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S. 884. If you will combine the Senate Committee Amendment with the original bill you will have the version which became Chapter 350 Laws of 1968 Approved November 21, 1968

(in back pocket)

Proposed Revision

of the

GENERAL CORPORATION LAW

as

TITLE 14A. CORPORATIONS, GENERAL, of the New Jersey Statutes

SENATE, No. 884

(SENATE COMMITTEE AMENDMENT – SEE BACK POCKET)

STATE OF NEW JERSEY

In Legislature, Se...

Proposed Revision

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GENERAL CORPORATION LAW

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TITLE 14A. CORPORATIONS, GENERAL, of the New Jersey Statutes

SENATE, No. 884

STATE OF NEW JERSEY

INTRODUCED JUNE 20, 1968

By Senators McDERMOTT, BATEMAN, FORSYTHE,
RIDOLFI, LYNCH and TANZMAN

(Without Reference)

AN ACT revising the General Corporation Law and establishing a new Title to be known as Title 14A, Corporations, General, of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

TITLE 14A.

CORPORATIONS, GENERAL

TABLE OF CONTENTS

(Cross Reference Table on page 139)

TITLE 14A. CORPORATIONS, GENERAL, OF THE NEW JERSEY STATUTES

CHAPTER 1

General Provisions

Section

14A:1–1. Short Title; Purposes; Rules of Construction; Variation.

(1) This act shall be known and may be cited as the "New Jersey Business Corporation Act."

(2) This act shall be liberally construed and applied to promote its underlying purposes and policies.

(3) Underlying purposes and policies of this act are, among others,

(a) to simplify, clarify and modernize the law governing corporations;

(b) to provide a general corporate form for the conduct of lawful business with such variations and modifications from the form so provided as the interested parties in any corporation may agree upon, subject only to over-riding interests of this State and of third parties; and

(c) to give special recognition to the legitimate needs of the close corporation.

(4) The presence in certain provisions of this act of the words "unless otherwise provided in the certificate of incorporation" or "unless otherwise provided in the certificate of incorporation or by-laws," or words of similar import, does not imply that the effect of other provisions may not be varied by provisions in the certificate of incorporation or by-laws.

14A:1–2. DEFINITIONS.

As used in this act, unless the context otherwise requires, the term:

(a) "Attorney General" means the Attorney General of New Jersey.

(b) "Authorized shares" means the shares of all classes and series which the corporation is authorized to issue.

(c) "Board" means board of directors. "Entire board" means the total number of directors which the corporation would have if there were no vacancies.

(d) "Bonds" includes secured and unsecured bonds, debentures, notes and other written obligations for the payment of money.

(e) "Capital surplus" means the entire surplus of a corporation other than its earned surplus.

(f) "Certificate of incorporation" includes

(i) the original certificate of incorporation or any other instrument filed or issued under any statute to form a domestic or foreign corporation, as amended, supplemented or restated by certificates of amendment, merger or consolidation or by other certificates or instruments filed or issued under any statute; and

(ii) a special act or charter creating a domestic or foreign corporation, as amended, supplemented or restated.

(g) "Corporation" or "domestic corporation" means a corporation for profit organized under this act, or existing on its effective date and theretofore organized under any other law of this State for a purpose or purposes for which a corporation may be organized under this act.

(h) "Director" means any member of the governing board of a corporation, whether designated as director, trustee, manager, governor, or by any other title.

(i) "Earned surplus" means the portion of the surplus that represents the net earnings, gains and profits, after deduction of all losses, that have not been distributed to the shareholders as dividends or transferred to stated capital or capital surplus, or applied to other purposes permitted by law.

(j) "Foreign corporation" means a corporation for profit organized under laws of a jurisdiction other than this State for a purpose or purposes for which a corporation may be organized under this act.

(k) "Insolvent," except as used in Chapter 14 of this act, means being unable to pay debts as they become due in the usual course of the debtor's business.

(l) "Net assets" means the amount by which the assets of a corporation exceed its liabilities. Treasury shares are not assets and stated capital and surplus are not liabilities.

(m) "Secretary of State" means the Secretary of State of New Jersey.

(n) "Shareholder" means one who is a holder of record of shares in a corporation.

(o) "Shares" means the units into which the proprietary interests in a corporation are divided.

(p) "Stated capital" means, at any particular time, the sum of

(i) the par value of all shares of the corporation having a par value that have been issued;

(ii) the amount of the consideration received by the corporation for all shares of the corporation without par value that have been issued, except such part of the consideration therefor as may have been allocated to surplus in a manner permitted by law; and

(iii) such amounts not included in paragraphs 14A:1–2(p) (i) and 14A:1–2(p) (ii) as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law.

(q) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

(r) "Subsidiary" means a domestic or foreign corporation whose outstanding shares are owned directly or indirectly by another domestic or foreign corporation in such number as to entitle the holder at the time to elect a majority of its directors without regard to voting power which may thereafter exist upon a default, failure or other contingency.

(s) "Surplus" means the excess of the net assets of a corporation over its stated capital.

(t) "Treasury shares" means

(i) shares of a corporation which have been issued, have been subsequently acquired by the corporation under circumstances

which do not result in automatic cancellation and have not been cancelled by action of the board; and

(ii) shares which have been distributed as a share dividend upon treasury shares pursuant to subsection 14A:7–15(4).

Treasury shares are issued shares, but not outstanding shares.

14A:1–3. Application of Act.

This act shall apply to

(1) every corporation which is organized under this act;

(2) every corporation which reincorporates under this act pursuant to section 14A:1–4;

(3) every corporation which was organized under or became subject to, any heretofore enacted law of this State with respect to which power to amend or repeal was reserved to the Legislature, and which provided for the organization of a corporation or corporations for a purpose or purposes for which a corporation may be organized under this act;

(4) every corporation organized under or subject to any other law of this State providing for the organization of corporations for any purpose for which a corporation may not be organized under this act

(a) to the extent that this act provides that this act shall be applicable, in whole or in part, to any such corporation; or

(b) to the extent that the law applicable to any such corporation provides that this act shall be applicable to any such corporation;

(5) foreign corporations to the extent provided in this act; and

(6) commerce with foreign nations and among the several states, and to foreign corporations, including those formed by or under any act of Congress, only to the extent permitted under the Constitution and laws of the United States.

14A:1–4. Reincorporation Under This Act by Certain Corporations Organized Under Special Acts.

Any corporation which has been organized by special act of the Legislature for any of the purposes permitted by this act, and to which this act does not apply pursuant to section 14A:1–3, may come under and be subject to the provisions of this act, and continue in existence and operation as if organized hereunder, by amending its certificate of incorporation pursuant to the provisions of this act and filing a certificate of such amendment in the office of the Secretary of State, together with a certificate waiving any

right of exemption from taxation and from privileges and advantages arising under such special act of incorporation. Thereupon, such corporation shall be deemed to be incorporated under this act and to be free from the liabilities and provisions of the act or acts under which it was formerly incorporated. Nothing in this section shall be held to affect such transactions, liabilities or debts of any such corporations, occurring before the filing of such certificate.

14A:1–5. Reservation of Power.

This act may be supplemented, altered, amended or repealed by the Legislature, and every corporation, domestic or foreign, to which this act applies shall be bound thereby.

14A:1–6. Execution, Filing and Recording of Documents.

(1) If a document relating to a domestic or foreign corporation is required or permitted to be filed in the office of the Secretary of State under this act:

(a) The document shall be in the English language, except that the corporate name need not be in the English language if written in English letters or Arabic or Roman numerals, and except that this requirement shall not apply to a certificate of good standing under paragraph 14A:2–4(2) (b), section 14A:2–5, or subsection 14A:13–4(2).

(b) The filing shall be accomplished by delivering the document to the office of the Secretary of State, together with the fees and any accompanying documents required by law. Thereupon, the Secretary of State shall endorse upon it the word "Filed" with his official title and the date of filing thereof, and shall file it in his office. If so requested at the time of the delivery of the document to his office, the Secretary of State shall include the hour of filing in his endorsement thereon.

(c) The transaction in connection with which the document has been filed shall be effective at the time of filing, unless a subsequent effective time is set forth in such document pursuant to any other provision of this act, in which case such transaction shall be effective at the time so specified, which shall in no event be later than 30 days after the date of filing.

(2) If a document relating to a domestic corporation or a foreign corporation is required or permitted to be filed under this act and is also required by this act to be executed on behalf of such corporation, the document shall be signed by the chairman of the

board, or the president or a vice-president. The name of any person so signing such a document, and the capacity in which he signs, shall be stated beneath or opposite his signature. The document may, but need not, contain

(a) the corporate seal; or

(b) an attestation by the secretary or an assistant secretary of the corporation; or

(c) an acknowledgment or proof.

If the corporation is in the hands of a receiver, trustee, or other court appointed officer, the document shall be signed by such fiduciary or the majority of them, if there are more than one.

(3) If a document relating to a domestic or foreign corporation was required or permitted to be filed in the office of the Secretary of State under the law in force prior to the effective date of this act and was or is duly executed before or after the effective date of this act, in accordance with such law, to reflect any vote, consent, certification, or action by directors, officers, or shareholders of a corporation or by any such persons on behalf of the corporation, duly taken, given or made before the effective date of this act, such document and any annual report by a corporation, so executed, may be filed in the office of the Secretary of State on the effective date of this act, and within 6 months thereafter.

(4) The Secretary of State shall record all documents, excepting annual reports, which relate to or in any way affect corporations, and which are required or permitted by law to be filed in his office. The recording may be effected by typewritten copy, or by photographic, microphotographic or microfilming process, or in such other manner as may be provided by law. Such records shall be kept in a place separate and away from the place where the originals are filed.

14A:1–7. Repeal of Prior Acts.

The repeal by this act of the whole or any part of any act under which there was organized any corporation in existence on the effective date of this act, shall not work a dissolution of such corporation, but such corporation, its officers, directors and shareholders shall have the same rights, and shall be subject to the same limitations, restrictions, liabilities and penalties as those prescribed by this act for corporations organized under this act, their officers, directors and shareholders.

14A:1–8. NOTICES.

In computing the period of time for the giving of any notice required or permitted by this act, or by a certificate of incorporation or by-laws or any resolution of directors or shareholders, the day on which the notice is given shall be excluded, and the day on which the matter noticed is to occur shall be included. If notice is given by mail, the notice shall be deemed to be given when deposited in the mail addressed to the person to whom it is directed at his last address as it appears on the records of the corporation, with postage prepaid thereon.

14A:1–9. CERTIFICATES AND CERTIFIED COPIES.

(1) Upon request of any person, the Secretary of State shall furnish certified copies of documents filed in his office in accordance with the provisions of this act.

(2) Upon request of any person, the Secretary of State shall certify to the existence or non-existence of any facts on record in his office relating to domestic or foreign corporations.

CHAPTER 2

FORMATION

Section

14A:2–1. PURPOSES.

A corporation may be organized under this act for any lawful business purpose or purposes except to do in this State any business for which organization is permitted under any other statute of this State unless such statute permits organization under this act.

14A:2–2. Corporate Name of Domestic or Foreign Corporations.

(1) The corporate name of a domestic corporation or of a foreign corporation authorized to transact business in this State

(a) shall not contain any word or phrase, or abbreviation or derivative thereof, which indicates or implies that it is organized for any purpose other than one or more of the purposes permitted by its certificate of incorporation;

(b) shall not be the same as, or confusingly similar to, the corporate name of any domestic corporation, including a corporate name set forth in a certificate of incorporation filed in the office of the Secretary of State whose effective date is subsequent to the date of filing, as authorized by subsection 14A:2–7 (2), or of any foreign corporation authorized to transact business in this State or any corporate name reserved or registered under this act, unless the written consent of such other domestic or foreign corporation or holder of a reserved or registered name to the adoption of its name, or a confusingly similar name is filed in the office of the Secretary of State with the certificate of incorporation or with the application for an original or amended certificate of authority to transact business in this State or, in lieu of such consent, there is filed a certified copy of a final judgment of a court of competent jurisdiction establishing the prior right of the corporation to the use of such name in this State, and

(c) shall not contain any word or phrase, or any abbreviation or derivative thereof, the use of which is prohibited or restricted by any other statute of this State, unless any such restrictions have been complied with.

(2) This section

(a) shall not require any domestic corporation organized prior to the effective date of this act or any foreign corporation authorized to transact business in this State prior to the effective date of this act to change its corporate name in order to comply with this section, if such name is otherwise lawful on the effective date of this act. No such corporation shall change its corporate name on or after the effective date of this act to a name which is not available for corporate use under this section;

(b) shall not prevent a domestic corporation with which another corporation, domestic or foreign, is merged, or which is formed by the reorganization or consolidation of one or more other domestic or foreign corporations or upon a sale, lease or other disposition to, or exchange with, a domestic corporation

of all or substantially all the assets of another corporation, domestic or foreign, including its name, from having the same corporate name as any of such corporations if at the time such other corporation was organized under the laws of, or is authorized to transact business in, this State; and

(c) shall not prevent a foreign corporation from being authorized to transact business in this State under a fictitious name which is available for corporate use under this section if such corporation files in the office of the Secretary of State with its application for an original or amended certificate of authority a resolution of its board adopting such fictitious name for use in transacting business in this State.

(3) The corporate name of a domestic corporation which has been dissolved and any name confusingly similar to the name of a domestic corporation which has been dissolved shall not be available for corporate use for 2 years after the effective time of dissolution, unless, within such 2 year period, the written consent of such dissolved corporation to the adoption of its name, or a confusingly similar name, is filed in the office of the Secretary of State with the certificate of incorporation of another domestic corporation or with the application of a foreign corporation for an original or amended certificate of authority to transact business in this State.

(4) The filing in the office of the Secretary of State of the certificate of incorporation of a domestic corporation or the issuance by the Secretary of State of a certificate to a foreign corporation authorizing it to transact business in this State shall not preclude an action by this State to enjoin a violation of this section or an action by any person adversely affected to enjoin such violation or the use of a corporate name in violation of the rights of such person, whether on principles of unfair competition or otherwise. The court in any such action may grant any other appropriate relief.

14A:2–3. RESERVED NAME.

(1) The exclusive right to the use of a corporate name may be reserved upon compliance with the provisions of this section.

(2) The reservation shall be made by filing in the office of the Secretary of State an application to reserve a specified corporate name, executed by or on behalf of the applicant and setting forth the name and address of the applicant. If the Secretary of State finds that the name complies with the provisions of section 14A:2–2,

he shall reserve it for the exclusive use of the applicant for a period of 120 days from the date of filing of the application and shall issue a certificate of reservation.

(3) The right to the exclusive use of a specified corporate name so reserved may be transferred by filing in the office of the Secretary of State a notice of such transfer, executed by or on behalf of the applicant for whom the name was reserved, and specifying the name and address of the transferee.

14A:2–4. Registered Name.

(1) Any foreign corporation may register its corporate name under this act, provided its corporate name is available for use under section 14A:2–2.

(2) Such registration shall be made by filing in the office of the Secretary of State:

(a) An application for registration executed on behalf of the corporation, setting forth the name and the address of the main business or headquarters office of the corporation, the jurisdiction of its incorporation, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged; and

(b) A certificate setting forth that such corporation is in good standing under the laws of the jurisdiction of its incorporation, executed by the official of such jurisdiction who has custody of the records pertaining to corporations and dated not earlier than 30 days prior to the filing of the application.

(3) Such registration shall be effective until the close of the calendar year in which the application for registration is filed.

14A:2–5. Renewal of Registered Name.

A corporation which has a registration of its corporate name in effect may renew such registration from year to year by annually filing in the office of the Secretary of State an application for renewal setting forth the facts required to be set forth in an original application for registration, together with a certificate of good standing as required for the original registration. A renewal application may be filed between the first day of October and the thirty-first day of December in each year, and shall extend the registration for the following calendar year.

14A:2–6. Incorporators.

(1) One or more individuals or domestic or foreign corporations may act as incorporator or incorporators of a corporation by sign-

ing and filing in the office of the Secretary of State a certificate of incorporation for such corporation. Individuals acting as incorporators shall be at least 21 years of age. Incorporators need not be United States citizens or residents of this State or subscribers to shares in the corporation.

(2) Except as otherwise provided in the certificate of incorporation, any action required or permitted by this act to be taken by incorporators may be taken without a meeting.

(3) When there are two or more incorporators, if any dies or is for any reason unable to act, the other or others may act. If there is no incorporator able to act, any person for whom an incorporator was acting as agent may act in his stead, or if such other person also dies or is for any reason unable to act, his legal representative may act.

14A:2–7. Certificate of Incorporation.

(1) The certificate of incorporation shall set forth:

(a) The name of the corporation;

(b) The purpose or purposes for which the corporation is organized. It shall be a sufficient compliance with this paragraph to state, alone or with specifically enumerated purposes, that the corporation may engage in any activity within the purposes for which corporations may be organized under this act, and all such activities shall by such statement be deemed within the purposes of the corporation, subject to expressed limitations, if any;

(c) The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value;

(d) If the shares are, or are to be, divided into classes, or into classes and series, the designation of each class and series, the number of shares in each class and series, and a statement of the relative rights, preferences and limitations of the shares of each class and series, to the extent that such designations, numbers, relative rights, preferences and limitations have been determined;

(e) If the shares are, or are to be, divided into classes, or into classes and series, a statement of any authority vested in the board to divide the shares into classes or series or both, and to determine or change for any class or series its designation, number of shares, relative rights, preferences and limitations;

(f) Any provision not inconsistent with this act or any other statute of this State, which the incorporators elect to set forth for the management of the business and the conduct of the affairs of the corporation, or creating, defining, limiting or regulating the powers of the corporation, its directors and shareholders or any class of shareholders, including any provision which under this act is required or permitted to be set forth in the by-laws;

(g) The address of the corporation's initial registered office, and the name of the corporation's initial registered agent at such address;

(h) The number of directors constituting the first board and the names and addresses of the persons who are to serve as such directors;

(i) The names and addresses of the incorporators;

(j) The duration of the corporation if other than perpetual; and

(k) If, pursuant to subsection 14A:2–7(2), the certificate of incorporation is to be effective on a date subsequent to the date of filing, the effective date of the certificate.

(2) The certificate of incorporation shall be filed in the office of the Secretary of State. The corporate existence shall begin upon the effective date of the certificate, which shall be the date of the filing or such later time, not to exceed 30 days from the date of filing, as may be set forth in the certificate. Such filing shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and, after the corporate existence has begun, that the corporation has been incorporated under this act, except as against this State in a proceeding to cancel or revoke the certicate of incorporation or for involuntary dissolution of the corporation.

14A:2–8. Organization Meeting of Directors.

On or after the effective date of the certificate of incorporation, an organization meeting of the board named in the certificate of incorporation shall be held, at the call of a majority of the incorporators, to adopt by-laws, elect officers, and transact such other business as may come before the meeting. The incorporators calling the meeting shall give at least 5 days' notice thereof by mail to each director named in the certificate of incorporation, which notice shall state the time and place of the meeting.

14A:2–9. By-laws; Making and Altering.

(1) The initial by-laws of a corporation shall be adopted by the board at its organization meeting. Thereafter, the board shall have the power to make, alter and repeal by-laws unless such power is reserved to the shareholders in the certificate of incorporation, but by-laws made by the board may be altered or repealed, and new by-laws made, by the shareholders. The shareholders may prescribe in the by-laws that any by-law made by them shall not be altered or repealed by the board.

(2) The initial by-laws of a corporation adopted by the board at its organization meeting shall be deemed to have been adopted by the shareholders for purposes of this act.

(3) Any provision which this act requires or permits to be set forth in the by-laws may be set forth in the certificate of incorporation with equal force and effect.

14A:2–10. By-laws and Other Powers in Emergency.

(1) The board of a corporation may adopt emergency by-laws, subject to repeal or change by action of the shareholders, which shall, notwithstanding any different provision elsewhere in this act or in the certificate of incorporation or by-laws, be operative during any emergency in the conduct of the business of the corporation resulting from an attack on the United States or any nuclear or atomic disaster. The emergency by-laws may make any provision that may be practical and necessary for the circumtances of the emergency, including provisions that

(a) a meeting of the board may be called by any officer or director in such manner and under such conditions as shall be prescribed in the emergency by-laws;

(b) the director or directors in attendance at the meeting, or any greater number fixed by the emergency by-laws, shall constitute a quorum; and

(c) the officers or other persons designated in a list approved by the board before the emergency, all in such order of priority and subject to such conditions and for such period of time, not longer than reasonably necessary after the termination of the emergency, as may be provided in the emergency by-laws or in the resolution approving the list, shall, to the extent required to provide a quorum at any meeting of the board, be deemed directors for such meeting.

(2) Before or during any such emergency, the board may provide, and from time to time modify, lines of succession in the event

that during such an emergency any or all officers or agents of the corporation shall for any reason be rendered incapable of discharging their duties.

(3) Before or during any such emergency, the board may change the head office or designate several alternative head offices or regional offices, or authorize the officers so to do, said change to be effective during the emergency.

(4) To the extent not inconsistent with any emergency by-laws so adopted, the by-laws of the corporation shall remain in effect during any such emergency and upon its termination the emergency by-laws shall cease to be operative.

(5) Unless otherwise provided in emergency by-laws, notice of any meeting of the board during any such emergency need be given only to such of the directors as it may be feasible to reach at the time and by such means as may be feasible at the time, including publication, or other means of mass communication.

(6) To the extent required to constitute a quorum at any meeting of the board during any such emergency, the officers of the corporation who are present shall, unless otherwise provided in emergency by-laws, be deemed, in order of rank and within the same rank in order of seniority, directors for such meeting.

(7) No officer, director or employee acting in accordance with any emergency by-laws shall be liable except for willful misconduct. No officer, director or employee shall be liable for any action taken by him in good faith in such an emergency in furtherance of the ordinary business affairs of the corporation even though not authorized by the by-laws then in effect.

CHAPTER 3

Powers

Section

14A:3–1. General Powers.

(1) Each corporation, subject to any limitations provided in this act or any other statute of this State, or in its certificate of incorporation, shall have power

(a) to have perpetual duration unless a limited period is stated in its certificate of incorporation;

(b) to sue and be sued, complain and defend and participate as a party or otherwise in any judicial, administrative, arbitrative or other proceeding, in its corporate name;

(c) to have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;

(d) to purchase, lease or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;

(e) to sell, convey, mortgage, create a security interest in, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets;

(f) to purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships or individuals, or direct or indirect obligations of any domestic or foreign government or instrumentality thereof;

(g) to make contracts and guarantees and incur liabilities, borrow money, issue its bonds, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises and income;

(h) to lend money, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(i) to conduct its business, carry on its operations, and have offices and exercise the powers granted by this act anywhere in the universe;

(j) to elect or appoint officers, employees and agents of the corporation, and define their duties and fix their compensation;

(k) to make and alter by-laws for the administration and regulation of the affairs of the corporation;

(l) to pay pensions and establish pension, profit-sharing, stock option, stock purchase, incentive and deferred compensation plans, and plans of similar nature for, and to furnish medical

services, life, sickness, accident, disability or unemployment insurance and benefits, education, housing, social and recreational services and other similar aids and services to, any or all of its directors, officers and employees, their families, dependents or beneficiaries;

(m) to participate with others in any corporation, partnership, limited partnership, joint venture, or other association of any kind, or in any transaction, undertaking or arrangement which the participating corporation would have power to conduct by itself, whether or not such participation involves sharing or delegation of control with or to others;

(n) at the request of the United States government or of any of its agencies, to transact any lawful business in time of war or other national emergency, notwithstanding the purpose or purposes set forth in its certificate of incorporation;

(o) to have and exercise all other powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

(2) It shall not be necessary to set forth in the certificate of incorporation any corporate powers enumerated in this act.

14A:3–2. Ultra Vires Transactions.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(a) In a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(b) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation.

(c) In a proceeding by the Attorney General, as provided in this act, to dissolve the corporation, or in a proceeding by the Attorney General to enjoin the corporation from the transaction of unauthorized business.

14A:3–3. Guaranty Not In Furtherance of Corporate Purposes.

A corporation may give a guaranty not in furtherance of its corporate purposes only when authorized at a meeting of shareholders by the affirmative vote of two-thirds of the votes cast by the holders of each class and series of shares entitled to vote thereon. If authorized by a like vote, such guaranty may be secured by a mortgage of or a security interest in all or any part of the corporate property, or any interest therein, wherever situated.

14A:3–4. Contributions by Corporations.

(1) Any corporation organized for any purpose under any general or special law of this State, unless otherwise provided in its certificate of incorporation or by-laws, shall have power, irrespective of corporate benefit, to aid, singly or in cooperation with other corporations and with natural persons, in the creation or maintenance of institutions or organizations engaged in community fund, hospital, charitable, philanthropic, educational, scientific or benevolent activities or patriotic or civic activities conducive to the betterment of social and economic conditions, and the directors may appropriate, spend or contribute for such purposes such reasonable sums as they may determine; provided, that a contribution shall not be authorized hereunder if at the time of the contribution or immediately thereafter the donee institution shall own more than 10% of the voting stock of the donor corporation or one of its subsidiaries.

(2) The provisions of this section shall not be construed as directly or indirectly minimizing or interpreting the rights and powers of corporations, as heretofore existing, with reference to appropriations, expenditures or contributions of the nature above specified.

14A:3–5. INDEMNIFICATION OF DIRECTORS, OFFICERS AND EMPLOYEES.

(1) As used in this section,

(a) "corporate agent" means any person who is or was a director, officer, employee or agent of the indemnifying corporation and any person who is or was a director, officer, trustee, employee or agent of any other enterprise, serving as such at the request of the indemnifying corporation, or the legal representative of any such director, officer, trustee, employee or agent;

(b) "other enterprise" means any domestic or foreign corporation, other than the indemnifying corporation, and any partnership, joint venture, sole proprietorship, trust or other enterprise, whether or not for profit, served by a corporate agent;

(c) "expenses" means reasonable costs, disbursements and counsel fees;

(d) "liabilities" means amounts paid or incurred in satisfaction of settlements, judgments, fines and penalties;

(e) "proceeding" means any pending, threatened or completed civil, criminal, administrative or arbitrative action, suit or proceeding, and any appeal therein and any inquiry or investigation which could lead to such action, suit or proceeding.

