provision relates to any phase of the affairs of such corporation, including but not limited to the management of its business or declaration and payment of dividends or other division of profits or the election of directors or officers or the employment of stockholders by the corporation or the arbitration of disputes, shall be invalid on the ground that it is an attempt by the parties to the agreement or by the stockholders of the corporation to treat the corporation as if it were a partnership or to arrange relations among the stockholders or between the stockholders and the corporation in a manner that would be appropriate only among partners.

Section 14.11.—Stockholders' Option to Dissolve Corporation.—

A. The certificate of incorporation of any close corporation may include a provision granting to any stockholder, or to the holders of any specified number or percentage of shares of any class of stock, an option to have the corporation dissolved at will or upon the occurrence of any specified event or contingency. Whenever any such option to dissolve is exercised, the stockholders exercising such option shall give written notice thereof to all other stockholders. After the expiration of thirty (30) days following the sending of such notice, the dissolution of the corporation shall proceed as if the required number of stockholders having voting power had consented in writing to dissolution of the corporation as provided by Section 7.17 of this Act.

B. If the certificate of incorporation as originally filed does not contain a provision authorized by subsection (A), the certificate may be amended to include such provision if adopted by the affirmative vote of the holders of all the issued

and outstanding stock, whether or not entitled to vote, unless the certificate of incorporation specifically authorizes such an amendment by a vote which shall be not less than two thirds (2/3) of all the issued and outstanding stock whether or not entitled to vote.

C. Each stock certificate in any corporation whose certificate of incorporation authorizes dissolution as permitted by this Section shall conspicuously note on the face thereof the existence of the provision. Unless noted conspicuously on the face of the stock certificate, the provision is ineffective.

Section 14.12.—Bylaws.—

A. A close corporation need not approve bylaws if the provisions required by law to appear in the bylaws are stated in the certificate of incorporation or in a stockholders' agreement authorized by Section 14.09 of this Act.

B. If a corporation does not have bylaws upon termination of its status as a close corporation pursuant to Section 14.18 the corporation must immediately approve bylaws pursuant to the provisions of Section 1.09.

Section 14.13.—Limited Liability.—

The fact that a close corporation does not observe the customary corporate formalities or requirements with respect to its corporate powers or the conduct of its business and affairs is not grounds for imposing personal liability on the stockholders for the liabilities of the corporation.

Section 14.14.—Voluntary Termination of Close Corporation Status; Effect of Termination.—

A. A corporation may voluntarily terminate its status as a close corporation and cease to be subject to this Chapter by amending its certificate of incorporation to delete therefrom the additional provisions required or permitted by Section 14.03 of this Act to be stated in the certificate of incorporation of a close corporation. Any such amendment shall be adopted and shall become effective in

accordance with Section 8.02 of this Act, except that it must be approved by a vote of the holders of at least two-thirds (2/3) of the shares of each class of stock of the corporation which are outstanding.

B. The certificate of incorporation of a close corporation may provide that on any amendment to terminate its status as a close corporation, a vote greater than two-thirds (2/3) or a vote of all shares of any class shall be required; and if the certificate of incorporation contains such a provision, that provision shall not be amended, repealed or modified by any vote less than that required to terminate the corporation's status as a close corporation.

Section 14.15.—Appointment of a Trustee for a Close Corporation.—

A. In addition to Section 7.16 of this Act respecting the appointment of a trustee for any corporation, the Court of First Instance (Superior Part), upon petition of any stockholder, may appoint one or more persons to be trustees of a close corporation and, if the corporation is insolvent, as receivers thereof, when:

1. Pursuant to Section 14.08 of this Act, the business and affairs of the corporation are managed by the stockholders and such stockholders are in such disagreement that the business of the corporation is suffering or is threatened with irreparable injury, and any remedy to such deadlock provided in the certificate of incorporation, the bylaws, or any written agreement among the stockholders has failed, or

2. The petitioning stockholders have the right to dissolve the corporation pursuant to the provisions of the certificate of incorporation permitted by Section 14.11 of this Act.

B. If the Court of First Instance (Superior Part) finds that it favors the best interests of the close corporation, then in lieu of appointing a trustee pursuant to Section 7.16 of this Act, the Court may appoint a provisional director, whose

powers and legal status shall be as provided by Section 16.16 of this Act. Such appointment shall not preclude any subsequent order of the court providing the appointment of a trustee for such close corporation.

Section 14.16.—Appointment of a Provisional Director in Certain Cases.—

A. Notwithstanding any provision to the contrary in the certificate of incorporation or the bylaws, or in any stockholders' agreement, the Court of First Instance (Superior Part) may appoint a provisional director for a close corporation if the directors are in such disagreement respecting the business and affairs of the corporation that it is impossible to obtain the votes for the board of directors to act, and as a result, the business and affairs of the corporation cannot be conducted for the benefit of the stockholders generally.

B. A petition for relief pursuant to this Section must be filed:

1. By at least one-half of the number of directors then in office;
2. by the holders of at least one-third (1/3) of all stock then entitled to elect the directors, or
3. if there be more than one class of stock then entitled to elect one or more directors, by the holders of two-thirds (2/3) of the stock of any of such classes; but the certificate of incorporation of a close corporation may provide that a lesser proportion of the directors or of the stockholders or of a class of stockholders may request relief under this Section.

C. The provisional director shall be an impartial person who is neither a stockholder nor a creditor of the corporation or of any subsidiary or affiliate of such corporation, and whose further qualifications, if any, may be determined by the Court of First Instance (Superior Part). The provisional director is not a receiver of the corporation and does not have the juridical status and powers of a trustee or receiver appointed pursuant to the provisions of Section 7.16 of this Act. The provisional director shall have all of the rights and powers of a duly elected

director of the corporation, including the right to notice of the meetings and to vote thereat until removed from his/her office by the Court of First Instance (Superior Part) or by the holders of a majority of the shares then entitled to elect the directors, or by the holders of two-thirds (2/3) of the shares of the class of the stockholders which filed the petition for appointment of a provisional director. The provisional director and the corporation shall agree on the compensation to be received by the provisional director, subject to the approval of the Court of First Instance (Superior Part), which may fix such compensation in the absence of an agreement or in the event of disagreement between the provisional director and the corporation.

D. Even though the requirements of subsection (B) relating to the number of directors or stockholders who may petition for the appointment of a provisional director are not satisfied, the Court of First Instance (Superior Part) may nevertheless appoint a provisional director if permitted by subsection (B) of Section 14.15 of this Act.

Section 14.17.—Special Remedy; Dissolution.—

A. The Court of First Instance (Superior Part) may order the dissolution of the corporation if it finds:

1. That there exists one or more grounds for the judicial dissolution pursuant to Section 9.13, or

2. All of the other remedies ordered by the Court pursuant to Sections 14.16 and 14.15 have failed to resolve the matters in dispute.

B. In determining whether to dissolve the corporation or not, the Court shall take into consideration, among other relevant proof, the financial condition of the corporation, but it may not refuse to order the dissolution of a corporation solely because the corporation has accrued earnings or current operational profits.

Section 14.18.—Limitations on Continuation of Close Corporation Status.—

A close corporation continues to be such and to be subject to this Act until:

A. It files with the Secretary of State a certificate of amendment deleting from its certificate of incorporation the provisions required or permitted by Section 14.03 of this Act to be stated in the certificate of incorporation to qualify it as a close corporation; or

B. Any of the provisions or conditions required or permitted by Section 14.03 of this Act to be stated in a certificate of incorporation to qualify a corporation as a close corporation has in fact been breached and neither the corporation nor any of its stockholders takes the steps required by Section 14.19 of this Act to prevent such loss of status or to remedy such breach.

Section 14.19.—Involuntary Termination of Close Corporation Status; Proceeding to Prevent Loss of Status.—

A. If any event occurs resulting in one or more breaches of the provisions or conditions included in the certificate of incorporation of a close corporation pursuant to Section 14.03(A) of this Act and which qualify it as such pursuant to this Act, the status of such corporation as a close corporation shall terminate, unless:

1. Within thirty (30) days following the occurrence of the event, or discovery, whichever is later, the corporation files a certificate pursuant to Section 1.03 of this Act at the Department of State stating that a specific provision or condition included in its certificate of incorporation to qualify it as a close corporation, pursuant to Section 14.03 of this Act, has ceased to be applicable, and a copy of such certificate is furnished to each stockholder, and

2. The corporation concurrently with the filing of such certificate takes the necessary steps to correct the situation which threatens its legal status as a close

corporation, including, without limitation, the refusal to register the wrongful transfer of stock as provided in Section 14.06 of this Act, or conduct a proceeding pursuant to subsection (B) of this Section.

B. In case a suit is brought against the corporation or any stockholder, the Court of First Instance (Superior Part) shall have jurisdiction to enter all orders which may be necessary to prevent the corporation from losing its status as a close corporation, or to restore its status as such, by enjoining or setting aside any action or threat of action by the corporation or by a stockholder which may be inconsistent with any of the provisions or conditions of Section 14.03 of this Act required or permitted to be incorporated into the certificate of incorporation of a close corporation, unless it is an act approved pursuant to Section 14.14. The Court of First Instance (Superior Part) may enjoin or set aside any transfer of stock of a close corporation which is inconsistent with the terms and conditions of its certificate of incorporation or with any restriction of the transfer permitted under Section 14.06, and may enjoin any public offering, as defined in Section 14.03, or the threat of a public offering of the stock of a close corporation.

CHAPTER XV

ANNUAL REPORTS AND OBLIGATION TO KEEP BOOKS AND OTHER DOCUMENTS IN PUERTO RICO

Section 15.01.—Domestic Corporations; Annual Reports; Books and Other Documents in Puerto Rico.—

A. Every corporation organized under the laws of the Commonwealth shall annually submit at the office of the Department of State, no later than the fifteenth (15th) day of April, a report certified, pursuant to Section 1.03 (A) and (B), by an authorized official, a director or the incorporator.

The report shall contain:

1. A financial statement prepared in accordance to generally accepted accounting principles showing the financial condition of the corporation at the close of its operations, duly audited by a Certified Public Accountant licensed by the Commonwealth, who is neither a stockholder nor employee of such corporation, together with the corresponding opinion of such certified public accountant.

It shall not be necessary that the report required by this Section be audited by a certified public accountant in the case of nonprofit and noncapital stock corporations or profitable corporations whose volume of business does not exceed three million dollars (\$3,000,000). When the volume of business does not exceed three million dollars (\$3,000,000) the financial statement shall be prepared by a Certified Public Accountant licensed by the Commonwealth, who is neither a stockholder nor employee of such corporation, together with the corresponding opinion of such certified public accountant.

2. A list of the names and mailing addresses of two officers of the corporation, including he/she who signs the report, holding office on the date of the filing of the report and the expiration dates of their respective offices.

3. Such other information which the Secretary of State may require. This report shall be accompanied by an internal revenue voucher for the filing fees, as provided in Section 17.01 of this Act.

B. Every corporation organized under the laws of the Commonwealth shall keep and maintain in Puerto Rico such accounting books, documents and records (including inventory records) which suffice to:

1. Clearly establish the amount of gross income and deductions, credits and other details concerning the operations inside and outside of Puerto Rico,

which must appear on the income tax returns which they file in the Commonwealth, and

2. clearly show the amount of its investments inside and outside of Puerto Rico, the property owned by the corporation and the amount of the capital invested in conducting business inside and outside of Puerto Rico.

Section 15.02.—Administrative Fines and Penalties for Failing to Render Reports.—

In the event that a corporation should fail to file the report referred to in Section 15.01 of this Act within the period established by law, or refuses to file or amend it when so ordered by the Secretary of State because it is incomplete or unsatisfactory, or whenever it fails to keep in Puerto Rico the accounting books and documents and records referred to in said Section, the Secretary of State is authorized to impose administrative fines for violation of said Section.

The notice of the administrative fine to be sent to the corporation shall state the alleged violation and the amount of the administrative fine, which shall not be of less than one hundred dollars (\$100) nor greater than one thousand dollars (\$1,000) for nonprofit corporations, whether domestic or foreign. For those for profit corporations, the fine shall be of not less than five hundred dollars (\$500) nor greater than two thousand dollars (\$2,000). The fine shall be paid within thirty (30) days upon receipt of the notice of the fine.

If a domestic corporation fails to file the annual report required by law for a term of two (2) consecutive years, the Secretary of State is authorized to revoke the certificate of incorporation of such corporation. At least sixty (60) days before revoking the certificate of incorporation, the Secretary of State shall notify the

affected corporation of his/her intention to revoke by sending a notice of such intentions by mail to the registered agent of such corporation as it appears in its records.

The Secretary of State shall establish by regulation such other provisions as may be necessary to implement the procedure of administrative fines and other penalties which are established in this Section.

Once the certificate of incorporation is canceled pursuant to law the Secretary of State shall notify the Secretary of the Treasury of such cancellation.

Section 15.03.—Foreign Corporations; Annual Reports.—

Every foreign corporation, whether or not for profit, authorized to do business in Puerto Rico shall annually file at the office of the Department of State, not later than the fifteenth (15th) day of April, a certified report pursuant to Section 1.03 (B) of this Act.

The report shall include:

A. A financial statement prepared in conformity with generally accepted accounting principles, showing the financial condition of the corporation at the close of its operations, duly audited by a certified public accountant licensed by the Commonwealth of Puerto Rico, who is neither a stockholder nor employee of the corporation, together with the corresponding opinion of such certified public accountant;

It shall not be necessary that the report required by this Section be audited by a certified public accountant in the case of foreign nonprofit and corporations without capital stock or not for profit corporations whose volume of business does not exceed three million dollars (\$3,000,000). When the volume of business does not exceed three million dollars (\$3,000,000) the financial statement shall be

prepared by a Certified Public Accountant licensed by the Commonwealth, who is neither a stockholder nor employee of such corporation, together with the corresponding opinion of such Certified Public Accountant;

B. A list of the names and mailing addresses of two officers of the corporation holding office on the date of the filing of the report and the expiration dates of their respective offices; and

C. Such other information which the Secretary of State may require.

This report shall be accompanied by an internal revenue voucher for the filing fee as provided in Section 17.01 of this Act. Failure to pay such fee shall result in the revocation of the authorization granted to the corporation to do business in Puerto Rico.

Section 15.04.—Penalties; Suspension and Revocation of Authorization.—

In the event that any foreign corporation fails to file the report required by Section 15.03 of this Act, or refuses to file or amend it when so requested by the Secretary of State because it is incomplete or unsatisfactory, or fails to keep or maintain in Puerto Rico the accounting books and documents and records referred to by Sections 13.08 and 15.03 of this Act, the Secretary of State is hereby authorized to impose administrative fines for violation of said Sections. In such case, the procedure established in Section 15.02 of this Act shall apply.

If a foreign corporation fails to file the report referred to in Section 15.03 of this Act for the term of two (2) consecutive years, the Secretary of State is hereby authorized to revoke the authorization granted to the corporation to do business in Puerto Rico. The Secretary of State shall notify the concerned corporation of his/her intention to revoke the authorization to do business at least sixty (60) days before the revocation. Such notice shall be sent to the last known address of the registered agent of the corporation, as it appears from the records of the Department of State.

The Secretary of State shall establish by regulation such other provisions as may be necessary to implement the procedure of administrative fines and other penalties established in this Section.

Section 15.05.—Extensions.—

The Secretary of State may grant an extension which shall not exceed ninety (90) days from the term fixed for the filing of the annual reports of domestic and foreign corporations doing business in Puerto Rico; provided it is determined upon application filed on time, over the Internet, that the corporation shall not be able for sufficient motives to file its annual report on the date fixed by law. In case the annual report of any corporation which has been granted an extension was not filed within the additional term granted, the procedure prescribed by Sections 15.02 or 15.04 of this Act shall apply, as the case may be.

Section 15.06.—Evaluation of Corporate Records for the Issuance of Certificates of Good Standing—

The Secretary of State shall use as a basis the annual reports of the five (5) years preceding the request for issuing certificates of good standing to domestic and foreign corporations, whether or not for profit.

Once the certificate of good standing is issued in accordance with the provisions of this Section, the Secretary of State shall not impose fines or take any action under this Chapter for failure to render reports in years preceding those contemplated under this Section.

Section 15.07.—Exceptions from Filing Annual Reports.—

The provisions of this Chapter shall not be applicable to religious nonprofit corporations.

Section 15.08.—Annual Reports, Nonprofit Corporations, Special Requirements.—

In order for the Department of State to keep a register, active nonprofit corporations, whether domestic and foreign, shall specify in their annual reports to which of the following categories and organization forms they belong:

A. Categories

1) Social Services.-It includes the distribution of clothing, food and other basic commodities; social services work, care centers, lectures and orientations on personal and family improvement, services related to child abuse, the elderly and homeless persons, as well as domestic and family abuse; family planning, social rehabilitation services; assistance services in disaster situations; and others of similar nature.

2) Legal and Defense of Rights Services.-It includes orientation on legal problems and legal aid in Courts and other forums, as well as services directed to protecting civil and ethnic groups rights.

3) Educational and Research Services.-It includes any kind of academic, technical, vocational or artistic training activity; intellectual development, special or remedial education and tutoring; and complementary services such as information system, library and audiovisual services. Likewise, the research and practice in the fields of education, science, technology, socioeconomic and community development and others are also included.

4) Health Services.-It includes any kind of activity directed to preventing, diagnosing, or tending physical or mental health problems.

5) Art and Culture.-Includes any kind of efforts directed to developing activities in the musical, artistic, theatrical, folkloric, artisanal, literary, dancing or reciting, poetry, and museology fields, as well as research and publishing activities

regarding any of such fields. The foregoing includes the development of forums, lectures, exhibitions, festivals, concerts, presentations, workshops, and short informal education courses.

6) Sports and Recreation Services.- It includes any kind of effort directed to promoting activities to spend leisure time, other than cultural activities, such as scouting, ecotourism, internal tourism, and all kinds of sports. It includes the organization of marathons, camps, clinics, tournaments, and informal physical education courses and other related subjects.

7) Housing Services.- It includes programs or activities to sponsor, develop and administer housing projects, including the rehabilitation and construction of housing units, providing orientation, and financial assistance for housing, location and relocation services and other related services.

8) Environmental Services.- It includes any kind of activity directed to protecting and improving the environment such as educational programs, defense groups, recycling campaigns, clean-up campaigns, as well as research and publications on the subject and other similar activities. It also includes the wildlife defenders, and animal health and protection services.

9) Economic, Social, and Community Development.- It includes any kind of activity directed to promoting the development and rehabilitation of every kind of industry or commerce and the improvement of the infrastructure. It also includes self-management in the development of financial services, microenterprises and small and medium-size businesses; and the revitalization of commercial sectors. Likewise, the promotion of the quality of life in neighborhoods and communities through local development organizations, cooperatives, and others similar; and the improvement of the institutional infrastructure to alleviate social problems and address public wellbeing are also included.