(2) Any corporation organized for any purpose under any general or special law of this State shall have the power to indemnify a corporate agent against his expenses and liabilities in connection with any proceeding involving the corporate agent by reason of his being or having been such a corporate agent, other than a proceeding by or in the right of the corporation, if

(a) such corporate agent acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation; and

(b) with respect to any criminal proceeding, such corporate agent had no reasonable cause to believe his conduct was unlawful.

The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent, shall not of itself create a presumption that such corporate agent did not meet the applicable standards of conduct set forth in paragraphs 14A:3–5(2) (a) and 14A:3–5(2) (b).

(3) Any corporation organized for any purpose under any general or special law of this State shall have the power to indemnify a corporate agent against his expenses in connection with any proceeding by or in the right of the corporation to procure a judg-

ment in its favor which involves the corporate agent by reason of his being or having been such corporate agent, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation. However, in such proceeding no indemnification shall be provided in respect of any claim, issue or matter as to which such corporate agent shall have been adjudged to be liable for negligence or misconduct, unless and only to the extent that the court in which such proceeding was brought shall determine upon application that despite the adjudication of liability, but in view of all circumstances of the case, such corporate agent is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

(4) Any corporation organized for any purpose under any general or special law of this State shall indemnify a corporate agent against expenses to the extent that such corporate agent has been successful on the merits or otherwise in any proceeding referred to in subsections 14A:3–5(2) and 14A:3–5(3) or in defense of any claim, issue or matter therein.

(5) Any indemnification under subsection 14A:3–5(2) and, unless ordered by a court, under subsection 14A:3–5(3), may be made by the corporation only as authorized in a specific case upon a determination that indemnification is proper in the circumstances because the corporate agent met the applicable standard of conduct set forth in subsection 14A:3–5(2) or subsection 14A:3–5(3). Such determination shall be made

(a) by the board of directors acting by a quorum consisting of directors who were not parties to the proceeding; or

(b) if such a quorum is not obtainable, or, even if obtainable and a quorum of the disinterested directors so directs, by independent legal counsel in a written opinion; or

(c) by the shareholders.

(6) Expenses incurred by a corporate agent in connection with a proceeding may be paid by the corporation in advance of the final disposition of the proceeding upon receipt of an undertaking by or on behalf of the corporate agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified as provided in this section.

(7) (a) If a corporation upon application of a corporate agent has failed or refused to provide indemnification as required under subsection 14A:3–5(4) or permitted under subsections 14A:3–5(2), 14A:3–5(3) and 14A:3–5(6), a corporate agent may apply to a court for an award of indemnification by the corporation, and such court

(i) may award indemnification to the extent authorized under subsections 14A:3–5(2) and 14A:3–5(3) and shall award indemnification to the extent required under subsection 14A:3–5(4), notwithstanding any contrary determination which may have been made under subsection 14A:3–5(5); and

(ii) may allow reasonable expenses to the extent authorized by, and subject to the provisions of, subsection 14A:3–5(6), if the court shall find that the corporate agent has by his pleadings or during the course of the proceeding raised genuine issues of fact or law.

(b) Application for such indemnification may be made

(i) in the civil action in which the expenses were or are to be incurred or other amounts were or are to be paid; or

(ii) to the Superior Court in a separate proceeding. If the application is for indemnification arising out of a civil action, it shall set forth reasonable cause for the failure to make application for such relief in the action or proceeding in which the expenses were or are to be incurred or other amounts were or are to be paid.

The application shall set forth the disposition of any previous application for indemnification and shall be made in such manner and form as may be required by the applicable rules of court or, in the absence thereof, by direction of the court to which it is made. Such application shall be upon notice to the corporation. The court may also direct that notice shall be given at the expense of the corporation to the shareholders and such other persons as it may designate in such manner as it may require.

(8) The indemnification provided by this section shall not exclude any other rights to which a corporate agent may be entitled under a certificate of incorporation, by-law, agreement, vote of shareholders, or otherwise.

(9) Any corporation organized for any purpose under any general or special law of this State shall have the power to purchase and maintain insurance on behalf of any corporate agent against any expenses incurred in any proceeding and any liabilities asserted against him in his capacity as corporate agent, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

(10) The powers granted by section 14A:3–5 may be exercised by the corporation notwithstanding the absence of any provision in its certificate of incorporation or by-laws authorizing the exercise of such powers.

14A:3–6. Provisions Relating to Actions by Shareholders.

(1) No action shall be brought in this State by a shareholder in the right of a domestic or foreign corporation unless the plaintiff was a holder of shares or of voting trust certificates therefor at the time of the transaction of which he complains, or his shares or voting trust certificates thereafter devolved upon him by operation of law from a person who was a holder at such time.

(2) In any action hereafter instituted in the right of any such corporation by the holder or holders of shares of such corporation or of voting trust certificates therefor, the court having jurisdiction, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in the defense of such action.

(3) In any action now pending or hereafter instituted or maintained in the right of any such corporation by the holder or holders of less than 5% of the outstanding shares of any class of such corporation or of voting trust certificates therefor, unless the shares or voting trust certificates so held have a market value in excess of $25,000.00, the corporation in whose right such action is brought shall be entitled at any time before final judgment to require the plaintiff or plaintiffs to give security for the reasonable expenses, including fees of attorneys, that may be incurred by it in connection with such action or may be incurred by other parties named as defendant for which it may become legally liable. Market value shall be determined as of the date that the plaintiff institutes the action or, in the case of an intervener, as of the date that he becomes a party to the action. The amount of such security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or excessive. The corporation shall have recourse to such security in such amount as the court having jurisdiction shall determine upon the termination of such action.

CHAPTER 4

Registered Office and Registered Agent; Annual Report

Section

14A:4–1. Registered Office and Registered Agent.

(1) Every corporation organized for any purpose under any general or special law of this State and every foreign corporation authorized to transact business in this State shall continuously maintain a registered office in this State, and a registered agent having a business office identical with such registered office.

(2) The registered office may be, but need not be, the same as a place of business of the corporation which it serves.

(3) The registered agent may be a natural person of the age of 21 years or more, or a domestic corporation or a foreign corporation authorized to transact business in this State, whether or not any such agent corporation is organized for a purpose or purposes for which a corporation may be organized under this act.

(4) The designation of a principal or registered office in this State and of a registered agent in charge thereof by any corporation of this State or by any foreign corporation authorized to transact business in this State, as in force on the effective date of this act, shall continue with like effect as if made hereunder until changed pursuant to this act.

14A:4–2. Function of Registered Agent and Office; Service of Process, Notice or Demand.

(1) Every registered agent shall be an agent of the corporation which has appointed him, upon whom process against the corporation may be served.

(2) Whenever any law of this State requires or permits any notice or demand to be given to or made upon a domestic corporation or a foreign corporation authorized to transact business in this State, its officers or directors, such notice or demand may be sent by mail or otherwise, as the law may require or permit, to the registered office of the corporation in this State, and such notice so given or demand so made shall be sufficient notice or demand.

(3) The provisions of this section shall not exclude any other method provided by law for service of process upon a corporation, domestic or foreign, or for service of a notice or demand upon such corporation, its officers or directors.

(4) Whenever any law of this State requires that any certificate, report or statement made, published, filed or recorded by any

corporation, domestic or foreign, state the residence or post office address of any incorporator, shareholder, director or officer, it shall be sufficient if the address of the registered office of the corporation in this State is stated.

14A:4–3. Change of Registered Office or Registered Agent.

(1) A domestic corporation or a foreign corporation authorized to transact business in this State may change its registered office or its registered agent, or both. When the registered office is changed, or when the registered agent is changed, or dies, resigns or becomes disqualified, the corporation shall, by resolution of the board, forthwith fix the address of the new registered office or designate the successor registered agent or both, as the case may be.

(2) Such corporation shall forthwith file in the office of the Secretary of State a certificate executed on behalf of the corporation setting forth

(a) the name of the corporation;

(b) if the registered agent is not being changed, the name of the registered agent;

(c) if the registered agent is being changed, the names of the registered agent being succeeded and of the successor registered agent;

(d) if the registered office is not being changed, the address of the then registered office;

(e) if the registered office is being changed, the address of the registered office immediately prior to the change, and the address of the new registered office;

(f) that the address of its registered office and the address of its registered agent will be identical after the change; and

(g) that the change in registered office, or registered agent, or both, is made pursuant to resolution of the board.

(3) The registered agent of one or more domestic or foreign corporations may change the registered office of such corporation or corporations to another address in the same municipality or county of this State by filing in the office of the Secretary of State a certificate executed by such agent and setting forth

(a) the names of all the corporations whose registered offices are being changed and for which he or it is the registered agent, listed in alphabetical order;

(b) the address of the registered office of each such corporation immediately prior to the change, and the address of the new registered office;

(c) that the address of the registered office of each such corporation and the address of its registered agent will be identical after the change; and

(d) a statement that at least 20 days' prior notice of the change has been given to each such corporation in writing.

The change of the registered office of each of the corporations named in the certificate shall become effective upon the date of such filing or at such later time, not to exceed 30 days after the date of filing, as may be set forth in the certificate.

14A:4–4. Resignation of Registered Agent.

(1) The registered agent of a domestic corporation or a foreign corporation authorized to transact business in this State may resign by complying with the provisions of this section.

(2) The registered agent shall serve a notice of resignation by certified mail, return receipt requested, upon the president, or any vice president, or the secretary or treasurer of the corporation at the address last known to the agent, and shall make an affidavit of such service. If such service cannot be made, the affidavit shall so state, and shall state briefly why such service cannot be made. The affidavit, together with a copy of the notice of resignation, shall be filed in the office of the Secretary of State.

(3) Such resignation shall become effective upon the expiration of 30 days after the filing in the office of the Secretary of State of the affidavit under this section or upon the designation by the corporation of a new registered agent pursuant to this act, whichever is earlier. If the corporation fails to designate a new registered agent within said 30-day period, the corporation shall thereafter be deemed to have no registered agent or registered office in this State.

14A:4–5. Annual Report to Secretary of State.

(1) Every domestic corporation and every foreign corporation authorized to transact business in this State shall file in the office of the Secretary of State, within the time prescribed by this section, an annual report setting forth

(a) the name of the corporation and, in the case of a foreign corporation, the jurisdiction of its incorporation;

(b) the address of the registered office of the corporation in this State, and the name of its registered agent in this State at such address, and, in the case of a foreign corporation, the address of its main business or headquarters office;

(c) the names and addresses of the directors and officers of the corporation; and

(d) the date appointed for the next annual meeting of the shareholders for the election of directors.

(2) Such report shall be filed within 30 days after the time appointed for holding the annual election of directors, commencing with the time appointed for the first annual election of directors following the date of incorporation or of registering to transact business.

(3) If the report is not so filed, the corporation shall, after written demand therefor by the Secretary of State by certified mail addressed to the corporation at the last address appearing of record in his office, forfeit to the State a penalty of $200.00 for each report required to have been filed not more than 5 years prior thereto and remaining unfiled, to be recovered with costs in a civil action prosecuted by the Attorney General. No corporation shall be subject to penalty if it shall, within 30 days after such written demand, file the reports required by law and shall pay to the Secretary of State a fee of $10.00 for the filing of each such report. In lieu of such civil action, the Secretary of State, after expiration of such 30-day period, may issue a certificate to the Clerk of the Superior Court that the corporation is indebted for the payment of such penalty, and thereupon the Clerk shall immediately enter upon his record of docketed judgments the name of such corporation as the judgment debtor, and of the State as the judgment creditor, a statement that the penalty is imposed under this section, the amount of the penalty, and the date of such certificate. Such entry shall have the same force as a judgment docketed in the Superior Court. The Secretary of State within 5 days after such entry shall give notice thereof to the corporation by certified mail addressed to the corporation at the last address appearing of record in his office.

(4) The Secretary of State shall furnish annual report forms, shall keep in his office all such reports and shall prepare an alphabetical index thereof, which reports and index shall be open to public inspection at proper hours.

CHAPTER 5

Shareholders' Meetings and Elections; Rights and Liabilities of Shareholders in Certain Cases

Section

14A:5–1. Place of Shareholders' Meetings.

Meetings of shareholders of every corporation organized for any purpose under any general or special law of this State may, unless otherwise provided by law, be held at such place, within or without this State, as may be provided in the by-laws or as may be fixed by the board pursuant to authority granted by the by-laws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

14A:5–2. Annual Meeting of Shareholders.

An annual meeting of the shareholders shall be held at such time as may be provided in the by-laws and, in the absence of such provision, at noon on the first Tuesday of April. Failure to hold the annual meeting at the designated time, or to elect a sufficient number of directors at such meeting or any adjournment thereof, shall not affect otherwise valid corporate acts or work a forfeiture or dissolution of the corporation. If the annual meeting for election of directors is not held on the date designated therefor, the directors shall cause the meeting to be held as soon thereafter as convenient. If there is a failure to hold an annual meeting for a period of 30 days after the date designated therefor, or if no date has been designated for a period of 13 months after the organization of the corporation or after its last annual meeting, the Superior Court may, upon the application of any shareholder, summarily order the meeting or the election, or both, to be held at such time and place, upon such notice and for the transaction of such business as may be designated in such order. At any meeting ordered to be called pursuant to this section, the shareholders present in person or by proxy and having voting powers shall constitute a quorum for the transaction of the business designated in such order.

14A:5–3. Call of Special Meetings of Shareholders.

Special meetings of the shareholders may be called by the president or the board, or by such other officers, directors or shareholders as may be provided in the by-laws. Notwithstanding any such provision, upon the application of the holder or holders of not less than 10% of all the shares entitled to vote at a meeting, the Superior Court, in an action in which the court may proceed in a summary manner, for good cause shown, may order a special meeting of the shareholders to be called and held at such time and place, upon such notice and for the transaction of such business

as may be designated in such order. At any meeting ordered to be called pursuant to this section, the shareholders present in person or by proxy and having voting powers shall constitute a quorum for the transaction of the business designated in such order.

14A:5–4. Notice of Shareholders' Meetings.

(1) Except as otherwise provided in this act, written notice of the time, place and purpose or purposes of every meeting of shareholders shall be given not less than 10 nor more than 60 days before the date of the meeting, either personally or by mail, to each shareholder of record entitled to vote at the meeting.

(2) When a meeting is adjourned to another time or place, it shall not be necessary, unless the by-laws otherwise provide, to give notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment the board fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record on the new record date entitled to notice under subsection 14A:5–4 (1).

14A:5–5. Waiver of Notice or of Lapse of Time.

(1) Notice of a meeting need not be given to any shareholder who signs a waiver of such notice, in person or by proxy, whether before or after the meeting. The attendance of any shareholder at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by him.

(2) Whenever shareholders are authorized to take any action after the lapse of a prescribed period of time, the action may be taken without such lapse if such requirement is waived in writing, in person or by proxy, before or after the taking of such action, by every shareholder entitled to vote thereon as at the date of the taking of such action.

14A:5–6. Action by Shareholders Without a Meeting.

(1) Any action required or permitted to be taken at a meeting of shareholders by this act or the certificate of incorporation or

by-laws of a corporation, may be taken without a meeting if all the shareholders entitled to vote thereon consent thereto in writing.

(2) Except for actions required or permitted to be taken at a meeting of shareholders by Chapter 10 of this act, any action required or permitted to be taken at a meeting of shareholders by this act or the certificate of incorporation or by-laws of a corporation, may be taken without a meeting upon the written consent of less than all the shareholders entitled to vote thereon, if

(a) such action is provided for by the certificate of incorporation; and

(b) the shareholders who so consent would be entitled to cast at least the minimum number of votes which would be required to take such action at a meeting at which all shareholders entitled to vote thereon are present.

Prompt notice of such action shall be given to all shareholders who would have been entitled to vote upon the action if such meeting were held.

(3) Whenever action is taken pursuant to subsection 14A:5–6(1) or 14A:5–6(2), the written consents of the shareholders consenting thereto shall be filed with the minutes of proceedings of shareholders.

(4) Any action taken pursuant to subsection 14A:5–6(1) or 14A:5–6(2) shall have the same effect for all purposes as if such action had been taken at a meeting of the shareholders.

(5) If any other provision of this act requires the filing of a certificate upon the taking of an action by shareholders, and such action is taken in the manner authorized by subsection 14A:5–6(1) or 14A:5–6(2), such certificate shall state that such action was taken without a meeting pursuant to the written consents of the shareholders and shall set forth the number of shares represented by such consents.

14A:5–7. Fixing Record Date.

(1) For the purpose of determining the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or to express consent to or dissent from any proposal without a meeting, or for the purpose of determining shareholders entitled to receive payment of any dividend or allotment of any right, or for the purpose of any other action, the by-laws may provide for fixing, or in the absence of such provision the board may fix, in advance, a date as the record date for any such determination of shareholders. Such date shall not be more

than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other action.

(2) If no record date is fixed

(a) the record date for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders shall be the close of business on the day next preceding the day on which notice is given, or, if no notice is given, the day next preceding the day on which the meeting is held; and

(b) the record date for determining shareholders for any purpose other than that specified in paragraph 14A:5–7(2) (a) shall be at the close of business on the day on which the resolution of the board relating thereto is adopted.

(3) When a determination of shareholders of record entitled to notice of or to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof, unless the board fixes a new record date under this section for the adjourned meeting.

14A:5–8. Voting List.

(1) The officer or agent having charge of the stock transfer books for shares of a corporation shall make and certify a complete list of the shareholders entitled to vote at a shareholders' meeting or any adjournment thereof. Such list shall

(a) be arranged alphabetically within each class and series, with the address of, and the number of shares held by, each shareholder;

(b) be produced at the time and place of the meeting;

(c) be subject to the inspection of any shareholder during the whole time of the meeting; and

(d) be prima facie evidence as to who are the shareholders entitled to examine such list or to vote at any meeting.

(2) If the requirements of this section have not been complied with, the meeting shall, on the demand of any shareholder in person or by proxy, be adjourned until the requirements are complied with. Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting prior to the making of any such demand.

14A:5–9. Quorum of Shareholders.

(1) Unless otherwise provided in the certificate of incorporation or this act, the holders of shares entitled to cast a majority of the votes at a meeting shall constitute a quorum at such meeting. The

shareholders present in person or by proxy at a duly organized meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum. Less than a quorum may adjourn.

(2) Whenever the holders of any class or series of shares are entitled to vote separately on a specified item of business, the provisions of this section shall apply in determining the presence of a quorum of such class or series for the transaction of such specified item of business.

14A:5–10. Voting of Shares.

Each outstanding share shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, unless otherwise provided in the certificate of incorporation.

14A:5–11. Votes Required.

(1) Whenever any action, other than the election of directors, is to be taken by vote of the shareholders, it shall be authorized by a majority of the votes cast at a meeting of shareholders by the holders of shares entitled to vote thereon, unless a greater plurality is required by the certificate of incorporation or another section of this act.

(2) The certificate of incorporation may provide that any class or classes of shares, or any series thereof, shall vote as a class to authorize any action, including amendments to the certificate of incorporation. Such voting as a class shall be in addition to any other vote required by this act. Where voting as a class or series is provided in the certificate of incorporation, it shall be by the proportionate vote provided in the certificate or, if no proportionate vote is so provided, then for any action other than the election of directors, by a majority of the votes cast at such meeting by the holders of shares of such class or series entitled to vote thereon.

(3) Where voting as a class or series is required by this act to authorize any action, such action shall be authorized by a majority of the votes cast at such meeting by the holders of shares of each such class or series entitled to vote thereon, unless a greater vote is required by the certificate of incorporation or another section of this act. Such voting as a class shall be in addition to any other vote required by this act.

14A:5–12. Greater Voting Requirements.

(1) Whenever, with respect to any action to be authorized by the shareholders of a corporation, the certificate of incorporation

requires the affirmative vote of a greater proportion of the votes cast by the holders of shares entitled to vote thereon, or by the holders of shares of any class or series thereof, than is required by this act with respect to such action, the provisions of the certificate of incorporation shall control.

(2) An amendment of the certificate of incorporation which changes or deletes such a provision shall be authorized by the same vote as would be required to take action under such provision.

14A:5–13. Shares Owned or Controlled by the Corporation Not Voted or Counted.

Treasury shares shall not be voted at any meeting or counted in determining the total number of outstanding shares at any given time. If the corporation holds shares entitled to cast the plurality of the votes required for the election of directors of another domestic corporation or a foreign corporation, shares of the corporation held by such other domestic corporation or foreign corporation shall not be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

14A:5–14. Shares Held by Another Corporation.

Shares standing in the name of another domestic or foreign corporation may be voted by any officer or agent, or by proxy appointed by any of them, unless some other person, by resolution of its board or pursuant to its by-laws, shall be appointed to vote such shares.

14A:5–15. Shares Held by Fiduciaries.

Shares held by any person in any representative or fiduciary capacity may be voted by him without a transfer of such shares into his name. Where shares are held jointly by any number of fiduciaries, and the instrument or order appointing such fiduciaries does not otherwise direct, such shares shall be voted as the majority of such fiduciaries shall determine. If the fiduciaries are equally divided as to how the shares shall be voted, any court having jurisdiction may, in an action brought by any of such fiduciaries or by any beneficiary, appoint an additional person to act with such fiduciaries in such matter, and the stock shall be voted by the majority of such fiduciaries and such additional person. The court may proceed in the action in a summary manner or otherwise.

14A:5–16. Shares Held Jointly or as Tenants in Common.

Shares held by two or more persons as joint tenants or as tenants in common may be voted at any meeting of the shareholders by any one of such persons, unless another joint tenant or tenant in common seeks to vote any of such shares in person or by proxy. In the latter event, the written agreement, if any, which governs the manner in which such shares shall be voted, shall control if presented at the meeting. If there be no such agreement presented at the meeting, the majority in number of such joint tenants or tenants in common present shall control the manner of voting. If there be no such majority, or if there be two such joint tenants or tenants in common, both of whom seek to vote such shares, the shares shall, for the purpose of voting, be divided equally among such joint tenants or tenants in common present.

14A:5–17. Voting of Pledged Stock.

A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, or a nominee of the pledgee.

14A:5–18. When Redeemable Shares No Longer Entitled to Vote.

On and after the date on which written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares.

14A:5–19. Proxy Voting.

(1) Every shareholder entitled to vote at a meeting of shareholders or to express consent or dissent without a meeting may authorize another person or persons to act for him by proxy. Every proxy shall be executed in writing by the shareholder or his agent. No proxy shall be valid after 11 months from the date of its execution, unless a longer time is expressly provided therein, but in no event shall a proxy be valid after 3 years from the date of execution. Unless it is coupled with an interest, a proxy shall be revocable at will. A proxy shall not be revoked by the death or incapacity of the shareholder but such proxy shall continue in force until revoked by the personal representative or guardian of the

shareholder. The presence at any meeting of any shareholder who has given a proxy shall not revoke such proxy unless the shareholder shall file written notice of such revocation with the secretary of the meeting prior to the voting of such proxy.

(2) A person named in a proxy as the attorney or agent of a shareholder may, if the proxy so provides, substitute another person to act in his place, including any other person named as an attorney or agent in the same proxy. The substitution shall not be effective until an instrument effecting it is filed with the secretary of the corporation.

14A:5–20. VOTING TRUST.

(1) One or more shareholders of a corporation may confer upon a trustee or trustees the right to vote or otherwise represent his or their shares, for a period not to exceed 21 years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by filing an executed counterpart of the agreement at the registered office of the corporation and by depositing his or their shares of an original issue with, or by transferring his or their shares to, such trustee or trustees for the purposes of the agreement. After the filing of the agreement, certificates for shares shall be issued to the trustee or trustees to represent any shares of an original issue so deposited with him or them, and any certificates for shares so transferred shall be surrendered and cancelled and new certificates therefor issued to such trustee or trustees stating that they are issued under such agreement, and in the entry of such ownership in the records of the corporation that fact shall also be noted, and such trustee or trustees may vote the shares so transferred during the term of such agreement. The copy of the voting trust agreement so filed shall be subject to inspection at any reasonable time by any shareholder of the corporation or by any holder of a beneficial interest in the voting trust, in person or by agent or attorney. Voting trust certificates shall be issued to evidence beneficial interests in the voting trust.

(2) A trustee who votes shares subject to a voting trust shall incur no responsibility as shareholder, trustee, or otherwise, except for his own dereliction of duty.

(3) Where two or more persons are designated as voting trustees, and the right and method of voting any shares standing in their names at any meeting of the corporation are not fixed by the agreement appointing the trustees, the right to vote said shares and the manner of voting the same at any such meeting shall be

determined by a majority of the trustees. If the trustees are equally divided as to how the shares shall be voted, the Superior Court or County Court having jurisdiction may, in an action brought by any of such trustees, appoint an additional person to act with such trustees in such matter, and the right to vote said shares and the manner of voting the same at any such meeting shall be determined by a majority of the trustees and such additional person. The court may proceed in the action in a summary manner or otherwise.

(4) At any time within 2 years prior to the time of expiration of any such voting trust agreement as originally fixed or as extended as herein provided, one or more beneficiaries of the voting trust may, by agreement in writing and with the written consent of such voting trustees, extend the duration of such voting trust agreement with regard to the shares subject to their beneficial interest for an additional period not exceeding 21 years. The voting trustees shall, prior to the time of expiration of any such voting trust agreement, as originally fixed or as previously extended, as the case may be, file in the registered office of the corporation an executed counterpart of such extension agreement and of their consent thereto, and thereupon the duration of such voting trust agreement shall be extended for the period fixed in such extension agreement; but no such extension agreement shall affect the rights or obligations of persons not parties thereto.

(5) The validity of a voting trust or of an extension thereof, otherwise lawful, shall not be affected during a period of 21 years from the date of its commencement by the fact that by its terms it will or may last beyond such 21-year period; but it shall become inoperative at the end of such 21-year period.

14A:5–21. Agreements as to Voting; Provision in Certificate of Incorporation as to Control of Directors.

(1) An agreement between two or more shareholders, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the shares held by them shall be voted as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon by them.

(2) A provision in the certificate of incorporation otherwise prohibited by law because it improperly restricts the board in its management of the business of the corporation, or improperly transfers to one or more shareholders or to one or more persons or corporations to be selected by him or them, all or any part of such management otherwise within the authority of the board, shall

nevertheless be valid if all the incorporators have authorized such provision in the certificate of incorporation or the holders of record of all outstanding shares, whether or not having voting power, have authorized such provision in an amendment to the certificate of incorporation.

(3) A provision authorized by subsection 14A:5–21(2) shall become invalid if, to the knowledge of the board,

(a) subsequent to the adoption of such provision, shares are transferred or issued to any person who takes delivery of the share certificate without notice thereof, unless such person consents in writing to such provisions; or

(b) any shares of the corporation are listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association.

(4) If a provision authorized by subsection 14A:5–21(2) shall have become invalid as provided in subsection 14A:5–21(3), the board shall amend the certificate of incorporation to delete such provision by filing a certificate of amendment in the office of the Secretary of State. The certificate shall be executed on behalf of the corporation and shall set forth

(a) the name of the corporation;

(b) the date of the adoption of the amendment;

(c) the deleted provision; and

(d) the event set forth in subsection 14A:5–21(3) by reason of which the provision has become invalid.

(5) The effect of any provision authorized by subsection 14A:5–21(2) shall be to relieve the directors and impose upon the shareholders the liability for managerial acts or omissions that is imposed on directors by law to the extent that, and so long as, the discretion or powers of the directors in their management of corporate affairs is controlled by any such provision. Such shareholders shall be deemed to be corporate agents for the purposes of section 14A:3–5.

(6) If the certificate of incorporation contains a provision authorized by subsection 14A:5–21(2), the existence of such provision shall be noted conspicuously on the face of every certificate for shares issued by such corporation, and each holder of such certificate shall conclusively be deemed to have taken delivery with notice of such provision.

14A:5–22. Infant Shareholders and Bondholders.

(1) A corporation may treat an infant who holds shares or bonds of such corporation as having capacity to receive and to empower others to receive dividends, interest, principal and other payments and distributions, to vote or express consent or dissent, and to make elections and exercise rights relating to such shares or bonds, unless, in the case of shares, the corporate officer responsible for maintaining the list of shareholders or the transfer agent of the corporation or, in the case of bonds, the treasurer or paying officer or agent, has received written notice that such holder is an infant.

(2) An infant holder of shares or bonds of a corporation who has received or empowered others to receive payments or distributions, voted or expressed consent or dissent, or made an election or exercised a right relating to such shares or bonds, shall have no right thereafter to disaffirm or avoid, as against the corporation, any such act on his part, unless prior to such receipt, vote, consent, dissent, election or exercise, as to shares, the corporate officer responsible for maintaining the list of shareholders or its transfer agent or, in the case of bonds, the treasurer, other paying officer or transfer agent, had received written notice that such holder was an infant.

(3) This section does not limit any other statute which authorizes any corporation to deal with an infant or limits the right of an infant to disaffirm his acts.

14A:5–23. Voting Powers of Bondholders; Right to Inspect.

The certificate of incorporation may confer upon the holders of bonds issued by the corporation the power to vote for the election of directors and in respect to other corporate affairs and management, upon such terms and conditions as the certificate of incorporation shall provide. The certificate of incorporation or by-laws may provide for the manner of exercising such voting powers. The holders of bonds with voting powers shall, when entitled by the terms of such bonds to exercise such voting powers, have the same rights as those accorded to shareholders under section 14A:5–28.

14A:5–24. Elections of Directors; Cumulative Voting.

(1) Elections of directors need not be by ballot unless a shareholder demands election by ballot at the election and before the voting begins, or unless the by-laws so require.

(2) At each election of directors every shareholder entitled to vote at such election shall have the right to vote the number of shares owned by him for as many persons as there are directors

to be elected and for whose election he has a right to vote, or, if the certificate of incorporation so provides, to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by the aggregate number of his votes shall equal, or by distributing such votes on the same principle among any number of such candidates.

(3) Except as otherwise provided by the certificate of incorporation, directors shall be elected by a plurality of the votes cast at an election.

14A:5–25. Selection of Inspectors.

(1) Unless the by-laws otherwise provide, the board may, in advance of any shareholders' meeting, appoint one or more inspectors to act at the meeting or any adjournment thereof.

(2) If inspectors are not so appointed by the board or as otherwise provided in the by-laws or shall fail to qualify, the person presiding at a shareholders' meeting may, and on the request of any shareholder entitled to vote thereat, shall, make such appointment.

(3) In case any person appointed as inspector fails to appear or act, the vacancy may be filled by appointment made by the board in advance of the meeting or at the meeting by the person presiding at the meeting.

(4) If the by-laws require inspectors at any shareholders' meeting, such requirement is waived unless compliance therewith is requested by a shareholder entitled to vote at such meeting.

(5) Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability.

(6) No person shall be elected a director at a meeting at which he has served as an inspector.

14A:5–26. Duties of Inspectors.

The inspectors shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all shareholders. If there are three or more

inspectors, the act of a majority shall govern. On request of the person presiding at the meeting or any shareholder entitled to vote thereat, the inspectors shall make a report in writing of any challenge, question or matter determined by them. Any report made by them shall be prima facie evidence of the facts therein stated, and such report shall be filed with the minutes of the meeting.

14A:5–27. Review of Elections by Superior Court.

Any election by shareholders may be reviewed by the Superior Court in a summary manner, or otherwise, in an action brought by a shareholder entitled to vote at such election upon notice to the persons elected, the corporation and such other persons as the court may direct. The court may confirm the election, order a new election or provide such other relief as justice may require.

14A:5–28. Books and Records; Right of Inspection.

(1) Each corporation shall keep books and records of account and minutes of the proceedings of its shareholders, board and executive committee, if any. Unless otherwise provided in the by-laws, such books, records and minutes may be kept outside this State. The corporation shall keep at its registered office, or at the office of its transfer agent in this State, a record or records containing the names and addresses of all shareholders, the number, class and series of shares held by each and the dates when they respectively became the owners of record thereof, except that in the case of shares listed on a national securities exchange, the records of the holders of such shares may be kept at the office of the corporation's transfer agent within or without this State. Any of the foregoing books, minutes or records may be in written form or in any other form capable of being converted into written form within a reasonable time. A corporation shall convert into written form without charge any such records not in such form, upon the written request of any person entitled to inspect them.

(2) Upon the written request of any shareholder, the corporation shall mail to such shareholder its balance sheet as at the end of the preceding fiscal year, and its profit and loss and surplus statements for such fiscal year.

(3) Any person who shall have been a shareholder of record of a corporation for at least six months immediately preceding his demand, or any person holding, or so authorized in writing by the holders of, at least 5% of the outstanding shares of any class, upon at least five days' written demand shall have the right for any proper purpose to examine in person or by agent or attorney,

during usual business hours, its minutes of the proceedings of its shareholders and record of shareholders and to make extracts therefrom, at the places where the same are kept pursuant to subsection 14A:5–28(1).

(4) Nothing herein contained shall impair the power of any court, upon proof by a shareholder of proper purpose, irrespective of the period of time during which said shareholder shall have been a shareholder of record, and irrespective of the number of shares held by him, to compel the production for examination by such shareholder of the books and records of account, minutes and record of shareholders of a corporation.

(5) Holders of voting trust certificates representing shares of the corporation shall be regarded as shareholders for the purpose of this section.

14A:5–29. Preemptive Rights.

(1) Except as otherwise provided in the certificate of incorporation, a corporation may issue or deliver unissued or treasury shares, or option rights, or securities having conversion or option rights, without first offering them to existing shareholders.

(2) The preemptive rights, whether created by statute or common law, of shareholders of corporations organized prior to the effective date of this act shall not be affected by subsection 14A:5–29(1). Any such corporation may alter or abolish its shareholders' preemptive rights by an amendment of its certificate of incorporation.

14A:5–30. Liability of Subscribers and Shareholders.

(1) A holder of or subscriber for shares of a corporation shall be under no obligation to the corporation or its creditors to pay for such shares other than the obligation to pay to the corporation the unpaid portion of the consideration for which such shares were issued or to be issued, which in no event shall be less than the amount of the consideration for which such shares could be lawfully issued.

(2) A person holding stock in a fiduciary or representative capacity shall not be personally liable to the corporation as the holder of or subscriber for shares of a corporation but the estate and funds in his hands shall be so liable.

(3) Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be liable to the corporation or its creditors for any un-

paid portion of such consideration, but the original holder or subscriber and any assignee or transferee prior to an assignment or transfer to a person taking in good faith and without such knowledge or notice shall remain liable therefor.

(4) No pledgee or other holder of shares as collateral security shall be liable as a shareholder.

CHAPTER 6

Directors and Officers

Section

14A:6–1. Board of Directors.

The business and affairs of a corporation shall be managed by its board, except as in this act or in its certificate of incorporation otherwise provided. Directors shall be at least 21 years of age and need not be United States citizens or residents of this State

or shareholders of the corporation unless the certificate of incorporation or by-laws so require. The certificate of incorporation or by-laws may prescribe other qualifications for directors.

14A:6–2. Number of Directors.

The number of directors of a corporation shall be not less than three, except that in cases where all the shares with voting powers of a corporation are owned beneficially and of record by either one or two shareholders, the number of directors may be less than three but not less than the number of shareholders. Subject to such limitation and to any provisions contained in the certificate of incorporation, the by-laws shall specify the number of directors except as to the number constituting the first board.

14A:6–3. Term of Directors.

The directors named in the certificate of incorporation shall hold office until the first annual meeting of shareholders, and until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this act. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified. A director may resign by written notice to the corporation. The resignation shall be effective upon receipt thereof by the corporation or at such subsequent time as shall be specified in the notice of resignation.

14A:6–4. Classification of Directors; Restriction of Right to Choose Directors.

(1) A corporation may provide in its certificate of incorporation for the classification of its directors in respect to the time for which they shall severally hold office, but no class of directors shall hold office for a term shorter than one year or longer than five years, and the term of office of at least one class shall expire in each year. No classification of directors shall be effective prior to the first annual meeting of shareholders.

(2) Any corporation having more than one class of shares may provide in its certificate of incorporation for the election of one or more directors by the shareholders of any class or series, to the exclusion of other shareholders.

14A:6–5. Vacancies and Newly Created Directorships.

(1) Unless otherwise provided in the certificate of incorporation or the by-laws, any directorship not filled at the annual meeting and any vacancy, however caused, occurring in the board may be filled by the affirmative vote of a majority of the remaining directors even though less than a quorum of the board, or by a sole remaining director. A director so elected by the board shall hold office until the next succeeding annual meeting of shareholders and until his successor shall have been elected and qualified.

(2) Unless otherwise provided in the certificate of incorporation or by-laws, when one 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, and each director so chosen shall hold office as herein provided in the filling of other vacancies.

(3) Any directorship to be filled by reason of an increase in the number of directors shall be filled by election at an annual meeting or at a special meeting of shareholders called for that purpose, except that the certificate of incorporation or a by-law adopted by the shareholders may authorize the board to fill any such directorship. A director elected by the board to fill any such directorship shall hold office until the next succeeding annual meeting of shareholders and until his successor shall have been elected and qualified.

(4) If by reason of death, resignation or other cause a corporation has no directors in office, any shareholder or the executor or administrator of a deceased shareholder may call a special meeting of shareholders for the election of directors and, over his own signature, shall give notice of said meeting in accordance with section 14A:5–4 except to the extent that such notice is waived pursuant to section 14A:5–5.

14A:6–6. Removal of Directors.

(1) One or more or all the directors of a corporation may be removed for cause by the shareholders by the affirmative vote of the majority of the votes cast by the holders of shares entitled to vote for the election of directors. If the certificate of incorporation so provides, one or more or all the directors may be removed without cause by like vote of the shareholders.

(2) The removal of directors, with or without cause, by vote of the shareholders as provided in subsection 14A:6–6(1), is subject to the following qualifications

(a) in any case where cumulative voting is authorized, if less than the total number of directors then serving on the board is to be removed by the shareholders, no one of the directors may be so removed if the votes cast against his removal would be sufficient to elect him if then voted cumulatively at an election of the entire board; or, if there are classes of directors, at an election of the class of directors of which he is a part;

(b) a director elected by a class vote, as authorized by subsection 14A:6–4(2), may be removed only by a class vote of the holders of shares entitled to vote for his election.

(3) The certificate of incorporation or a by-law adopted by the shareholders may provide that the board shall have the power to remove directors for cause and to suspend directors pending a final determination that cause exists for removal.

(4) The Superior Court, in an action in which the court may proceed in a summary manner or otherwise, may review the removal or suspension of a director for cause.

(5) No act of the board done during the period when a director has been suspended or removed for cause shall be impugned or invalidated if the suspension or removal is thereafter rescinded by the shareholders or by the board or by the final judgment of the court.

14A:6–7. Quorum of Board of Directors and Committees; Action of Directors Without a Meeting.

(1) A majority of the entire board, or of any committee thereof, shall constitute a quorum for the transaction of business, unless the certifiate of incorporation or the by-laws shall provide that a greater or lesser number shall constitute a quorum, which in no case shall be less than the greater of two persons or one-third of the entire board or committee, except that when a board of one director is authorized under the provisions of section 14A:6–2, then one director shall constitute a quorum. The act of the majority present at a meeting at which a quorum is present shall be the act of the board or of the committee, unless the act of a greater number is required by this act, the certificate of incorporation or the by-laws.

(2) Unless otherwise provided by the certificate of incorporation or by-laws, any action required or permitted to be taken pursuant to authorization voted at a meeting of the board or any committee thereof, may be taken without a meeting if, prior or subsequent to such action, all members of the board or of such

committee, as the case may be, consent thereto in writing and such written consents are filed with the minutes of the proceedings of the board or committee. Such consent shall have the same effect as a unanimous vote of the board or committee for all purposes, and may be stated as such in any certificate or other document filed with the Secretary of State.

14A:6–8. Effect of Common Directorships and Directors' Personal Interest.

(1) No contract or other transaction between a corporation and one or more of its directors, or between a corporation and any domestic or foreign corporation, firm or association of any type or kind in which one or more of its directors are directors or are otherwise interested, shall be void or voidable solely by reason of such common directorship or interest, or solely because such director or directors are present at the meeting of the board or a committee thereof which authorizes or approves the contract or transaction, or solely because his or their votes are counted for such purpose, if

(a) the contract or other transaction is fair and reasonable as to the corporation at the time it is authorized, approved or ratified; or

(b) the fact of the common directorship or interest is disclosed or known to the board or committee and the board or committee authorizes, approves, or ratifies the contract or transaction by a vote sufficient for the purpose without counting the vote or votes of such common or interested director or directors; or

(c) the fact of the common directorship or interest is disclosed or known to the shareholders, and they authorize, approve or ratify the contract or transaction.

(2) Common or interested directors may be counted in determining the presence of a quorum at a board or committee meeting at which a contract or transaction described in subsection 14A:6–8(1) is authorized, approved or ratified.

(3) The board, by the affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, shall have authority to establish reasonable compensation of directors for services to the corporation as directors, officers, or otherwise; provided that the approval of the shareholders shall be required if the by-laws so provide.

14A:6–9. Executive Committee; Other Committees.

(1) If the certificate of incorporation or the by-laws so provide, the board, by resolution adopted by a majority of the entire board, may appoint from among its members an executive committee and one or more other committees, each of which shall have at least three members. To the extent provided in such resolution, or in the certificate of incorporation or in the by-laws, each such committee shall have and may exercise all the authority of the board, except that no such committee shall

(a) make, alter or repeal any by-law of the corporation;

(b) elect or appoint any director, or remove any officer or director;

(c) submit to shareholders any action that requires shareholders' approval; or

(d) amend or repeal any resolution theretofore adopted by the board.

(2) The board, by resolution adopted by a majority of the entire board, may

(a) fill any vacancy in any such committee;

(b) appoint one or more directors to serve as alternate members of any such committee, to act in the absence or disability of members of any such committee with all the powers of such absent or disabled members;

(c) abolish any such committee at its pleasure; and

(d) remove any director from membership on such committee at any time, with or without cause.

(3) Actions taken at a meeting of any such committee shall be reported to the board at its next meeting following such committee meeting; except that, when the meeting of the board is held within two days after the committee meeting, such report shall, if not made at the first meeting, be made to the board at its second meeting following such committee meeting.

(4) The designation of any such committee and the delegation thereto of authority shall not operate to relieve the board, or any member thereof, of any responsibility imposed by law.

14A:6–10. Place and Notice of Directors' Meetings.

(1) Meetings of the board may be held either within or without this State, unless otherwise provided by the certificate of incorporation or the by-laws.

(2) Regular meetings of the board may be held with or without notice as prescribed in the by-laws. Special meetings of the board

shall be held upon such notice as is prescribed in the by-laws. Notice of any meeting need not be given to any director who signs a waiver of notice, whether before or after the meeting. The attendance of any director at a meeting without protesting prior to the conclusion of the meeting the lack of notice of such meeting shall constitute a waiver of notice by him. Neither the business to be transacted at, nor the purpose of, any meeting of the board need be specified in the notice or waiver of notice of such meeting unless required by the by-laws. Notice of an adjourned meeting need not be given if the time and place are fixed at the meeting adjourning and if the period of adjournment does not exceed ten days in any one adjournment.

14A:6–11. Loans to Officers or Employees.

A corporation may lend money to, or guarantee any obligation of, or otherwise assist, any officer or other employee of the corporation or of any subsidiary, whenever, in the judgment of the directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation; provided, however, that a corporation shall not lend money to, guarantee any obligation of, or otherwise assist, any officer or other employee who is also a director of the corporation unless such loan, guarantee or assistance is authorized by the certificate of incorporation or a by-law adopted by the shareholders, and then only when authorized by a majority of the entire board. The loan, guarantee or other assistance may be made with or without interest, and may be unsecured, or secured in such manner as the board shall approve, including, without limitation, a pledge of shares of the corporation, and may be made upon such other terms and conditions as the board may determine.

14A:6–12. Liability of Directors in Certain Cases.

(1) In addition to any other liabilities imposed by law upon directors of a corporation, directors who vote for, or concur in, any of the following corporate actions

(a) the declaration of any dividend or other distribution of assets to the shareholders contrary to the provisions of this act or contrary to any restrictions contained in the certificate of incorporation;

(b) the purchase of the shares of the corporation contrary to the provisions of this act or contrary to any restrictions contained in the certificate of incorporation;

(c) the distribution of assets to shareholders during or after dissolution of the corporation without paying, or adequately pro-

viding for, all known debts, obligations and liabilities of the corporation, except that the directors shall be liable only to the extent of the value of assets so distributed and to the extent that such debts, obligations and liabilites of the corporation are not thereafter paid, discharged, or barred by statute or otherwise;

(d) the making of any loan to an officer, director or employee of the corporation or of any subsidiary thereof contrary to the provisions of this act;

shall be jointly and severally liable to the corporation for the benefit of its creditors or shareholders, to the extent of any injury suffered by such persons, respectively, as a result of any such action.

(2) Any director against whom a claim is successfully asserted under this section shall be entitled to contribution from the other directors who voted for, or concurred in, the action upon which the claim is asserted.

(3) Directors against whom a claim is successfully asserted under this section shall be entitled, to the extent of the amounts paid by them to the corporation as a result of such claims,

(a) upon payment to the corporation of any amount of an improper dividend or distribution, to be subrogated to the rights of the corporation against shareholders who received such dividend or distribution with knowledge of facts indicating that it was not authorized by this act, in proportion to the amounts received by them respectively;

(b) upon payment to the corporation of any amount of the purchase price of an improper purchase of shares, to have the corporation rescind such purchase of shares and recover for their benefit, but at their expense, the amount of such purchase price from any seller who sold such shares with knowledge of facts indicating that such purchase of shares by the corporation was not authorized by this act;

(c) upon payment to the corporation of the claim of any creditor by reason of a violation of paragraph 14A:6–12 (1)(c), to be subrogated to the rights of the corporation against shareholders who received an improper distribution of assets;

(d) upon payment to the corporation of the amount of any loan made improperly to a director or shareholder, to be subrogated to the rights of the corporation against a director or shareholder who received the improper loan.

(4) A director shall not be liable under this section if, in the circumstances, he discharged his duty to the corporation under section 14A:6–14.

(5) Every action against a director for recovery upon a liability imposed by subsection 14A:6–12(1) shall be commenced within six years next after the cause of any such action shall have accrued.

14A:6–13. Liability of Directors; Presumption of Assent to Action Taken at a Meeting.

A director of a corporation who is present at a meeting of its board, or any committee thereof of which he is a member at which action on any corporate matter referred to in section 14A:6–12 is taken shall be presumed to have concurred in the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before or promptly after the adjournment thereof. Such right to dissent shall not apply to a director who voted in favor of such action. A director who is absent from a meeting of the board, or any committee thereof of which he is a member at which any such action is taken shall be presumed to have concurred in the action unless he shall file his dissent with the secretary of the corporation within a reasonable time after learning of such action.

14A:6–14. Liability of Directors; Reliance on Corporate Records.

Directors and members of any committee designated by the board shall discharge their duties in good faith and with that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions. In discharging their duties, directors and members of any committee designated by the board shall not be liable if, acting in good faith, they rely upon the opinion of counsel for the corporation or upon written reports setting forth financial data concerning the corporation and prepared by an independent public accountant or certified public accountant or firm of such accountants or upon financial statements, books of account or reports of the corporation represented to them to be correct by the president, the officer of the corporation having charge of its books of account, or the person presiding at a meeting of the board.

14A:6–15. Officers.

(1) The officers of a corporation shall consist of a president, a secretary, a treasurer, and, if desired, a chairman of the board, one or more vice presidents, and such other officers as may be pre-

scribed by the by-laws. Unless otherwise provided in the by-laws, the officers shall be elected or appointed by the board.

(2) Any two or more offices may be held by the same person but no officer shall execute, acknowledge, or verify any instrument in more than one capacity if such instrument is required by law or by the by-laws to be executed, acknowledged, or verified by two or more officers.

(3) Any officer elected or appointed as herein provided shall hold office for the term for which he is so elected or appointed and until a successor is elected or appointed and has qualified, subject to earlier termination by removal or resignation.

(4) All officers of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the by-laws, or as may be determined by resolution of the board not inconsistent with the by-laws.

14A:6–16. Removal and Resignation of Officers; Filling of Vacancies.

(1) Any officer elected or appointed by the board may be removed by the board with or without cause. An officer elected by the shareholders may be removed, with or without cause, only by vote of the shareholders but his authority to act as an officer may be suspended by the board for cause. The removal of an officer without cause shall be without prejudice to his contract rights, if any. Election or appointment of an officer shall not of itself create contract rights.

(2) An officer may resign by written notice to the corporation. The resignation shall be effective upon receipt thereof by the corporation or at such subsequent time as shall be specified in the notice of resignation.

(3) Any vacancy occurring among the officers, however caused, shall be filled in the manner provided in the by-laws. In the absence of such provision, any vacancy shall be filled by the board.

14A:6–17. Bonds; Facsimile Signatures and Seals.

The seal of the corporation and any or all signatures of the officers or other agents of the corporation upon a bond and any coupon attached thereto may be facsimilies if the bond is countersigned by an officer or other agent of a trustee or other certifying or authenticating authority. In case any officer or other agent who has signed or whose facsimile signature has been placed upon

such bond or coupon shall have ceased to be such officer or agent before such bond is issued, it may be issued by the corporation with the same effect as if he were such officer or agent at the date of its issue.

CHAPTER 7

Shares and Dividends

Section

14A:7–1. Authorized Shares.

(1) Each corporation shall have power to create and issue the number of shares stated in its certificate of incorporation. Such shares may consist of one class or may be divided into two or more classes and any class may be divided into one or more series. Each

class and series may have such designation and such relative voting, dividend, liquidation and other rights, preferences, and limitations as shall be stated in the certificate of incorporation, except that all shares of the same class shall be either without par value or shall have the same par value. Each class and series shall be designated so as to distinguish its shares from those of every other class and series.

(2) In particular, and without limitation upon the general power granted by subsection 14A:7–1(1), a corporation, when so authorized in its certificate of incorporation, may issue classes of shares and series of shares of any class

(a) entitling the holders thereof to cumulative, non-cumulative or partially cumulative dividends;

(b) entitling the holders thereof to receive dividends payable on a parity with or in preference to the dividends payable on any other class or series;

(c) entitling the holders thereof to preferential rights upon the liquidation of, or upon any distribution of the assets of, the corporation;

(d) convertible as provided in section 14A:7–9;

(e) redeemable as provided in section 14A:7–6;

(f) lacking voting rights or having limited voting rights or enjoying special or multiple voting rights.

14A:7–2. Issuance of Shares in Classes and Series; Board Action.

(1) The division of shares into classes and into series within any class or classes, the determination of the designation and the number of shares of any class or series, the determination of the relative rights, preferences and limitations of the shares of any class or series, and any or all of such divisions and determinations, may be accomplished by the original certificate of incorporation or may be accomplished by an amendment or amendments thereto. Such an amendment may be made by any procedure to amend the certificate of incorporation provided for in Chapter 9 of this act or as provided in subsection 14A:7–2(2).

(2) Such an amendment may be made by action of the board if the certificate of incorporation authorizes the board to take such action. Unless otherwise provided in the certificate of incorporation, authority granted to the board to determine the number of shares of any class or series shall be deemed to include the power to increase the number of shares of such class or series previously

determined by it, and to decrease such previously determined number of shares to a number not less than that of the shares then outstanding. Upon any such decrease, the affected shares shall continue as part of the authorized shares and shall have such designation and such relative rights, preferences and limitations as they had before the board first acted to include them in such class or series. Unless otherwise provided in the certificate of incorporation, authority granted to the board to determine the relative rights and preferences of any class or series shall be deemed to include the power to determine relative rights and preferences which are prior or subordinate to, or equal with, the shares of any other class or series, whether or not such other shares are issued and outstanding at the time when the board acts to determine such relative rights and preferences. The certificate of incorporation may authorize the board to change the designation or number of shares, or the relative rights, preferences and limitations of the shares, of any theretofore established class or series no shares of which have been issued.

(3) Whenever the board acts under subsection 14A:7–2(2) it shall adopt a resolution setting forth its actions and stating the designation and number of shares, and the relative rights, preferences and limitations of the shares, of each class and series thereby created or with respect to which it has made a determination or change.