10) Donations.- It includes any financial support activity or of other kind mainly directed to financing the operations and development of an organization's projects or programs or financing the operation and development of other nonprofit organizations.

11) International Activities.- It includes programs, projects and bodies directed to developing international humanitarian activities, promoting peace and civil rights internationally, developing international relations, and promoting foreign social or economic development.

12) Religious Services.- It includes any organization, institution or congregation that promotes religious beliefs and performs religious services.

13) Institutional Services.- Open category which seeks to include the different activities and services offered to their members by professional organizations, social clubs, and civic organizations, and in the case of the last two categories, those that also offer services to community individuals and groups that do not have a common denominator.

14) Other Services.

B. Kinds of Organization:

1) Professional Organization.- It has the main purpose of furthering the interests of its members and is regularly created by means of a special law to group members of one or more professions.

2) Social Club.- It integrates individuals who have any kind of common interest, other than professional, which main purpose is to further the interests of its members or partners.

3) Civic Organization.- It integrates individuals who have any kind of common interest, other than professional, which, in addition to furthering the interests of its members or partners, are mainly directed to offering civil services.

4) Religious Organization.- It includes churches, synagogues, mosques, and other congregations or institutions similar in nature, as well as any body which depends directly on them.

5) Foundation.- It includes any organization incorporated as nonprofit organization which makes donations or services to individuals or makes donations to other nonprofit organizations to enable them to render the services. Its funds may originate mainly from an individual, a family or corporation, or revenues obtained from different sources.

6) Community-based Organizations.- It includes any organization incorporated as nonprofit organization to provide community services, or any nongovernmental organization internationally designated with the acronym NGO which constitution is based on a solidarity development effort of a particular social community with the participation of the members of such community, for example, a ward, a sector with own identity and personality, a community identify as “special community.”

7) Philanthropic Organization.- It includes organizations other than those set forth in clauses (1) through (6) of this subsection that are incorporated as nonprofit organizations in order to render services mainly designed to help the general community or populations with special needs that are part thereof. The term “philanthropy” is used herein in the broadest sense of different kinds of services such as educational, cultural, housing, environmental, health, and other services, that are offered to the community as a token of social and civil solidarity.

8) Institutional Services.- Open category that seeks to include the various activities and services offered to their members by professional organizations, social clubs, and civic organizations, and in the case of the last two categories, those that offer to community individuals and groups services that do not necessarily have a common denominator.

Since the objective of these categories is to record the sector, the definitions set forth in this Section have no implication or application with respect to other laws.

CHAPTER XVI

SPECIAL EMPLOYEE-OWNED CORPORATIONS

Section 16.01.—Organizational Procedures for Special Employee-Owned Corporations.—

A. Any corporation or group of natural persons wishing to organize a special employee-owned corporation shall comply with the provisions of this Chapter. In order for a special employee-owned corporation to be organized and subject to the provisions of this Chapter, it shall state it in its certificate of incorporation or through an amendment thereto. Every corporation organized under this Chapter shall have at least three (3) regular members who are not interrelated up to the fourth degree of consanguinity or second degree of affinity. Provided that a special employee-owned corporation shall only be constituted by a group of natural persons organized as such for the purpose of engaging in a new economic activity, as defined below.

In the case of corporations that amend their certificates of incorporation or otherwise convert all or part of their operations to be carried out through a special employee-owned corporation, said amendment or conversion shall be limited to the following situations:

1. Conversion of corporations or partnerships in risk of closing, as said term is defined below.
2. Conversion of nonprofit entities, regardless of the form or program under which said entities were originally organized.
3. Privatization of public services.

B. When the special employee-owned corporation is organized through an amendment to the certificate of incorporation of a previously existing corporation, it shall submit together with the certificate of amendment, a detailed reorganization plan for the conversion of capital stock, and other titles representing the interest in the corporation converted by certificates of membership, credits to the internal capital accounts, new capital stock or other titles that represent the capital paid in to the corporation created with the amendment. When submitting the plan, it shall be certified that it was approved by at least two-thirds (2/3) of the shareholders or members of the existing corporation prior to the amendment. The plan shall also include the reasons or purposes for said amendment as limited to the circumstances listed in clauses (1), (2), and (3) of subsection (A) of this Section. Said requirements shall likewise be applicable in the case of other types of corporate conversion or reorganization of the existing corporation.

C. For the purposes of this Chapter, a “new economic activity” means an activity carried out by a special employee-owned corporation that meets any and all of the following requirements:

1. An economic activity of any nature whose regular members do not jointly own more than twenty percent (20%) of the shares issued, or other interest in the property of the former for profit or a partnership of any kind that performs or carries out an activity similar to or like the activity to be performed by the special employee-owned corporation in which ten percent (10%) of the regular members have had any type of proprietary interest in said entity denominated as the former business. The holding of shares or other interest in the ownership of said former business shall be determined according to the rules regarding the holding of corporate shares or interest in partnerships under the Internal Revenue Code of 1994, as the case may be.

2. The former business has not ceased operations prior to the constitution of the special employee-owned corporation, nor during a five (5)-year period after its constitution, unless said fact is due to special circumstances such as wars, Government acts or of the elements, or any other exceptional natural cause beyond the control of said former business.

3. The former business maintains a number of jobs, during the above mentioned period of time, equal to seventy-five percent (75%) of its average annual employment for the three (3) taxable years prior to the constitution of the special employee-owned corporation, unless said average cannot be maintained because of the above stated special circumstances.

4. The special employee-owned corporation does not use physical facilities, including lands, buildings, machinery, equipment, inventory, supplies or tangible assets of any nature which have been previously used by former business, as defined in clause (1) of this subsection.

5. The special employee-owned corporation is not administered directly or indirectly through a management contract or is otherwise controlled by a former business, as defined in clause (1) of this subsection.

Provided, that the above requirements as well as the limitation of new economic activity shall not apply to special employee-owned corporations that are related among themselves or other nonprofit entities, regardless of the form or program under which said entities were originally created.

D. The term “corporations or partnerships at risk of closing” includes profitable corporations or partnerships of any kind which meet one (1) or more of the following requirements:

1. Have filed or are in the process of filing an application to avail themselves of the provisions of the Federal Bankruptcy Act.

2. For bookkeeping purposes, have generated operating losses equal to twenty-five percent (25%) or more of its gross income during the last five (5) taxable years without taking into account depreciation or other expenses which do not involve cash disbursements, administration expenses or management services between related entities, nor losses that are the result of the sale or other type of disposal of capital assets or inventory adjustments.

3. The entity is part of a group controlled by a foreign entity, which is to close operations in the Commonwealth permanently due to a financial restructuring of said controlled group.

4. The entity is to be permanently closed due to the retirement of its owner or owners because of death, retirement or disability, and none of the surviving or remaining owners shall become a regular member of the new entity, nor may own any type of interest therein, except during the period provided in Section 16.09 of this Act.

5. The entity is to be permanently closed due to a natural disaster or other reason of force majeure which is beyond the control of such entity.

6. The entity has been forced to reduce its production employment by more than fifty percent (50%) of its average annual employment for the last five (5) taxable years, which reduction is not due to a substitution of manpower for capital investment.

E. Those provisions that are not inconsistent with this Chapter shall be applied to special corporations organized under this Chapter, with regard to corporations authorized to issue capital stock, even when the certificate of incorporation does not grant such authorization. To such effects, the special employee-owned corporations shall be classified as for profit corporations.

Section 16.02.—Content of the Certificate of Incorporation.—

A. The certificate of incorporation of the special employee-owned corporation shall comply with all the provisions of subsection (A) of Section 1.02 of this Act and shall also:

1. Include at the end of its name the acronym “S.E.O.C.,” which shall be part of its name.

2. The manner that the minimum amount of corporate capital of one thousand dollars (\$1,000) shall be expressly stated, which can be for the acquisition of membership certificates or to acquire corporate stock.

3. When the corporation thus organized is a subsidiary of another special employee-owned corporation, a nonprofit corporation or a profitable corporation subject to the provisions of Section 16.09 of this Act, it shall also state:

i. That the corporation is a subsidiary.

ii. The name of the parent corporation.

iii. The number of directors and officers that can be appointed by the parent corporation pursuant to what is provided in Section 16.09 of this Act.

iv. The number of votes that the parent corporation is authorized to cast at the assembly of members of the subsidiary, under the limitations established in Sections 16.03 and 16.09 of this Act.

v. How the parent corporation shall participate in the profits or losses of the subsidiary and in the distribution of the subsidiary’s internal capital accounts in case the latter is dissolved.

4. When the corporation that is thus organized is authorized by this Chapter to have special members, the number of directors that shall be elected by and in representation of the special members, and the number of officers that these directors may appoint, subject to what is established in Section 16.06 of this Act, shall be stated.

B. The certificate of incorporation may also contain any of the details stated in subsection (B) of Section 1.02, subsection (A) of Section 16.03, Section 16.05, subsections (B) and (D) of Section 16.07, subsection (A) of Section 16.08, and subsection (B) of Section 16.09 of this Act.

Section 16.03.—Members; Certificate of Incorporation; Contributions by Members, Rights and Responsibilities.—

A. The certificate of incorporation shall establish the conditions required for admitting and removing its members, or it may provide that said conditions shall be consigned in the corporation's bylaws.

1. Natural persons who are employed in a corporation organized under this Chapter in a corporation organized under this Chapter in an indefinite full-time and/or part-time basis work relationship shall be admitted as “regular members” of a corporation and said membership shall be contingent on their remaining permanently employed without impairing the powers of the assembly of members to remove or dismiss a member as such. With respect to part-time employees, regular members shall be those who, in addition to complying with the provisions of this Chapter, have paid their membership fee in full, contribute with a minimum of twelve (12) weekly hours of direct work for the corporation and waive the payment of a periodic salary for advanced profits. The productivity credit notices corresponding to the work contributed to by these members shall be credited to the capital internal accounts, but they shall not be the object of advanced profits as in the case of regular members whose work relationship is full time.

2. The following may be admitted as “special members” in connection with the corporation with which they maintain the indicated relationship:

i. Consumers who patronize those special corporations engaged in retail sales.

ii. Depositors in the special corporations engaged in financial activities.

iii. Students in special corporations engaged in teaching.

iv. Unemployed farmers in special corporations engaged in agricultural and agroindustrial activities.

v. Parent corporations may be admitted as “corporate members” of their subsidiary corporations.

B. On accepting each new member, the special corporation organized under this Chapter shall issue a membership certificate on behalf of the new member for the value established in the bylaws of the corporation. The price of said membership certificate of regular members shall be paid in full or in part, in cash, by services rendered, or with the contribution of assets. Regarding membership certificates paid in part, the regular member shall have the obligations established in Sections 5.07, 5.08, 5.09, and 5.10 of this Act regarding the balance of the price owed. The price of the special and corporate membership certificates shall be paid in full upon their acquisition, in cash or other goods.

C. Regular members will be entitled to vote, even though they have not paid for their membership certificates in full, and no regular member shall be issued more than one of such certificates. Each regular member shall be entitled to cast one single vote for the membership certificate he/she owns. When the special employee-owned corporation has special or corporate members, the regular members shall be guaranteed that in any matter in which their vote is required, regular members shall have the right to cast no less than fifty-five percent (55%) of the total number of votes. The votes of special and corporate members, together, shall be distributed in such a way that they do not exceed forty-five percent (45%) of the total number of votes than can be cast in the special corporation. In no case shall special members have more than one vote per person.

D. The regular members shall elect the directors of the corporation. When the corporation has other classes of members in addition to the regular members, each class of members shall be entitled to elect the number of directors provided in the certificate of incorporation, subject to the provisions of Section 16.06 of this Act.

E. All members of these special corporations shall have the rights and privileges granted to the holders of common stock in Chapter VII of this Act, except as they are expressly modified by the provisions of this Chapter. Likewise, the assembly of members, which shall be composed of all its members including regular, special, and corporate members, shall have the powers granted to the board of stockholders in this Act and shall establish the procedure for the admission and dismissal of members. Provided, however, that any dismissal of a member must be ratified by a two-thirds (2/3) vote of the members assembled.

F. Membership certificates and the balance in the individual internal capital accounts cannot be transferred or encumbered in any way. The membership certificate, the money expended for its acquisition, and the balance in the internal capital accounts are fully exempted from attachment.

G. In case a regular member ceases to be an employee of the corporation or is no longer interested in being a member, he/she may request the corporation to purchase his/her membership certificate and pay him/her the balance in his/her internal capital account.

In the case of the death of a regular or special member, their heirs may likewise request the corporation to acquire the principal's membership certificate and that they be paid the balance in his/her internal capital account. The heirs cannot retain the membership certificate of a regular or special member unless they are regular or special members, respectively, and qualify as such.

In all the cases indicated herein, the redemption price of the membership certificate shall be the same as its book value, as determined in the internal capital accounts pursuant to the provisions of Section 16.07 of this Act. The payment of the value of the certificate and of the entire balance in the internal capital account of the member shall be made in accordance with the procedure provided in the bylaws of the corporation and the manner of payment shall be determined by the board of directors pursuant to what is established in said bylaws. The payment may be made in installments, which shall not exceed five (5) years, if it is so determined by the board of directors, unless said board determines that if it is paid in full in said term it would threaten the financial or economic stability of the corporation. Provided, that if said determination were made, the term for payment may be extended five (5) additional years. Said term may be extended for another five (5) years, for a total of fifteen (15) years, if it is so agreed by the assembly of members by the vote of three-fourths (3/4) of its members. In every case in which the payment in installments of the value of the certificate and the balance of the internal capital account of a member is directed, the board of directors shall provide for the payment of interest as established by the Interest Rates and Financing Charges Regulating Board. A regular member who ceases to be an employee or any member who is no longer interested in being a member, or the heirs of a regular or special member, in the case of his/her death, may request that the value of the membership certificate and the balance in his/her internal capital account be compensated through corporate stocks and bonds equal to the value the member is entitled to receive.

The provisions of Section 5.12 of this Act and of Chapter VI shall not apply to membership certificates.

Section 16.04.—Voting Rights; Bylaws; Amendments to the Certificate of Incorporation.—

A. The special corporation organized under this Chapter shall not be authorized to issue common stock nor any other voting stock, except the membership certificate, but may issue all other types of stocks and bonds authorized by this Chapter.

B. The membership certificates, all types of stock, corporate bonds, and any instrument that represents any interest in the special corporation shall be nominative.

C. The first bylaws of the corporation may be approved by the incorporators. The power to subsequently approve, modify or repeal the bylaws shall rest solely on the members. However, with the exception of the power to approve the procedure to admit and remove members, said members of the corporation may delegate said power on the board of directors under the terms and conditions approved in a resolution to such effects. Said delegation may be rendered ineffective at any time by the members in a regular or special assembly or with the consent of the members stated as provided in Section 7.17 of this Act.

D. The certificate of incorporation may be amended using the procedure provided in Chapter VII of this Act, subject to that established by Section 16.11 of this Act; provided, that the certificate of incorporation may not be amended to convert an employee-owned corporation into another corporation such as the ones permitted by the other Sections of this Act. The holders of stock issued by the corporation shall be entitled to vote to amend the certificate of incorporation only when the circumstances in which they are entitled to vote under the provisions of Section 8.02 of this Act concur.

Section 16.05.—Proxy or Delegate Voting.—

All regular members shall be empowered to cast their vote personally or through a proxy in all matters on which the members of the corporation are entitled to vote; but no proxy vote may be cast one year after the granting of said proxy, unless a longer period is specifically provided therein. The right of a regular member to vote may only be delegated on a proxy who is a regular member of the corporation. The proxy of one or more regular members cannot cast more than two (2) votes delegated on him/her in addition to the one he/she is entitled to cast for the membership certificate he/she holds, unless all of the votes for which he/she has been appointed proxy belong to persons who are his/her relatives within the fourth degree of consanguinity or the second of affinity, in which case he/she may cast a maximum of five (5) votes.

Special members' votes may be cast by means of delegates or proxies as determined in the certificate of incorporation. Special members' votes may be cast by delegates to prevent voting by fractions of a vote, but no delegate may cast a number that exceeds an equivalent of five (5) votes, regardless of the number of members represented by those five (5) votes. Delegates or proxies of special members must be other special members. The manner and time that the special members shall select their delegates or proxies shall be provided in the special corporation's bylaws.

Corporate members may delegate on their directors or officers, respectively, to cast the votes they are entitled to.

Section 16.06.—Directors and Officers.—

A. Persons who are not regular members of the special corporation may be appointed to positions as directors thereof, provided they do not exceed one-third (1/3) of the total number of directors.

B. Not less than two-thirds (2/3) of the officers must be regular members of the corporation employed in the fields of production or rendering of services of the corporation; provided, that all officers shall be members of the special corporation.

C. No person may hold more than one office as officer of the corporation.

D. Directors shall be elected annually by the assembly of members and no director shall hold that office for more than three (3) consecutive terms. This restriction may be dispensed with in extraordinary situations by the affirmative vote of two-thirds (2/3) of the total number of the class of members that elected the director.

Section 16.07.—Internal Capital Accounts; Redemption, Purchase and Withdrawal Price of the Certificates of Membership; Collective Reserve Account and Social Fund; Interest.—

A. The special corporation organized under the provisions of this Chapter shall establish a system of internal capital accounts through which the book value of the capital assets of the corporation, the redemption, purchase, and withdrawal price of the certificates of membership and the corporate capital shares and the value accumulated by each member in the notices of productivity, patronage and capital credits may be determined in a prompt and economical manner.

B. The bylaws shall indicate the way the corporation shall establish and credit the productivity credit notices to regular members, the patronage credit notices to special members, and the capital credit notices to corporate members. The manner to determine the productivity of regular members shall be established in the corporation's bylaws taking into consideration the members' contribution to its goodwill. This contribution to the goodwill may be established by considering the quality of the duties and functions of the member, his/her salary or any other method that will adequately reflect his/her productivity and contribution to the corporation's assets. In no case shall the productivity credit assigned to a regular

member exceed six (6) times the productivity credit assigned to another regular member who is employed on a fulltime basis by the corporation. The assembly of members may waive compliance of this requirement in specific exceptional cases with the affirmative vote of two-thirds (2/3) of the total number of votes cast by all the members at the assembly. The manner to establish productivity credits shall be determined uniformly for all regular members. Patronage credits shall be established taking into consideration the support that special members give the special corporation's activities as established in its bylaws. The amount and manner of the payment of capital credits shall be established in the certificate of incorporation of the subsidiary of the special corporation taking into consideration the capital contribution of the parent corporation to the subsidiary, and shall not exceed twenty-five percent (25%) of the subsidiary's profits.

C. Productivity, patronage, and capital credit notices are established as a means of distributing the profits of the special corporation or as an advance of earnings, and replace the payment of dividends in the membership certificates. The board of directors of the corporation shall determine when the productivity, patronage, and capital credits are to be made to the regular, special and corporate members, respectively, and shall issue the corresponding productivity, patronage and capital credit notices in which each member shall be notified of the periodically accrued value of productivity, patronage and capital and the manner and term that the payment of this credit shall be made or if it will be capitalized.