(4) Before the issue of any shares of a class or series with respect to which the board has acted under subsection 14A:7–2(2), the corporation shall execute and file in the office of the Secretary of State a certificate of amendment to the certificate of incorporation setting forth

(a) the name of the corporation;

(b) a copy of the resolution of the board required by subsection 14A:7–2(3);

(c) that such resolution was duly adopted by the board and the date of such adoption; and

(d) that the certificate of incorporation is amended so that the designation and number of shares of each class and series acted upon in the resolution, and the relative rights, preferences and limitations of each such class and series, are as stated in the resolution.

14A:7–3. Subscriptions for Shares.

(1) Unless otherwise provided by the subscription agreement or unless all of the subscribers consent to the revocation of such

subscription, a subscription for shares of a corporation to be formed shall be irrevocable for a period of 6 months if no certificate of incorporation shall be filed within such period. If the certificate of incorporation is filed within such period, or if it is filed at any later time before revocation, such subscription shall also be irrevocable until 60 days after the filing of the certificate of incorporation. Subscriptions for shares, whether made before or after the organization of a corporation, shall be accepted or rejected by the board, unless the certificate of incorporation or the by-laws require action by the shareholders.

(2) A subscription agreement, whether made before or after the formation of a corporation, shall not be enforceable unless it satisfies the requirements provided in N. J. S. § 12A:8–319 with respect to a contract for the sale of securities.

(3) Unless otherwise provided by the subscription agreement

(a) the subscriber shall not become a holder of any shares for which the full consideration to be received by the corporation has not been paid;

(b) any payment made by the subscriber, in accordance with the subscription agreement or as called for by the board, shall be applied to pay the full consideration to be received by the corporation for as many whole shares as possible and any remaining balance of such payment shall be applied as part payment of a share;

(c) a share certificate shall be registered in the name of the subscriber for the number of shares so paid for in full; and

(d) the corporation shall be entitled to retain such share certificate as security for the performance by the subscriber of his obligations under the subscription agreement and subject to the power of sale or rescission upon default provided in paragraphs 14A:7–3(5)(b) and 14A:7–3(5)(c).

(4) Unless otherwise provided by the subscription agreement

(a) subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board;

(b) any call made by the board for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be;

(c) all such calls for payments on subscriptions shall be upon 30 days' notice thereof and of the time and place of payment,

which notice shall be given personally or by registered or certified mail.

(5) In the event of default in the payment of any installment or call or other amount due under the terms of the subscription agreement, including any amount which may become due as a result of a default in the performance of any provision thereof, the corporation shall have the following rights and duties:

(a) It may proceed to collect the amount due in the same manner as any other debt owing to it. At any time before full satisfaction of the claim or any judgment therefor, it may proceed as provided in paragraph 14A:7–3(5)(b).

(b) It may sell the shares in any reasonable manner. Notice of the time and place of any public sale or of the time after which any private sale may be had, together with a statement of the amount due upon each share, shall be given in writing to the subscriber personally or by registered or certified mail at least 20 days before any such time stated in the notice. Unless otherwise provided in the subscription agreement, the corporation may not be the purchaser at any sale. Any excess of net proceeds realized over the amount due plus interest shall be paid over to the subscriber. If the sale is made in good faith, in a reasonable manner and upon the notice required by this paragraph, the corporation may recover the difference between the amount due plus interest and the net proceeds of the sale. A good faith purchaser for value shall acquire title to the sold shares free of any rights of the subscriber even though the corporation fails to comply with one or more of the requirements of this subsection.

(c) It may rescind the subscription, with the effect provided in subsection 14A:7–3(6), and may recover damages for breach of contract. Unless special circumstances show proximate damages of a different amount, the measure of damages shall be the difference between the market price at the time and place for tender of the shares and the unpaid contract price. Liquidated damages may be provided for in the subscription agreement in an amount which is reasonable under the circumstances, including the difficulties of proof of loss. The subscriber shall be entitled to restitution of any amount by which the sum of his payments exceeds the corporation's damages for breach of contract, whether fixed by agreement or judgment.

The rights and duties set forth in subsection 14A:7–3(5) shall be interpreted as cumulative so far as is consistent with the purpose

of entitling the corporation to a full and single recovery of the amount due or its damages. The subscription agreement may limit the rights and remedies of the corporation set forth in subsection 14A:7–3(5), and may add to them so far as is consistent with the preceding sentence.

(6) The rescission by the corporation of a subscription under which a portion of the shares subscribed for have been issued and in which the corporation retains a security interest, as provided in subsection 14A:7–3(3), shall effect the cancellation of such shares.

(7) A contract made with a corporation to purchase its shares, whether shares to be issued or treasury shares, is a subscription agreement and not an executory contract to purchase shares, unless otherwise provided in the agreement.

14A:7–4. Consideration for Shares.

(1) Shares having a par value may be issued for such consideration, not less than the par value thereof, as shall be fixed from time to time by the board.

(2) Shares without par value may be issued for such consideration as may be fixed from time to time by the board unless the certificate of incorporation reserves to the shareholders the right to fix the consideration. If such right is reserved as to any shares, the shareholders shall either fix the consideration to be received for such shares or authorize the board to fix such consideration.

(3) Unless otherwise provided in the certificate of incorporation, treasury shares may be disposed of by the corporation for such consideration as may be fixed from time to time by the board.

(4) That part of the surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be the consideration for the issuance of such shares.

(5) Upon a conversion of shares or of convertible bonds, or upon an exchange of shares with or without par value for the same or a different number of shares with or without par value, whether of the same or different class or series, the consideration for the shares so issued in exchange or conversion shall be

(a) the stated capital then represented by the shares so exchanged or converted, or, in the case of convertible bonds, the principal sum of and the accrued interest on the convertible bonds;

(b) any stated capital not theretofore allocated to any designated class or series of shares which is thereupon allocated to the new shares;

(c) that part of surplus, if any, transferred to stated capital upon the issuance of shares for the shares or bonds so exchanged or converted; and

(d) any additional consideration paid to the corporation upon the issuance of shares for the shares or bonds so exchanged or converted.

(6) In the absence of fraud in the transaction, the judgment of the board or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

14A:7–5. Payment for Shares.

(1) Subject to any restrictions contained in the certificate of incorporation, the consideration for the issuance of shares may be paid, in whole or in part, in money, in real property, in tangible or intangible personal property, including stock of another corporation, or in labor or services actually performed for the corporation or in its formation. Neither obligations of the subscriber nor any future services shall constitute payment or part payment for shares of the corporation.

(2) When payment of the full consideration for which shares are to be issued is received by the corporation, the subscriber shall thereupon become entitled to all the rights and privileges of a holder of such shares, including the registration in his name of a certificate representing them, and such shares shall be fully paid and nonassessable.

14A:7–6. Redeemable Shares.

(1) A corporation may provide in its certificate of incorporation for one or more classes or series of shares which are redeemable, in whole or in part, at the option of the corporation in cash, its bonds or other property, at such price or prices, within such period or periods, and under such conditions as are stated in the certificate of incorporation. If so provided in its certificate of incorporation, a corporation may create a sinking fund for the redemption of any class or classes of redeemable shares.

(2) A corporation which is an open-end investment company, as defined in an Act of Congress entitled "Investment Company Act of 1940," as amended or supplemented, or any act adopted in substitution therefor, may, if its certificate of incorporation so provides and upon compliance with that act, issue shares which are redeemable at the option of the holder at a price approximately equal to the shares' proportionate interest in the net assets of the

corporation, and a shareholder may compel redemption of such shares in accordance with their terms.

(3) A corporation may provide, in its original certificate of incorporation or by an amendment approved by unanimous vote of the shareholders, for one or more classes or series of shares which are redeemable, in whole or in part, at the option of the shareholder. Subject to the restrictions imposed by section 14A:7–16, such shares may be redeemable in cash, bonds of the corporation or other property, at such price or prices, within such period or periods and under such conditions as are stated in the certificate of incorporation, and such shares may also be redeemable at the option of the corporation, as provided in subsection 14A:7–6(1). The certificate of incorporation may be amended to delete or change a provision for shares redeemable at the option of the shareholder only with the unanimous approval of the holders of such shares. A provision for shares redeemable at the option of the shareholder shall become invalid when the number of holders of such shares, other than directors, officers, employees and the spouses of such persons, shall become 25 or more. For the purposes of the preceding sentence, shares which are held in joint or common tenancy or by the entireties shall be counted as held by one holder. The provisions of this subsection shall not be applicable to an open-end investment company.

(4) If a provision for shares redeemable at the option of the holder shall have become invalid as provided in the last sentence of subsection 14A:7–6(3), the board shall amend the certificate of incorporation to delete such provision by filing a certificate of amendment in the office of the Secretary of State. The certificate shall be executed on behalf of the corporation and shall set forth

(a) the name of the corporation;

(b) the date of adoption of the amendment;

(c) the deleted provision; and

(d) that the provision for shares redeemable at the option of the holder has become invalid because the number of holders of such shares, other than directors, officers, employees and the spouses of such persons, has become 25 or more.

The corporation shall thereupon give written notice of such invalidity to each holder of shares which have ceased to be redeemable at the option of the holder.

14A:7–7. Share Rights and Options.

(1) Subject to any provisions in respect thereof set forth in its certificate of incorporation, a corporation may create and issue,

whether or not in connection with the issuance and sale of any of its shares or bonds, rights or options entitling the holders thereof to purchase from the corporation shares of any class or series for such consideration and upon such terms and conditions as may be fixed by the board. The shares to be purchased upon the exercise of any such right or option may be authorized but unissued shares, treasury shares or shares to be purchased or acquired by the corporation for the purpose. Such rights or options shall be evidenced in such manner as the board shall approve and, without limiting the generality of the foregoing, may be evidenced by warrants attached to or forming part of bond instruments or share certificates or existing independently thereof. The instruments evidencing such rights or options shall set forth or incorporate by reference the terms and conditions of their exercise, including the time or times, which may be limited or unlimited in duration, within which, and the price or prices at which such shares may be purchased from the corporation, and any limitations on the transferability of any such right or option. The consideration for shares to be purchased upon the exercise of any such right or option shall comply with the requirements of sections 14A:7–4 and 14A:7–5. In the absence of fraud in the transaction, the judgment of the board as to the adequacy of the consideration received for such rights or options shall be conclusive.

(2) If such rights or options are to be issued to directors, officers or employees as such of the corporation or of any subsidiary thereof, or to their families, dependents or beneficiaries, pursuant to a plan, the provisions of Chapter 8 of this act govern their issuance. Without a plan, a corporation may also issue such rights or options to any such person, as an incentive to service or continued service of any such director, officer or employee, provided that no such director, officer or employee, together with his dependents and beneficiaries, shall receive in the aggregate rights and options entitling him to more than 1% of each class of shares of the corporation except with shareholder approval.

14A:7–8. Determination of Amount of Stated Capital.

(1) The consideration received by a corporation upon the issuance of shares having a par value shall constitute stated capital to the extent of the par value and the excess, if any, shall constitute capital surplus.

(2) The consideration received by a corporation upon the issuance of shares without par value shall constitute stated capital unless, at the time of or within 60 days after the issuance of such

shares, the board shall allocate a portion of such consideration to capital surplus. No such allocation shall be made of any portion of the consideration for the issue of shares without par value which is fixed by the shareholders pursuant to a right reserved in the certificate of incorporation, unless such allocation is authorized by a vote of the shareholders, nor shall such allocation be made contrary to any restrictions contained in the certificate of incorporation.

(3) If shares have been or shall be issued by a corporation in merger or consolidation or in acquisition of all or substantially all of the outstanding shares or of the property and assets of another corporation, whether domestic or foreign, any amount that would otherwise constitute capital surplus under the foregoing provisions of this section may instead be allocated to earned surplus by the board of the issuing corporation except that its aggregate earned surplus shall not exceed the sum of the earned surpluses of the issuing corporation and of all other corporations, domestic or foreign, that were merged or consolidated or of which the shares or assets were acquired.

(4) The stated capital of a corporation may be increased from time to time by resolution of the board directing that all or a part of the surplus of the corporation be transferred to stated capital. The board may direct that the amount so transferred shall be stated capital in respect to any designated class or series of shares.

14A:7–9. Convertible Shares and Bonds.

(1) When so provided in its certificate of incorporation, a corporation may issue shares of any class or series convertible, at the option of the holder or of the corporation or both, into shares of any other class or classes or of any series of the same or any other class or classes.

(2) Unless otherwise provided in its certificate of incorporation, a corporation may issue bonds convertible, at the option of the holder or of the corporation or both, into shares of any class or classes or of any series of any class or classes, upon such terms and conditions as may be fixed by the board. The bond instrument shall set forth or incorporate by reference the terms and conditions of the conversion privilege.

(3) No issue of shares or bonds convertible into shares of the corporation shall be made unless a sufficient number of shares of the appropriate class or classes or series, either authorized but unissued or treasury shares, are reserved by the board to be issued

or disposed of only in satisfaction of the conversion privileges of the convertible shares or bonds being issued.

(4) If there is shareholder approval of the issue of shares or bonds convertible into shares of the corporation, such approval may provide that the board is authorized upon such issue to increase the authorized shares of any class or series to such number as will be not more than sufficient, when added to the previously authorized but unissued shares of such class or series, to satisfy the conversion privileges of the convertible shares or bonds being issued. The board, when so authorized, may increase the authorized shares of the corporation by filing a certificate of amendment to the certificate of incorporation. The certificate shall be executed on behalf of the corporation and shall set forth

(a) the name of the corporation;

(b) the date of adoption of the amendment;

(c) the amendment so adopted;

(d) that the amendment is made pursuant to authority granted by the shareholders in connection with shareholder approval of the issue of shares or bonds of the corporation convertible into the shares being authorized by the amendment; and

(e) the designation of the convertible shares or bonds and the date of such shareholder approval.

(5) If, upon the conversion of shares, the stated capital represented by the shares being converted is greater than the amount of stated capital required by the provisions of subsections 14A:7–8(1) and 14A:7–8(2) to be represented by the shares being issued, a reduction of stated capital by all or any part of such excess may be accomplished at any time thereafter by the procedure set forth in section 14A:7–19. Subsection 14A:7–19(3) shall not limit the power of the board to make such reduction of stated capital.

(6) No privilege of conversion shall be confered upon, or altered in respect to, any shares or bonds which would result in the receipt by the corporation, upon the exercise of such privilege, of less than the minimum consideration for which the new shares may lawfully be issued, except that a privilege of conversion may provide for adjustments of the conversion rate or price as required to maintain the value of the privilege unimpaired by changes in the capital structure of the corporation occurring after the issue of such convertible shares or bonds.

(7) When bonds have been converted, they shall be cancelled and not reissued. The disposition of converted shares is provided for in section 14A:7–18.

14A:7–10. Expenses of Organization, Reorganization and Financing.

The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares assessable or not fully paid.

14A:7–11. Certificates Representing Shares.

(1) The shares of a corporation shall be represented by certificates signed by, or in the name of the corporation by, the chairman or vice-chairman of the board, or the president or a vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the corporation and may be sealed with the seal of the corporation or a facsimile thereof. If the certificate is countersigned by a transfer agent or registrar, who is not an officer or employee of the corporation, any and all other signatures may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the date of its issue.

(2) Every share certificate delivered after the effective date of this act by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate, a full statement

(a) of the designations, relative rights, preferences and limitations of the shares of each class and series authorized to be issued, so far as the same have been determined, and

(b) of the authority of the board to divide the shares into classes or series and to determine and change the relative rights, preferences and limitations of any class or series, or

shall set forth that the corporation will furnish to any shareholder, upon request and without charge, such a full statement.

(3) Each certificate representing shares shall state upon the face thereof

(a) that the corporation is organized under the laws of this State;

(b) the name of the person to whom issued; and

(c) the number and class of shares, and the designation of the series, if any, which such certificate represents.

(4) No certificate shall be issued for any share until such share is fully paid, except as provided in section 14A:8–3.

14A:7–12. Transfer of Shares and Restrictions on Transfer.

(1) The shares of a corporation shall be personal property and shall be transferable in accordance with the provisions of Chapter 8 of the Uniform Commercial Code (N.J.S. 12A:8–101 et seq.), as amended from time to time, except as otherwise provided in this act.

(2) Any reasonable restriction on the transfer or registration of transfer of shares, or other securities having conversion or option rights, may be enforced against the holder of the restricted securities and any successor or transferee of the holder, including any fiduciary entrusted with responsibility for the person or property of the holder. Such restriction shall be valid only if imposed by the certificate of incorporation or by-laws or by the provisions of an employee benefit plan permitted by Chapter 8 of this act, or by a written agreement among any number of shareholders or among such holders and the corporation. No restriction shall be valid with respect to any securities issued prior to the imposition of the restriction unless their holders shall have voted in favor of the imposition of the restriction or are parties to the agreement imposing it. Unless noted conspicuously on the security, a restriction shall not be valid against a person who becomes the holder of the security without actual knowledge of the restriction.

(3) In particular and without limitation of the generality of the power granted by subsection 14A:7–12(2) to impose restrictions, a restriction on the transfer or registration of transfer of shares, or other securities having conversion or option rights, may be enforced as provided in subsection 14A:7–12(2), if it:

(a) obligates the holder of the restricted securities to offer to the corporation or to any other holders of securities 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;

(b) 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;

(c) requires the corporation or the holders of any class or series 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;

(d) prohibits the transfer of the restricted securities to designated persons or classes of persons, and such designation is not manifestly unreasonable; or

(e) exists for the purpose of maintaining the status of the corporation as an electing small business corporation under subchapter S of the United States Internal Revenue Code.

(4) If a restriction on transfer of shares or other securities having conversion or option rights is held not to be authorized by the law of this State, the corporation shall nevertheless have an option for a period of 30 days after the judgment setting aside the restriction becomes final, to acquire the restricted securities at a price to be agreed upon by the parties, or if no agreement is reached as to price, then at their fair value as determined by any court having jurisdiction. In order to determine fair value, the court may appoint an appraiser to receive evidence and report to the court his findings and recommendations as to fair value. The appraiser shall have such powers and shall proceed so far as applicable, in the same manner as an appraiser appointed under section 14A:11–8.

14A:7–13. Issuance of Fractional Shares or Scrip.

Unless otherwise provided in its certificate of incorporation, a corporation may, but shall not be obliged to issue fractions of a share and certificates therefor on original issue or otherwise when necessary to effect share transfers, dividends, distributions, exchanges or reclassifications, or to effect mergers, consolidations or reorganizations. By action of its board, a corporation may, in lieu of issuing fractional shares, pay cash equal to the value of such fractional share, or issue scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip aggregating a full share. A certificate for a fractional share shall entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any distribution of assets of the corporation in the event of liquidation, but scrip shall not entitle the holder to exercise such voting

rights, receive dividends or participate in any such distribution of assets unless such scrip shall so provide. All scrip shall be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares before a specified date. If such scrip is not so exchanged, the corporation shall either sell the shares for which such scrip was exchangeable and distribute the proceeds thereof pro rata to the holders of such scrip, or pay, pro rata, to the holders of such scrip the market value of the shares for which such scrip was exchangeable as of the day when such scrip became void.

14A:7–14. Dividends or Other Distributions in Cash or Property.

(1) A corporation may, from time to time, by action of its board, declare and pay dividends or make other distributions on its outstanding shares in cash or in its bonds or other property, including the shares or bonds of other corporations, except when the corporation is insolvent or would thereby be made insolvent, or when the payment or distribution would be contrary to any restrictions contained in the certificate of incorporation. Unless the certificate of incorporation otherwise provides, such payments or distributions may be made whether or not the net assets remaining after the transaction are less than the aggregate amount of the preferences of outstanding shares in the assets of the corporation upon liquidation.

(2) Dividends may be declared or paid and other distributions may be made out of surplus only, except in dissolution and except that a corporation engaged in the exploitation of natural resources or other wasting assets, including patents and other term rights, or formed primarily for the liquidation of specific assets, may declare and pay dividends or make other distributions in excess of its surplus to the extent that the cost of the wasting or specific assets has been recovered by depletion reserves, amortization or sale.

14A:7–15. Share Dividends.

(1) Subject to any restrictions contained in the certificate of incorporation, a corporation may, from time to time, by resolution of its board, pay dividends in its own shares, as provided in this section.

(2) Such dividends may be paid in authorized but unissued shares out of surplus upon the following conditions

(a) if a dividend is payable in shares having a par value, such shares shall be issued at not less than the par value thereof and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus at least equal to the aggregate par value of the shares to be issued as a dividend;

(b) if a dividend is payable in shares without par value, the amount of stated capital to be represented by each share shall be fixed by the board by resolution adopted at the time such dividend is declared, unless the certificate of incorporation reserves to the shareholders the right to fix the consideration for the issue of such shares, and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate stated capital represented by such shares.

(3) Such dividends may be paid in treasury shares, in which event no transfer from surplus to capital need be made.

(4) A corporation paying a dividend in authorized but unissued shares to the holders of any class or series of outstanding shares may at its option make an equivalent distribution on treasury shares of the same class or series and any shares so distributed shall be treasury shares.

(5) Unless the certificate of incorporation otherwise provides, a dividend may be paid in shares having a preference in the assets of the corporation upon liquidation, whether or not the net assets remaining after such payment are less than the aggregate amount of such preferences of such outstanding shares.

(6) A split-up or division of the issued shares of any class or series into a greater number of shares of the same class or series without increasing the stated capital of the corporation shall not be construed to be a share dividend within the meaning of this section.

14A:7–16. Right of a Corporation to Acquire and Dispose of Its Own Shares.

(1) A corporation shall have the right to purchase or otherwise acquire, and to sell, create a security interest in, or otherwise dispose of its own shares, but purchases of its own shares, whether direct or indirect, shall be made only out of surplus, except as provided in subsections 14A:7–16(2), 14A:7–16(3) and 14A:7–16(4).

(2) A corporation may purchase its own shares out of stated capital for the purpose of

(a) eliminating fractional shares;

(b) collecting or compromising indebtedness to the corporation; or

(c) paying dissenting shareholders entitled to payment for their shares under the provisions of this act.

(3) A corporation may redeem or purchase its redeemable shares out of stated capital, except when after such redemption or purchase net assets would be less than the stated capital remaining after giving effect to the cancellation of such shares.

(4) A corporation may purchase its nonredeemable shares out of stated capital, if such shares have a preference over the shares of any other class or series in the payment of dividends or in the distribution of the assets upon liquidation, except when after such purchase net assets would be less than the stated capital remaining after giving effect to the cancellation of such shares.

(5) No purchase or redemption of its own shares shall be made by a corporation

(a) contrary to any restrictions contained in the certificate of incorporation;

(b) at a time when the corporation is insolvent or when such purchase or redemption would render the corporation insolvent;

(c) unless after such purchase or redemption there remain outstanding one or more classes or series of shares possessing, among them collectively, voting rights and unlimited residual rights as to dividends and distribution of assets on liquidation; or

(d) in the case of redeemable shares and within the period of their redeemability, at a price greater than the applicable redemption price plus, in the case of shares entitled to cumulative dividends, the dividends which would have accrued to the next dividend date following the date of purchase or redemption.

(6) A corporation which has purchased its own shares out of surplus may defer payment for such shares over such period as may be agreed between it and the selling shareholder. The obligation so created shall constitute an ordinary debt of the corporation and the validity of any payment made upon the debt so created shall not be affected by the absence of surplus at the time of such payment.

(7) Unless the certificate of incorporation otherwise provides, a corporation may purchase or redeem its shares whether or not the assets remaining after the transaction are less than the aggregate amount of the preferences of outstanding shares in the assets of the corporation upon liquidation.

14A:7–17. Disclosure to Shareholders Upon Certain Distributions or Earned Surplus Transactions.

(1) Every dividend or other distribution from a source in whole or in part other than earned surplus, and every share dividend or other distribution of shares of the corporation shall be accompanied by a written notice disclosing the amounts by which such dividend or distribution affects stated capital, capital surplus and earned surplus, or, if such amounts are not determinable at the time of such notice, disclosing the approximate effect of such dividend or distribution upon stated capital, capital surplus and earned surplus and stating that such amounts are not yet determinable.

(2) A corporation which applies any part or all of its capital surplus to the reduction or elimination of any deficit in its earned surplus, as permitted by subsection 14A:7–20(3), shall disclose such application in each financial statement covering the period in which such application is made that is furnished by the corporation to any of its shareholders, and in any event to all its shareholders within 6 months of the date of such application.

(3) Failure of the corporation to comply in good faith with the provisions of this section shall make it liable for any damage sustained by any shareholder in consequence thereof.

14A:7–18. Cancellation of Reacquired Shares.

(1) When shares of a corporation are reacquired out of stated capital or by their conversion into other shares of the corporation, the reacquisition shall effect their cancellation. When shares of a corporation are otherwise reacquired by it, the corporation may retain them as treasury shares or may cancel them by resolution of the board. In all cases of cancellation, except that of converted shares, a statement of cancellation shall be filed as provided in this section. Upon their cancellation, reacquired shares shall be restored to the status of authorized but unissued shares, unless the certificate of incorporation, or the plan of merger or consolidation in the case of shares acquired by the corporation pursuant to Chapter 11 of this act, provides that such shares shall not be reissued, in which case the filing of the statement of cancellation, pursuant to a resolution of the board, shall constitute an amendment to the certificate of incorporation and shall reduce the authorized number of shares by the number of shares so cancelled.

(2) The statement of cancellation shall be executed on behalf of the corporation and filed in the office of the Secretary of State

not later than 30 days after the cancellation of the reacquired shares. The statement shall set forth:

(a) the name of the corporation;

(b) the number of shares cancelled, itemized by classes and series, and if cancelled shares were not reacquired out of stated capital or by their conversion into other shares of the corporation, the date of adoption of the resolution of the board cancelling such shares;

(c) the aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation;

(d) the amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation;

(e) if the certificate of incorporation, or the plan of merger or consolidation in the case of shares acquired by the corporation pursuant to Chapter 11 of this act, provides that the cancelled shares shall not be reissued

(i) that the certificate of incorporation is amended pursuant to a resolution of the board by decreasing the aggregate number of shares which the corporation is authorized to issue by the number of shares cancelled, and

(ii) the number of shares which the corporation has authority to issue, itemized by classes and series, after giving effect to such cancellation; and

(f) if shareholder approval is required by subsection 14A:7–18(3) for a reduction of the stated capital of the corporation, a statement of the date of approval by the shareholders, the number of shares outstanding, the number of shares entitled to vote thereon, and the number of shares voted for and against the reduction of the stated capital, respectively; and, if any class or series of shares is entitled to vote thereon as a class, a separate statement of such facts for each class and series entitled to vote separately.