D. The certificate of incorporation or the bylaws of the corporation may authorize the redemption, purchase or periodic or regular withdrawal of the productivity, patronage, and capital credit notices and the shares of capital stock issued and shall provide for the redemption, purchase or withdrawal of the membership certificates once the members cease or end that relationship with the corporation. No amount shall be paid for the redemption, purchase or withdrawal

of membership certificates, shares or productivity, patronage or capital credit notices if by so doing or authorizing it, the directors of the corporation incur civil liability pursuant to the provisions of Sections 5.21 and 5.22 of this Act.

E. The bylaws of the corporation may authorize the payment of interest on unpaid productivity, patronage or capital credit notices or for other distributions credited and not paid to the members as seen in the individual internal capital accounts of each member.

F. The corporation shall have the above mentioned internal capital accounts, a collective reserve account and a social account or fund. The net profits and losses shall be distributed among those accounts and not any other. Ninety percent (90%) of the membership fee of regular and corporate members and the membership fee of special members and any additional capital contributed by the member whether through the purchase of shares, bonds or loans by the member from the corporation, shall be credited to the individual internal capital account, and the crediting, distribution, and payment of net profits and losses attributed to the member whether through productivity, patronage credit notices or capital contributions, or any other means, shall also be registered therein, as well as any other interest accrued, if authorized. Whenever the corporation does not have sufficient resources to pay dividends to the stockholders and interest to the bondholders, the board of directors shall not authorize any payment whatsoever to the members of the corporation nor shall it make credits to the internal capital accounts, except to members who are stock or bond holders, while said situation persists, and if there is a positive balance in the internal capital accounts, it shall be transferred to pay said obligations with priority. The balance kept in the internal capital accounts shall be for the benefit of the members. Ten percent (10%) of the regular and corporate membership fees, all donations received by the corporation, borrowings, proceeds from the sale of corporate bonds to nonmembers,

contributions to corporate capital by nonmembers for the sale of stocks or any other manner, and the net profits and losses that have not been appropriated to the internal capital accounts or social fund shall be credited in the collective reserve account. No less than twenty percent (20%) of the net profits of the corporation shall be credited in the collective reserve account. The losses shall be credited to said account in the same proportion as the net profits, and the remaining balance shall be credited to the internal capital account of each member. The balance of the collective reserve account shall be used for the construction of capital improvements, acquisition of machinery and equipment, and for the payment of loans whose proceeds have been used for the payment of loans whose proceeds have been used for the above. The collective reserve account shall not be distributed among members nor shall it be for their benefit even when the corporation ceases to exist. No less than ten percent (10%) of the net profits of the corporation shall be credited to the social fund. The balance of the social fund shall be used for social interest activities as determined by the board of directors which will be available to all natural persons residing in the municipality in which the corporation has its main office. For the purposes of what is provided herein, contributions for social interest purposes shall be understood to:

1. Establish or collaborate with a program to finance housing for low-income families;
2. Grant scholarships or financial assistance for university or vocational studies for students of low-income families;
3. Make gifts for emergency community help in case of a disaster or for charity;
4. Make donations to groups of low-income persons so that they may establish employee-owned enterprises.

5. Create, acquire, and capitalize an employee owned financing enterprise directed mainly to financing employee-owned enterprises organized under this Chapter, regardless of the municipality in which their registered office is established;

6. Publish information of general interest that does not constitute publicity for specific properties or enterprises;

7. Create and capitalize special employee-owned corporations organized under this Chapter regardless of the municipality in which their registered office is established;

8. Establish or collaborate with a program to develop adequate technology and research applied to the production process of employee-owned corporations, regardless of the municipality in which their registered office is established.

For the purposes of what is provided herein, the terms “family” and “low-income persons” shall be those defined in the affordable housing programs of the Commonwealth. In case the corporation ceases to exist, the collective reserve account shall be transferred to another special corporation or corporations organized pursuant to the provisions of this Chapter, or to one or several credit unions as determined by the assembly of members, and the social fund shall be destined to one or several special employee-owned corporations or nonprofit entities selected by the assembly. The balances in all internal capital accounts, including the internal individual capital accounts, collective reserve accounts, and social fund shall be adjusted at the end of each accounting period so that the sum of said balances is equal to the net value in the corporate books.

Section 16.08.—Undistributed Net Profits and Losses; Pro rata; Distribution and Payment.—

A. The corporation shall keep internal capital accounts for each member. In order to determine the balance of each member in his/her individual account, the

losses of the corporation shall be prorated by using the same method that is used to distribute the portion of the profits corresponding to each member. The distribution, capitalization or payment of the balance in the individual internal capital accounts of each member shall be made in the manner and time provided in the certificate of incorporation or in the bylaws of the corporation.

B. The appropriation, distribution and payment of the balance in the internal individual capital accounts shall be made in cash, in productivity, patronage or capital credit notices, in capital stock, or in corporate bonds.

Section 16.09.—Subsidiary Corporations; Equity in Secondary Corporations.—

A. The special employee-owned corporation may establish subsidiaries organized under the provisions of this Chapter or any other provisions of this Act. Special employee-owned corporations that are subsidiaries of nonprofit corporations may also be organized. Profitable corporations may have subsidiaries that are special employee-owned corporations only if they are part of a reorganization plan to convert such profitable corporation into a special employee-owned corporation in a specific term through a merger, consolidation or any other form, or with the purpose of separating a part or segment of its operations, or is liquidated as such. The reorganization plan shall be submitted together with the certificate of incorporation of the new entity. Pursuant to subsection (A) of Section 16.01 of this Act, the conversion thus allowed shall be limited to corporations or partnerships at risk of closing. The term during which the profitable corporation may maintain a special employee-owned corporation as a subsidiary shall not exceed five (5) years.

The special employee-owned corporation subsidiary of a for profit corporation which is part of a reorganization and conversion plan, as provided herein, shall enjoy all the benefits of this Chapter from the time of its organization

and registration as a special corporation in the Department of State, and the holding of the first meeting of members duly certified by notarial certificate; provided, that the regular members of a special employee-owned corporation or subsidiary corporation have control of such entity equal to not less than fifty-five percent (55%) immediately after its conversion. Meanwhile, the parent corporation of said subsidiary corporation shall be deemed to be and shall continue to operate as a for profit corporation.

The requirements for filing a reorganization plan and the maximum term for the conversion are also applicable to a for profit corporation that amends its certificate of incorporation to become a special employee-owned corporation.

In those cases in which it is determined that the above mentioned provisions for the reorganization and conversion plan have not been complied with as indicated, within the maximum period provided in this Section, it shall constitute prima facie evidence that the sole purpose for the transaction was to take advantage of the tax benefits provided under the Internal Revenue Code of 1994. An administrative fine of one thousand dollars (\$1,000) per day shall be imposed by the Secretary of State pursuant to the procedure established through regulations; all tax benefits received by the parent corporation, the subsidiary and its regular and special members shall be paid and reimbursed to the Secretary of the Treasury, and the certificate of incorporation shall be canceled retroactively. The imposition of said fines and penalties shall apply equally to special employee-owned corporations that are not the result of a corporate conversion or reorganization, and which have not been organized in good faith to carry out a new business activity.

The special employee-owned corporation subsidiary of a for profit corporation which is a part of a reorganization and conversion plan, as provided herein, shall enjoy all the benefits of this Chapter from the time of its organization

and registration as a special corporation in the Department of State, and the holding of their first meeting of members duly certified by a notarial certificate.

B. When the parent corporation establishes a subsidiary organized under the provisions of this Chapter, it may appoint up to the joint maximum limit for all special and corporate members, of one-third (1/3) of the directors and officers of the subsidiary corporation, if it is so established in the certificate of incorporation.

C. The parent corporation that establishes a subsidiary organized under the provisions of this Chapter may cast the number of votes in the assembly of members of the subsidiary, authorized in the certificate of incorporation of the subsidiary, up to the joint maximum limit for all special and corporate members, of forty-five percent (45%) of the total number of votes that all the members of the subsidiary may cast.

D. The certificate of incorporation of the subsidiary may only be amended by the affirmative vote of three-fourths (3/4) of the members meeting in the assembly of members.

E. The special employee-owned corporation may join other corporations organized under the provisions of this Chapter, nonprofit organizations, and cooperative credit unions to form associations, federations, or confederations, if not specifically forbidden by law and they are incorporated under the provisions of this Chapter, and in that case, the corporation shall only have corporate members. In these cases the corporate members shall be entitled to cast one single vote per member and it will not be permitted to vote by proxy nor delegate the power to vote on any other person except the representative designated by the corporate member; provided, that said corporate members may appoint all the directors and officers and shall be the only ones authorized to vote on corporate matters.

F. The special employee-owned corporation may acquire a profitable corporation from natural or juridical persons as regular shareholders of said

corporations, provided, that the special corporation holds fifty-five percent (55%) of the outstanding voting stock of said entity immediately after the sale or exchange. Said control must be increased to eighty percent (80%) within a period three (3) years or less, as established in Section 1389 of the Internal Revenue Code of 1994, as amended. The subsidiary corporation thus owned shall become a special employee-owned corporation in a term that shall not exceed five (5) years. Consequently, the regular stockholder of said corporation must dispose of the remaining shares within the above stated term. Meanwhile, and until the date of conversion, the relationship of both the special corporation and the investor or natural person with respect to said subsidiary, shall be that of a regular or voting stockholder of a for profit corporation. The present provision shall apply when the stock of said corporation is exchanged or sold to employees of said corporation for the purpose of converting the same into a special employee-owned corporation subject to the terms of the above-mentioned Section 1389 and in compliance with a reorganization plan established to such effects. Notwithstanding the foregoing, said alternative is only available in the event that the corporation whose stock is sold to the employees is at a risk of closing.

Section 16.10.—Advance of Profits.—

A. Regular and periodic compensation distributed by the special employee-owned corporation to its full-time regular members for their work in the special corporation shall be deemed as an advance of profits and not as wages or salaries to the effects of labor legislation. Advance of profits shall not be distributed to part-time regular members.

Regular members shall not be deemed to be employees or workers in their work relationship with the special employee-owned corporation, to the effects of labor-protective legislation; provided, that to such effects, they shall be deemed as self-employed, with the exception of the application and benefits of Act No. 45 of

April 18, 1935, known as the “Compensation System for Work-Related Accidents Act,” as well as with respect to Act No. 74 of June 21, 1956, known as the “Puerto Rico Employment Security Act.”

B. Payment of advances of profits shall be subject to the same restrictions imposed for the payment of productivity credit notices found in Section 16.07 of this Act.

Section 16.11.—Extinction of Corporate Existence; Merger or Consolidation with Other Corporations Prohibited.—

A. The corporation shall cease to exist:

1. On the date established in the certificate of incorporation when its extinction is stated therein;

2. When it is absorbed by another corporation by merger or consolidation, pursuant to the provisions of this Chapter; provided, that a special employee-owned corporation shall only merge or consolidate with other corporations that are organized under the provisions of this Chapter at the time of the merger or consolidation, or pursuant to the provisions of Section 16.09 of this Act;

3. Upon dissolving the corporation pursuant to the provisions of Chapter IX of this Act; and

4. When the corporation fails to comply with the provisions of this Act and the Secretary of State issues an order to dissolve the corporation.

CHAPTER XVII

FEES PAYABLE

Section 17.01.—Fees Payable to the Department of State for Filing Certificates and Other Documents.—

A. The Secretary of State shall charge and collect the following fees which shall be paid in every case, in internal revenue vouchers:

1. For filing the original certificate of incorporation, the fee shall be computed on the basis of one (1) cent for each share of authorized capital stock with par value, up to twenty thousand (20,000) shares, inclusive; and one-fifth of a cent for each share in excess of two hundred thousand (200,000) shares; one-half cent for each share of authorized capital stock without par value up to twenty thousand (20,000) shares, inclusive; one-fourth of a cent for each share in excess of twenty thousand (20,000) up to two million (2,000,000) shares, inclusive; and one-fifth of a cent for each share in excess of two million (2,000,000) shares. The amount payable shall in no case be less than one hundred dollars (\$100). For purposes of computing the fee payable on par value stock, each one hundred dollar (\$100) unit of the authorized capital stock shall be counted as one taxable share. For the filing of the original certificate of incorporation, all corporations organized under the provisions of Chapter XVI of this Act shall pay one hundred dollars (\$100).

2. For filing a certificate of amendment to the certificate of incorporation, or an amended certificate of incorporation, before the payment of capital, increasing the authorized capital stock of the corporation, the fee shall be an amount equal to the difference between the fees computed on the basis of the rates set forth in clause (1) of this subsection upon the total of the authorized capital stock of the corporation, including the proposed increase, and the fee computed on the basis of the foregoing rates upon the total authorized capital stock, excluding the proposed increase. The amount payable shall in no case be less than ten dollars (\$10).

3. For filing a certificate of merger or consolidation of two (2) or more corporations, the fee shall be equal to the difference between the fee computed on the basis of the foregoing rates upon the total authorized capital stock of the corporation created by the merger or consolidation and the fee computed on the

basis of such rate upon the total authorized capital stock of the constituent corporations. The amount payable shall in no case be less than fifty dollars (\$50).

4. For filing an amended certificate of incorporation before the payment of capital when the authorized capital stock will not be increased; an amendment to the certificate of incorporation not involving an increase of the authorized capital stock; a certificate of reduction of capital, or a certificate of retirement of preferred stock, a sum that in no case shall be less than twenty dollars (\$20). A sum that in no case shall be less than ten dollars (\$10) shall be paid for all other certificates relating to corporations.

5. For filing a certificate of dissolution, ten dollars (\$10); and for certifying or copying the certificate, or both, ten dollars (\$10).

6. For filing a certificate or other document of surrender and withdrawal from the Commonwealth by a foreign corporation, a sum that in no case shall be less than ten dollars (\$10); for certifying or copying the certificate or other document, or both, a sum that in no case shall be less than ten dollars (\$10).

7. For filing any certificate, sworn statement, agreement, report or any other document provided in this Section for which a different fee is not expressly fixed, a sum that in no case shall be less than ten dollars (\$10) shall be paid in each case.

8. For filing the documents required of foreign corporations by Section 15.03 of this Act, a sum shall be, in no case, less than one hundred dollars (\$100).

9. For certifying or copying (or for both) any certificate of incorporation or any certificate of amendment to the certificate of incorporation, or any certificate of consolidation or merger, or any other document, a fee computed on the basis of ten dollars (\$10) for affixing the official seal and one dollar (\$1) per page, or any part thereof shall be paid. The fees payable shall in no case be less than ten dollars (\$10).

10. For filing in the offices of the Department of State any certificate of change of registered agent or change of domicile of the registered office of the corporation, as provided in Section 3.03 of this Act, a sum that in no case shall be less than fifty dollars (\$50) shall be charged and collected.

11. For filing in the offices of the Department of State any certificate of change of address of the registered agent, as provided in Section 3.04 of this Act, a sum that in no case shall be less than fifty dollars (\$50) shall be charged and collected.

12. For filing in the offices of the Department of State any duplicate certificate of resignation of registered agent, as provided in Section 3.04 of this Act, a sum that in no case shall be less than fifty dollars (\$50.00) shall be charged and collected and additional fees that in no case shall be less than five dollars (\$5.00) for every corporation whose registered agent resigns pursuant to said certificate.

13. For filing in the offices of the Department of State any certificate of resignation of the registered agent, as provided in Section 3.05 of this Act, a sum that in no case shall be less than ten dollars (\$10.00) shall be charged and collected for every corporation whose registered agent resigns through said certificate.

14. For certifying or copying any other certificate provided by this Section, or both, fees computed on the basis of the provisions of clause (9) of this subsection (A) of this Section shall be paid.

15. For filing in the offices of the Department of State any annual report, as provided in Sections 15.01 and 15.03 of this Act, a sum that in no case shall be less than one hundred dollars (\$100) shall be charged and collected.

16. For filing service of process and any document related thereto, in accordance with Sections 10.02(D), 10.04, 10.07(D), 10.14(D), 10.17(C), 13.11(C), 13.12(D), and 13.13(C) of this Act, a sum that in no case shall be less than fifty dollars (\$50.00) shall be collected and paid.

B. For purposes of computing the fees set forth in clauses (1) to (3) of subsection (A) of this Section, the authorized capital of a corporation shall be deemed to be the aggregate number of shares which the corporation is authorized to issue, even if less than the aggregate number of outstanding shares.

C. In the case of nonprofit corporations, the Secretary of State shall charge and collect the following fees which shall be paid in every case in internal revenue vouchers:

1. For filing the certificate of incorporation, or amendments thereto, a sum that in no case shall be less than five dollars (\$5.00).

2. For filing a certificate of merger or consolidation, a sum that in no case shall be less than five dollars (\$5.00).

3. For filing a certificate of dissolution, a sum that in no case shall be less than two dollars (\$2.00); for certifying or copying the certificate, or both, a sum that in no case shall be less than one dollar (\$1.00).

4. For filing a certificate or other document of surrender or withdrawal by a foreign corporation from the Commonwealth, a sum that in no case shall be less than two dollars (\$2.00); for certifying or for copying the certificate or other document, or both, a sum that in no case shall be less than one dollar (\$1.00).

5. For filing the documents required of foreign corporations by Section 15.03 of this Act, five dollars (\$5.00).

6. For filing any certificate, sworn statement, agreement, or any other document provided in this Section for which a different fee is not expressly fixed, a sum that in no case shall be less than two dollars (\$2.00) shall be paid in each case.

7. For certifying or copying any document which has been filed at the Department of State, a sum that in no case shall be less than two dollars (\$2.00) for affixing the official seal and one dollar (\$1.00) per page or any part thereof shall be paid.

8. For filing any certificate of change of registered agent or change of domicile of the registered office of the corporation, as provided in Section 3.03 of this Act, a sum that in no case shall be less than two dollars (\$2.00).

9. For filing any certificate of change of address of the registered agent, as provided in Section 3.04 of this Act, a sum that in no case shall be less than two dollars (\$2.00). For certifying said change, a sum that in no case shall be less than one dollar (\$1.00).

10. For filing any duplicate certificate of change of registered agent, as provided in Section 3.04 of this Act, a sum that in no case shall be less than two dollars (\$2.00) for every corporation whose registered agent is changed in the certificate.

11. For filing any certificate of resignation of a registered agent, as provided in Section 3.05 of this Act, a sum that in no case shall be less than two dollars (\$2.00) for every corporation whose registered agent resigns pursuant to said certificate.

12. For certifying any other document, a sum that in no case shall be less than one dollar (\$1.00).

13. For filing in the offices of the Department of State any annual report, as provided in Sections 15.01 and 15.03 of this Act, fees that in no case shall be less than in the amount of ten dollars (\$10.00) shall be charged and collected.

No fees whatsoever shall be collected for filing and recording the certificate of incorporation or amendments thereto, of any nonprofit religious, fraternal, charitable or educational corporation.

Section 17.02.—Authority of the Secretary of State to Modify Fees Payable.—

The Secretary of State may, by circular letter or administrative order, modify the fees payable fees pursuant to Section 17.01 of this Act.

Section 17.03.—Distribution of Funds Generated by Fees Payable, Special Account of the Department of State and General Fund.—

It is hereby provided that, during the first five (5) years as of the effective date of this Act, forty percent (40%) of the sums collected on account of the fees established in this Chapter, shall be covered into a special account of the Department of State, which shall be used to update and carry out improvements in the divisions of the Registry of Corporations and to defray part of the costs entailed by the digitization and automatization of Registry of Corporations. The remainder sixty percent (60%) shall be covered into the general fund.

It is hereby provided that, once the five-year (5) term as of the effective date of this Act has elapsed, one hundred percent (100%) of the sums collected on account of the fees established in this Chapter shall be covered into the general fund.

CHAPTER XVIII

PROFESSIONAL CORPORATIONS

Section 18.01.—Legislative Intent.—

It is the purpose of this Chapter to provide for the incorporation of an individual, or group of individuals, who render the same professional service to the public for which service such individuals are required by law to obtain a license or other legal authorization.

Section 18.02.—Definitions.—

As used in this Chapter, the following words shall have the meaning stated below:

A. The term “professional service” shall mean any type of personal service to the public which by law, regulation or jurisprudence could not be effected by a corporation before the effective date of this Act and for which the obtaining of a license or other legal authorization for the rendering of such services is required as a condition precedent. In addition, and by way of example without limiting the generality thereof, the personal services included under this Chapter are those rendered by architects, certified or other public accountants, podiatrists, chiropractors, dentists, doctors of medicine, optometrists, osteopaths, professional engineers, veterinarians, and, subject to the Rules of the Supreme Court, attorneys-at-law.

B. The term “professional corporation” means a corporation which is organized, under this Chapter, for the sole and specific purpose of rendering professional service and the auxiliary or complementary services thereto, and which has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within the Commonwealth to render the same professional service as the corporation.

Section 18.03.—Authority to Incorporate.—

One or more persons may, each of whom are duly licensed or otherwise legally authorized to render the same professional services in the Commonwealth, under the provisions of this Chapter, incorporate and become a stockholder or stockholders of a professional corporation for profit, for the sole and specific purpose of rendering the same professional services. The provisions of Chapter XIV of this Act shall not apply to corporations organized under this Chapter.

Section 18.04.—Number of Directors; Officers.—

The determination of the number of directors and officers of a professional corporation shall be governed by Sections 4.01 and 4.02 of this Act.

Section 18.05.—Rendition of Professional Services Through Licensed Officers, Employees, and Agents.—

No corporation organized and incorporated under this Chapter may render professional services, except through officers, employees, and agents who are duly licensed or otherwise legally authorized to render such professional services within this jurisdiction. However, this provision shall not be interpreted to include within the term “employee”, as used in this Chapter, clerical personnel, secretaries, managers, bookkeepers, technicians, and other assistants who are not considered pursuant to law, usage, and customs as requiring a license or any other legal authorization for the exercise of the profession which they practice. Nor does the term “employee” include any other person who performs all his/her employment under the direct supervision and control of an officer, employee or agent who is him/herself authorized to render a professional service to the public on behalf of a professional corporation. Provided, further, that no person shall, under the guise of being an employee of a professional corporation, practice also a profession unless he/she is duly licensed to do so in accordance with the laws of this jurisdiction.

Section 18.06.—Scope and Responsibilities of Professional Relationship; Legal Liabilities; Standards for Professional Conduct; Negligence; Attachment of Assets.—

Nothing contained in this Chapter shall be interpreted to abolish, repeal, modify, restrict or limit the law now in effect in this jurisdiction, applicable to the professional relationship and the contract, tort, and other legal liabilities between the person furnishing the professional services and the person receiving the professional service, and to the standards for professional conduct, including the confidential relationship between the person rendering the professional services and the person receiving such professional service, if any. Likewise, all confidential relationships previously enjoyed under the laws of the Commonwealth

or hereafter enacted shall remain inviolate. Any officer, employee, agent or shareholder of a corporation, organized under this Chapter, shall remain personally and fully liable and accountable for any negligent, wrongful acts, or misconduct committed by such person, or by any person under such person's direct supervision and control, while rendering professional service on behalf of the corporation to the person for whom such professional services were being rendered. The corporation shall be jointly liable up to the full value of its property for any negligent, wrongful acts, or misconduct committed by any of its officers, employees, agents or shareholders while they are engaged in behalf of the corporation in the rendering of professional services. The assets of a professional corporation shall not be liable to attachment for the individual debts of its shareholders. Notwithstanding the foregoing, the relationship of an individual to a professional corporation, organized under this Chapter, with which such individual is or may be associated, whether as officer, employee, agent, or shareholder director, shall in no way modify, extend, or diminish the jurisdiction over such individual, of and by whatever state agency, or office which licensed or otherwise legally authorized such person for or to render service in a particular field of endeavor.

Section 18.07.—Engaging in Another Business Prohibited.—

No corporation organized under this Chapter may engage in another business which is not the rendering of the professional services for which it was incorporated, or the auxiliary or complementary services thereto; provided, however, that nothing contained in this Act, or in any other provision of law applicable to corporations, shall be interpreted as prohibiting a corporation from investing its funds in real property, mortgages, stock or any other type of

investments, or from being the owner of the personal or real property necessary and desirable to carry out the rendering of the professional services for which it was incorporated.

Section 18.08.—Issuance of Capital Stock to Licensed Individuals; Voting Trust Agreements Prohibited; Holding of Stock by Shareholder’s Estate.—

No corporation, organized under this Chapter, may issue any of its capital stock to anyone other than an individual who is duly licensed or otherwise legally authorized to render the same specific professional services as those for which the corporation was incorporated. No shareholder of a corporation, organized under this Chapter, shall enter into a voting trust agreement, proxy, or any other type of agreement vesting another person who is not a stockholder of the corporation with the authority to exercise the voting power of any or all of such shareholder’s stock. Notwithstanding the foregoing, any stockholder of a corporation organized under this Chapter may authorize another shareholder of the corporation to exercise his/her right to vote by proxy. Subject to the corporation’s certificate of incorporation, the estate of a shareholder who was a person duly licensed or otherwise legally authorized to render the same professional service as that for which the professional corporation was organized may continue to hold stock for a term of six (6) months from the death of the stockholder for the administration of the estate, but shall not be authorized to participate in any of the decisions specifically concerning the rendering of the professional services rendered by the corporation.

Section 18.09.—Disqualification of Officer, Shareholder, Agent or Employee.—

If any officer, employee, agent or shareholder of a corporation, organized under this Chapter, becomes legally disqualified to render such professional services within this jurisdiction, or either (i) is elected to a public office that, or (ii)

accepts employment that, pursuant to existing law, places restrictions or limitations upon such officer, employee, agent or shareholder's continued rendering of such professional services, such person shall sever all employment with, and financial interests in, the corporation, forthwith. Provided, that failure to comply with the provisions of this Section shall constitute a ground for the forfeiture of its charter and its dissolution. When a corporation's failure to comply with this Section is brought to the attention of the Secretary of State, the Secretary of State shall forthwith certify that fact to the Secretary of Justice to initiate the appropriate action to dissolve the corporation before the Court of First Instance.

Section 18.10.—Sale or Transfer of Shares.—

Except as provided in Section 18.14 of this Act, no shareholder of a corporation, organized under this Chapter, may sell or transfer such shareholder's shares in the corporation, except to the corporation, or to another individual who is eligible to be a shareholder of such corporation. Provided that the sale or transfer may be made only after the same shall have been approved, by at least a majority of the stock outstanding and entitled to vote on this matter in particular, as provided in the certificate of incorporation or the bylaws of the corporation. The meeting for the consideration of the sale or transfer of stock may be a meeting of stockholders called for such purposes, or an annual meeting where notice of said additional purpose is given with ten (10) days notice. At such meeting of stockholders, the stock of the stockholder proposing the sale or transfer of his/her stock shall not be voted or counted. The certificate of incorporation may specifically provide additional restrictions on the sale or transfer of stock and may require the redemption or payment of said stock by the corporation at certain prices and in a specific manner, or authorize the board of directors of the corporation or its stockholders to adopt bylaws limiting the sale or transfer of stock and providing

for the purchase or redemption of stock by the corporation. Provided, however, that the aforementioned provisions of the certificate of incorporation on the sale or redemption by the corporation of its stock may not be invoked in a manner which impairs the capital of the corporation.

Section 18.11.—Price of Shares.—

If the certificate of incorporation or bylaws of a professional corporation do not set a price at which the professional corporation or its stockholders may purchase the shares of a deceased, retired, expelled or disqualified stockholder, and if the certificate of incorporation or bylaws do not otherwise provide, the price of the shares shall be the book value computed as of the last day of the month immediately preceding the death, retirement, expulsion or disqualification of the stockholder. The book value shall be determined by an independent certified public accountant employed by the professional corporation. The determination of the book value by the independent certified public accountant shall be final for the professional corporation and its stockholders.

Section 18.12.—Perpetual Corporate Existence.—

A corporation organized under the provisions of this Chapter shall have perpetual existence until dissolved in accordance with the provisions of this Chapter.

Section 18.13.—Transfer of Shares upon Death or Disqualification.—

A. In the event of death

The shares of a decedent stockholder shall be transferred to his/her heirs by the mere fact of his death, to the surviving spouse if a conjugal partnership existed, the community property portion, and in every case the spousal usufructuary portion.

The stockholders of the corporation, the heirs and the surviving spouse shall have a period of six (6) months to opt for the sale of the shares of the decedent to the corporation or to one or more of the stockholders.

In case of a corporation with only one stockholder, upon his/her death his/her heirs and the surviving spouse shall have a period of ten (10) days following the death of the stockholder, if the corporation does not have employees admitted to the profession, to retain a professional to manage the affairs of the professional corporation and proceed to the liquidation of the corporation or to the sale of the shares thereof within the six (6) months following the death of the stockholder. If the corporation has employees admitted to the profession in question, the heirs and the surviving spouse shall designate within the same term of ten (10) days one of the employees so admitted to serve as an industrial partner and, if failing to do so, the employee admitted to the profession with the greatest seniority in the corporation shall act as interim administrator of the corporation until a professional is appointed to manage the corporation.

During the aforementioned transition period, the heirs and the surviving spouse shall only have in the corporation such rights as are conferred upon special partners pursuant to Section 101(2), 127 and 136 of the Puerto Rico Commerce Code.

B. In case of Retirement, Expulsion or Disqualification

(a) In case of retirement of a stockholder, his/her shares shall be acquired by the corporation or by one or various stockholders, within the six (6)-month term from the effective date of the retirement of the stockholder for the purchase of his/her shares.

(b) In case of expulsion or disqualification of a stockholder, his/her shares shall be acquired by the corporation or by one or various stockholders, within the term of disqualification. In this case, he/she or the acquirers of the shares shall

have a reasonable term to realize the payment. In the absence of an agreement among the parties, the term shall be established by the Court, taking into consideration the condition of the corporation and of those stockholders who remain, as well as those expelled or disqualified

Section 18.14.—Corporate Name.—

The corporate name of a corporation organized under the provisions of this Chapter shall include the words “professional corporation” or the abbreviations “C. S. P.”, “P. S. C.”, “C. P.” or “P. C.”. The corporate name may include a word or words describing the professional service to be rendered by such corporation. The use of the word “company,” “incorporated,” or “corporation” is specifically prohibited in the corporate name of a corporation organized under the provisions of this Chapter, unless said word is immediately followed by the word “professional” or by any other word, words, abbreviations or prefixes which indicate that it is a corporation.

Section 18.15.—Applicability of this Act; Consolidation or Merger of Corporations; Annual Report.—

This Act shall be applicable to corporations organized in accordance with this Chapter, except to the extent that any of the provisions thereof are interpreted to be in conflict with the provisions of this Chapter, and in such case the provisions and sections of this Chapter shall take precedence with respect to corporations organized under the provisions of this Chapter. A professional corporation organized under this Chapter may consolidate or merge only with another professional corporation organized under this Chapter which is authorized to render the same specific professional services. The merger or consolidation with any foreign corporation is prohibited. Sections 15.01 and 17.01 of this Act shall apply to a corporation organized under the provisions of this Chapter; but in addition to the information which all corporations must furnish in their annual

report pursuant to such provisions, the annual report of a corporation organized under the provisions of this Chapter shall certify that its stockholders, directors and officers are duly licensed, certified, registered or otherwise legally authorized to render in this jurisdiction the same professional service as the professional corporation.

Section 18.16.—Conversion into a Business Corporation.—

Whenever all stockholders of a corporation organized under this Chapter, at any time and for any reason, cease to be licensed, certified or registered in the profession for which such corporation was organized, the corporation shall thereupon be treated as converted into and shall operate henceforth solely as a business corporation under the provisions applicable to this Act.

Section 18.17.—Construction of Chapter.—

This Chapter shall not be construed as repealing, modifying or restricting the applicable provisions of law relating to sales of securities, or regulating the several professions enumerated in this Chapter, except insofar as such laws conflict with this Act.

Section 18.18.—Shareholders of a Professional Corporation.—

The shareholders of a professional corporation shall be deemed as industrial partners of a partnership constituted through a public deed for all purposes of Act No. 45 of April 18, 1935, as amended, and Act No. 74 of June 21, 1956, as amended.

CHAPTER XIX

LIMITED LIABILITY COMPANIES

Section 19.01.—Definitions.—

For the purposes of this Chapter, the following terms and phrases shall have the meaning stated hereinafter, unless another meaning arises from the context:

(a) “Manager” – Means a person who is appointed manager of a limited liability company or designated as manager of a limited liability company under a limited liability company agreement or other similar document under which the limited liability company is formed.

(b) “Contribution” – Means any cash, property, services rendered, note or other obligation to contribute cash or property or to render a service that a person contributes to a limited liability company in his/her capacity as member.

(c) “Certificate of Formation” – Means the certificate through which a limited liability company is formed, as provided in Section 19.12 of this Act, as the same may be amended.

(d) “Knowledge” – Means a person’s actual knowledge of a fact, rather than the person’s constructive knowledge of the fact.

(e) “Limited Liability Company” or “LLC,” and “domestic limited liability company” or “DLLC” – Means a limited liability company created by one (1) or more persons under the laws of Puerto Rico.

(f) “Foreign LLC” or “FLLC” – Means a limited liability company created under the laws of any state of the United States or of any other foreign country or jurisdiction and denominated as such under the laws of said state, foreign country or jurisdiction.

(g) “Limited Liability Company Agreement” or “LLCA” – Means that written agreement (whether referred to as a limited liability company agreement, operating agreement, or otherwise) adopted by the members of a limited liability company to govern the internal affairs and administration of a limited liability company. A limited liability company agreement shall be valid even when the limited liability company has only one member. A limited liability company agreement may provide rights to any person, including a person who is not a party

to the limited liability company agreement, to the extent set forth therein. A written limited liability company agreement, or another written agreement or any other written document:

1) May provide that a person be admitted as member of a limited liability company, or become an assignee of an interest or other rights or powers of a member of a limited liability company as provided in said agreement, and shall be obliged by the limited liability company agreement if: (A) such person (or representative authorized orally, in writing or otherwise, such as through the payment for an interest in the limited liability company) executes the limited liability company agreement or any other writing evidencing the intent of such person to become a member or assignee; or (B) without such execution, if such person (or representative authorized orally, in writing or otherwise, such as through the payment for an interest in the limited liability company) complies with the conditions for becoming a member or assignee as provided in the limited liability company agreement or any other writing; and

2) shall be valid even if it has not been signed by the person who is being admitted as member or becoming an assignee as provided in clause (1) of this subsection, or because it has been signed by a representative, as provided in this Act.

(h) “Department of State” – Means the Department of State of the Commonwealth of Puerto Rico.

(i) “State” – Means the District of Columbia or any state, territory or possession or other jurisdiction of the United States of America, other than the Commonwealth of Puerto Rico.

(j) “Interest in a Limited Liability Company” – Means a member’s share in the profits and losses of a limited liability company and a member’s right to receive distributions of the limited liability company’s assets.

(k) “Member” – Means a person who has been admitted as member to a limited liability company as provided in Section 19.18 of this Act, or in the case of foreign limited liability companies, in accordance with the laws of the state, foreign country or jurisdiction under which the foreign limited liability company was formed.

(l) “Person” – Means a natural person, partnership (whether general or limited), trust, estate, association, corporation or any other individual or entity in its own or any representative capacity, as the case may be, whether domestic or foreign, and a limited liability company or a foreign limited liability company.

(m) “Puerto Rico” – Means the Commonwealth of Puerto Rico.

(n) “Secretary of State” – Means the Secretary of State of the Commonwealth of Puerto Rico, as provided in Article IV of Section 6 of the Constitution of the Commonwealth of Puerto Rico.

(o) “Court of First Instance” or “Court” – Means any Part of the Court of First Instance that has competence over the matter pursuant to the provisions of the Judiciary Act of 1994, as amended, as well as to Section 5.001 of Act No. 201 of August 22, 2003, known as the “Judiciary Act of the Commonwealth of Puerto Rico of 2003,” which became effective on November 20, 2003.

Section 19.02.—Name as Set Forth in the Certificate.—

The name of every limited liability company as set forth in its certificate of formation:

(1) Shall contain the terms “Limited Liability Company” or “Compañía de Responsabilidad Limitada” or the abbreviation “L.L.C.” or “C.R.L.,” or the designation “LLC” or “CRL.”

(2) May contain the name of a member or manager.

(3) Must be such as to distinguish it upon the records of the Department of State from the name on said records of any corporation, partnership, limited partnership, statutory trust or limited liability company reserved, registered, formed or organized under the laws of Puerto Rico or qualified to do business or registered as foreign corporation, foreign limited partnership, foreign statutory trust, foreign partnership or a foreign limited liability company in Puerto Rico; provided, however, that a company may be registered under any name which is not such as to distinguish it upon the records of the Department of State from the name on said records of any domestic or foreign corporation, partnership, limited partnership, trust or limited liability company reserved, registered, formed or organized under the laws of Puerto Rico with the written consent of the other corporation, partnership, limited partnership, statutory trust or limited liability company, which written consent shall be filed with the Secretary of State.

(4) May contain the following words: “Company,” “Association,” “Club,” “Foundation,” “Fund,” “Institute,” “Society,” “Union,” “Syndicate,” “Limited,” or “Trust” (or abbreviations of like import).

(5) Provided, that the acronyms required in the preceding subsection (1) shall be mandatory in all certificates of incorporation; however, the terms provided in subsection (4) shall be considered optional at the time of their inclusion in said certificate.