(3) Except as otherwise provided in this subsection, upon the cancellation of reacquired shares the stated capital of the corporation shall be reduced by the amount represented by such shares before their cancellation. In the case of shares without par value for whose issue the consideration was fixed by the shareholders, as provided in subsection 14A:7–4(2), if such shares are not redeemable and are not preferred over the shares of any other class or series in the payment of dividends or in the distribution of assets upon liquidation and have not been reacquired for any of the purposes set forth in subsection 14A:7–16(2), their cancella-

tion shall cause a reduction of the stated capital only to the extent, if any, that the stated capital represented by such shares exceeded the minimum amount required, as provided in subsection 14A:7–8 (2), unless such further reduction has been approved by a vote of the shareholders or is authorized by the certificate of incorporation. This subsection shall not be applicable to converted shares.

(4) A statement of cancellation of converted shares shall be filed only if the certificate of incorporation provides that such shares shall not be reissued. The statement of cancellation shall set forth the information required by paragraphs 14A:7–18(2)(a), (b), (c) and (e).

(5) Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this act.

14A:7–19. Reduction of Stated Capital by Board Action.

(1) Unless otherwise provided in the certificate of incorporation and subject to the provisions of subsections 14A:7–19(3), 14A:7–19 (4) and 14A:7–19(5), a reduction of the stated capital of a corporation, where such reduction is not accompanied by any action requiring an amendment of the certificate of incorporation and not accompanied by a cancellation of shares, may be made by resolution of the board setting forth the amount of the proposed reduction, the manner in which the reduction shall be effected and the date upon which the reduction shall become effective.

(2) A statement of such reduction shall be executed on behalf of the corporation and filed in the office of the Secretary of State not later than 30 days after the effective date of the reduction. Such statement shall set forth

(a) the name of the corporation;

(b) a statement of the amount of the reduction, the manner in which such reduction is effected, and the amount, expressed in dollars, of stated capital of the corporation after giving effect to such reduction; and

(c) if shareholder approval is required for a reduction of the stated capital of the corporation, a statement of the date of approval by the shareholders, the number of shares outstanding, the number of shares entitled to vote thereon, and the number of shares voted for and against the reduction of the stated capital, respectively; and, if any class or series of shares is entitled to vote thereon as a class, a separate statement of such facts for each class and series entitled to vote separately.

(3) Unless the certificate of incorporation otherwise provides, the board shall have discretion to reduce the stated capital of shares under this section whether or not the stated capital after such reduction is at least equal to the aggregate amount of the preferences of issued shares in the assets of the corporation upon liquidation plus the aggregate amount of the par value of all other issued shares with par value.

(4) If the consideration for the issue of shares without par value was fixed by the shareholders under subsection 14A:7–4(2), the board shall not reduce the stated capital represented by such shares except to the extent, if any, that the board was authorized by the shareholders to allocate a portion of such consideration to surplus, as provided in subsection 14A:7–8(2), unless such further reduction has been approved by a vote of the shareholders or is authorized by the certificate of incorporation.

(5) Stated capital which remains in existence, because of the applicability of the second sentence of subsection 14A:7–18(3), after the cancellation of the shares which formerly represented it, shall not be reduced by the board unless such reduction has been approved by a vote of the shareholders or is authorized by the certificate of incorporation.

14A:7–20. Special Provisions Relating to Surplus.

(1) The surplus, if any, created by or arising out of a reduction of the stated capital of a corporation, or a revaluation to reflect unrealized appreciation of its assets, shall be capital surplus. Upon the realization of any such increase in value, the board may, by resolution, transfer from capital surplus to earned surplus the amount realized. When a corporation has applied its earned surplus to the acquisition of treasury shares and such shares are subsequently disposed of for a consideration, the corporation may, at its option, restore to earned surplus, out of the consideration received, all or part of the amount by which earned surplus was reduced at the time of acquisition of such shares. If the consideration received exceeds the amount by which earned surplus was reduced with respect to such shares, the excess shall be capital surplus. When treasury shares are used to satisfy the exercise of conversion privileges, if the stated capital formerly represented by the converted shares is reduced in accordance with the provisions of section 14A:7–19, the surplus so produced may be restored to earned surplus as provided in this subsection, as if it were consideration for the disposition of the treasury shares.

(2) The capital surplus of a corporation may be increased from time to time by resolution of the board directing that all or a part of the earned surplus of the corporation be transferred to capital surplus.

(3) A corporation may, by resolution of its board, apply any part or all of its capital surplus to the reduction or elimination of any deficit in the earned surplus account.

(4) The board of any corporation formed before the effective date of this act may determine the amount of the corporation's earned surplus before the declaration of the first dividend after the effective date of this act, and such determination if made in good faith shall be conclusive.

CHAPTER 8

Beneficial Provisions for Employees

Section

14A:8–1. Employee Benefit Plans.

(1) A corporation may, in the manner prescribed in section 14A:8–2, establish and carry out wholly or partly at its expense, any one or more of the following plans for the benefit of some or all employees of the corporation or any subsidiary thereof and their families, dependents or beneficiaries

(a) plans providing for the sale or distribution of its shares of any class or series, held by it or issued or purchased by it for the purpose, including stock option, stock purchase, stock bonus, profit-sharing, savings, pension, retirement, deferred compensation and other plans of similar nature, whether or not such plans also provide for the distribution of cash or property other than its shares;

(b) plans providing for payments solely in cash or property other than shares of the corporation, including profit-sharing, bonus, savings, pension, retirement, deferred compensation and other plans of similar nature; and

(c) plans for the furnishing of medical services; life, sickness, accident, disability or unemployment insurance or benefits; education; housing; social and recreational services; and other similar aids and services.

(2) The term "employees" as used in this Chapter means employees, officers and directors, including any who have retired, become disabled or died prior to the establishment of any plan heretofore or hereafter adopted.

14A:8–2. Formulation of Plans; Submission to Shareholders in Certain Instances.

The board alone, by affirmative vote of a majority of directors in office, may adopt any plan described in section 14A:8–1 and may include such provisions therein as the board may deem advisable; provided that the approval of the shareholders shall be required for the adoption of any plan which permits the use or issuance of treasury shares or authorized but unissued shares, and shall also be required for the adoption of any other plan if the certificate of incorporation or the by-laws so provide.

14A:8–3. Terms of Plan; Issuance of Certificates.

The approval by the shareholders of a plan for the issue of rights or options to employees shall include approval of the terms and conditions upon which such rights or options are to be issued, such as, but without limitation thereto, any restrictions upon the administration of the plan, the terms and conditions of payment for shares in full or in installments, the issue of certificates for shares to be paid for in installments, any limitations upon the transferability of such shares and the voting and dividend rights to which the holders of such shares may be entitled, though the full amount of the consideration therefor has not been paid; provided that no certificate for shares shall be delivered under the plan, prior to full payment in cash, property or services therefor, unless the fact that the shares are partly paid for is noted conspicuously on the face of such certificate, or such certificate is deposited with a trustee to be held pursuant to the terms of a plan or an appropriate agreement.

14A:8–4. Amendment or Termination of Plans.

Unless otherwise provided in the plan, the board may amend or terminate any plan described in section 14A:8–1 heretofore or hereafter adopted, provided that

(a) no such amendment or termination shall impair any rights which have accrued under the plan or deprive any employee or beneficiary of the employee of the equivalent in cash or other benefits of the contributions of the employee under the plan; and

(b) any amendment made by the board to a plan which was approved by the shareholders in accordance with section 14A:8–2, shall be submitted to the shareholders for approval, unless the board shall have determined that such amendment will not result in a material increase in the cost of the plan to the corporation; and

(c) any amendment made by the board to a plan which, under section 14A:8–2, did not initially require shareholder approval, shall require shareholder approval, if the effect of such amendment is to include in the plan a provision, which if originally included in the plan, would have required shareholder approval of the plan.

14A:8–5. Trust Funds for Employees; Creation; Maintenance and Administration.

Any domestic or foreign corporation which has adopted, or hereafter adopts, a plan described in section 14A:8–1 may establish one or more trust funds of the property contributed or held by any such corporation or any subsidiary thereof for the purposes of such plan. Any such trust fund may be held and administered by the corporation adopting such plan or by any trustee or trustees, within or without this State, appointed by the corporation for that purpose.

14A:8–6. Continuation of Trust; Law Against Perpetuities Inapplicable.

The period for which any such trust may be created and maintained may be as long as may be desirable for the complete administration of any such plan as originally adopted or thereafter amended, and no such trust or trust fund shall be subject to or held to be in violation of any principle of law, against perpetuities or restraints on alienation or perpetual accumulations or trusts.

CHAPTER 9

Amendments, Changes or Alterations

Section

14A:9–1. Amendment of Certificate of Incorporation.

(1) A corporation may amend its certificate of incorporation, from time to time, in any and as many respects as may be desired so long as the amendment contains only such provisions as might lawfully be contained in an original certificate of incorporation filed at the time of making such amendment.

(2) In particular, and without limitation upon the general power of amendment granted by subsection 14A:9–1(1), a corporation may amend its certificate of incorporation

(a) to change its corporate name;

(b) to enlarge, limit, or otherwise change its corporate purposes or powers;

(c) to change the duration of the corporation, or if such duration has expired but the corporation continues in business, to revive its existence for a limited or perpetual duration;

(d) to increase or decrease the aggregate number of shares, or shares of any class or series of any class, which the corporation has authority to issue;

(e) to increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued;

(f) to exchange, classify, reclassify or cancel all or any part of its shares, whether issued or unissued;

(g) to change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations and the relative rights in respect of all or any part of its shares, whether issued or unissued;

(h) to change shares having a par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value;

(i) to change the shares of any class or series, whether issued or unissued, and whether with or without par value, into a different number of shares of the same class or series or into the same or a different number of shares, either with or without par value, of other classes or series;

(j) to create new classes or series of shares having rights and preferences superior or inferior to, or equal with, the shares of any class or series then authorized, whether issued or unissued;

(k) to cancel or otherwise affect the right of the holders of the shares of any class or series to receive dividends which have accrued but have not been declared;

(l) to divide any class of shares, whether issued or unissued, into series and fix the designations of such series and the preferences, limitations and relative rights of the shares of such series;

(m) to authorize the board to divide authorized but unissued shares of any class into series and fix the designations and number of shares of such series and the preferences, limitations and relative rights of the shares of such series;

(n) to authorize the board to fix or change the designation or number of shares of, or preferences, limitations or relative rights of the shares of any theretofore established series the shares of which have not been issued;

(o) to revoke, diminish or enlarge the authority of the board to take any of the actions set forth in paragraphs 14A:9–1(2) (m) and 14A:9–1(2) (n);

(p) to limit, deny or grant to shareholders of any class the preemptive right to acquire additional or treasury shares of the corporation, whether then or thereafter authorized;

(q) to strike out, change or add any provision, not inconsistent with law, for the management of the business and the conduct of the affairs of the corporation, or creating, defining, limiting and regulating the powers of the corporation, its directors and shareholders or any class of shareholders, including any provision which under this act is required or permitted to be set forth in the by-laws.

(3) An amendment of the certificate of incorporation may, by resolution of the board, be accompanied by a reduction of stated capital. Such reduction shall not be part of the amendment, but

may be set forth in the certificate of amendment as provided in subsection 14A:9–4(4) and shall become effective as provided in subsection 14A:9–4(5).

14A:9–2. Procedure to Amend Certificate of Incorporation.

(1) Before the organization meeting of the board, the incorporators may amend the certificate of incorporation by complying with subsection 14A:9–4(1).

(2) Amendment of the certificate of incorporation by action of the board is provided for in subsection 14A:4–3(1), subsection 14A:5–21(4), subsection 14A:7–2(4), subsection 14A:7–6(4), subsection 14A:7–9(4), and subsections 14A:7–18(1) and 14A:7–18(4). Amendment of the certificate of incorporation by action of the registered agent to change the registered office is provided for in subsection 14A:4–3(3).

(3) An amendment of the certificate of incorporation pursuant to a plan of merger may be made in the manner provided in Chapter 10 of this act.

(4) All other amendments of the certificate of incorporation shall be made in the following manner:

(a) The board shall approve the proposed amendment and direct that it be submitted to a vote at a meeting of the shareholders.

(b) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this act for the giving of notice of meetings of shareholders.

(c) At such meeting a vote of shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of a majority of the votes cast by the holders of shares entitled to vote thereon and, in addition, if any class or series of shares is entitled to vote thereon as a class, the affirmative vote of a majority of the votes cast in each class vote; except that, in the case of a corporation organized prior to the effective date of this act, the proposed amendment shall be adopted upon receiving the affirmative vote of two-thirds of the votes so cast. The voting requirements of this section shall be subject to such greater requirements as are provided in this act for specific

amendments, or as may be provided in the certificate of incorporation.

(d) Subject to the provisions of section 14A:5–12, a corporation organized prior to the effective date of this act may adopt the majority voting requirements prescribed in paragraph 14A:9–2(4)(c) by amendment of its certificate of incorporation adopted by the affirmative vote of two-thirds of the votes cast by the holders of shares entitled to vote thereon.

(e) Any number of amendments may be acted upon at one meeting.

(f) Upon adoption, a certificate of amendment shall be filed in the office of the Secretary of State as provided in section 14A:9–4.

14A:9–3. Class Voting on Amendments.

(1) Except as otherwise provided in subsection 14A:9–3(4), and notwithstanding any provision in the certificate of incorporation, the holders of the outstanding shares of a class or series shall be entitled to vote as a class upon a proposed amendment, if the amendment would

(a) exclude or limit their right to vote on any matter, except as such right may be limited by voting rights given to new shares then being authorized of any existing or new class or series;

(b) limit or deny their existing preemptive rights;

(c) cancel or otherwise adversely affect dividends which have accrued but have not been declared on the shares held by them; or

(d) create, or authorize the board to create, a new class or series having, or convertible into shares having, rights or preferences prior or superior to those of the shares held by them, or increase such rights or preferences of any class or series.

(2) Except as otherwise provided in subsection 14A:9–3(4), and notwithstanding any provision in the certificate of incorporation, the holders of the outstanding shares of a class or series whose rights or preferences would be subordinated or otherwise adversely affected by a proposed amendment shall be entitled to vote as a class thereon, if the amendment would

(a) decrease the par value of their shares;

(b) effect a conversion, exchange or reclassification of their shares;

(c) effect a conversion or exchange, or create a right of conversion or exchange, of any shares of another class or series into shares of their class or series;

(d) change the designation, preferences, limitations or relative rights of their shares;

(e) change their shares into a different number of shares, or into the same number of shares of another class or series; or

(f) divide the shares of their class into series or determine the designation of any series in their class or determine any preferences, limitations or relative rights of any series in their class, or authorize the board to make any such division or to make or change any such determination.

(3) If any proposed amendment referred to in subsections 14A:9–3(1) and 14A:9–3(2) would subordinate or otherwise adversely affect the rights or preferences of the holders of shares of one or more series of any class, but not of the entire class, then only the holders of such series shall be entitled by this section to vote as a class upon such proposed amendment.

(4) This section shall not apply to amendments which may be made by board action without shareholder approval, as set forth in subsection 14A:9–2(2).

14A:9–4. Certificate of Amendment.

(1) If the amendment is made as provided by subsection 14A:9–2(1), a certificate of amendment shall, subject to subsection 14A:2–6(3), be signed by all the incorporators, shall set forth the name of the corporation and the amendment so adopted, and shall recite that the amendment is made by unanimous consent of the incorporators before the organization meeting of the directors.

(2) If the amendment is made by the board as referred to in subsection 14A:9–2(2), a certificate of amendment shall be executed on behalf of the corporation. The certificate shall set forth the information required by the section of this act which empowers the board to make the amendment.

(3) If the amendment is made as provided by subsection 14A:9–2(4), a certificate of amendment shall be executed on behalf of the corporation and shall set forth

(a) the name of the corporation;

(b) the amendment so adopted;

(c) the date of the adoption of the amendment by the shareholders;

(d) the number of shares outstanding, and the number of shares entitled to vote thereon, and if the shares of any class or series are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class or series;

(e) the number of shares voted for and against such amendment, respectively, and if the shares of any class or series are entitled to vote thereon as a class, the number of shares of each such class and series voted for and against such amendment, respectively;

(f) if such amendment is intended to provide for an exchange, reclassification or cancellation of issued shares, a statement of the manner in which the same shall be effected; and

(g) if, pursuant to subsection 14A:9–4(5), the amendment is to become effective at a time subsequent to the time of filing, the date when the amendment is to become effective.

(4) If such amendment is accompanied by a reduction of stated capital, the corporation may also include in the certificate, at its discretion, in lieu of a statement of reduction under section 14A:7–19, a statement of the amount of the reduction, the manner in which the reduction is effected, and the amount, expressed in dollars, of stated capital of the corporation after giving effect to the reduction.

(5) Each certificate of amendment of the certificate of incorporation shall be filed in the office of the Secretary of State and the amendment shall become effective upon the date of filing or at such later time, not to exceed 30 days from the date of filing, as may be set forth in the certificate. If the certificate of amendment includes a statement provided for in subsection 14A:9–4(4), the stated capital shall be reduced when the amendment becomes effective.

14A:9–5. Restated Certificate of Incorporation.

(1) A corporation may restate and integrate in a single certificate the provisions of its certificate of incorporation as theretofore amended, including any provision effected by a merger or consolidation and any further amendments as may be adopted concurrently with the restated certificate.

(2) If the proposed restated certificate merely restates and integrates, but does not further amend the certificate of incorporation as theretofore amended, it may be adopted by the board.

(3) If the proposed restated certificate restates and integrates and also further amends the certificate of incorporation as thereto-

fore amended, such restated certificate shall be adopted in the following manner:

(a) the board shall approve the proposed restated certificate and direct that it be submitted to a vote at a meeting of the shareholders;

(b) written notice setting forth the proposed restated certificate shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this act for the giving of notice of such meeting;

(c) at such meeting a vote of shareholders entitled to vote thereon shall be taken on the proposed restated certificate. The proposed restated certificate shall be adopted upon receiving the affirmative vote of a majority of the votes cast by the holders of shares entitled to vote thereon. The voting requirements of this section shall be subject to such greater requirements as are provided in this act for specific amendments or as may be provided in the certificate of incorporation.

(4) The restated certificate shall recite that it is a restated certificate and shall contain all such provisions as are required in an original certificate of incorporation filed at the time the restated certificate is filed, except that

(a) it shall state the address of the corporation's then current registered office, and the name of its then current registered agent, and it shall also state the number, names and addresses of the directors constituting its then current board;

(b) it need not include statements as to the incorporator or incorporators or as to the first directors or the first registered office and registered agent;

(c) if, pursuant to subsection 14A:9–5(6), the restated certificate is to become effective subsequent to the time of filing, it shall state the date when it is to become effective.

(5) The restated certificate shall be executed on behalf of the corporation, and shall be filed in the office of the Secretary of State. There shall be attached to it and filed therewith a certificate executed on behalf of the corporation and setting forth

(a) the name of the corporation;

(b) the date such restated certificate was adopted; and

(c) if the restated certificate of incorporation was adopted by the shareholders, it shall also set forth

(i) the number of the shares outstanding, and the number of shares entitled to vote thereon, and, if the shares of any class or series are entitled to vote thereon as a class, the desig-

nation and number of outstanding shares entitled to vote thereon of each such class and series;

(ii) the number of shares voted for and against such adoption, and, if the shares of any class or series are entitled to vote thereon as a class, the number of shares of each such class and series voted for and against such adoption; and

(iii) if an amendment of the certificate of incorporation was adopted concurrently with the adoption of the restated certificate, the information required by paragraphs 14A:9–4 (3) (b), 14A:9–4(3) (f), and 14A:9–4(3) (g).

(6) The restated certificate and any amendment included therein shall become effective upon the date of filing with the Secretary of State or at such later time, not to exceed 30 days from the date of filing as may be set forth therein.

14A:9–6. Abandonment of Amendment.

Prior to the effective date of an amendment of the certificate of incorporation for which shareholder approval is required under the provisions of this act, such amendment may be abandoned pursuant to provisions therefor, if any, set forth in the resolution of the shareholders approving such amendment. If a certificate of amendment has been filed in the office of the Secretary of State prior to such abandonment, a certificate of abandonment shall be filed in the office of the Secretary of State. The certificate shall state that the amendment has been abandoned in accordance with the provisions therefor set forth in the resolution of the shareholders adopting such amendment.

CHAPTER 10

Merger, Consolidation, Acquisition of All Capital Shares of a Corporation and Sale of Assets

Section

14A:10–1. Procedure for Merger.

(1) Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this act.

(2) The board of each corporation shall approve a plan of merger setting forth

(a) the names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;

(b) the terms and conditions of the proposed merger, including a statement of any amendments in the certificate of incorporation of the surviving corporation to be effected by such merger;

(c) the manner and basis of converting the shares of each merging corporation into shares, other securities, or obligations of the surviving corporation, or into cash or other consideration which may include shares or other securities or obligations of a corporation not a party to the merger, or into any combination thereof; and

(d) such other provisions with respect to the proposed merger as are deemed necessary or desirable.

14A:10–2. Procedure for Consolidation.

(1) Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this act.

(2) The board of each corporation shall approve a plan of consolidation setting forth

(a) the names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(b) the terms and conditions of the proposed consolidation;

(c) the manner and basis of converting the shares of each corporation into shares, other securities, or obligations of the new corporation, or into cash or other consideration which may include shares or other securities or obligations of a corporation not a party to the consolidation, or into any combination thereof;

(d) with respect to the new corporation, all of the statements required to be set forth in the certificate of incorporation for corporations organized under this act, except that it shall not be necessary to set forth the name and address of each incorporator; and

(e) such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

14A:10–3. Approval by Shareholders.

(1) The board of each corporation, upon approving such plan of merger or plan of consolidation, shall direct that the plan be submitted to a vote at a meeting of shareholders. Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than 20 nor more than 60 days before such meeting, in the manner provided in this act for the giving of notice of meetings of shareholders. Such notice shall include, or shall be accompanied by

(a) a copy or a summary of the plan of merger or consolidation, as the case may be; and

(b) a statement informing shareholders who, under Chapter 11 of this act, are entitled to dissent, that they have the right to dissent and to be paid the fair value of their shares, provided that they file with the corporation before the taking of the vote of the shareholders on the plan of merger or consolidation a written notice of dissent as required by subsection 14A:11–2(1), and that they otherwise comply with the procedures set forth in Chapter 11 of this act.

(2) At each such meeting, a vote of the shareholders shall be taken on the proposed plan of merger or consolidation. Such plan shall be approved upon receiving the affirmative vote of a majority of the votes cast by the holders of shares of each such corporation entitled to vote thereon, and, in addition, if any class or series is entitled to vote thereon as a class, the affirmative vote of a majority of the votes cast in each class vote; except that, in the case of a corporation organized prior to the effective date of this act, the plan of merger or consolidation shall be approved upon receiving

the affirmative vote of two-thirds of the votes so cast. Any class or series of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to the certificate of incorporation, would entitle such class or series of shares to vote as a class unless such provision is one which could be adopted by the board without shareholder approval as referred to in subsection 14A:9–2(2). The voting requirements of this section shall be subject to such greater requirements as are provided in this act for specific amendments or as may be provided in the certificate of incorporation.

(3) Subject to the provisions of section 14A:5–12, a corporation organized prior to the effective date of this act may adopt the majority voting requirements prescribed in subsection 14A:10–3(2) by an amendment of its certificate of incorporation adopted by the affirmative vote of two-thirds of the votes cast by the holders of shares entitled to vote thereon.

(4) Notwithstanding the provisions set forth in subsections 14A:10–3(1) and 14A:10–3(2), the approval of the shareholders of a surviving corporation shall not be required to authorize a merger if

(a) the agreement of merger does not change the name or authorized shares or series of any class or otherwise amend the certificate of incorporation of the surviving corporation; and

(b) the authorized unissued shares and the treasury shares of each class and series of the surviving corporation to be issued or delivered under the plan of merger do not exceed 15 per cent of the shares of each such class or series of the surviving corporation outstanding immediately prior to the effective date of the merger.

14A:10–4. Certificate of Merger or Consolidation.

(1) After approval of the plan of merger or consolidation, a certificate of merger or a certificate of consolidation, as the case may be, shall be executed on behalf of each corporation. The certificate shall set forth

(a) the plan of merger or the plan of consolidation;

(b) as to each corporation whose shareholders are entitled to vote, the number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class;

(c) as to each corporation whose shareholders are entitled to vote, the number of shares voted for and against such plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively; and

(d) in the case of a merger governed by subsection 14A:10–3(4), that the plan of merger was approved by the board of directors without any vote of shareholders of the surviving corporation; and

(e) if, pursuant to subsection 14A:10–4(2), the merger is to become effective at a time subsequent to the date of filing with the Secretary of State, the date when the merger is to become effective.

(2) The certificate shall be filed in the office of the Secretary of State and the merger or consolidation shall become effective upon the date of such filing or at such later time, not to exceed 30 days after the date of filing, as may be set forth in the certificate.

14A:10–5. Merger of Subsidiary Corporation.

(1) Any domestic corporation owning at least 90% of the outstanding shares of each class and series of another domestic corporation or corporations, may merge such other corporation or corporations into itself, or may merge itself, or itself and any such subsidiary corporation or corporations, into any such subsidiary corporation, without approval of the shareholders of any of the corporations, except as provided in subsections 14A:10–5(5) and 14A:10–5(6). The board of the parent corporation shall approve a plan of merger setting forth those matters required to be set forth in plans of merger under section 14A:10–1. Approval by the board of any such subsidiary corporation shall not be required.