(6) It shall be understood that the name of the LLC shall be distinguished in the records of the Department of State from the names of any other juridical entity organized, reserved or registered in the Department of State of Puerto Rico.

Section 19.03.—Reservation of Name.—

The name of a limited liability company may be reserved pursuant to the provisions of Section 1.02 of this Act.

Section 19.04.—Registered Office and Registered Agent.—

Every limited liability company shall have and maintain a registered office and a registered agent in Puerto Rico, pursuant to the provisions of Chapter II of this Act.

Section 19.05.—Service of Process.—

The service of process to a limited liability company shall be carried out pursuant to the provisions of Chapter XII of this Act.

Section 19.06.—Nature of Businesses Permitted; Powers.—

A. A limited liability company may be established under this Chapter to carry out or promote any lawful business or purpose, whether or not for profit, except those proscribed by the Constitution and the laws of the Commonwealth. Likewise, a limited liability company and its members may exercise the powers listed in Chapter II of this Act. Moreover, a limited liability company and its members may render the services listed in Sections 18.01 and 18.02, subject to the limitations provided in Sections 18.05 and 18.06 of this Act. A limited liability company and its members shall also have and may exercise all the powers and privileges granted by this or any other Act, or by the limited liability company agreement, in addition to those other powers incidental thereto, provided that said powers and privileges are necessary or convenient to carry out or promote the businesses or purposes set forth in the certificate of incorporation.

B. Notwithstanding any provision of this Chapter, without limiting the general powers enumerated in subsection (A) of this Section, a limited liability company shall, subject to such standards and restrictions, if any, as are set forth in its limited liability company agreement, have the power and authority to make contracts of guaranty and surety and enter into interest rate, basis, currency, hedge

or other swap agreements or cap, floor, put, call, option, exchange or collar agreements, derivative agreements, or other agreements similar to any of the foregoing.

Section 19.07.—Loans to a Member or Manager.—

Except as otherwise provided in a limited liability company agreement, a member or manager may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume one or more obligations of, provide collateral for, and transact other business with, a limited liability company and, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a member or manager.

Section 19.08.—Indemnification.—

Subject to the provisions of Section 4.08, and to the standards and restrictions, if any, set forth in its limited liability company agreement, a limited liability company may, and shall have the power to, indemnify and hold harmless any member or manager or other person from and against any and all claims and suits whatsoever.

Section 19.09.—Service of Process on Managers and Liquidating Trustee.—

The service of process on managers or trustee shall be conducted pursuant to the provisions of Chapter XII of this Act.

Section 19.10.—Contested Matters Relating to Managers; Contested Votes.—

A. Upon application of any member or manager, the Court of First Instance may hear and determine the validity of any admission, election, appointment, removal or resignation of a manager of a limited liability company, and the right of any person to become or continue to be a manager of a limited liability company, and, in case the right to serve as a manager is claimed by more than one person, may determine the person or persons entitled to serve as managers; and to that end make such order or decree in any such case as may be just and proper, with power

to enforce the production of any books, papers and records of the limited liability company relating to the issue under its consideration. In any such application, the limited liability company shall be named as a party and service of copies of the application upon the registered agent of the limited liability company shall be deemed to be service upon the limited liability company and upon the person or persons whose right to serve as a manager is contested and upon the person or persons, if any, claiming to be a manager or claiming the right to be a manager; and the registered agent shall forward immediately a copy of the application to the limited liability company and to the person or persons whose right to serve as a manager is contested and to the person or persons, if any, claiming to be a manager or the right to be a manager, in a postpaid, sealed, registered letter addressed to such limited liability company and such person or persons at their mailing addresses last known to the registered agent or furnished to the registered agent by the applicant member or manager. The Court may make such order respecting further or other notice of such application as it deems proper under these circumstances.

B. Upon application of any member or manager, the Court of First Instance may hear and determine the result of any vote of members or managers upon matters as to which the members or managers of the limited liability company, or any class or group of members or managers, have the right to vote pursuant to the limited liability company agreement or other agreement or this Act (other than the admission, election, appointment, removal or resignation of managers). In any such application, the limited liability company shall be named as a party and service of the application upon the registered agent of the limited liability company shall be deemed to be service upon the limited liability company, and no other party need

be joined in order for the Court to adjudicate the result of the vote. The Court may make such order respecting further or other notice of such application as it deems proper under these circumstances.

C. Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This Section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

Section 19.11.—Interpretation and Enforcement of Agreement.—

Any action to interpret, apply or enforce the provisions of a limited liability company agreement, or the duties, obligations or liabilities of a limited liability company to the members or managers of the limited liability company, or the duties, obligations or liabilities among members or managers and of members or managers to the limited liability company, or the rights or powers of, or restrictions on, the limited liability company, members or managers, may be brought in the Court of First Instance.

Section 19.12.—Certificate of Formation.—

In order to form a limited liability company, one or more authorized persons shall execute a certificate of formation.

The execution, acknowledgement, filing and registration of the certificate of formation, as well as the amendment, cancellation, reaffirmation and revival of the corporate existence of a limited liability company shall be conducted in accordance with the terms and requirements established in this Act for corporations.

Section 19.13.—Merger or Consolidation.—

The merger or consolidation of any limited liability company with other domestic or foreign business entity shall be conducted pursuant to the procedure set forth for corporations in Chapter X of this Act.

Section 19.14.—Domestication of Non-United States Entities.—

A. As used in this Section, “non-United States entity” means a foreign limited liability company (other than one formed under the laws of a State) or a corporation, a business trust or association, a real estate investment trust, or any other unincorporated business, including a partnership (be it general, including a limited liability partnership) or limited (including a limited liability limited partnership) formed, incorporated, created or that otherwise came into being under the laws of any foreign country or other foreign jurisdiction (other than any state).

B. Any non-United States entity may become domesticated as a limited liability company in Puerto Rico by complying with subsection (G) of this Section and filing in the office of the Secretary of State in accordance with the provisions of Chapter I of this Act for foreign corporations:

1) A certificate of limited liability company domestication that has been executed by one or more authorized persons in accordance with Chapter I of this Act for certificates of incorporation, and

2) A certificate of formation that complies with Section 19.12 of this Act and has been executed by one or more authorized persons in accordance with Chapter I of this Act for incorporators.

C. The certificate of limited liability company domestication shall state:

1) The date on which and jurisdiction where the non-United States entity was first formed, incorporated, created or otherwise came into being;

2) The name of the non-United States entity immediately prior to the filing of the certificate of limited liability company domestication;

3) The name of the limited liability company as set forth in the certificate of formation filed in accordance with subsection (B) of this Section;

4) The future effective date or time (which shall be a date or time certain) of the domestication as a limited liability company if it is not to be effective upon the filing of the certificate of limited liability company domestication and the certificate of formation; and

5) The jurisdiction that constituted the seat, siege social, principal place of business or central administration of the non-United States entity, or any other equivalent thereto under applicable laws, immediately prior to the filing of the certificate of limited liability company domestication.

D. Upon the filing in the office of the Secretary of State of the certificate of limited liability company domestication and the certificate of formation or upon the future effective date or time of the certificate of limited liability company domestication and the certificate of formation, the non-United States entity shall be domesticated as a limited liability company in Puerto Rico, and the limited liability company shall thereafter be subject to all of the provisions of this Act, except that notwithstanding the provisions of Section 19.12 of this Act, the existence of the limited liability company shall be deemed to have commenced on the date the non-United States entity commenced its existence in the jurisdiction in which the non-United States entity was first formed, incorporated, created or otherwise came into being.

E. The domestication of any non-United States entity as a limited liability company in Puerto Rico shall not be deemed to affect any obligations or liabilities of the non-United States entity incurred prior to its domestication as a limited liability company in Puerto Rico, or the personal liability of any person therefor.

F. The filing of a certificate of limited liability company domestication shall not affect the choice of law applicable to the non-United States entity, except that from the effective date or time of the domestication, the laws of Puerto Rico,

including the provisions of this Act, shall apply to the non-United States entity to the same extent as if the non-United States entity had been formed as a limited liability company on that date.

G. Prior to filing a certificate of limited liability company domestication with the Secretary of State, the domestication shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-Puerto Rico law, as appropriate, and a limited liability company agreement shall be approved by the same authorization required to approve the domestication.

H. When any domestication shall have become effective pursuant this Section, for all purposes of the laws of Puerto Rico, all of the rights, privileges and powers of the non-United States entity that has been domesticated, and all property, real, personal and mixed, and all debts due to such non-United States entity, as well as all other things and causes of action belonging to such non-United States entity, shall remain vested in the domestic limited liability company to which such non-United States entity has been domesticated and shall be the property of such domestic limited liability company, and the title to any real property vested by deed or otherwise in such non-United States entity shall not revert or be in any way impaired by reason of this Act; but all rights of creditors and all liens upon any property of such non-United States entity shall be preserved unimpaired, and all debts, liabilities and duties of the non-United States entity that has been domesticated shall remain attached to the domestic limited liability company to which such non-United States entity has been domesticated, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a domestic limited liability

company. The rights, privileges, powers and interests in property of the non-United States entity, as well as the debts, liabilities and duties of the non-United States entity, shall not be deemed, as a consequence of the domestication, to have been transferred to the domestic limited liability company to which such non-United States entity has domesticated for any purpose of the laws of Puerto Rico.

I. When a non-United States entity has become domesticated as a limited liability company pursuant to this Section, for all purposes of the laws of Puerto Rico, the limited liability company shall be deemed to be the same entity as the domesticating non-United States entity. Unless otherwise agreed, or pursuant to the provisions of the applicable non-Puerto Rico laws, the domesticating non-United States entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the domestication shall not be deemed to constitute a dissolution of such non-United States entity, but rather the continuance of the existence of the domesticating non-United States entity in the form of a domestic limited liability company. If, following domestication, a non-United States entity that has become domesticated as a limited liability company continues its existence in the foreign country or other foreign jurisdiction in which it was existing immediately prior to domestication, the limited liability company and such non-United States entity shall, for all purposes of the laws of Puerto Rico, constitute a single entity formed, incorporated, created or otherwise having come into being, as applicable, and existing under the laws of Puerto Rico and the laws of such foreign country or other foreign jurisdiction.

J. In connection with a domestication conducted in accordance with this Section, the rights or securities of, or interests in, the non-United States entity that is to be domesticated as a domestic limited liability company may be exchanged for or converted into cash, property, rights or securities of, or interests in, such

domestic limited liability company or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, another domestic limited liability company or other entity or may be cancelled.

Section 19.15.—Transfer or Continuance.—

A. Upon compliance with this Section, any limited liability company may transfer to or domesticate in any jurisdiction other than any state, which allows the transfer to or the domestication in such jurisdiction of a limited liability company and, in connection therewith, may elect to continue its existence as a limited liability company in Puerto Rico.

B. Unless otherwise provided in the limited liability company agreement, the transfer or domestication or continuance described in subsection (A) of this Section shall be approved in writing by all managers and all members. If all managers and members of the limited liability company, or such other vote that could appear in the limited liability company agreement approve the transfer or domestication described in subsection (A) of this Section, a certificate of transfer shall be filed with the Secretary of State if the existence of the limited liability company as a limited liability company of Puerto Rico is to cease, or a certificate of transfer and continuance if the limited liability company's existence as a limited liability company in Puerto Rico is to continue, executed in accordance with the provisions of Chapter I of this Act. The certificate of transfer or the certificate of transfer and continuance shall state:

(1) The name of the limited liability company and, if it has been changed, the name under which its certificate of formation was originally filed;

(2) The filing date of its original certificate of formation with the Secretary of State;

(3) The jurisdiction to which the limited liability company shall be transferred or in which it shall be domesticated;

(4) The future effective date or time (which shall be a date or time certain) of the transfer to or domestication in the jurisdiction specified in paragraph (3) of this Section if it is not to be effective upon the filing of the certificate of transfer or the certificate of transfer and continuance;

(5) That the transfer or domestication or continuance of the limited liability company has been approved in accordance with this Section;

(6) In the case of a certificate of transfer: (A) that the existence of the limited liability company as a limited liability company of Puerto Rico shall cease when the certificate of transfer becomes effective, and (B) the agreement of the limited liability company that it may be served with process in Puerto Rico in any action, suit or proceeding for enforcement of any obligation of the limited liability company arising while it was a limited liability company of Puerto Rico, and that it irrevocably appoints the Secretary of State as its agent to accept service of process in any such action, suit or proceeding;

(7) The address to which a copy of the process referred to in paragraph (6) of this Section shall be mailed by the Secretary of State. In the event of service hereunder upon the Secretary of State, pursuant to this provision, the procedures set forth in subsection (C) of Section 20.08 of this Act shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in this paragraph, and any other address that the plaintiff may elect to furnish, together with copies of such process as required by the Secretary of State, and the Secretary of State shall notify the limited liability company that has transferred or domesticated out of Puerto Rico at all such addresses furnished by the plaintiff in accordance with the procedures set forth in Section 20.08 of this Act; and

(8) In the case of a certificate of transfer and continuance, that the limited liability company shall continue to exist as a limited liability company of Puerto Rico after the certificate of transfer and continuance becomes effective.

C. Upon the filing with the Secretary of State of the certificate of transfer or upon the future effective date or time of the certificate of transfer and payment to the Secretary of State of all fees prescribed in this Act, the Secretary of State shall certify that the limited liability company has filed all documents and paid all fees required by this Act, and thereupon the limited liability company shall cease to exist as a limited liability company of Puerto Rico. Such certificate of the Secretary of State shall be prima facie evidence of the transfer or domestication of such limited liability company out of Puerto Rico.

D. The transfer or domestication of a limited liability company out of Puerto Rico in accordance with this Section, and the resulting cessation of its existence as a limited liability company of Puerto Rico pursuant to a certificate of transfer shall not be deemed to affect any obligations or liabilities of the limited liability company incurred prior to such transfer or domestication or the personal liability of any person incurred prior to such transfer or domestication, nor shall it be deemed to affect the choice of law applicable to the limited liability company with respect to matters arising prior to such transfer or domestication. Unless otherwise agreed, the transfer or domestication of a limited liability company out of Puerto Rico in accordance with this Section shall not require such limited liability company to wind up its affairs or pay its liabilities and distribute its assets pursuant to the provisions of this Act.

E. If a limited liability company files a certificate of transfer and continuance, after the time the certificate of transfer and continuance becomes effective, the limited liability company shall continue to exist as a limited liability company of Puerto Rico, and the laws of Puerto Rico, including this Act, shall apply to the

limited liability company to the same extent as prior to such time. So long as a limited liability company continues to exist as a limited liability company of Puerto Rico following the filing of a certificate of transfer and continuance, the continuing domestic limited liability company and the entity formed, incorporated, created or that otherwise came into being as a consequence of the transfer of the limited liability company to, or its domestication in a foreign country or other foreign jurisdiction shall, for all purposes of the laws of Puerto Rico, constitute a single entity formed, incorporated, created or otherwise having come into being, as applicable, and existing under the laws of Puerto Rico and the laws of such foreign country or other foreign jurisdiction.

F. In connection with a transfer or domestication or continuance of a domestic limited liability company to or in another jurisdiction pursuant to subsection (A) of this Section, the rights or securities of, or interests in, such limited liability company may be exchanged for or converted into cash, property, rights or securities of, or interests in, the business form in which the limited liability company shall exist in such other jurisdiction as a consequence of the transfer or domestication or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, other business form or may be cancelled.

G. When a limited liability company has transferred or domesticated out of Puerto Rico pursuant to this Section, the transferred or domesticated business form shall, for all purposes of the laws of Puerto Rico, be deemed to be the same entity as the limited liability company existing prior to such transfer or domestication. When any transfer or domestication of a limited liability company out of Puerto Rico shall have become effective under this Section, for all purposes of the laws of Puerto Rico, all of the rights, privileges and powers of the limited liability company that has transferred or domesticated, and all property, real, personal and

mixed, and all debts due to such limited liability company, as well as all other things and causes of action belonging to such limited liability company, shall remain vested in the transferred or domesticated business form, and shall be the property of such transferred or domesticated business form and the title to any real property vested by deed or otherwise in such limited liability company shall not revert or be in any way impaired by reason of this Act; but all rights of creditors and all liens upon any property of such limited liability company shall be preserved unimpaired, and all debts, liabilities and duties of the limited liability company that has transferred or domesticated shall remain attached to the transferred or domesticated business form and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as the transferred or domesticated business form. The rights, privileges, powers and interests in property of the limited liability company that has transferred or domesticated, as well as the debts, liabilities and duties of such limited liability company, shall not be deemed, as a consequence of the transfer or domestication out of Puerto Rico, to have been transferred to the domesticated business form for any purpose of the laws of Puerto Rico.

H. A limited liability company agreement may provide that a domestic limited liability company shall not have the power to transfer, domesticate or continue as set forth in this Section.

Section 19.16.—Conversion of Certain Entities.—

A. As used in this Section, the term “other entity” means a domestic or foreign corporation, a statutory trust, a business trust or an association, a real estate investment trust, or any other unincorporated business, including a partnership (whether general, including a limited liability partnership) or limited (including a limited liability limited partnership) or a foreign limited liability company.

B. Any other entity may convert to a domestic limited liability company by complying with the provisions of subsection (H) of this Section and filing with the Secretary of State:

(1) A certificate of conversion to limited liability company that has been executed by one or more authorized persons; and

(2) A certificate of formation that complies with the applicable provisions of this Act.

C. The certificate of conversion to limited liability company shall state:

(1) The date on which and jurisdiction where the entity was first formed, incorporated, created or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a limited liability company;

(2) The name of the other entity immediately prior to the filing of the certificate of conversion to limited liability company;

(3) The name of the limited liability company as set forth in its certificate of formation filed in accordance with subsection (B) of this Section; and

(4) The future effective date or time (which shall be a date or time certain) of the conversion to a limited liability company if it is not to be effective upon the filing of the certificate of conversion to limited liability company and the certificate of formation.

D. Upon the filing with the Secretary of State of the certificate of conversion to limited liability company and the certificate of formation or upon the future effective date or time of the certificate of conversion to limited liability company and the certificate of formation, the other entity shall be converted into a domestic limited liability company and the limited liability company shall thereafter be subject to all of the provisions of this Act, except that notwithstanding the provisions of Section 19.12 of this Act, the existence of the limited liability

company shall be deemed to have commenced on the date the other entity commenced its existence in the jurisdiction in which the other entity was first formed, incorporated, created or otherwise came into being.

E. The conversion of any other entity into a domestic limited liability company shall not be deemed to affect any obligations or liabilities of the other entity incurred prior to its conversion to a domestic limited liability company or the personal liability of any person incurred prior to such conversion.

F. When any conversion shall have become effective under this Section, for all purposes of the laws of Puerto Rico, all of the rights, privileges and powers of the other entity that has converted, and all property, real, personal and mixed, and all debts due to such other entity, as well as all other things and causes of action belonging to such other entity, shall remain vested in the domestic limited liability company to which such other entity has converted and shall be the property of such domestic limited liability company, and the title to any real property vested by deed or otherwise in such other entity shall not revert or be in any way impaired by reason of this Act; but all rights of creditors and all liens upon any property of such other entity shall be preserved unimpaired, and all debts, liabilities and duties of the other entity that has converted shall remain attached to the domestic limited liability company to which such other entity has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a domestic limited liability company. However, the rights, privileges, powers and interests in property of the other entity, as well as the debts, liabilities and duties of the other entity, shall not be deemed, as a consequence of the conversion, to have been transferred to the domestic limited liability company to which such other entity has converted for any purpose of the laws of Puerto Rico.

G. Unless otherwise agreed, or in accordance with the provisions of non-Puerto Rico applicable laws, the converting other entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such other entity, but rather the continuance of the existence of the converting other entity in the form of a domestic limited liability company. When an other entity has been converted to a limited liability company pursuant to this Section, for all purposes of the laws of Puerto Rico, the limited liability company shall be deemed to be the same entity as the converting other entity.

H. Prior to filing a certificate of conversion to limited liability company with the Secretary of State, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate and a limited liability company agreement shall be approved by the same authorization required to approve the conversion.

I. In connection with a conversion conducted in accordance with this Section, the rights or securities of or interests in the other entity which is to be converted to a domestic limited liability company may be exchanged for or converted into cash, property, or rights or securities of or interests in such domestic limited liability company or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, or rights or securities of or interests in another domestic limited liability company or other entity or may be cancelled.

J. The provisions of this Section shall not be construed to limit the accomplishment of a change in the law governing, or the domicile of, an other entity to Puerto Rico by any other means provided for in a limited liability

company agreement or other agreement or as otherwise permitted by law, including by the amendment of a limited liability company agreement or other agreement.

Section 19.17.—Series of Members, Managers, Limited Liability Company Interests.—

A. A limited liability company agreement may establish or provide for the establishment of series of members, managers or limited liability company interests which shall have separate rights, powers or duties with respect to specified properties or obligations of the limited liability company or profits or losses associated with specified properties or obligations and, to the extent provided in the limited liability company agreement, any such series may have a separate business purpose or investment objective.

B. Notwithstanding anything to the contrary set forth in this Act or under other law, in the event that a limited liability company agreement provides for the establishment of one or more series, and if the records maintained (directly or indirectly, including through a nominee or otherwise) for any such series account for the assets associated with such series separately from the other assets of the limited liability company, or any other series thereof, and if the limited liability company agreement so provides, and if notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the certificate of formation of the limited liability company, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, and, unless otherwise provided in the limited liability company agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series

thereof shall be enforceable against the assets of such series. Notice of the limitation on liabilities of a series as referenced in this subsection shall be sufficient for all purposes of this subsection whether or not the limited liability company has established any series when such notice is included in the certificate of formation, and there shall be no requirement that any specific series of the limited liability company be referenced in such notice. The fact that a certificate of formation that contains the foregoing notice of the limitation on liabilities of a series is on file in the Department of State shall constitute notice of such limitation on liabilities of a series.

C. Notwithstanding the provisions of subsection (A) of Section 19.19 of this Act, under a limited liability company agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations and liabilities of one or more series.

D. A limited liability company agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members or managers associated with the series 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 existing members or managers associated with the series. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or manager or class or group of members or managers, including an action to create under the provisions of the limited liability company agreement a class or group of the series of limited

liability company interests that was not previously outstanding. A limited liability company agreement may provide that any member or class or group of members associated with a series shall have no voting rights.

E. A limited liability company agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a series the right to vote separately or with all or any class or group of the members or managers associated with the series, on any matter. Voting by members or managers associated with a series may be on a per capita, number, financial interest, class, group or any other basis.

F. Unless otherwise provided in a limited liability company agreement, the management of a series shall be vested in the members associated with such series in proportion to the then current percentage or other interest of members in the profits of the series owned by all of the members associated with such series, the decision of members owning more than fifty (50) percent of the said percentage or other interest in the profits controlling. Provided, however, that if a limited liability company agreement provides for the management of the series, in whole or in part, by a manager, the management of the series, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the limited liability company agreement. The manager of the series shall also hold the offices and have the responsibilities accorded to the manager as set forth in a limited liability company agreement. A series may have more than one manager. Subject to Section 19.36 of this Act, a manager shall cease to be a manager with respect to a series as provided in a limited liability company agreement. Except as otherwise provided in a limited liability company agreement, any event under this Chapter or in a limited liability company agreement that causes a manager to cease to be a

manager with respect to a series shall not, in itself, cause such manager to cease to be a manager of the limited liability company or with respect to any other series thereof.

G. Notwithstanding the provisions of Section 19.19 of this Act, but subject to subsections (H) and (K) of this Section, and unless otherwise provided in a limited liability company agreement, when a member associated with a series that has been established in accordance with subsection (B) of this Section becomes entitled to receive a distribution with respect to such series, the member shall have the status of, and be entitled to all remedies available to, a creditor of the series, with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a series.

H. Notwithstanding the provisions of subsection (A) of Section 19.41 of this Act, a limited liability company may make a distribution with respect to a series that has been established in accordance with subsection (B) of this Section. A limited liability company shall not make a distribution with respect to a series that has been established in accordance with subsection (B) of this Section to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of such series, other than liabilities to members on account of their limited liability company interests with respect to such series and liabilities for which the recourse of creditors is limited to specified property of such series, exceed the fair value of the assets associated with such series, except that the fair value of property of the series that is subject to a liability for which the recourse of creditors is limited shall be included in the assets associated with such series only to the extent that the fair value of that property exceeds that liability. For purposes of the immediately preceding sentence, the term “distribution” shall not include amounts constituting reasonable compensation for present or past

services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A member who receives a distribution in violation of this subsection, and who knew at the time of the distribution that the distribution violated this subsection, shall be liable to a series for the amount of the distribution. A member who receives a distribution in violation of this subsection, and who did not know at the time of the distribution that the distribution violated this subsection, shall not be liable for the amount of the distribution. Subject to the provisions of subsection (C) of Section 19.41 of this Act, which shall apply to any distribution made with respect to a series under this subsection, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

I. Unless otherwise provided in the limited liability company agreement, a member shall cease to be associated with a series and to have the power to exercise any rights or powers of a member with respect to such series upon the assignment of all of the member's limited liability company interest with respect to such series. Except as otherwise provided in a limited liability company agreement, any event under this Act or a limited liability company agreement that causes a member to cease to be associated with a series shall not, in itself, cause such member to cease to be associated with any other series or terminate the continued membership of a member in the limited liability company or cause the termination of the series, regardless of whether such member was the last remaining member associated with such series.

J. Subject to Section 19.47 of this Act, except to the extent otherwise provided in the limited liability company agreement, a series may be terminated and its affairs wound up without causing the dissolution of the limited liability company. The termination of a series established in accordance with subsection (B) of this Section shall not affect the limitation on liabilities of such series

provided by subsection (B) of this Section. A series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under Section 19.47 of this Act or otherwise upon the first to occur of the following:

- (1) At the time specified in the limited liability company agreement;
- (2) Upon the happening of events specified in the limited liability company agreement;
- (3) Unless otherwise provided in the limited liability company agreement, upon the affirmative vote or written consent of the members of the limited liability company associated with such series or, if there is more than one class or group of members associated with such series, then by each class or group of members associated with such series, in either case, by members associated with such series who own more than two-thirds (2/3) of the then-current percentage or other interest in the profits of the series of the limited liability company owned by all of the members associated with such series or by the members in each class or group of such series, as appropriate; or
- (4) Upon the termination of such series under subsection (L) of this Section.

K. Notwithstanding the provisions of this Act with respect to terminations, unless otherwise provided in the limited liability company agreement, a manager associated with a series who has not wrongfully terminated the series or, if none, the members associated with the series or a person approved by the members associated with the series or, if there is more than one class or group of members associated with the series, then by each class or group of members associated with the series, in either case, by members who own more than fifty (50) percent of the then-current percentage or other interest in the profits of the series owned by all of the members associated with the series or by the members in each class or group associated with the series, as appropriate, may wind up the affairs of the series;

however, if the series has been established in accordance with subsection (B) of this Section, the Court of First Instance, upon cause shown, may wind up the affairs of the series upon application of any member associated with the series, the member's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee.

L. On application by or for a member or manager associated with a series established in accordance with subsection (B) of this Section, the Court of First Instance may decree termination of such series whenever it is not reasonably practicable to carry on the business of the series pursuant to a limited liability company agreement.

M. If a foreign limited liability company that is registering to do business in Puerto Rico pursuant to Section 20.01 of this Act is governed by a limited liability company agreement that establishes or provides for the establishment of designated series of members, managers, or limited liability company interests having separate rights, powers or duties with respect to specified property or obligations of the foreign limited liability company or profits and losses associated with specified property or obligations, that fact shall be so stated on the application for registration as a foreign limited liability company. In addition, the foreign limited liability company shall state on such application whether the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series, if any, shall be enforceable against the assets of such series only, and not against the assets of the foreign limited liability company generally or any other series thereof, and except as otherwise provided in the limited liability company agreement, any of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the foreign limited liability company generally or any other series thereof shall be enforceable against the assets of such series.

SUB-CHAPTER I

MEMBERS

Section 19.18.—Admission of Members.—

A. In connection with the formation of a LLC, a person is admitted as a member of the LLC upon the later to occur of:

(1) The formation of the LLC; or

(2) The time provided in and upon compliance with the LLCA or, if the LLCA does not so provide, when the person's admission is reflected in the records of the LLC.

B. After the formation of a LLC, a person is admitted as a member of the LLC:

(1) In the case of a person who is not an assignee of a LLC interest, including a person acquiring a LLC interest directly from the LLC and a person to be admitted as a member of the LLC without acquiring a LLC interest in the LLC at the time provided in and upon compliance with the LLCA or, if the LLCA does not so provide, upon the consent of all members and when the person's admission is reflected in the records of the LLC;

(2) In the case of an assignee of a LLC interest, as provided in subsection (A) of Section 19.45 of this Act, and at the time provided in and upon compliance with the LLCA or, if the LLCA does not so provide, when any such person's permitted admission is reflected in the records of the LLC; or

(3) Except as otherwise provided in an agreement of merger or consolidation, in the case of a person acquiring a LLC interest from a surviving or resulting LLC, pursuant to a merger or consolidation approved in accordance with this Act, at the time provided in and upon compliance with the LLCA of the surviving or resulting LLC, in the event of any inconsistency, the terms of the agreement of merger or consolidation shall control; and in the case of a person

acquiring a LLC interest pursuant to a merger or consolidation in which such LLC is not the surviving or resulting LLC, as provided in the LLCA of such non-surviving or non-resulting LLC.

C. In connection with the domestication of a non-United States entity as a LLC in Puerto Rico or the conversion of an other entity to a DLLC in accordance with this Act, a person shall be admitted as a member of the LLC at the time provided in and upon compliance with the LLCA.

D. A person may be admitted to a LLC as a member of the LLC and may receive a LLC interest in the LLC without making a contribution or being obligated to make a contribution to the LLC. Unless otherwise provided in a LLCA, a person may be admitted to a LLC as a member of the LLC without acquiring a LLC interest in the LLC. Unless otherwise provided in a LLCA, a person may be admitted as the sole member of a LLC without making a contribution or being obligated to make a contribution to the LLC or without acquiring a LLC interest in the LLC.

E. Unless otherwise provided in a LLCA or another agreement, a member shall have no preemptive right to subscribe to any additional issue of LLC interests or another interest in a LLC.

Section 19.18.—Classes and Voting.—

A. A LLCA may provide for classes or groups of members having such rights, powers and duties as the LLCA may provide, and may make provision for the future creation of additional classes or groups of members having such 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. A LLCA may provide for the taking of an action, including the amendment of the LLCA, without the vote or approval of any member or class or group of members, including an

action to create under the provisions of the LLCA a class or group of LLC interests that was not previously outstanding. A LLCA may provide that any member or class or group of members shall have no voting rights.

B. A LLCA may grant to all or a specific group of members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers, on any matter. Voting by members may be on a per capita, number, financial interest, class, group or any other basis.

C. A LLCA may set forth provisions relating to notice of the time, place and purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

D. Unless otherwise provided in a LLCA, on any matter that is to be voted on, consented to or approved by members, the members may take such action without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted. Unless otherwise provided in a LLCA, on any matter that is to be voted on by members, the members may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. Unless otherwise provided in a LLCA, a consent transmitted by electronic transmission by a member or by a person or persons authorized to act for a member shall be deemed to be written and signed for purposes of this subsection. For purposes of this subsection, the term “electronic transmission” means any form of communication not directly involving

the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

If a LLCA provides for the manner in which it may be amended, including by requiring the approval of a person who is not a party to the LLCA or the satisfaction of certain conditions, it may be amended only in that manner or as otherwise permitted by law (provided that the approval of any person may be waived by such person and that any such conditions may be waived by all persons for whose benefit such conditions were intended).

Section 19.19.—Liability to Third Parties.—

A. Except as otherwise provided by this Act, the debts, obligations and liabilities of a LLC, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the LLC, and no member or manager of a LLC shall be obligated personally for any such debt, obligation or liability of the LLC solely by reason of being a member or acting as a manager of the LLC.

B. Notwithstanding the provisions of subsection (A) of this Section, under a LLCA or under another agreement, a member or manager may agree to be obligated personally for any and all of the debts, obligations and liabilities of the LLC.

Section 19.20.—Access to Confidential Information; Records.—

A. Each member of a LLC has the right, subject to such reasonable standards (including standards governing what information and documents are to be furnished at what time and location and at whose expense) as may be set forth in a LLCA or otherwise established by the manager or, if there is no manager, then by the members, to obtain from the LLC from time to time upon reasonable demand for any purpose reasonably related to the member's interest as a member of the LLC:

(1) True and full information regarding the status of the business and financial condition of the LLC;

(2) Promptly after becoming available, a copy of the LLC's federal, state and local income tax returns for each year;

(3) A current list of the name and last known business, residence or mailing address of each member and manager;

(4) A copy of any written LLCA and certificate of formation and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the LLCA and any certificate and all amendments thereto have been executed;

(5) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future, and the date on which each became a member; and

(6) Other information regarding the affairs of the LLC as is just and reasonable.

B. Each manager shall have the right to examine all of the information described in subsection (A) of this Section for a purpose reasonably related to the position of manager.

C. The manager of a LLC shall have the right to keep confidential from the members, for such period of time as the manager deems reasonable, any information which the manager reasonably believes to be in the nature of trade secrets or other information the disclosure of which the manager in good faith believes is not in the best interest of the LLC or could damage the LLC or its business or which the LLC is required by law or by agreement with a third party to keep confidential.

D. A LLC may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

E. Any demand by a member under this Section shall be in writing and shall state the purpose of such demand.

F. Any action to enforce any right arising under this Section shall be brought in the Court of First Instance. If the LLC refuses to permit a member to obtain or a manager to examine the information described in paragraph (3) of subsection (A) of this Section or does not reply to the demand that has been made within five (5) business days after the demand has been made, the demanding member or manager may apply to the Court of First Instance for an order to compel such disclosure. The Court of First Instance is hereby vested with exclusive jurisdiction to determine whether or not the person seeking such information is entitled to the information sought. The Court of First Instance may summarily order the LLC to permit the demanding member to obtain or manager to examine the information described in paragraph (3) of subsection (A) of this Section and to make copies or abstracts therefrom, or the Court may summarily order the LLC to furnish to the demanding member or manager the information described in paragraph (3) of subsection (A) of this Section on the condition that the demanding member or manager first pay to the LLC the reasonable cost of obtaining and furnishing such information and on such other conditions as the Court deems appropriate. When a demanding member seeks to obtain or a manager seeks to examine the information described in paragraph (3) of subsection (A) of this Section, the demanding member or manager shall first establish:

(1) that the demanding member or manager has complied with the provisions of this Section respecting the form and manner of making demand for obtaining or examining of such information, and

(2) that the information the demanding member or manager seeks is reasonably related to the member's interest as a member or the manager's position as a manager, as the case may be.

The Court of First Instance may, in its discretion, prescribe any limitations or conditions with reference to the obtaining or examining of information, or award such other or further relief as the Court may deem just and proper. The Court of First Instance may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within Puerto Rico and kept in Puerto Rico upon such terms and conditions as the order may prescribe.

G. The rights of a member or manager to obtain information as provided in this Section may be restricted in an original LLCA or in any subsequent amendment approved or adopted by all of the members or in compliance with any applicable requirements of the LLCA. The provisions of this subsection shall not be construed to limit the ability to impose restrictions on the rights of a member or manager to obtain information by any other means permitted under this Section.

Section 19.21.—Remedies for Breach of LLCA by Member.—

A LLCA may provide that:

(1) A member who fails to perform in accordance with, or to comply with the terms and conditions of, the LLCA shall be subject to specified penalties or specified consequences; and

(2) At the time or upon the happening of events specified in the LLCA, a member shall be subject to specified penalties or specified consequences. Such specified penalties or specified consequences may include and take the form of any penalty or consequence set forth in subsection (C) of Section 19.31 of this Act.

SUB-CHAPTER II

MANAGERS

Section 19.22.—Admission of Managers.—

A person may be named or designated as a manager of the LLC as provided in subsection (A) of Section 19.01 of this Act.

Section 19.23.—Management of LLC.—

Unless otherwise provided in a LLCA, the management of a LLC shall be vested in its members in proportion to their percentages or other interest of members in the profits of the LLC owned by all of the members. The decisions shall be made by the members owning more than 50% of the said proportion or other interest in the profits. Provided, however, that if a limited liability company agreement provides for the management, in whole or in part, of a LLC by a manager, the management of the LLC, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the LLCA. The manager shall hold the offices and have the responsibilities accorded to the manager provided in a LLCA. Subject to Section 19.36 of this Act, a manager shall cease to be a manager as provided in a LLCA. A LLC may have more than one manager, unless otherwise provided in a LLCA, each member and manager has the authority to bind the LLC.

Section 19.24.—Contributions by a Manager.—

A manager of a LLC may make contributions to the LLC and share in the profits and losses of, and in distributions from, the LLC as a member. A person who is both a manager and a member has the rights and powers, and is subject to the restrictions and liabilities, of a manager and, except as otherwise provided in a LLCA, also has the rights and powers, and is subject to the restrictions and liabilities, of a member to the extent of the manager's participation in the LLC as a member.

Section 19.25.—Classes and Voting.—

A. A LLCA may provide for classes and groups of managers having such rights, powers and duties as the LLCA may provide, and may make provision for the future creation of additional classes and groups of managers having such rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of managers. A LLCA may provide for the taking of an action, including the amendment of the LLCA, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the LLCA a new class or group of LLC interests that was not previously outstanding.