(2) If the parent corporation owns less than 100% of the outstanding shares of each subsidiary corporation, it shall mail to each minority shareholder of record of each subsidiary corporation, unless waived in writing, a copy or a summary of the plan of merger. The parent corporation shall also mail to each shareholder who, under Chapter 11 of this act, is entitled to dissent, a statement informing such shareholder that he has the right to dissent and to be paid the fair value of his shares, provided that he files with the corporation, within 20 days after the mailing of such copy or summary, a written demand for the fair value of his shares as required by subsection 14A:11–2(4), and that he other-

wise complies with the procedures set forth in Chapter 11 of this act.

(3) A certificate of merger shall be executed on behalf of the parent corporation. The certificate shall set forth

(a) the plan of merger;

(b) the number of outstanding shares of each class and series of each subsidiary corporation which is a party to the merger and the number of such shares of each class and series owned by the parent corporation;

(c) if the parent corporation owns less than 100% of the outstanding shares of each subsidiary corporation, the date of the mailing of a copy or a summary of the plan of merger to minority shareholders of each subsidiary corporation; or if all such shareholders have waived such mailing in writing, a statement that such waiver has been obtained; and

(d) if, pursuant to subsection 14A:10–5(4), the merger is to become effective at a time subsequent to the date of filing with the Secretary of State, the date when the merger is to become effective.

(4) The certificate shall be filed in the office of the Secretary of State and the merger shall become effective upon the date of such filing or at such later time, not to exceed 30 days from the date of filing, as may be set forth in the certificate.

(5) Approval of the shareholders of any such subsidiary corporation shall be obtained pursuant to its certificate of incorporation, if such certificate requires approval of a merger by the affirmative vote of the holders of more than the percentage of the shares of any class or series of such corporation then owned by the parent corporation.

(6) Approval of the shareholders of the parent corporation shall be obtained:

(a) whenever its certificate of incorporation requires shareholder approval of such a merger; or

(b) pursuant to section 14A:10–3 where

(i) the plan of merger contains a provision which would change any part of the certificate of incorporation of the parent corporation into which a subsidiary corporation is being merged, unless such change is one that can be made by the board without shareholder approval as referred to in subsection 14A:9–2(2); or

(ii) a subsidiary corporation is to be the surviving corporation.

(7) The grant of the power to merge under this section shall not preclude the effectuation of any merger as elsewhere provided in this Chapter.

14A:10–6. Effect of Merger or Consolidation.

When a merger or consolidation has become effective:

(a) The parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(b) The separate existence of all parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(c) Such surviving or new corporation shall, to the extent consistent with its certificate of incorporation as amended or established by the merger or consolidation, possess all the rights, privileges, powers, immunities, purposes and franchises, both public and private, of each of the merging or consolidating corporations.

(d) All real property and personal property, tangible and intangible, of every kind and description, belonging to each of the corporations so merged or consolidated shall be vested in the surviving or new corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(e) The surviving or new corporation shall be liable for all the obligations and liabilities of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pendng by or against any of such corporations may be enforced as if such merger or consolidation had not taken place. Neither the rights of creditors nor any liens upon, or security interests in, the property of any of such corporations shall be impaired by such merger or consolidation.

(f) In the case of a merger, the certificate of incorporation of the surviving corporation shall, without further act or deed, be amended to the extent, if any, stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the certificate of consolidation and which are required or permitted to be set forth in the certificate of incorporation of corporations organized under this act shall be the certificate of incorporation of the new corporation.

14A:10-7. Merger or Consolidation of Domestic and Foreign Corporations.

(1) One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the jurisdiction under which each such foreign corporation is organized:

(a) Each domestic corporation shall comply with the provisions of this act with respect to the merger or consolidation of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the jurisdiction under which it is organized.

(b) If the surviving or new corporation is to be a foreign corporation and is to transact business in this State, it shall comply with the provisions of this act with respect to foreign corporations, and, whether or not it is to transact business in this State, the certificate of merger or consolidation required to be filed on behalf of the domestic corporation or corporations pursuant to subsection 14A:10-4(2) shall, in addition to the information required by subsection 14A:10-4(1), set forth

(i) an agreement by such foreign corporation that it may be served with process in this State in any proceeding for the enforcement of any obligation of any domestic corporation or any foreign corporation, previously amenable to suit in this State, which is a party to such merger or consolidation, and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation; and

(ii) an irrevocable appointment by such foreign corporation of the Secretary of State of this State as its agent to accept service of process in any such proceeding, and the post office address, within or without this State, to which the Secretary of State shall mail a copy of the process in such proceeding;

(iii) an agreement by such foreign corporation that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this act with respect to the rights of dissenting shareholders.

(2) The provisions of subsection 14A:10-3(4) shall apply to a merger in which the surviving corporation is a domestic corporation.

(3) If the surviving or new corporation is a domestic corporation, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations. If the surviving or new corporation is a foreign corporation, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of the jurisdiction of incorporation of such foreign corporation shall provide otherwise.

(4) One or more foreign corporations and one or more domestic corporations may be merged in the manner provided in section 14A:10–5 if such merger is permitted by the laws of the jurisdiction of incorporation of such foreign corporation, provided that, if the parent corporation is a foreign corporation, it shall, notwithstanding the provisions of the laws of its jurisdiction of incorporation, comply with the provisions of subsection 14A:10–5(2) with respect to notice to shareholders of any domestic subsidiary corporation which is a party to the merger.

14A:10–8. Abandonment of Merger or Consolidation.

Prior to the time when a merger or consolidation authorized by this Chapter shall become effective, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation. If a certificate of merger or consolidation has been filed in the office of the Secretary of State prior to such abandonment, a certificate of abandonment shall be filed in the office of the Secretary of State. The certificate shall be executed on behalf of each corporation which is a party to the plan of merger or consolidation, unless the plan permits abandonment by less than all of such corporations, in which event the certificate may be executed on behalf of the corporation or corporations exercising the right to abandon. The certificate shall state that the merger or consolidation has been abandoned in accordance with the provisions therefor set forth in the plan of merger or consolidation.

14A:10–9. Acquisition of All the Shares, or a Class or Series of Shares, of a Corporation.

(1) Subject to the limitations imposed by any other statute of this State, any domestic corporation may, in the manner provided by this section, acquire, in exchange for its shares, all the shares, or all the shares of any class or series of any other corporation organized under any statute of this State.

(2) Such acquiring corporation shall submit by first-class mail to all holders of the shares to be acquired a written offer which shall

(a) specify the shares to which such offer relates;

(b) prescribe the terms and conditions of such offer, including the method of acceptance thereof and the manner of exchanging such shares;

(c) contain a statement summarizing the rights of such shareholders as provided in paragraph 14A:10–9(3) (b).

Any such offer may provide for the payment of cash in lieu of the issuance of fractional shares of the acquiring corporation.

(3) If, within 120 days after the date of such mailing, the offer is accepted by the holders of not less than 90% of the shares of each class and series to which the offer relates, other than shares already held at the date of mailing by, or by a nominee for, the acquiring corporation or any subsidiary thereof, the acquiring corporation shall, within 60 days after such acceptance:

(a) execute and file a certificate in the office of the Secretary of State setting forth such acceptance; and

(b) give written notice of such acceptance, by registered or certified mail, return receipt requested, to each holder of such shares to which the offer relates, who has not accepted the offer. Such notice shall include, or be accompanied by, a statement that

(i) such shareholders may elect either to accept the offer or to dissent therefrom and be paid the fair value of their shares provided that they file with the acquiring corporation, not later than 30 days after the mailing of such written notice, a written demand for the fair value of their shares as required by subsection 14A:11–2(5), and otherwise comply with the procedures set forth in Chapter 11 of this act; and

(ii) if such shareholders do not make written demand for the payment of the fair value of their shares to which the offer relates within the 30-day period specified in subsection 14A:11–2(5), they shall be deemed to have accepted the offer.

(4) Upon the filing of such certificate in the office of the Secretary of State as required by paragraph 14A:10–9(3) (a)

(a) the acquiring corporation shall cause to be issued to the holders of shares who have accepted or who are deemed to have accepted such offer pursuant to the provisions of paragraph 14A:10–9(3) (b) certificates for shares of the acquiring corporation to which they respectively are entitled;

(b) all shares in exchange for which shares of the acquiring corporation are so issued shall become the property of the acquiring corporation, irrespective of whether the certificates for such shares have been surrendered for exchange, and the acquiring corporation shall be entitled to have new certificates registered in its name as the holder thereof; and

(c) the acquiring corporation or a corporate fiduciary designated by it, shall hold in trust, for delivery to the persons entitled thereto, certificates for its shares registered in the names of any holders, other than shares of dissenting shareholders, who have not surrendered their shares for exchange in accordance with the offer, and shall hold in trust, for payment to the persons entitled thereto, any cash payable in lieu of fractional shares.

(5) This section shall not be construed to prevent a corporation from making an offer to purchase the shares of another corporation conditioned upon the acceptance of holders of less than 90% of the shares to which such offer relates. Such an offer may be joined as an alternate offer with an offer made pursuant to this section; but in no case shall the acquiring corporation have the right to avail itself of the provisions of this section unless the holders of the percentage of shares to which the offer relates required by subsection 14A:10–9(3) shall accept the offer within the time period required by subsection 14A:10–9(3).

(6) Whenever a corporation whose capital stock is acquired pursuant to this section is a stock insurance company organized under any law of this State (hereinafter called the insurance subsidiary),

(a) the acquiring corporation shall furnish to the Commissioner of Banking and Insurance such information as he may, from time to time, reasonably request in respect to the honesty and trustworthiness of its directors and officers, and

(b) upon a finding by the Commissioner of Banking and Insurance that the acquiring corporation has failed or refused to take such steps as may be necessary to remove from office any of the directors or officers referred to in paragraph 14A:10–9(6)(a) hereof whom the commissioner, after hearing upon notice to such acquiring corporation and such officer or director, has found to be a dishonest or untrustworthy person, the commissioner may forthwith take possession of the property and business of the insurance subsidiary as provided in chapter 30 of Title 17 of the Revised Statutes, and

(c) upon a finding by the Commissioner of Banking and Insurance that access to specified books and records of the acquiring corporation which relate to the condition and affairs of the insurance subsidiary is necessary to the discharge of his regulatory duties with respect to such subsidiary under Title 17 of the Revised Statutes, the commissioner may have access to the books and records which he has so specified and the acquiring corporation shall answer any inquiry by him which is pertinent thereto.

14A:10–10. Sale or Other Disposition of Assets in Regular Course of Business and Mortgage or Pledge of Assets.

The sale, lease, exchange, or other disposition of all, or substantially all, the assets of a corporation in the usual and regular course of its business as conducted by such corporation, and the mortgage or pledge of any or all the assets of a corporation whether or not in the usual and regular course of business as conducted by such corporation, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares, bonds or other securities of any other corporation, domestic or foreign, as shall be authorized by its board. In any such case, unless otherwise provided in the certificate of incorporation, no approval of the shareholders shall be required.

14A:10–11. Sale or Other Disposition of Assets Other Than in Regular Course of Business

(1) A sale, lease, exchange, or other disposition of all, or substantially all, the assets of a corporation, if not in the usual and regular course of its business as conducted by such corporation, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares, bonds or other securities of any other corporation, domestic or foreign, as may be authorized in the following manner:

(a) The board shall recommend such sale, lease, exchange, or other disposition and direct that it be submitted to a vote at a meeting of shareholders.

(b) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than 20 nor more than 60 days before such meeting, in the man-

ner provided in this act for the giving of notice of meetings of shareholders. Such notice shall include, or shall be accompanied by

(i) a statement summarizing the principal terms of the proposed transaction; and

(ii) a statement informing shareholders who, under Chapter 11 of this act, are entitled to dissent, that they have the right to dissent and to be paid the fair value of their shares, provided that they file with the corporation before the taking of the vote of the shareholders on such sale, lease, exchange or other disposition, a written notice of dissent as required by subsection 14A:11–2(1) and otherwise comply with the procedures set forth in Chapter 11 of this act.

(c) At such meeting the shareholders may approve such sale, lease, exchange, or other disposition and may fix, or may authorize the board to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such sale, lease, exchange or other disposition shall be approved upon receiving the affirmative vote of a majority of the votes cast by the holders of shares entitled to vote thereon, and, in addition, if any class or series of shares is entitled to vote thereon as a class, the affirmative vote of a majority of the votes cast in each class vote; except that, in the case of a corporation organized prior to the effective date of this act, the sale, lease, exchange, or other disposition shall be approved upon receiving the affirmative vote of two-thirds of the votes so cast.

(d) Subject to the provisions of section 14A:5–12, a corporation organized prior to the effective date of this act may adopt the majority voting requirements prescribed in paragraph 14A:10–11(1)(c) by an amendment of its certificate of incorporation adopted by the affirmative vote of two-thirds of the votes cast by the holders of shares entitled to vote thereon.

(2) Notwithstanding such approval or authorization by the shareholders, the board may abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action by the shareholders.

CHAPTER 11

Rights of Dissenting Shareholders

Section

14A:11–1. Right of Shareholders to Dissent.

(1) Any shareholder of a domestic corporation shall have the right to dissent from any of the following corporate actions

(a) any plan of merger or consolidation to which the corporation is a party, provided that

(i) a shareholder shall not have right to dissent from any plan of merger or consolidation with respect to shares

(A) which are listed on a national securities exchange or are regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association on the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting of shareholders at which the plan of merger or consolidation is to be acted on; and

(B) for which, pursuant to the plan of merger or consolidation such shareholders are required to accept only shares or shares and cash in lieu of fractional shares of the cor-

poration surviving or resulting from such merger or consolidation;

(ii) a shareholder of a surviving corporation shall not have the right to dissent from a plan of merger, if the merger did not require for its approval the vote of such shareholders as provided in subsections 14A:10–3(4) and 14A:10–7(2);

(b) any sale, lease, exchange or other disposition of all or substantially all of the assets of a corporation not in the usual or regular course of business as conducted by such corporation, other than

(i) with respect to shares where, at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting of shareholders at which such transaction is to be voted on, such shares are listed on a national securities exchange or are regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association; or

(ii) a transaction pursuant to a plan of dissolution of the corporation which provides for distribution of substantially all of its net assets to shareholders in accordance with their respective interests within 1 year after the date of such transaction, where such transaction is wholly for

(A) cash; or

(B) shares, bonds and other securities which are listed on a national securities exchange or are regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association; or

(C) cash and such securities; or

(iii) a sale pursuant to an order of a court having jurisdiction.

(2) Any shareholder of a domestic corporation shall have the right to dissent with respect to any shares owned by him which are to be acquired pursuant to section 14A:10–9.

(3) A shareholder may not dissent as to less than all of the shares owned beneficially by him and with respect to which a right of dissent exists. A nominee or fiduciary may not dissent on behalf of any beneficial owner as to less than all of the shares of such owner with respect to which the right of dissent exists.

14A:11–2. NOTICE OF DISSENT; DEMAND FOR PAYMENT; ENDORSEMENT OF CERTIFICATES.

(1) Whenever a meeting of shareholders is called to vote upon a proposed corporate action from which a shareholder may dissent under section 14A:11–1, any shareholder electing to dissent from such action shall file with the corporation before the taking of the vote of the shareholders on such corporate action, a written notice of such dissent stating that he intends to demand payment for his shares if the action is taken.

(2) Within 10 days after the date on which such corporate action takes effect, the corporation, or, in the case of a merger or consolidation, the surviving or new corporation, shall give written notice of the effective date of such corporate action, by certified mail to each shareholder who filed written notice of dissent pursuant to subsecton 14A:11–2(1), except any who voted for or consented in writing to the proposed action.

(3) Within 20 days after the mailing of such notice, any shareholder to whom the corporation was required to give such notice and who has filed a written notice of dissent pursuant to this section may make written demand on the corporation, or, in the case of a merger or consolidation, on the surviving or new corporation, for the payment of the fair value of his shares.

(4) Whenever a corporation is to be merged pursuant to section 14A:10–5 or subsection 14A:10–7(4), and, where shareholder approval is not required under subsections 14A:10–5(5) and 14A:10–5(6), a shareholder who has the right to dissent pursuant to section 14A:11–1 may, not later than 20 days after a copy or summary of the plan of such merger and the statement required by subsection 14A:10–5(2) is mailed to such shareholder, make written demand on the corporation or on the surviving corporation, for the payment of the fair value of his shares.

(5) Whenever all the shares, or all the shares of a class or series, are to be acquired by another corporation pursuant to section 14A:10–9, a shareholder of the corporation whose shares are to be acquired may, not later than 30 days after the mailing of notice by the acquiring corporation pursuant to paragraph 14A:10–9(3)(b), make written demand on the acquiring corporation for the payment of the fair value of his shares.

(6) Not later than 20 days after demanding payment for his shares pursuant to this secton, the shareholder shall submit the certificate or certificates representing his shares to the corporation upon which such demand has been made for notation thereon that

such demand has been made, whereupon such certificate or certificates shall be returned to him. If shares represented by a certificate on which notation has been made shall be transferred, each new certificate issued therefor shall bear similar notation, together with the name of the original dissenting holder of such shares, and a transferee of such shares shall acquire by such transfer no rights in the corporation other than those which the original dissenting shareholder had after making a demand for payment of the fair value thereof.

14A:11–3. "Dissenting Shareholder" Defined; Date for Determination of Fair Value.

(1) A shareholder who has made demand for the payment of his shares in the manner prescribed by subsections 14A:11–2(3), 14A:11–2(4) or 14A:11–2(5) is hereafter in this Chapter referred to as a "dissenting shareholder".

(2) Upon making such demand, the dissenting shareholder shall cease to have any of the rights of a shareholder except the right to be paid the fair value of his shares and any other rights of a dissenting shareholder under this Chapter.

(3) "Fair value" as used in this Chapter shall be determined

(a) as of the day prior to the day on which the vote of shareholders was taken approving the proposed action; or

(b) in the case of a merger pursuant to section 14A:10–5 or subsection 14A:10–7(4) in which shareholder approval is not required, as of the day prior to the day on which the board of directors approves the plan of merger; or

(c) in the case of an acquisition of all the shares or all the shares of a class or series by another corporation pursuant to section 14A:10–9, as of the day prior to the day on which the board of directors of the acquiring corporation authorizes the acquisition.

In all cases, "fair value" shall exclude any appreciation or depreciation resulting from the proposed action.

14A:11–4. Termination of Right of Shareholder to be Paid the Fair Value of His Shares.

(1) The right of a dissenting shareholder to be paid the fair value of his shares under this Chapter shall cease if

(a) he has failed to present his certificates for notation as provided by subsection 14A:11–2(6), unless a court having juris-

diction, for good and sufficient cause shown, shall otherwise direct;

(b) his demand for payment is withdrawn with the written consent of the corporation;

(c) the fair value of the shares is not agreed upon as provided in this Chapter and no action for the determination of fair value by the Superior Court is commenced within the time provided in this Chapter;

(d) the Superior Court determines that the shareholder is not entitled to payment for his shares;

(e) the proposed corporate action is abandoned or rescinded; or

(f) a court having jurisdiction permanently enjoins or sets aside the corporate action.

(2) In any case provided for in subsection 14A:11–4(1), the rights of the dissenting shareholder as a shareholder shall be reinstated as of the date of the making of a demand for payment pursuant to subsections 14A:11–2(3), 14A:11–2(4) or 14A:11–2(5) without prejudice to any corporate action which has taken place during the interim period. In such event, he shall be entitled to any intervening preemptive rights and the right to payment of any intervening dividend or other distribution, or, if any such rights have expired or any such dividend or distribution other than in cash has been completed, in lieu thereof, at the election of the board, the fair value thereof in cash as of the time of such expiration or completion.

14A:11–5. Rights of Dissenting Shareholder.

(1) A dissenting shareholder may not withdraw his demand for payment of the fair value of his shares without the written consent of the corporation.

(2) The enforcement by a dissenting shareholder of his right to receive payment for his shares shall exclude the enforcement by such dissenting shareholder of any other right to which he might otherwise be entitled by virtue of share ownership, except as provided in subsection 14A:11–4(2) and except that this subsection shall not exclude the right of such dissenting shareholder to bring or maintain an appropriate action to obtain relief on the ground that such corporate action will be or is ultra vires, unlawful or fraudulent as to such dissenting shareholder.

14A:11–6. Determination of Fair Value by Agreement.

(1) Not later than 10 days after the expiration of the period within which shareholders may make writtend demand to be paid the fair value of their shares, the corporation upon which such demand has been made pursuant to subsections 14A:11–2(3), 14A:11–2(4) or 14A:11–2(5) shall mail to each dissenting shareholder the balance sheet and the surplus statement of the corporation whose shares he holds, as of the latest available date which shall not be earlier than 12 months prior to the making of such offer and a profit and loss statement or statements for not less than a 12-month period ended on the date of such balance sheet or, if the corporation was not in existence for such 12-month period, for the portion thereof during which it was in existence. The corporation may accompany such mailing with a written offer to pay each dissenting shareholder for his shares at a specified price deemed by such corporation to be the fair value thereof. Such offer shall be made at the same price per share to all dissenting shareholders of the same class, or, if divided into series, of the same series.

(2) If, not later than 30 days after the expiration of the 10-day period limited by subsection 14A:11–6(1), the fair value of the shares is agreed upon between any dissenting shareholder and the corporation, payment therefor shall be made within 20 days after surrender of the certificate or certificates representing such shares.

14A:11–7. Procedure on Failure to Agree Upon Fair Value; Commencement of Action to Determine Fair Value.

(1) If the fair value of the shares is not agreed upon within the 30-day period limited by subsection 14A:11–6(2), the dissenting shareholder may serve upon the corporation upon which such demand has been made pursuant to subsections 14A:11–2(3), 14A:11–2(4) or 14A:11–2(5) a written demand that it commence an action in the Superior Court for the determination of the fair value of the shares. Such demand shall be served not later than 30 days after the expiration of the 30-day period so limited and such action shall be commenced by the corporation not later than 30 days after receipt by the corporation of such demand, but nothing herein shall prevent the corporation from commencing such action at any earlier time.

(2) If a corporation fails to commence the action as provided in subsection 14A:11–7(1), a dissenting shareholder may do so in the name of the corporation, not later than 60 days after the

expiration of the time limited by subsection 14A:11–7(1) in which the corporation may commence such an action.

14A:11–8. Action to Determine Fair Value; Jurisdiction of Court; Appointment of Appraiser.

In any action to determine the fair value of shares pursuant to this Chapter:

(a) The Superior Court shall have jurisdiction and may proceed in the action in a summary manner or otherwise;

(b) All dissenting shareholders, wherever residing, except those who have agreed with the corporation upon the price to be paid for their shares, shall be made parties thereto as an action against their shares quasi in rem;

(c) The court in its discretion may appoint an appraiser to receive evidence and report to the court on the question of fair value, who shall have such power and authority as shall be specified in the order of his appointment; and

(d) The court shall render judgment against the corporation and in favor of each shareholder who is a party to the action for the amount of the fair value of his shares.

14A:11–9. Judgment in Action to Determine Fair Value.

(1) A judgment for the payment of the fair value of shares shall be payable upon surrender to the corporation of the certificate or certificates representing such shares.

(2) The judgment shall include an allowance for interest at such rate as the court finds to be equitable, from the date of the dissenting shareholder's demand for payment under subsections 14A:11–2(3), 14A:11–2(4) or 14A:11–2(5) to the day of payment. If the court finds that the refusal of any dissenting shareholder to accept any offer of payment, made by the corporation under section 14A:11–6, was arbitrary, vexatious or otherwise not in good faith, no interest shall be allowed to him.

14A:11–10. Costs and Expenses of Action.

The costs and expenses of bringing an action pursuant to section 14A:11–8 shall be determined by the court and shall be apportioned and assessed as the court may find equitable upon the parties or any of them. Such expenses shall include reasonable compensation for and reasonable expenses of the appraiser, if any, but shall exclude the fees and expenses of counsel for and experts employed by any party; but if the court finds that the offer of payment made

by the corporation under section 14A:11–6 was not made in good faith, or if no such offer was made, the court in its discretion may award to any dissenting shareholder who is a party to the action reasonable fees and expenses of his counsel and of any experts employed by the dissenting shareholder.

14A:11–11. Disposition of Shares Acquired by Corporation.

(1) The shares of a dissenting shareholder in a transaction described in paragraph 14A:11–1(1)(b) and the shares of a dissenting shareholder of the surviving corporation in a merger shall become reacquired by the corporation which issued them upon the payment of the fair value of shares. Such shares shall be cancelled if reacquired out of stated capital or if the plan of merger so requires; otherwise they shall become treasury shares.

(2) In a merger or consolidation, if the surviving or new corporation pays out of surplus the fair value of the shares of dissenting shareholders of the merged or constituent corporation, the shares of the surviving or new corporation into which such shares would have been converted under the plan of merger or consolidation shall become treasury shares of such corporation, unless the plan shall provide otherwise.

(3) In an acquisition of shares pursuant to section 14A:10–9, the shares of a dissenting shareholder shall become the property of the acquiring corporation upon the payment by the acquiring corporation of the fair value of such shares. Such payment may be made, with the consent of the acquiring corporation, by the corporation which issued the shares, in which case the shares so paid for shall become reacquired by the corporation which issued them and shall be cancelled.

CHAPTER 12

Dissolution

Section

14A:12–1. Methods of Dissolution.

(1) A corporation may be dissolved in any one of the following ways

(a) automatically by expiration of any period of duration stated in the corporation's certificate of incorporation;

(b) by action of the incorporators or directors pursuant to section 14A:12–2;

(c) by action of the shareholders pursuant to section 14A:12–3;

(d) by action of the board and the shareholders pursuant to section 14A:12–4;

(e) by action of a shareholder or shareholders pursuant to section 14A:12–5;

(f) by a judgment of the Superior Court in an action brought pursuant to sections 14A:12–6 or 14A:12–7, or otherwise;

(g) automatically by a proclamation of the Governor repealing or revoking a certificate of incorporation for nonpayment of taxes.

(2) A corporation which has been dissolved in a proceeding pursuant to section 14A:12–6 or 14A:12–7, or which has been dissolved, or whose charter has been forfeited or revoked, for a cause or by a method not mentioned in this section, shall be subject to all the provisions of this chapter and of Chapter 14, to the extent that such provisions are compatible with a court directed dissolution, or with the statute or common law proceeding pursuant to which such dissolution, forfeiture or revocation is effected.