B. A LLCA may grant to all or a group of managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter. Voting by managers may be on a per capita, number, financial interest, class, group or any other basis.

C. A LLCA may set forth provisions relating to notice of the time, place and purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

D. Unless otherwise provided in a LLCA, on any matter that is to be voted on, consented to or approved by managers, the managers may take such action without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the managers having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all managers entitled to vote thereon were present and voted. Unless otherwise provided in a LLCA, on any matter that is to

be voted on by managers, the managers may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. Unless otherwise provided in a LLCA, a consent transmitted by electronic transmission by a manager or by a person or persons authorized to act for a manager shall be deemed to be written and signed for purposes of this subsection. For purposes of this Section, the term “electronic transmission” means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

Section 19.26.—Remedies for Breach of LLCA by Member.—

A LLCA may provide that:

(1) A manager who fails to perform in accordance with, or to comply with the terms and conditions of, a limited liability company agreement shall be subject to specified penalties or specified consequences; and

(2) At the time or upon the happening of events specified in a limited liability company agreement, a manager shall be subject to specified penalties or specified consequences.

Section 19.27.—Actions of Members and Managers.—

The members and managers shall be as loyal to the limited liability company and liable for their acts and omissions in the exercise of their duties as the directors, officers and stockholders with regard to corporate matters pursuant to the provisions of Chapter IV of this Act.

Section 19.28.—Reliance on Reports and Information by Member or Manager.—

A member, manager or liquidating trustee of a LLC shall be fully protected in relying in good faith upon the records of the LLC and upon information, opinions, reports or statements presented by another manager, member or liquidating trustee, an officer or employee of the LLC, or committees of the LLC, members or managers, or by any other person as to matters the member, manager or liquidating trustees reasonably believes are within such other person's professional or expert competence, including information, opinions, reports or statements as to the value or amount of the assets, liabilities, profits or losses of the LLC, or the value and amount of assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and obligations or any other facts pertinent to the existence and amount of assets from which distributions to members or creditors might properly be paid.

Section 19.29.—Delegation of Rights and Powers to Manage.—

Unless otherwise provided in the LLCA, a member or manager of a LLC has the power and authority to delegate to one or more other persons the member's or manager's, as the case may be, rights and powers to manage and control the business and affairs of the LLC, including to delegate to agents, officers and employees of a member or manager or the LLC, and to delegate by a management agreement or another agreement with, or otherwise to, other persons. Unless otherwise provided in the LLCA, such delegation by a member or manager of a LLC shall not cause the member or manager to cease to be a member or manager, as the case may be, of the LLC or cause the person to whom any such rights and powers have been delegated to be a member or manager, as the case may be, of the LLC.

SUB-CHAPTER III
CONTRIBUTIONS AND FINANCE

Section 19.30.—Form.—

The contribution of a member to a LLC may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

Section 19.31.—Liability.—

A. Except as provided in a LLCA, a member is obligated to a LLC to perform any promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability or any other reason. If a member does not make the required contribution of property or services, the member is obligated at the option of the LLC to contribute cash equal to that portion of the aggregated value (as stated in the records of the LLC) of the contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the LLC may have against such member under the LLCA or applicable law.

B. Unless otherwise provided in a LLCA, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this Act may be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a LLC who extends credit, after the entering into of a LLCA or an amendment thereto which, in either case, reflects the obligation, and before the amendment thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return. A conditional obligation of a member to make a contribution or return money or other property to a LLC may not be enforced unless the conditions of the

obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of a LLC prior to the time the call occurs.

C. A LLCA may provide that the interest of any member who fails to make any contribution that the member is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a LLC, subordinating the member's LLC interest to that of non-defaulting members, a forced sale of that LLC interest, forfeiture of the defaulting member's LLC interest, the lending by other members of the amount necessary to meet the defaulting member's commitment, a fixing of the value of the defaulting member's LLC interest by appraisal or by formula and redemption or sale of the LLC interest at such value, or other penalty or consequence.

Section 19.32.—Allocation of Profits and Losses.—

The profits and losses of a LLC shall be allocated among the members, and among classes or groups of members, in the manner provided in a LLCA. If the LLCA does not so provide, profits and losses shall be allocated on the basis of the agreed value (as stated in the records of the LLC) of the contributions made by each member to the extent they have been received by the LLC and have not been returned.

Section 19.33.—Allocation of Distributions.—

Distributions of cash or other assets of a LLC shall be allocated among the members, and among classes or groups of members, in the manner provided in a LLCA. If the LLCA does not so provide, distributions shall be made on the basis of the agreed value (as stated in the records of the LLC) of the contributions made by each member to the extent they have been received by the LLC and have not been returned.

Section 19.34.—Defense of Usury Not Available.—

The availability of defense of usury in any action shall be governed pursuant to the provisions of Section 12.09 of this Act.

SUB-CHAPTER IV DISTRIBUTIONS

Section 19.35.—Interim Distributions.—

Except as provided in this Chapter, to the extent and at the times or upon the happening of the events specified in a LLCA, a member is entitled to receive from a LLC distributions before the member's resignation from the LLC and before the dissolution and winding up thereof.

Section 19.36.—Resignation of Manager.—

A manager may resign as a manager of a LLC at the time or upon the happening of events specified in a LLCA and in accordance with the LLCA. A LLCA may provide that a manager shall not have the right to resign as a manager of a LLC. Notwithstanding that a LLCA provides that a manager does not have the right to resign as a manager of a LLC, a manager may resign as a manager of a LLC at any time by giving written notice to the members and other managers. If the resignation of a manager violates a LLCA, in addition to any remedies otherwise available under applicable law, a LLC may recover from the resigning manager damages for breach of the LLCA and offset the damages against the amount otherwise distributable to the resigning manager.

Section 19.37.—Resignation of Member.—

A member may resign from a LLC only at the time or upon the occurrence of events specified in a LLCA and in accordance with the LLCA. Notwithstanding anything to the contrary under applicable law, unless a LLCA provides otherwise, a member may not resign from a LLC prior to the dissolution and liquidation of the LLC.

Section 19.38.—Distribution Upon Resignation.—

Except as provided in this Chapter, upon resignation any resigning member is entitled to receive any distribution to which such member is entitled under a LLCA and, if not otherwise provided in a LLCA, such member is entitled to receive, within a reasonable time after resignation, the fair value of such member's LLC interest as of the date of resignation based upon such member's right to share in distributions from the LLC.

Section 19.39.—Distribution in Kind.—

Except as provided in a LLCA, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a LLC in any form other than cash. Except as provided in a LLCA, a member may not be compelled to accept a distribution of any asset in kind from a LLC to the extent that the percentage of the asset distributed exceeds a percentage of that asset which is equal to the percentage in which the member shares in distributions from the LLC. Except as provided in the LLCA, a member may be compelled to accept a distribution of any asset in kind from a LLC to the extent that the percentage of the asset distributed is equal to a percentage of that asset which is equal to the percentage in which the member shares in distributions from the LLC.

Section 19.40.—Right to Distribution.—

Subject to Section 19.41, and unless otherwise provided in a LLCA, at the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of a LLC with respect to the distribution. A LLCA may provide for the establishment of a record date with respect to allocations and distributions by a LLC.

Section 19.41.—Limitations on Distribution.—

A. A LLC shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the LLC, other than liabilities to members on account of their LLC interests and liabilities for which the recourse of creditors is limited to specified property of the LLC, exceed the fair value of the assets of the LLC, except that the fair value of property for which the recourse of creditors is limited shall be included only to the extent that the fair value of that property exceeds that liability. For purposes of this subsection, the term “distribution” shall not include amounts constituting reasonable compensation for services rendered or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other bona fide benefits program.

B. A member who receives a distribution in violation of subsection (A) of this Section, and who knew at the time of the distribution that the distribution violated subsection (A) of this Section, shall be liable to a LLC for the amount of the distribution. A member who receives a distribution in violation of subsection (A) of this Section, and who did not know at the time of the distribution that the distribution violated subsection (A) of this Section, shall not be liable for the amount of the distribution. Subject to subsection (C) of this Section, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

C. Unless otherwise agreed, a member who receives a distribution from a LLC shall have no liability under this Act or other applicable law for the amount of the distribution after the expiration of three (3) years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of the said three (3)-year period and an adjudication of liability against such member is made in the said action.

SUB-CHAPTER V
ASSIGNMENT OF INTERESTS

Section 19.42.—Nature of the LLC Interest.—

A LLC interest shall be deemed personal property. A member shall have no interest in specific LLC property.

Section 19.43.—Assignment of LLC Interest.—

A. A LLC interest is assignable in whole or in part except as provided in a LLCA. The assignee of a member's LLC interest shall have no right to participate in the management of the business and affairs of a LLC, except as provided in a LLCA or, subject to:

(1) The approval of all of the members of the LLC other than the member assigning the LLC interest, or

(2) Compliance with any procedure provided for in the LLCA.

B. Unless otherwise provided in a LLC:

(1) An assignment of a LLC interest does not entitle the assignee to become or to exercise any rights or powers of a member.

(2) An assignment of a LLC interest entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned.

(3) A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of the member's LLC interest. Unless otherwise provided in a LLCA, the pledge of, or granting of a security interest, lien or other encumbrance in or against, any or all of the LLC interest of a member shall not cause the member to cease to be a member or to have the power to exercise any rights or powers of a member.

C. Unless otherwise provided in a LLCA, a member's interest in a LLC may be evidenced by a certificate of LLC interest issued by the LLC. A LLCA may provide for the assignment or transfer of any LLC interest represented by such a certificate and make other provisions with respect to such certificates.

D. Unless otherwise provided in a LLCA and except to the extent assumed by agreement, until an assignee of a LLC interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

E. Unless otherwise provided in the LLCA, a limited liability company may acquire, by purchase, redemption or otherwise, any LLC interest or other interest of a member or manager in the LLC. Unless otherwise provided in the LLCA, any such interest so acquired by the LLC shall be deemed canceled.

Section 19.44.—Member's Interest in a LLC Subject to Orders.—

A. On application by a judgment creditor of a member or of a member's assignee, a Court with competent jurisdiction may charge against the LLC interest of the member subject to judgment to satisfy the same. To the extent so charged, the judgment creditor has only the right to receive any distribution or distributions to which the judgment debtor would otherwise have been entitled in respect of such LLC interest. The Court may appoint a trustee for the portion of the distributions payable or that shall become payable under the judgment against the member with respect to the LLC, whose trustee shall have the rights of the assignee, and the Court may issue those orders, instructions, accounts and questions that the member subject to the judgment could have or that the circumstances of the case may require.

B. A charging order constitutes a lien on the LLC interest of the member subject to judgment. The Court may, at any time, order the execution of the interest in the LLC subject to the charging order. The buyer in the sale due to execution shall only have the rights of an assignee.

C. Unless otherwise provided in a LLCA, at any time prior to execution, an interest in a LLC subject to a charging order may be redeemed:

(1) By the member subject to judgment;

(2) by property that is not owned by the LLC, by one (1) or more of the other members; or

(3) by the LLC with the consent of the members whose interest is not charged.

D. This Act does not limit the rights of a member under exemption laws with respect to his/her interest in the LLC.

E. This Section provides the exclusive remedy by which a judgment creditor of a member or of a member's assignee may satisfy a judgment out of the LLC interest of the member subject to judgment.

F. No creditor of a member shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to the property of the LLC.

Section 19.45.—Right of Assignee to Become Member.—

A. An assignee of a LLC interest may become a member, as provided in the LLCA; and

(1) The approval of all of the members of the LLC other than the member assigning the LLC interest, or

(2) Compliance with any procedure provided in the LLCA.

B. An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under a LLCA and this Act. Notwithstanding the foregoing, unless otherwise provided in a LLCA, an assignee who becomes a member is liable for the obligations of the assignor to make contributions as provided in Section 19.31, but shall not be liable for the obligations of the assignor under Chapter VI of this Act.

However, the assignee is not obligated for liabilities, including the obligations of the assignor to make contributions as provided in Section 19.31 of this Act, unknown to the assignee at the time the assignee became a member and which could not be ascertained from a LLCA.

C. Whether or not an assignee of a LLC interest becomes a member, the assignor is not released from liability to a LLC under Chapters V and VI of this Act.

Section 19.46.—Powers of Estate of Deceased or Incompetent Member.—

If a member who is an individual dies or a Court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, the member's personal representative may exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property, including any power under a LLCA of an assignee to become a member. If a member is a corporation, trust or other entity and is dissolved or terminated, the powers of that member may be exercised by its personal representative.

SUB-CHAPTER VI

DISSOLUTION

Section 19.47.—Dissolution.—

A. A LLC is dissolved and its affairs shall be wound up upon the first to occur of the following:

(1) At the time and date specified in a LLCA, but if no such time is set forth in the LLCA, then the LLC shall have a perpetual existence;

(2) Upon the happening of events specified in a LLCA;

(3) Unless otherwise provided in a LLCA, upon the affirmative vote or written consent of the members of the LLC or, if there is more than one class or group of members, then by each class or group of members by members who own

more than two-thirds (2/3) of the then-current percentage or other interest in the profits of the LLC owned by all of the members or by the members in each class or group, as appropriate;

(4) At any time there are no members; provided, that the LLC is not dissolved and is not required to be wound up if: (i) unless otherwise provided in a LLCA, within 90 days or such other period as is provided for in the LLCA after the occurrence of the event that terminated the continued membership of the last remaining member, the personal representative of the last remaining member agrees in writing to continue the LLC and to the admission of the personal representative of such member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; provided, that a LLC may provide that the personal representative of the last remaining member shall be obligated to agree in writing to continue the LLC and to the admission of the personal representative of such member or its nominee or designee to the LLC as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; or (ii) a member is admitted to the LLC in the manner provided for in the LLCA, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, within 90 days or such other period as is provided for in the LLCA after the occurrence of the event that terminated the continued membership of the last remaining member, pursuant to a provision of the LLCA that specifically provides for the admission of a member to the LLC after there is no longer a remaining member of the LLC;

(5) A decree of dissolution by a competent Court under Section 19.48 of this Act.

B. Unless otherwise provided in a LLCA, the death, retirement, resignation, expulsion, bankruptcy or dissolution of any member or the occurrence of any other event that terminates the continued membership of any member shall not cause the LLC to be dissolved or its affairs to be wound up, and upon the occurrence of any such event, the LLC shall be continued without dissolution.

Section 19.48.—Judicial Dissolution.—

On application by a member or manager the Court of First Instance may decree dissolution of a LLC whenever it is not reasonably practicable to carry on the business in conformity with a LLCA.

Section 19.49.—Winding Up.—

A. Unless otherwise provided in a LLCA, a manager who has not wrongfully dissolved a LLC or, if none, the members of a person approved by the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by members who own more than 50% of the then-current percentage or other interest in the profits of the LLC owned by all of the members or by the members in each class or group, as appropriate, may wind up the LLC's affairs; however, the Court of First Instance, upon cause shown, may wind up the LLC's affairs upon application of any member or manager, the member's or manager's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee.

B. Upon dissolution of a LLC and until the filing of a certificate of cancellation as provided in Section 1.03 of this Act, the persons winding up the LLC's affairs may, in the name of, and for and on behalf of, the LLC, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the LLC's business, dispose of and convey the LLC's property, discharge or

make reasonable provision for the LLC's liabilities, and distribute to the members any remaining assets of the LLC, all without affecting the liability of members and managers and without imposing liability on a liquidating trustee.

Section 19.50.—Distribution of Assets.—

A. Upon the winding up of a LLC, the assets shall be distributed as follows:

(1) To creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the LLC (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members and former members under Sections 19.35 to 19.38 of this Act;

(2) Unless otherwise provided in a LLCA, to members and former members in satisfaction of liabilities for distributions under Sections 19.35 to 19.38 of this Act; and

(3) Unless otherwise provided in a LLCA, to members first for the return of their contributions and second respecting their LLC interests, in the proportions in which the members share in distributions.

B. A LLC which has dissolved: (i) shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured contractual claims, known to the LLC; (ii) shall make such provision as shall be reasonably likely to be sufficient to provide compensation for any claim against the LLC which is the subject of a pending action, suit or proceeding to which the LLC is a party; and (iii) shall make such provision as shall be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the LLC or that have not arisen but that, based on facts known to the LLC, are likely to arise or to become known to the LLC within 10 years after the date of dissolution. If there are sufficient assets, such claims and obligations shall be paid

in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of assets available therefor. Unless otherwise provided in the LLCA, any remaining assets shall be distributed as provided in this Act. Any liquidating trustee winding up a LLC's affairs shall not be personally liable to the claimants of the dissolved LLC by reason of such person's actions in winding up the limited liability company.

C. A member who receives a distribution in violation of subsection (A) of this Section, and who knew at the time of the distribution that the distribution violated subsection (A) of this Section, shall be liable to the LLC for the amount of the distribution. For purposes of the immediately preceding sentence, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services rendered in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A member who receives a distribution in violation of subsection (A) of this Section, and who did not know at the time of the distribution that the distribution violated subsection (A) of this Section, shall not be liable for the amount of the distribution. Subject to subsection (D) of this Section, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

D. Unless otherwise agreed, a member who receives a distribution from a LLC to which this Section applies shall have no liability under this Act or other applicable law for the amount of the distribution after the expiration of 3 years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of the said 3-year period and an adjudication of liability against such member is made in the said action.

Section 19.51.—Trustees or Receivers for Dissolved Companies; Appointment; Powers; Duties.—

When the certificate of formation of any LLC shall be canceled pursuant to this Act, the Court of First Instance (Superior Part), on application of any creditor, member or manager of the LLC, or any other person who shows good cause therefor, at any time, may either appoint one or more of the managers of the LLC to be trustees, or appoint one or more persons to be receivers, of and for the corporation, to take charge of the corporation's property, and to collect the debts and property due and belonging to the corporation, with the power to prosecute and defend, in the name of the corporation, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by the corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation. The powers of the trustees or receivers may be continued as long as the Court of First Instance (Superior Part) shall deem necessary for the purposes aforesaid.

Section 19.52.—Revocation of Dissolution.—

Notwithstanding the occurrence of an event set forth in Section 19.47(A)(1), (2), (3), or (4) of this sub-chapter, the LLC shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of cancellation at the Department of State, the LLC is continued, effective as of the occurrence of such event, pursuant to the affirmative vote or written consent of all remaining members of the LLC or the personal representative of the last remaining member of the LLC if there is no remaining member (and any other person whose approval is required under the LLCA to revoke a dissolution pursuant to this Section); provided, however, if the dissolution was caused by a vote or written consent, the dissolution shall not be revoked unless each member and other person (or their respective

personal representatives) who voted in favor of, or consented to, the dissolution has voted or consented in writing to continue the LLC. If there is no remaining member of the LLC and the personal representative of the last remaining member votes in favor of or consents to the continuation of the LLC, such personal representative shall be required to agree in writing to the admission of the personal representative of such member or its nominee or designee to the LLC as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member.

SUB-CHAPTER VII

DERIVATIVE ACTIONS

Section 19.53.—Right to Bring Action.—

A member or an assignee of a LLC interest may bring an action in the Court of First Instance on behalf of a LLC to recover a judgment in its favor if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed.

Section 19.54.—Proper Plaintiff.—

In a derivative action, the plaintiff must be a member or an assignee of a LLC interest at the time of bringing the action and:

1. At the time of the transaction of which the plaintiff complains; or
2. The plaintiff's status as a member or an assignee of a LLC interest had devolved upon the plaintiff by operation of law or pursuant to the terms of a LLCA from a person who was a member or an assignee of a LLC interest at the time of the transaction.

Section 19.55.—Complaint.—

In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a manager or member or the reasons for not making the effort.

Section 19.56.—Expenses.—

If a derivative action is successful, in whole or in part, as a result of a judgment, compromise or settlement of any such action, the Court may award the plaintiff reasonable expenses, including reasonable attorney fees, from any recovery in any such action or from a LLC.

CHAPTER XX

FOREIGN LIMITED LIABILITY COMPANIES

Section 20.01.—Law Governing.—

A. Subject to the Constitution of the Commonwealth of Puerto Rico:

1. The laws of the state, territory, possession, or other jurisdiction or country under which a FLLC has been organized shall govern its organization and internal affairs and the liability of its members and managers; and

2. A FLLC may not be denied registration by reason of any difference between those laws and the laws of Puerto Rico.

B. A FLLC shall be subject to Section 19.06 of this Act.

Section 20.02.—Authorization to Do Business; Application.—

A foreign limited liability company shall not be able to do business in Puerto Rico until it is authorized to do so pursuant to the procedures set forth in Chapter XIII of this Act regarding foreign corporations.

Section 20.03.—Name; Registered Office; Registered Agent.—

A. A FLLC may be registered to do business with the Secretary of State under any name (whether or not it is the name under which it is registered in the jurisdiction of its formation) which includes the words “Limited liability company,” or “Compañía de responsabilidad limitada,” or the abbreviation “L.L.C.,” or “C. R. L.,” or the designation “LLC,” or “CRL, ” and that could be registered by a DLLC; provided, however, that a FLLC may register under any name which is not such as to distinguish it upon the records of the Department of

State from the name on such records of any corporation, partnership, statutory trust, limited liability company or limited partnership, whether domestic or foreign, reserved, registered, formed or organized under the laws of Puerto Rico with the written consent of the other corporation, partnership, statutory trust, limited liability company or limited partnership, which written consent shall be filed with the Secretary of State.

B. Any corporation authorized to do business in the Commonwealth shall maintain continuously a registered office and a registered agent in the Commonwealth, in compliance with the provisions of Section 13.10 of this Act regarding foreign corporations.

Section 20.04.—Cancellation of Registration.—

A FLLC may cancel its registration by filing with the Secretary of State a certificate of cancellation, executed by an authorized person, together with a fee as set forth in paragraph (6) of subsection (b) of Section 21.01 of this Act. A cancellation does not terminate the authority of the Secretary of State to accept service of process on the FLLC with respect to causes of action arising out of the doing of business in Puerto Rico.

Section 20.05.—Doing Business Without Registration.—

A. A FLLC doing business in Puerto Rico may not commence any action, suit or proceeding in Puerto Rico until it has registered and paid to Puerto Rico all fees, taxes and penalties for the period of time during which it did business in Puerto Rico without having registered.

B. The failure of a FLLC to register in Puerto Rico does not impair:

1. The validity of any contract or act of the FLLC;
2. The right of any other party to the contract with the FLLC to initiate any action, suit or proceeding on the contract; or

3. The ability of the FLLC to defend itself on any action, suit or proceeding in any Court or administrative procedure in Puerto Rico.

C. A member or a manager of a FLLC is not liable for the obligations of the FLLC solely by reason of the LLC having done business in Puerto Rico without registration.

D. Any FLLC doing business in Puerto Rico without first having registered and in spite of having enjoyed the grace period provided in this Act, which establishes fair and reasonable time for its formation pursuant to this statute or other provisions of existing laws, shall pay to the Secretary of State a penalty of \$200.00 for each year or part thereof during which it was not authorized to do business in Puerto Rico.

Section 20.06.—Doing Business Without Having Qualified; Injunctions.—

A. The Court of First Instance shall have jurisdiction to enjoin any FLLC or any agent thereof, from doing any business in Puerto Rico if such FLLC has failed to register under this Chapter or if such FLLC has secured a certificate of the Secretary of State on the basis of false or misleading representations. Upon petition of the Secretary of Justice or upon petition of any person with legal standing, the Secretary of Justice shall proceed pursuant to the herein provided by filing the corresponding action before the Court of First Instance.

Section 20.07.—Service of Process to Foreign Limited Liability Companies.—

The service of process to a FLLC shall be conducted pursuant to the provisions of Section 13.11 of this Act regarding foreign corporations.

Section 20.08.—Service of Process to Unregistered-FLLC.—

The service of process to a FLLC doing business in Puerto Rico without having registered as provided in this Act, shall be conducted pursuant to the provisions of Section 13.13 of this Act regarding foreign corporations.

Section 20.09.—Activities Not Constituting Doing Business.—

The activities not constituting doing business in Puerto Rico shall be defined as provided in Section 13.05 of this Act regarding foreign corporations.

CHAPTER XXI
FEES PAYABLE AND LIMITED LIABILITY
COMPANY TAX LIABILITIES

Section 21.01.—Fees.—

A. No document or certificate held or to be filed pursuant to the provisions of this Act, shall be effective until all fees provided in this Section are paid. The Secretary of State shall collect the following fees for the filing of the following documents:

1. \$75.00 for the filing of an application for reservation of a name or renewal or cancellation thereof.

2. \$50.00 for the filing of a certificate to designate a registered agent; \$50.00 and \$2.00 for each LLC affected by the filing of a certificate of resignation with or without designation of successor.

3. \$50.00 for the filing of:

(A) A certificate of domestication of an LLC;

(B) A certificate of transfer or certificate of transfer and continuance;

(C) A certificate of incorporation;

(D) A certificate of amendment;

(E) A certificate of cancellation;

(F) A certificate of merger or consolidation;

(G) A certificate of formation;

(H) A certificate of amendment with future effective time and date;

(I) A certificate of termination of a certificate with future effective time and date;

(J) A certificate of correction;

(K) A certificate of revival;

(L) Good standing of a DLLC or the authorization to do business for a FLLC.

4. \$20.00 for each certified copy of any paper on file of a LLC.

5. \$2.00 for the first page and \$0.25 for each additional page of any photocopy or electronic image copy of instruments on file, as well as for any other instrument, document and paper not on file, and for all such photocopies or electronic image copies, whether certified or not. The Secretary of State shall also issue microfiche copies of instruments on file as well as of other instruments, documents and other papers not on file, and shall charge \$2 for each microfiche.

6. \$50.00 for filing of an application for authorization to do business as a FLLC pursuant to Section 20.02 of this Act; for a certificate to amend an application for authorization or a certificate of cancellation under Section 20.04 of this Act.

7. \$50.00 for filing of a certificate of change of address; \$50.00 and \$2.50 for each affected FLLC upon filing a certificate of resignation of a resident agent with or without designation of successor.

8. \$250.00 for pre-clearance of any document to be filed.

9. \$30.00 for certification issued by the Secretary of State regarding any specific information contained in the file of an LLC.

10. \$20.00 for issuing any certificate of the Secretary of State, including but not limited to a certificate of good standing, other than a certification of a copy under clause (4) of this subsection; and \$100.00 for issuing any certificate of the Secretary of State that lists all filings of a LLC with the Secretary of State.

11. \$25.00 for receiving and filing or recording any certificate, affidavit, agreement or any other paper provided for by this Act, for which no fee is established.

B. In addition to the fees established in subsection (A) of this Section, there shall be collected by and paid to the Secretary of State the following:

1. \$500.00 for any of the services established in subsection (A) of this Section that are required to be completed within a 2-hour period on the same day of the request.

2. \$200.00 for any of the services established in subsection (A) of this Section that are required to be completed on the same day of the request.

3. \$100.00 for all services established in subsection (A) of this Section that are required to be completed within a 24-hour period from the time of the request.

C. Two (2) years after the approval of this Act, all documents filed after the effectiveness of this Act shall be available through the Internet and no fees whatsoever shall be charged neither for access to them, nor for the self-reproduction of the images accessed through the Internet.

It is hereby provided that the sums collected on account of the fees established in this Section shall be covered into a special fund created for such purpose in the Department of the Treasury to defray the operating expenses of the registry herein established, which were not defrayed by appropriations from the General Fund or other budget appropriations.

It is hereby provided that during the first five (5) years of effectiveness of this Act, forty percent (40%) of the sums collected on account of the fees set forth in this Chapter shall be covered into a special account of the Department of State, which shall be used to update and improve the divisions of the Registry of Corporations and to defray a portion of the expenses incurred on the digitization

and mechanization of the Registry of Corporations. The remainder sixty percent (60%) shall be covered into the General Fund. It is hereby provided that after the five (5)-year term of effectiveness of this Act has elapsed, one hundred percent (100%) of the sums collected on account of the fees set forth in this Chapter shall be covered into the General Fund.

The Secretary of State may modify the fees payable under this Chapter through circular letter or administrative order.

Section 21.02.—Cancellation of the Certificate for Failure to Pay Annual Fees.—

A. A certificate of formation of a DLLC shall be deemed to be cancelled in the event that the DLLC fails to comply with its obligation to pay the fees established in Section 21.03 of this Act for a period of three (3) consecutive years, counted as of the date in which the first of said payments became due.

Section 21.03.—Tax Liability.—

A. For purposes of any tax levied by the Commonwealth of Puerto Rico or any instrumentalities, agencies or political subdivisions thereof, a LLC formed under this Act or a LLC authorized to do business in Puerto Rico shall be deemed to be a corporation as provided in Section 1411 (a)(2) of Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code of 1994,” and may avail itself of the benefits granted to special partnerships in sub-chapter K of said Code. Any qualified LLC shall be allowed to choose pursuant to the provisions of sub-chapter N of said Code, which regulates the operations of corporations of individuals.

B. Every DLLC and every FLLC authorized to do business in Puerto Rico shall pay a one hundred dollar (\$100)-annual fee to the Secretary of State, which shall be used by the Secretary for the implementation of this Act.

C. The annual fees established in subsection (B) of this Section shall be payable on March 1 of each year following the closing of each calendar year or upon the cancellation of a certificate of formation. If the annual fees are not paid on their due date, such fees shall accrue interest at a monthly rate of one and one-half percent (1½%) until fully paid.

D. In the event that a DLLC or FLLC refuses or fails to pay the annual fees as provided in this Section, it shall pay a penalty of \$100 in addition to any fees that have become due, which sum shall be subject to interest and payable as provided in this Section.

E. In case a DLLC or FLLC has failed to comply with its obligation to pay the fees established in this Section, or in the event that its registered agent dies, resigns, refuses to act as such, is not present in Puerto Rico or cannot with due diligence be found, it shall be lawful while in default to serve process against such DLLC or FLLC through the Secretary of State as provided and shall be effective pursuant to Section 19.05 of this Act in the case of a DLLC and Section 20.07 in the case of a FLLC.

F. The annual fees and any other penalty set forth in this Section may be demanded in the Courts as payment of debt of a LLC. It shall also be deemed a preferred debt in the case of insolvency of the LLC.

G. A DLLC or FLLC that neglects, refuses or fails to pay the annual fee shall cease to be in good standing and authorized to do business, as the case may be, in Puerto Rico.

H. A DLLC or a FLLC that has ceased to be in good standing or that has ceased to be authorized to do business by reason of the failure to pay the annual fees as provided in this Section, shall be revived to and have the status of a DLLC or FLLC in good standing or that is authorized to do business upon the payment of the annual fees and all penalties and interest thereon for each year or portion

thereof for which it failed to comply with its obligation to pay said annual fees. At the time of said revival, the fees provided in paragraph (3) of subsection (A) of Section 21.01 shall be paid.

I. In the event that the fees established in this Section are not paid for three consecutive years, the Secretary of Justice shall file *motu proprio* or upon request of the Secretary of State, a motion with the Court of First Instance for it to order the DLLC or FLLC that has not paid the fees to restrain from conducting any act or transaction in Puerto Rico or any other place until the fees, fines, and penalties accrued under this Section have been paid as well as the costs of said action, which shall be determined by the Court. This order shall be served to the affected party in the manner provided by the Court within 5 days of filing the motion, once the Court finds that it is proper. Once the Court grants the injunction, the LLC shall not do business or transactions until the Court removes the injunction.

J. A DLLC that has ceased to be in good standing by reason of its failure to pay the annual fees shall continue to be a DLLC formed under this Act. The Secretary of State shall not accept the filing of any certificate (except a certificate of resignation of a registered agent when a successor registered agent has not been appointed) that could be filed under this Act, nor shall issue a certificate of good standing with respect to said DLLC or FLLC, that has lost its good standing or its authorization to do business for failure to pay the annual fees as provided in this Section, until said DLLC or FLLC has been restored its good standing or is authorized to do business in Puerto Rico upon payment of the fees, penalties, and interests due pursuant to the provisions of this Section.

K. A DLLC that has ceased to be in good standing or a FLLC that has ceased to be authorized to do business in Puerto Rico for its failure to pay the annual fees as provided in this Section, shall not initiate any action, suit or proceeding in any Court of Puerto Rico until said DLLC has been restored to the status of good

standing or a FLLC authorized to do business in Puerto Rico. An action, suit or proceeding may not be initiated in any Court of Puerto Rico by any successor or assignee or by the person who has acquired all or substantially all the assets of the entity, of said LLC, that arises from any transaction of said entity after it has ceased to be in good standing or authorized to do business, until all the fees, penalties and interest have been paid.

L. The failure to pay the annual fees of a DLLC or FLLC shall not impair the validity of contracts, deeds, mortgages, security interests, liens or acts of said DLLC or FLLC or prevent said DLLC or FLLC from defending any action, suit or proceeding before any Court in Puerto Rico.

M. A member or manager of a DLLC or FLLC shall not be liable for the debts or obligations of a DLLC or FLLC solely by reason of refusal or failure to pay the annual fees, established in this Section, or because said DLLC or FLLC ceases to be in good standing or authorized to do business in Puerto Rico.

Section 21.04.—Violations and Penalties; Revocation.—

A. The Secretary of State shall impose on a DLLC or FLLC that violates the provisions of this Act, a fine of not less than two hundred dollars (\$200) or greater than five hundred dollars (\$500) for each violation.

B. The Secretary of State may file a proceeding under Section 21.03 of this Act to revoke the certificate of authorization of a FLLC authorized to do business in Puerto Rico if:

1. The FLLC lacks a registered agent or registered office in Puerto Rico for a term of sixty (60) days or more; or
2. as provided in any other provision of this Act.

CHAPTER XXII
DATE OF EFFECTIVENESS, REGULATIONS,
REPEAL AND TRANSITORY RULES

Section 22.01.—Vested Rights; Prior Laws.—

Every corporation organized before or after the effective date of this Act shall be governed by its provisions. This Act shall not impair, restrict or affect the rights, privileges and immunities conferred or vested under any law prior to the enactment hereof; or pending litigation and existing causes of action; nor the duties, restrictions, obligations, and penalties imposed or required by prior laws or in accordance therewith.

Section 22.02.—Non-Retroactivity of Amendments.—

This Act may be amended or repealed at the will of the Legislature; but neither the repeal nor the amendment of this Act shall work to detract or impair any remedy against any corporation in accordance with this Act or against the officers of the corporation for any liability incurred before such repeal or amendment. This Act and all of its amendments shall be part of the certificate of incorporation of every corporation, except to the extent they are inapplicable to the purposes of the corporation.

Section 22.03.—Special Laws.—

No provision of this Act shall repeal or be interpreted as repealing, wholly or partially, any law of the Commonwealth relating to the regulation of banks or banking, insurance or insurance companies, public utility companies or other special classes of corporations which the Commonwealth may have regulated.

Section 22.04.—Conversions.—

A. The stockholders of a professional corporation may convert it into a civil partnership by unanimous agreement. In order to do so, they shall proceed with the dissolution of the corporation in accordance with the provisions of this Act, and to the constitution of a partnership as provided in the Civil Code.

B. The conversion shall be stated in an act of constitution effective upon its filing at the Registry of Corporations of the Department of State. If the conversion documents are filed at the said registry, as hereinabove provided, within sixty (60) days following the dissolution of the corporation, the civil partnership created shall be the legal successor of the corporation and uninterrupted continuer of its legal existence.

C. The partners of a civil partnership engaged in the rendering of professional services may convert the civil partnership into a professional corporation to be governed by the provisions of this Act.

The partners shall proceed to the conversion by merging the civil partnership with a professional corporation organized by them in accordance with the requirements of this Act.

The professional corporation shall be the legal entity surviving such merger, and the predecessor civil partnership shall be deemed dissolved as a matter of law; provided, that from this dissolution it may not be proceeded to the partition of the partnership patrimony pursuant to Section 1599 of the Civil Code. Once the legal requirements and formalities have been met, the professional corporation shall be entirely governed by the provisions of this Act.

Section 22.05.—Specific Repeal; Provision on Transition.—

A. Act No. 144 of August 10, 1995, as amended, is hereby repealed.

B. The validly agreed transactions prior to the date of effectiveness set forth in Section 19.06 of this Act, and the rights, duties, and interests arising therefrom,

shall maintain its validity and may be terminated, completed, concluded or shall be validated as required or allowed by any law or other law amended or repealed by this Act, as if such repeal or amendment has not occurred.

Section 22.06.—Date of Effectiveness.—

This Act shall take effect on January first (1st) of 2010 and its provisions shall apply to transactions and events occurring after such date.

Section 22.07.—Regulations.—

The Secretary of State shall set forth through regulation any rules necessary to fulfill his/her duties, as provided in this Act, including but not limited to the filing of documents and other transactions with the Department of State through electronic means.

Section 22.08.—Late Annual Reports.—

For the purpose of conforming existing Corporations to this new Act, the Secretary of State is hereby empowered to set forth a window of opportunity as a transitory measure, which shall not exceed from five (5)-months, for any Non-Profit Corporation owing corporate reports to have the opportunity to file such reports, even pro forma, through payment of double the amount of the annual fee that such corporations would have paid for such reports without imposing any additional penalty. For Profit Corporations shall have the same right, paying however triple the corresponding amount.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 164 (S. B. 124)** of the **2nd Session of the 16th Legislature** of Puerto Rico:

AN ACT to establish the “General Corporations Act”; to repeal Act No. 144 of August 10, 1995; and for other purposes.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on the 16th day of September, 2010.

Solange I. De Lahongrais, Esq.
Director