14A:12–2. Dissolution Before Commencing Business.

(1) A corporation may be dissolved by action of its incorporators when there has been no organization meeting of the board, of by the board if there has been an organization meeting, provided that the corporation

(a) has not commenced business;
(b) has not issued any shares;
(c) has no debts or other liabilities; and
(d) has received no payments on subscriptions for its shares, or, if it has received such payments, has returned them to those entitled thereto, less any part thereof disbursed for expenses.

(2) The dissolution of such a corporation shall be effected in the following manner: the sole incorporator or director, if there is only one, or both incorporators or directors, if there are only two, or a majority of the incorporators or directors, if there are more than two, shall execute and file in the office of the Secretary of State a certificate of dissolution stating

(a) the name of the corporation;
(b) the name of the registered agent of the corporation;
(c) the location of the registered office of the corporation;
(d) the names of the incorporators and directors constituting the first board;
(e) that the corporation has not commenced business and has issued no shares, and has no debts or other liabilities;
(f) that the corporation has received no payments or subscriptions to its shares, or, if it has received such payments, that it has returned them to those entitled thereto, less any part thereof disbursed for expenses; and
(g) that the sole incorporator or director, if there is only one, or both incorporators or directors, if there are only two, or a majority of the incorporators or directors, if there are more than two, has or have elected that the corporation be dissolved.

14A:12–3. Dissolution Without a Meeting of Shareholders.

A corporation may be dissolved by the consent of all its shareholders entitled to vote thereon. To effect such dissolution, all such shareholders shall sign and file in the office of the Secretary of State a certificate of dissolution which shall state

(a) the name of the corporation;
(b) the name of the registered agent of the corporation;
(c) the location of the registered office of the corporation;

(d) the names of its directors and officers;
(e) that the corporation is dissolved; and
(f) that the certificate has been signed in person or by proxy by all the shareholders of the corporation entitled to vote thereon.

14A:12–4. Dissolution Pursuant to Action of Board and Shareholders.

(1) A corporation may be dissolved by action of its board and its shareholders as provided in this section.

(2) The board shall recommend that the corporation be dissolved, and direct that the question of dissolution be submitted to a vote at a meeting of shareholders.

(3) Notice of the meeting shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this act for the giving of notice of meetings of shareholders.

(4) At such meeting, a vote of the shareholders shall be taken on the proposed dissolution. Such dissolution shall be approved upon receiving the affirmative vote of a majority of the votes cast by the holders of shares of the corporation entitled to vote thereon, and, in addition, if any class or series is entitled to vote thereon as a class, the affirmative vote of a majority of the votes cast in each class vote; except that, in the case of a corporation organized prior to the effective date of this act, the proposed dissolution shall be approved upon receiving the affirmative vote of two-thirds of the votes so cast. The voting requirements of this section shall be subject to such greater requirements as may be provided in the certificate of incorporation.

(5) Subject to the provisions of section 14A:5–12, a corporation organized prior to the effective date of this act may adopt the majority voting requirements prescribed in subsection 14A:12–4 (4) by an amendment of its certificate of incorporation adopted by the affirmative vote of two-thirds of the votes cast by the holders of shares entitled to vote thereon.

(6) If dissolution is approved as provided in this section, a certificate of dissolution shall be executed on behalf of the corporation and shall be filed in the office of the Secretary of State. The certificate shall set forth

(a) the name of the corporation;
(b) the name of the registered agent of the corporation;
(c) the location of the registered office of the corporation;

(d) the names of the corporation's directors and officers;

(e) the text of the board resolution authorizing the dissolution;

(f) the date and place of the meeting of shareholders called to vote upon the dissolution;

(g) the number of outstanding shares of the corporation entitled to vote on the dissolution, and, if the shares of any class or series are entitled to vote as a class, the designation and number of outstanding shares of each such class and series; and

(h) the number of shares represented at the meeting, the number of shares voted for and voted against the dissolution, and, if the shares of any class or series are entitled to vote as a class, the number of shares of each such class and series voted for and voted against the dissolution.

14A:12–5. Dissolution Pursuant to Provision in Certificate of Incorporation.

(1) The certificate of incorporation may provide that any shareholder, or any specified number of shareholders, or the holders of any specified number or proportion of shares, or of any specified number or proportion of shares of any class or series, may effect the dissolution of the corporation at will or upon the occurence of a specified event. In such a case, dissolution of the corporation may be effected by the filing of a certificate of dissolution in the office of the Secretary of State, signed, as the certificate of incorporation may provide, by a single shareholder, or the specified number of shareholders, or the holders of any specified number or proportion of shares, or of any specified number or proportion of shares of any class or series. The certificate of dissolution shall state the name of the corporation, the location of its registered office and the name of its registered agent. It shall also state that the corporation is dissolved; that the dissolution is effected pursuant to a provision of the certificate of incorporation; and that the certificate is executed and filed by the person or persons authorized by the certificate of incorporation.

(2) An amendment of the certificate of incorporation which adds a provision authorized by this section, or which amends or deletes such a provision, shall be authorized at a meeting of shareholders by a vote of all outstanding shares, or by such lesser vote, but not less than the vote set forth in paragraph 14A:9–2(4) (c), as may be specifically provided for in the certificate of incorporation for such amendment.

(3) If the certificate of incorporation of any corporation contains a provision authorized by this section, the fact that such provision exists shall be noted conspicuously on the face or back of every certificate for shares issued by such corporation, and each holder of such certificates shall conclusively be deemed to have taken delivery with notice of such provision. A provision authorized by this subsection shall become invalid if, subsequent to the adoption of such provision, shares are transferred or issued to any person who takes delivery of the share certificate without notice thereof, unless such person consents in writing to such provision.

14A:12–6. Dissolution in Action Brought by the Attorney General.

(1) The Attorney General may bring an action in the Superior Court for the dissolution of a corporation upon the ground that the corporation

(a) has procured its organization through fraud;

(b) has repeatedly exceeded the authority conferred upon it by law; or

(c) has repeatedly conducted its business in an unlawful manner.

(2) The Superior Court may proceed in such action in a summary manner or otherwise.

(3) The enumeration in subsection 14A:12–6(1) of grounds for dissolution shall not exclude any other statutory or common law action by the Attorney General for the dissolution of a corporation or the revocation or forfeiture of its corporate franchises.

14A:12–7. Dissolution of Deadlocked Corporations.

A corporation may be dissolved by a judgment entered in an action brought in the Superior Court by one or more directors or by one or more shareholders entitled to vote at an election of directors of the corporation, upon proof that

(a) the directors of the corporation, or its shareholders if a provision in the corporation's certificate of incorporation contemplated by subsection 14A:5–21(2) is in effect, are unable to agree on matters respecting the management of the corporation's affairs; or

(b) the shareholders of the corporation are so divided in voting power that, for a period which includes at least two consecutive annual meeting dates, they have failed to elect successors

to directors whose terms have expired or would have expired upon the election and qualification of their successors; and

(c) as a result of the facts contemplated by either or both paragraphs 14A:12–7(a) and 14A:12–7(b), the corporation is unable to function normally in the best interests of its creditors and shareholders.

14A:12–8. Effective Time of Dissolution.

A corporation is dissolved

(a) when the period of duration stated in the corporation's certificate of incorporation expires;

(b) upon the proclamation of the Governor issued pursuant to section 54:11–2 of the Revised Statutes; or

(c) when a certificate of dissolution is filed in the office of the Secretary of State pursuant to sections 14A:12–2, 14A:12–3, 14A:12–4 or 14A:12–5, except when a later time not to exceed 30 days after the date of filing is specified in the certificate of dissolution; or

(d) when a judgment of forfeiture of corporate franchises or of dissolution is entered by a court of competent jurisdiction.

14A:12–9. Effect of Dissolution.

(1) Except as a court may otherwise direct, a dissolved corporation shall continue its corporate existence but shall carry on no business except for the purpose of winding up its affairs by

(a) collecting its assets;

(b) conveying for cash or upon deferred payments, with or without security, such of its assets as are not to be distributed in kind to its shareholders;

(c) paying, satisfying and discharging its debts and other liabilities; and

(d) doing all other acts required to liquidate its business and affairs.

(2) Subject to the provisions of subsection 14A:12–9(1), and except as otherwise provided by court order, the corporation, its officers, directors and shareholders shall continue to function in the same manner as if dissolution had not occurred. In particular, and without limiting the generality of the foregoing,

(a) the directors of the corporation shall not be deemed to be trustees of its assets and shall be held to no greater standard of conduct than that prescribed by section 14A:6–14;

(b) title to the corporation's assets shall remain in the corporation until transferred by it in the corporate name;

(c) the dissolution shall not change quorum or voting requirements for the board or shareholders, nor shall it alter provisions regarding election, appointment, resignation or removal of, or filling vacancies among, directors or officers, or provisions regarding amendment or repeal of by-laws or adoption of new by-laws;

(d) shares may be transferred;

(e) the corporation may sue and be sued in its corporate name and process may issue by and against the corporation in the same maner as if dissolution had not occurred;

(f) no action brought against any corporation prior to its dissolution shall abate by reason of such dissolution.

(3) The right of the corporation to sell its assets and the right of a shareholder to dissent from such sale shall be governed by Chapters 10 and 11 in the same manner as if dissolution had not occurred.

14A:12–10. Revocation of Dissolution Proceedings.

(1) Dissolution proceedings commenced pursuant to sections 14A:12–3, 14A:12–4 or 14A:12–5 may be revoked at any time within 60 days after the effective time of dissolution, as determined pursuant to section 14A:12–8, provided that no distribution of corporate assets has been made to the shareholders and no proceeding pursuant to section 14A:12–15 is pending, by filing in the office of the Secretary of State a certificate of revocation signed, in person or by proxy, by all of the shareholders, stating that revocation is effective pursuant to subsection 14A:12–10(1) and that all the shareholders of the corporation have signed the certificate, in person or by proxy.

(2) Dissolution proceedings commenced pursuant to sections 14A:12–3 or 14A:12–4 may also be revoked at any time within 60 days after the effective time of dissolution, as determined pursuant to section 14A:12–8, provided that no distribution of corporate assets has been made to the shareholders and no proceeding pursuant to section 14A:12–15 is pending, in the following manner:

(a) The board of directors shall call a meeting of shareholders to vote upon the question of revocation of the dissolution proceedings. In connection with such meeting, the shareholders shall be given the same notice, and the revocation shall be ap-

proved by the same vote, as that required by section 14A:12–4 for the approval of dissolution.

(b) A certificate of revocation, stating

(i) that dissolution is revoked pursuant to subsection 14A:12–10(2), and

(ii) the matters required by subsection 14A:12–4(5)

shall be executed on behalf of the corporation and shall be filed in the office of the Secretary of State.

14A:12–11. Effect of Revocation of Dissolution.

(1) Upon the filing of a certificate of revocation of dissolution proceedings as authorized by this act, the revocation of dissolution proceedings shall become effective, and the corporation may, subject to the provisions of subsection 14A:12–11(2), again carry on its business in the same manner as if dissolution proceedings had never been commenced. The corporation shall be liable for all taxes payable under the "Corporation Business Tax Act (1945)" (P. L. 1945, c. 162), as amended and supplemented, or under the "Financial Business Tax Law (1946)" (P. L. 1946, c. 174), as amended and supplemented, as though dissolution of the corporation had not occurred.

(2) If, pursuant to subsection 14A:2–2(3), a dissolved corporation has filed a written consent to the adoption of its name or a confusingly similar name by another, the subsequent revocation of dissolution proceedings pursuant to this section shall not restore the dissolved corporation's right to the use of its name.

14A:12–12. Notice to Creditors; Filing Claims.

(1) At any time after a corporation has been dissolved, the corporation, or a receiver appointed for the corporation pursuant to this chapter, may give notice requiring all creditors to present their claims in writing. Such notice shall be published twice, once in each of two consecutive weeks, in a newspaper of general circulation in the county in which the registered office of the corporation is located and shall state that all persons who are creditors of the corporation shall present written proof of their claims to the corporation or the receiver, as the case may be, at a place and on or before a date named in the notice, which date shall not be less than 6 months after the date of the first publication.

(2) On or before the date of the first publication of the notice as provided in subsection 14A:12–12(1), the corporation, or the receiver, as the case may be, shall mail a copy of the notice to each

known creditor of the corporation. The giving of such notice shall not constitute recognition that any person to whom such notice is directed is a creditor of the corporation other than for the purpose of receipt of notice hereunder.

(3) As used in this section, "creditor" means all persons to whom the corporation is indebted, and all other persons who have claims or rights against the corporation, whether liquidated or unliquidated, matured or unmatured, direct or indirect, absolute or contingent, secured or unsecured.

(4) Proof of the publication and mailing required by this section shall be made by an affidavit filed in the office of the Secretary of State.

14A:12–13. Barring of Claims of Creditors.

(1) Except as otherwise provided in this section and elsewhere in this chapter, any creditor as defined in subsection 14A:12–12(3) who does not file his claim as provided in the notice given pursuant to section 14A:12–12, and all those claiming through or under him, shall be forever barred from suing on such claim or otherwise realizing upon or enforcing it.

(2) This section shall not apply to claims which are in litigation on the date of the first publication of the notice pursuant to section 14A:12–12.

14A:12–14. Disposition of Rejected Claims.

If the corporation, or the receiver of a corporation appointed pursuant to this chapter, rejects in whole or in part any claim filed by a creditor, as defined in subsection 14A:12–12(3), the corporation or the receiver, as the case may be, shall mail notice of such rejection to the creditor. If the creditor does not bring suit upon such claim within 60 days from the time such notice was mailed to him, the creditor and all those claiming through or under him shall, except as otherwise provided in this chapter, be forever barred from suing on such claim or otherwise realizing upon or enforcing it. Proof of the mailing required by this section shall be made by an affidavit filed in the office of the Secretary of State.

14A:12–15. Jurisdiction of the Superior Court.

(1) At any time after a corporation has been dissolved in any manner, a creditor, as defined in subsection 14A:12–12(3), or a shareholder of the corporation, or the corporation itself, may apply to the Superior Court for a judgment that the affairs of the

corporation and the liquidation of its assets continue under the supervision of the court. The court shall have power to proceed in a summary manner or otherwise upon such application, and shall make such orders and judgments as may be required, including, but not limited to, the continuance of the liquidation of the corporation's assets by its officers and directors under the supervision of the court, or the appointment of a receiver of the corporation, who shall be vested with all the powers provided in Chapter 14 to be exercised by receivers appointed to liquidate the affairs of a corporation.

(2) For good cause shown, and so long as the corporation has not made complete distribution of its assets, the Superior Court may, in an action pending under subsection 14A:12–15(1) or otherwise, permit a creditor who has not filed his claim within the time limited by section 14A:12–13, or who has not begun suit on a rejected claim within the time limited by section 14A:12–14, to file such claim, or to bring such suit, within such time as the court shall direct.

14A:12–16. Distribution to Shareholders.

Any assets remaining after payment of or provision for claims against the corporation shall be distributed among the shareholders according to their respective rights and interests. Distribution may be made either or both cash and kind.

14A:12–17. Disposition of Unclaimed Distributive Shares.

The distributive shares payable to any person who is unknown or cannot be found, or who is under a disability and for whom there is no legal representative, shall be paid into the Superior Court to be held for the benefit of the owners, subject to the order of the court.

14A:12–18. Judgment of Dissolution; Filing Copy.

A copy of every judgment dissolving a corporation or forfeiting its charter shall be forthwith filed by the clerk of the court in the office of the Secretary of State, and a notation thereof shall be made by the Secretary of State on the charter or certificate of incorporation of the corporation affected.

CHAPTER 13

Foreign Corporations

Section

14A:13–1. Holding and Conveying Real Estate.

A corporation organized under laws other than the laws of this State, whether or not constituting a foreign corporation as defined in this act, shall have the same powers with respect to real property located in this State, or any interest therein, as a domestic corporation.

14A:13–2. Application of Act to Foreign Corporations.

(1) Foreign corporations which are duly authorized to transact business in this State on the effective date of this act, for a purpose or purposes for which a corporation might secure such authority under this act, shall be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this State under this act, and from the time this act takes effect such corporations shall be subject to all the duties, restrictions, penalties and liabilities prescribed herein for foreign corporations procuring certificates of authority to transact business in this State under this act.

(2) A foreign corporation which receives a certificate of authority under this act shall, until a certificate of revocation or of with-

drawal is issued as provided in this act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, except as in this act otherwise provided, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character.

(3) A foreign corporation which transacts business in this State without a certificate of authority under this act shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a foreign corporation procuring such certificate of authority.

14A:13–3. Admission of Foreign Corporation.

(1) No foreign corporation shall have the right to transact business in this State until it shall have procured a certificate of authority so to do from the Secretary of State. A foreign corporation may be authorized to do in this State any business which may be done lawfully in this State by a domestic corporation, to the extent that it is authorized to do such business in the jurisdiction of its incorporation, but no other business.

(2) Without excluding other activities which may not constitute transacting business in this State, a foreign corporation shall not be considered to be transacting business in this State, for the purposes of this act, by reason of carrying on in this State any one or more of the following activities

(a) maintaining, defending or otherwise participating in any action or proceeding, whether judicial, administrative, arbitrative or otherwise, or effecting the settlement thereof or the settlement of claims or disputes;

(b) holding meetings of its directors or shareholders;

(c) maintaining bank accounts or borrowing money, with or without security, even if such borrowings are repeated and continuous transactions and even if such security has a situs in this State;

(d) maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.

(3) The specification in subsection 14A:13–3(2) does not establish a standard for activities which may subject a foreign corporation to service of process or taxation in this State.

14A:13–4. Application for Certificate of Authority.

(1) To procure a certificate of authority to transact business in this State, a foreign corporation shall file in the office of the Secretary of State an application executed on behalf of the corporation setting forth

(a) the name of the corporation and the jurisdiction of its incorporation;

(b) the date of incorporation and the period of duration of the corporation;

(c) the address of the main business or headquarters office of the corporation;

(d) the address of the registered office of the corporation in this State, and the name of its registered agent in this State at such address, together with a statement that the registered agent is an agent of the corporation upon whom process against the corporation may be served; and

(e) the character of the business it is to transact in this State, together with a statement that it is authorized to transact such business in the jurisdiction of its incorporation.

(2) Attached to the application shall be a certificate setting forth that such corporation is in good standing under the laws of the jurisdiction of its incorporation, executed by the official of such jurisdiction who has custody of the records pertaining to corporations and dated not earlier than 30 days prior to the filing of the application. If such certificate is in a foreign language, a translation thereof under oath of the translator shall be attached thereto.

(3) Upon the filing of the application, the Secretary of State shall issue to the foreign corporation a certificate of authority to transact business in this State.

14A:13–5. Effect of Certificate of Authority.

Upon the issuance of a certificate of authority by the Secretary of State, the foreign corporation shall be authorized to transact in this State any business of the character set forth in its application. Such authority shall continue so long as it retains its authority to transact such business in the jurisdiction of its incorporation and its authority to transact business in this State has not been surrendered, suspended or revoked.

14A:13–6. Amended Certificate of Authority.

(1) A foreign corporation authorized to transact business in this State shall procure an amended certificate of authority in the event

it desires to change its corporate name, or to enlarge, limit or otherwise change the character of the business which it proposes to transact in this State, by making application therefor to the Secretary of State.

(2) The requirements in respect to the form and contents of such application, the manner of its execution, the filing thereof in the office of the Secretary of State, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority.

14A:13–7. Change of Name by Foreign Corporation.

Whenever a foreign corporation which is authorized to transact business in this State shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and the corporation shall not thereafter transact any business in this State until it has changed its name to a name which is available to it under the laws of this State or has otherwise complied with the provisions of this act.

14A:13–8. Withdrawal of Foreign Corporation.

(1) A foreign corporation authorized to transact business in this State may withdraw from this State upon procuring from the Secretary of State a certificate of withdrawal. In order to procure such a certificate of withdrawal, such foreign corporation shall file in the office of the Secretary of State an application for withdrawal executed on behalf of the corporation setting forth

(a) the name of the corporation and the jurisdiction of its incorporation;

(b) that the corporation is not transacting business in this State;

(c) that the corporation surrenders its authority to transact business in this State; and

(d) a post-office address within or without this State to which the Secretary of State may mail a copy of any process against the corporation that may be served on him.

(2) Upon the filing of the application for withdrawal, the Secretary of State shall issue to the corporation a certificate of withdrawal, whereupon

(a) the authority of the corporation to transact business in this State shall cease;

(b) the authority of its registered agent in this State to accept service of any process against the corporation shall be deemed revoked;

(c) the corporation shall be deemed to have irrevocably consented that service of process in any action or proceeding based upon any liability or obligation incurred by it within this State before the issuance of the certificate of withdrawal may thereafter be made on such corporation by service thereof on the Secretary of State or the chief clerk in his office; and

(d) the Secretary of State shall be charged with such duties and shall be entitled to receive such fees with respect to any process which may be served hereunder on him or the chief clerk of his office, as are provided in N. J. S. sections 2A:15–26 to 2A:15–30.

(3) The post-office address specified in paragraph 14A:13–8(1)(d) may be changed from time to time by filing in the office of the Secretary of State a certificate executed on behalf of the corporation setting forth

(a) the name of the foreign corporation;

(b) the jurisdiction of its incorporation;

(c) the date of the issuance of its certificate of withdrawal by the Secretary of State; and

(d) the changed post-office address.

14A:13–9. Termination of Existence of Foreign Corporation.

(1) When a foreign corporation authorized to transact business in this State is dissolved, or its authority or existence is otherwise terminated or cancelled in the jurisdiction of its incorporation, or it is merged into or consolidated with another corporation, there shall be filed in the office of the Secretary of State

(a) a certificate of the official of the jurisdiction of incorporation of such foreign corporation who has custody of the records pertaining to corporations, attesting to the occurrence of any such event; or

(b) a certified copy of an order or decree of a court of competent jurisdiction directing the dissolution of such foreign corporation, the termination of its existence, or the cancellation of its authority;

together with a statement executed on behalf of the corporation of the post-office address within or without this State to which the Secretary of State may mail a copy of any process against the corporation that may be served on him.

(2) Upon the filing of the certificate, order or decree and the statement of the post-office address, the Secretary of State shall issue a certificate of withdrawal with like effect as provided in subsection 14A:13–8(2).

(3) The post-office address specified in subsection 14A:13–9(1) may be changed from time to time in the same manner as is provided in subsection 14A:13–8(3).

14A:13–10. Revocation of Certificate of Authority; Issuance of Certificate of Revocation.

(1) In addition to any other ground for revocation provided by law, the certificate of authority of a foreign corporation to transact business in this State may be revoked by the Secretary of State upon the conditions prescribed in this section when

(a) the certificate of authority of the corporation has been suspended for 90 days under this act; or

(b) the corporation has failed to apply for an amended certificate of authority within 90 days after it was required to do so under this act; or

(c) the corporation has failed to maintain a registered agent in this State as required by this act; or

(d) the corporation has failed, after change of its registered office or registered agent, to file in the office of the Secretary of State a statement of such change as required by this act; or

(e) the corporation has failed to file its annual report within the time required by this act.

(2) No certificate of authority of a foreign corporation shall be revoked by the Secretary of State unless

(a) he shall have given the corporation not less than 90 days' notice that such default exists and that its certificate of authority will be revoked unless such default is cured within 90 days after the mailing of such notice; and

(b) the corporation shall fail prior to revocation to cure such default.

Such notice shall be sent by certified mail to the corporation at its registered office in this State and at its main business or headquarters office as such offices are on record in the office of the Secretary of State.

(3) Upon revoking any such certificate of authority, the Secretary of State shall issue a certificate of revocation and shall mail a copy to such corporation at each of the addresses designated in subsection 14A:13–10(2).

(4) The issuance of the certificate of revocation shall have the same force and effect as the issuance of a certificate of withdrawal under subsection 14A:13–8(2).

14A:13–11. Transacting Business Without Certificate of Authority.

(1) No foreign corporation transacting business in this State without a certificate of authority shall maintain any action or proceeding in any court of this State, until such corporation shall have obtained a certificate of authority. This prohibition shall apply to

(a) any successor in interest of such foreign corporation, except any receiver, trustee in bankruptcy or other representative of creditors of such corporation; and

(b) any assignee of the foreign corporation, except an assignee for value who accepts an assignment without knowledge that the foreign corporation should have but has not obtained a certificate of authority in this State.

(2) The failure of a foreign corporation to obtain a certificate of authority to transact business in this State shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action or proceeding in any court of this State.

(3) In addition to any other liabilities imposed by law, a foreign corporation which transacts business in this State without a certificate of authority shall forfeit to the State a penalty of not less than $200.00, nor more than $1,000.00 for each calendar year, not more than 5 years prior thereto, in which it shall have transacted business in this State without a certificate of authority. Such penalty shall be recovered with costs in an action prosecuted by the Attorney General. The court may proceed in such action in a summary manner or otherwise.

14A:13–12. Injunction Against Foreign Corporation.

(1) The Attorney General may bring an action in the Superior Court in the name of the State to enjoin a foreign corporation from transacting business in this State

(a) without having first obtained a certificate of authority pursuant to this Chapter; or

(b) of a character not set forth in its application for a certificate of authority or for an amended certificate of authority; or

(c) after its authority to transact business in this State has been surrendered or revoked; or

(d) after it is dissolved or its authority or existence is otherwise terminated or cancelled in the jurisdiction of its incorporation.

(2) The Superior Court may proceed in such action in a summary manner or otherwise.

(3) The provisions of this section shall not exclude any other ground provided by law for injunctive relief against a foreign corporation to restrain it from the exercise of any franchise or the transaction of any business within this State.

CHAPTER 14

Insolvency, Receivers and Reorganization

Section

14A:14–1. DEFINITIONS.

As used in this chapter, and unless the context requires otherwise

(a) "corporation" means a domestic corporation and a foreign corporation;

(b) "creditor" means the holder of any claim, of whatever character, against a corporation, whether secured or unsecured, matured or unmatured, liquidated or unliquidated, absolute or contingent;

(c) "debt" includes any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent;

(d) "encumbrance" means a mortgage, security interest, lien or charge of any nature in or upon property;

(e) "fair consideration" is given for property or an obligation when, in exchange for such property or obligation, as a fair equivalent therefor, and in good faith, property is transferred or an intecedent debt is satisfied; or when such property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property or obligation obtained;

(f) "insolvent": a corporation shall be deemed to be insolvent for the purposes of this chapter (1) when the aggregate of its property, exclusive of any property which it may have conveyed, transferred, concealed, removed or permitted to be concealed or removed, with intent to defraud, hinder or delay its creditors, shall not at a fair valuation be sufficient in amount to pay its debts; or (2) when the corporation is unable, by its available assets or the honest use of credit, to pay its debts as they become due;

(g) "property" means real property, tangible and intangible personal property, and rights, claims and franchises of every nature;

(h) "receiver" means a receiver of a corporation appointed pursuant to this chapter, and includes corporations authorized by law to act as receivers in this State, as well as individuals;

(i) "receivership action" means an action brought pursuant to this chapter for the appointment of a receiver of a corporation;

(j) "transfer" means the sale and every other method, direct or indirect, of disposing of or parting with property or with an interest therein, or with the possession thereof, or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings, as a conveyance, sale, payment, pledge, mortgage, lien, encumbrance, gift, security, or otherwise; the retention of security title to property delivered to a corporation shall be deemed a transfer suffered by such corporation.

14A:14–2. Jurisdiction of the Superior Court; Appointment of Receiver.

(1) A receivership action may be brought in the Superior Court by

(a) a creditor whose claim is for a sum certain or for a sum which can by computation be made certain; or

(b) a shareholder or shareholders who individually or in combination own at least ten per cent of the outstanding shares of any class of the corporation; or

(c) the corporation, pursuant to resolution of its board.

(2) The action shall be based upon at least one of the following grounds:

(a) the corporation is insolvent;

(b) the corporation has suspended its ordinary business for lack of funds;

(c) the business of the corporation is being conducted at a great loss and greatly prejudicial to the interests of its creditors or shareholders.

(3) The court may proceed in the action in a summary manner or otherwise. It shall have power to appoint and remove one or more receivers of the corporation from time to time, and to enjoin the corporation, its officers and agents, from exercising any of its

debts, or paying out, selling, assigning or transferring any of its property, except to a receiver, and except as the court may otherwise order. The court shall have such further powers as shall be appropriate for the fullfillment of the purposes of this chapter.

(4) Every receiver shall, before assuming his duties, execute and file a bond in the office of the Clerk of the Superior Court, with such sureties and in such form as the court shall approve.

14A:14–3. Multiple Receivers.

When more than one receiver of a corporation is appointed,

(a) the provisions of this chapter applicable to one receiver shall be applicable to all;

(b) the debts and property of the corporation may be collected and received by any of them; and

(c) the powers and rights conferred upon them may be exercised by a majority of them.

14A:14–4. Title to Corporate Property and Franchises.

(1) Upon his appointment, the receiver shall become vested with the title to all the property of the corporation, of every nature, including its franchises.

(2) For the purpose of avoiding encumbrances, transfers and preferences, the right and title of a receiver shall relate back to the date upon which the receivership action commenced.

14A:14–5. Powers of Receivers; General.

Subject to the general supervision of the Superior Court and pursuant to specific order where appropriate, a receiver shall have power to

(a) take into his possession all the property of the corporation, including its books, records and papers;

(b) institute and defend actions by or on behalf of the corporation;

(c) sell, assign, convey or otherwise dispose of all or any part of the property of the corporation;

(d) settle or compromise with any debtor or creditor of the corporation, including any taxing authority;

(e) summon and examine under oath, which he may administer, or by affirmation, any persons concerning any matter pertaining to the receivership or to the corporation, its property

and its transactions, and require such person to produce books, records, papers and other tangible things and to be examined thereon;

(f) take testimony within or without the State, and, if without the State, apply to courts of other jurisdictions for compulsory process to obtain the attendance of witnesses;

(g) continue the business of the corporation, and, to that end, enter into contracts, borrow money, pledge, mortgage or otherwise encumber the property of the corporation as security for the repayment of the receiver's loans;

(h) do all further acts as shall best fulfill the purposes of this chapter.

14A:14–6. Powers of Receiver; Contempt of Court.

If any person summoned to be examined pursuant to section 14A:14–5 shall refuse to be sworn, or to affirm, or to testify, or to answer a proper question, or to produce the books, papers, documents or tangible things demanded, or shall otherwise misconduct himself, the Superior Court may, on motion, and after affording such person the opportunity to be heard, punish such person in the same manner as like failure is punishable in a case pending in the court.

14A:14–7. Powers of Receiver; Sale of Property Free of Encumbrances.

When property of a corporation for which a receiver has been appointed is, at the time of such appointment, subject to one or more encumbrances, the Superior Court, upon the application of the receiver, may authorize the receiver to sell such property at public or at private sale, clear of encumbrances, for such price and upon such terms as the court may approve. No such sale shall be authorized or made except upon prior notice to the holders of the encumbrances affecting such property, and unless the receiver demonstrates to the satisfaction of the court that the sale of such property may be reasonably expected to benefit general creditors of the corporation without adversely affecting the interests of the holders of the encumbrances. The proceeds of such sale shall be paid into court, there to remain until the further order of the court, subject to the same encumbrances which affected the property at the time of the sale.

14A:14–8. Rights of Debtors; Setoff; Counterclaim.

(1) In all cases of mutual debts or mutual credits between the corporation and a creditor, the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid.

(2) A right of setoff or counterclaim shall not be allowed in favor of any debtor of the corporation if it was acquired by such debtor after the commencement of the receivership action, or within four months before such commencement, with a view to such use and with knowledge or notice that the corporation was insolvent.

14A:14–9. Payment or Delivery to Corporation.

(1) After the commencement of a receivership action, but before the appointment of a receiver, a debtor of the corporation may make payment to the corporation of his debt, and a person holding property of the corporation may deliver it to the corporation, and such payment and such delivery shall have the same effect as if the receivership action were not pending.

(2) If such payment or such delivery is made after the appointment of a receiver by a person acting in good faith and without knowledge of the appointment, such payment and such delivery shall have the same effect as if a receiver had not been appointed.

14A:14–10. Fraudulent Transfers.

(1) Every transfer made and every obligation incurred by a corporation which is or will be thereby rendered insolvent, is fraudulent as to creditors without regard to its actual intent if the transfer is made or the obligation is incurred without a fair consideration.

(2) Every transfer made without fair consideration when the corporation making it is engaged or is about to engage in a business or transaction for which the property remaining in its hands after the transfer is an unreasonably small capital, is fraudulent as to creditors and as to other persons who become creditors during the continuance of such business or transaction without regard to its actual intent.

(3) Every transfer made and every obligation incurred without fair consideration when the corporation making the transfer or entering into the obligation intends to or believes that it will incur debts beyond its ability to pay as they mature, is fraudulent as to both present and future creditors.

(4) Every transfer made and every obligation incurred by a corporation with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors of the corporation, is fraudulent as to both such present and future creditors.

(5) Every transfer made and every obligation incurred by a corporation which is or will thereby be rendered insolvent, within four months prior to the commencement of a receivership action by or against such corporation, is fraudulent as to the then existing and future creditors: (a) if made or incurred in contemplation of the commencement of such action or in contemplation of liquidation of all or the greater portion of the corporation's property, with intent to use the consideration obtained for such transfer or obligation to enable any creditor of the corporation to obtain a greater percentage of his debt than some other creditor of the same class, and (b) if the transferee or obligee of such transfer or obligation, at the time of such transfer or obligation, knew or believed that the corporation intended to make such use of such consideration.

(6) For the purposes of this section, a transfer shall be deemed to have been made at the time when it became so far perfected that no purchaser from the corporation could thereafter have acquired any rights in the property so transferred superior to the rights of the transferee therein, but, if such transfer is not so perfected prior to the commencement of the receivership action by or against such corporation, it shall be deemed to have been made immediately before the filing of such action.

14A:14–11. Fraudulent Transfers: Continued.

(1) A transfer made or an obligation incurred which is fraudulent under section 14A:14–10 against a creditor, is fraudulent against the receiver, except as to a purchaser for a fair consideration, without knowledge of the fraud at the time of the purchase.

(2) When a transfer made or an obligation incurred is fraudulent as to a creditor whose claim has matured, the receiver may, as against any person except a purchaser for a fair consideration, without knowledge of the fraud at the time of the purchase, or one who has derived title immediately, or immediately from such a purchaser,

(a) disregard the transfer and attach or levy execution upon the property conveyed or such obligation; or

(b) have the transfer set aside or the obligation annulled to the extent necessary to satisfy the creditor's claim.

(3) A purchaser who, without actual fraudulent intent, has given less than a fair consideration for the transfer or obligation, may retain the property or obligation as security for repayment.

(4) When a transfer made or an obligation incurred is fraudulent as to a creditor whose claim has not matured, the receiver may proceed in the Superior Court against any person against whom he could have proceeded if the claim were matured, and the Court may

(a) restrain the defendant from disposing of the property covered or affected by such conveyance or of such obligation;

(b) direct that the property or obligation be delivered to the custody of the receiver;

(c) if equitable, set aside the conveyance or annul the obligation to the extent necessary to satisfy the claim.

14A:14–12. Fraudulent Transfers: Continued.

Nothing contained in section 14A:14–10 or 14A:14–11 shall be construed to validate a transfer which is voidable under section 14A:14–13.

14A:14–13. Liens by Legal Process.

(1) Every lien against the property of a corporation shall be void if

(a) such lien is obtained by attachment, judgment, levy or other legal process; and

(b) a receivership action against the corporation is commenced within four months after the date on which such lien was obtained, or if such lien is obtained after the commencement of the receivership action; and

(c) the assets of the corporation are distributed in the receivership action.

(2) The property affected by any such lien shall be discharged from such lien and shall pass to the receiver, but the court may order such lien to be preserved for the benefit of the corporation's creditors. The Superior Court may direct such conveyance of the property affected as may be proper or adequate to evidence title thereto of the receiver. The title of a bona fide purchaser of such property shall be valid, but, if such title is acquired otherwise than

by a judicial sale held to enforce such lien, it shall be valid only to the extent of the present consideration paid for such property.

14A:14–14. PREFERENCES.

(1) For the purposes of this chapter, a preference arises when

(a) a corporation which, while insolvent, and within four months of the commencement of a receivership action by or against it, transfers any property to or for the benefit of a creditor for or on account of an antecedent debt; and

(b) the effect of such transfer will be to enable such creditor to obtain a greater percentage of his debt than some other creditor of the same class; and

(c) the creditor receiving or to be benefited by the transfer, or his agent acting with reference thereto, has, at the time when the transfer is made, reasonable cause to believe that the corporation is insolvent.

(2) For the purpose of determining whether a preference has arisen

(a) a transfer of property other than real property shall be deemed to have been made or suffered at a time when it became so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee;

(b) a transfer of real property shall be deemed to have been made or suffered when it became so far perfected that no subsequent bona fide purchase from the corporation could create rights in such property superior to the rights of the transferee.

(3) If any transfer of real property is not so perfected against a bona fide purchase, or if any transfer of other property is not so perfected against such liens by legal or equitable proceedings prior to the commencement of a receivership action, it shall be deemed to have been made immediately before the commencement of such action.

(4) When a preference has arisen, the receiver may recover the property or, if it has been converted, its value, from any person who has received or converted such property, except a bona fide purchaser from or lienor of the corporation's transferee for a present fair consideration. Where, however, such bona fide purchaser or lienor has given less than such value, he shall nevertheless have a lien upon such property, but only to the extent of the consideration actually given by him. When a preference is by way

of lien or security title, the Superior Court may on due notice order such lien or title to be preserved for the benefit of the insolvent corporation's estate, in which event the lien or title shall pass to the receiver.

(5) If a creditor has been preferred and afterward in good faith gives the corporation further credit without security of any kind for property which becomes a part of the insolvent corporation's property, the amount of such new credit remaining unpaid at the time of the commencement of the receivership action may be set off against the amount which would otherwise be recoverable from such creditor.

14A:14–15. Notice to Creditors.

(1) At any time after his appointment, the receiver may give notice requiring all creditors to present their claims in writing. Such notice shall be published twice, once in each of two consecutive weeks, in a newspaper of general circulation in the county in which the registered office of the corporation is located and shall state that all persons who are creditors of the corporation shall present written proof of their claims to the receiver at a place and on or before a date named in the notice, which date shall not be less than 6 months after the date of the first publication.

(2) On or before the date of the first publication of the notice as provided in subsection (1) of this section, the receiver shall mail a copy of the notice to each known creditor of the corporation. The giving of such notice shall not constitute recognition that any person to whom such notice is directed is a creditor of the corporation other than for the purpose of receipt of notice hereunder.

(3) Proof of the publication and mailing required by this section shall be made by an affidavit filed in the office of the Clerk of the Superior Court.

14A:14–16. Claims; Presentation; Approval or Rejection.

Creditors shall, if required by the receiver, submit themselves to examination by him and produce before him such records and proof relating to their claims as the receiver may direct. The receiver may also examine under oath all witnesses produced before him relating to the claims, and he shall pass upon, and allow or disallow, such claims, and shall notify the creditors of his determination.

4A:14–17. Claims; Jury Trial.

A creditor who presents his claim to a receiver pursuant to this chapter and whose claim is disallowed in whole or in part by the receiver shall, on demand in writing, be entitled to trial by jury on any issue triable of right by jury.

14A:14–18. Review of Receiver's Actions.

Any person aggrieved by the proceedings or determination of the receiver in the discharge of his duties shall be entitled to a review of the receiver's action in a summary manner in the Superior Court.

14A:14–19. Discontinuance of Receivership Action.

A receivership action against a corporation may be discontinued at any time when it is established that cause for the action no longer exists. In such event, the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its property remaining in his hands. Upon such redelivery, the corporation shall be revested with full rights in such property and in its franchises as if the receiver had not been appointed.

14A:-4–20. Allowances to Receiver and Others; Costs and Expenses.

In any proceeding under this chapter, the court shall allow a reasonable compensation to the receiver for his services and his costs and expenses in the receivership action. It shall also allow reasonable compensation to the following for their services in the receivership action and their costs and expenses: the attorney for the receiver, the appraiser, the auctioneer, the accountant and other persons appointed by the court in connection with the receivership action.

14A:14–21. Distribution of Assets; Priorities.

(1) After payment of all allowances, expenses and costs, and the satisfaction of all liens upon the funds of the corporation to the extent of their lawful priority, the creditors shall be paid proportionately to the amount of their respective debts, excepting mortgage and judgment creditors when the judgment has not been by confession for the purpose of preferring creditors. The creditors shall be entitled to distribution on debts not due, making in

such case a rebate of interest, when interest is not accruing on the same.

(2) The surplus funds, if any, after payment of the creditors and the costs, expenses and allowances aforesaid, and the preferred stockholders, shall be divided and paid to the general stockholders proportionately, according to their respective shares.

(3) In any distribution to creditors under this section, all persons doing labor or service of any character, in the regular employment of the corporation, shall be entitled to priority of payment for the wages, not to exceed $600. for each claimant, due them respectively for all labor, work and services performed within three months before the institution of a receivership action under this chapter. A claim under this subsection 14A:14–21(3) shall have priority over all other claims against the corporation, but shall be subordinate to (1) a security interest in personal property perfected more than two months next preceding the date when the receivership action was instituted, (2) a security interest in personal property for money loaned or goods purchased within two months next preceding the date when the receivership action was instituted, (3) mortgages upon the real property of the corporation, and (4) all claims entitled to higher priority by law.

14A:14–22. Judgment of Dissolution.

After distribution of the corporation's assets as provided in section 14A:14–21, the Superior Court may make a judgment dissolving the corporation and declaring its charter forfeited and void.

14A:14–23. Reorganization Under Act of Congress; "Plan of Reorganization" Defined.

As used in sections 14A:14–24, 14A:14–25 and 14A:14–26, "plan of reorganization" means a plan of corporate reorganization which has been ordered or confirmed by a court or by a commission or other agency of the United States, in a proceeding brought under any act of Congress providing for the reorganization of corporations.

14A:14–24. Reorganization Under Act of Congress; Implementation of Plan of Reorganization.

(1) A corporation shall have the power to do any act required or permitted by a plan of reorganization in order to put such plan in effect according to its terms.

(2) The power conferred by subsection (1) of this section shall be exercised by the trustee or trustees, or other person or persons acting in similar capacities, appointed in the reorganization proceeding resulting in the plan of reorganization, or, if none be then acting, by any other person or persons designated or appointed for such purpose in such organization proceeding, or, if no such other person or persons be then acting, by an officer or officers of the corporation.

(3) The exercise of the power to put in effect a plan of reorganization by those designated in subsection (2) of this section shall have the same effect as if done with the unanimous consent of the directors and the shareholders.

14A:14–25. Reorganization Under Act of Congress; Rights of Certain Shareholders.

In any case where a plan of reorganization of a corporation provides for any action to be taken, which, if taken voluntarily on the vote of the shareholders of a corporation not in reorganization, would entitle dissenting shareholders to payment of the value of their shares, such action may be taken by such corporation in reorganization without payment to shareholders of the value of their shares.

14A:14–26. Reorganization Under Act of Congress; Certificates.

When any plan of reorganization provides for any action to be taken which, if taken voluntarily on the vote of the shareholders of a corporation not in reorganization, would require the filing of a certificate or other document in the office of the Secretary of State, such certificate or other document shall be executed on behalf of the corporation by the persons specified in subsection (2) of section 14A:14–24 and shall be filed in the office of the Secretary of State. Such certificate or other document shall recite that its making and filing are authorized pursuant to a plan of reorganization, and shall make reference to the proceeding in which the plan of reorganization was ordered or confirmed.

14A:14–27. Reorganization Under Act of Congress; Powers and Duties of State Instrumentalities.

Nothing contained in sections 14A:14–24, 14A:14–25 or 14A:14–26 shall be construed to abrogate, limit or restrict the powers and duties over any corporation imposed or conferred by law on any State officer, board, commission or other agency.

CHAPTER 15

Fees of Secretary of State

Section

14A:15–1. License Fees Payable by Domestic Corporations.

(1) The Secretary of State shall charge and collect from each domestic corporation a license fee, based upon the number of shares which it will have authority to issue or the increase in the number of shares which it will have authority to issue, at the time of

(a) filing the original certificate of incorporation;

(b) filing a certificate of amendment of the certificate of incorporation increasing the number of authorized shares or a restated certificate of incorporation including any such amendment; and

(c) filing a certificate of merger or a certificate of consolidation increasing the number of authorized shares which the surviving or new domestic corporation will have authority to issue above the aggregate number of shares which the merging and consolidating domestic corporations had authority to issue.

(2) The license fee shall be at the rate of one cent per share up to and including the first 10,000 authorized shares and one-tenth cent per share for each authorized share in excess of 10,000 shares, whether the shares are of par value or without par value.

(3) The license fee payable on an increase in the number of authorized shares shall be imposed only on the increased number of shares, but the number of previously authorized shares shall not be taken into account in determining the rate applicable to the increased number of authorized shares. The Secretary of State shall determine the amount due on each such increase by reference to the last document on file in his office setting forth the number of previously authorized shares without allowing any credit for any intermediate reduction in the number of authorized shares since the filing of the original certificate of incorporation.

(4) In no case shall any license fee payment hereunder be less than $10.00 nor more than $1,000.00.

14A:15–2. Filing Fees of the Secretary of State.

On filing any certificate or other papers relative to corporations in the office of the Secretary of State, there shall be paid to the Secretary of State for the use of the State, filing fees as follows, in addition to any applicable license fee and recording fee:

(1) Certificate of incorporation and amendments thereto:

(a) for filing the original certificate of incorporation $25.00

(b) for filing a certificate of amendment of the certificate of incorporation, including any number of amendments $20.00

(c) for filing a certificate of abandonment of one or more amendments of the certificate of incorporation $10.00

(d) for filing a certificate of merger or a certificate of consolidation $25.00

(e) for filing a certificate of abandonment of a merger or consolidation $10.00

(2) Restated certificate of incorporation:

For filing a restated certificate of incorporation, including any amendments of the certificate of incorporation concurrently adopted $25.00

(3) Dissolution of corporation:

(a) for filing a certificate of dissolution $25.00

(b) for filing an affidavit of the publication and of the mailing of a notice to creditors $10.00

(c) for filing a certificate of revocation of dissolution proceedings $25.00

(4) Admission and withdrawal of foreign corporation:

(a) for filing an application for a certificate of authority to transact business in this State and issuing a certificate of authority $135.00

(b) for filing an application for an amended certificate of authority to transact business in this State and issuing an amended certificate of authority $25.00

(c) for filing an application for withdrawal from this State and issuing a certificate of withdrawal.. $25.00

(d) for filing a certificate of change of post office address to which process may be mailed by the Secretary of State $10.00

(e) for filing a certificate, order or decree with respect to the dissolution of a foreign corporation, the termination of its existence, or the cancellation of its authority, and issuing a certificate of withdrawal $25.00

(5) Registered office and registered agent:

(a) for filing a certificate of change of address of registered office, or change of registered agent $5.00
if both are changed $10.00

(b) for filing a certificate of change of address of registered agent within the same municipality or county, where such certificate effects a change in the address of the registered office of one or more corporations, for each corporation named in the certificate $5.00

(c) for filing an affidavit of resignation of a registered agent $5.00

(6) Annual report:

For each such report required to be filed $10.00

(7) Tax clearance certificate from the Director of the Division of Taxation:

For each such certificate required to be filed $5.00

14A:15–3. Additional Miscellaneous Fees.

The Secretary of State shall also charge and collect for:

(1) filing an application to reserve a corporate name and issuing a certificate of reservation $10.00

(2) filing a notice of transfer of a reserved corporate name $5.00

(3) filing an application by a foreign corporation to register its corporate name $25.00

(4) filing an application by a foreign corporation to renew the registration of its corporate name .. $25.00

(5) filing a statement of cancellation of shares $20.00

(6) filing a statement of reduction of stated capital ... $20.00

(7) filing a certificate as to the acquisition of the shares or a class of shares of a domestic corporation.. $25.00

(8) issuing a certificate of standing, including registered agent and registered office $5.00

(9)	issuing a certificate of standing, same as above, but including incorporators, officers and directors, and authorized shares	$10.00
(10)	issuing a certificate of standing, listing charter documents	$10.00
(11)	issuing a certificate of availability of corporate name (1 to 3 names)	$5.00
(12)	all other certificates issued or papers filed, but not otherwise provided for	$5.00
(13)	recording all documents filed, except annual reports per page	$1.00

CHAPTER 16

Construction; Repealers; Effective Date

Section

14A:16–1. Construction.

(1) The provisions of this act not inconsistent with those of prior laws shall be construed as a continuation of such laws.

(2) This act shall be deemed to be a part of the general and permanent statutes of this State. The abbreviation "N. J. S. 14A" shall constitute a reference to this act, and sections of this act may be cited by section number only, preceded by such abbreviation.

(3) No repeal contained herein shall affect any right now vested in any person pursuant to the provisions of any law so repealed, nor, except as otherwise provided herein, shall it affect any remedy in an action or proceeding heretofore instituted and pending on the effective date of this act. "Action or proceeding" as used in this section shall not be limited to judicial actions or proceedings.

(4) The repeal of Title 14 of the Revised Statutes, as amended and supplemented, shall not of itself be deemed to revive any common law right or remedy abolished by any provision of said Title.

(5) The classification and arrangement of the sections of this act have been made for purposes of convenience, reference and orderly arrangement, and no implication or presumption of a legislative construction shall be drawn therefrom.

(6) In the construction of this act, no outline or analysis of the contents hereof or of any chapter or other part hereof, no cross-reference or cross-reference note and no headnote or source note to any action shall be deemed to be a part hereof.

(7) If any chapter, section or provision of this act shall be declared to be unconstitutional, invalid or inoperative in whole or in part, by a court of competent jurisdiction, such chapter, section or provision shall, to the extent that it is not declared unconstitutional, invalid or inoperative, be enforced and effectuated, and no such determination shall be deemed to invalidate or make ineffectual the remaining provisions of this act.

(8) The provisions of chapter 1 of Title 1 of the Revised Statutes shall be applicable to this act.

(9) Any reference to a section or sections of Title 14 of the Revised Statutes, as amended and supplemented, in any other statute which became effective prior to the effective date of this act and which still remains in effect, shall be given effect on and after the effective date of this act, as though the reference therein were made to the section or sections of this act which contain the statutory material formerly included in said section or sections of Title 14, as amended and supplemented. Where the statutory material formerly included in Title 14 as amended and supplemented, is not included in this act, references thereto in any other statute which so became effective and remains in effect, shall cease to be operative and shall be deemed to be superseded.

14A:16–2. Acts Saved from Repeal.

The following acts and parts of acts, and all amendments thereof, are saved from repeal:

R. S. 14:3–7
R. S. 14:3–8
R. S. 14:3–10
R. S. 14:7–5

R. S. 14:8–18
R. S. 14:8–22
R. S. 14:11–16
R. S. 14:13–13
R. S. 14:13–14
P. L. 1950, c. 102 (C. 14:17–1)
P. L. 1959, c. 200 (C. 14:18–1 through C. 14:18–12)
P. L. 1962, c. 233 (C. 14:19–1 through C. 14:19–17)

14A:16–3. Acts Repealed.

The following acts and parts of acts, and all other acts which are inconsistent with this act, except those specifically saved from repeal by this act, are hereby repealed:

Title 14 of the Revised Statutes
P. L. 1938, c. 178 (C. 14:15–7 through C. 14:15–9)
P. L. 1938, c. 180 (C. 14:15–10)
P. L. 1938, c. 303 (C. 14:13–15)
P. L. 1942, c. 124 (C. 14:3–14)
P. L. 1943, c. 175 (C. 14:8–3.1)
P. L. 1945, c. 131 (C. 14:3–15 through C. 14:3–17)
P. L. 1950, c. 220 (C. 14:3–13.1 through C. 14:3–13.4)
P. L. 1950, c. 282 (C. 14:4–4.1)
P. L. 1951, c. 254 (C. 14:13–7.1 through C. 14:13–7.3)
P. L. 1963, c. 161 (C. 14:4–7, C. 14:4–8)
P. L. 1964, c. 177 (C. 14:10–9.1)
P. L. 1967, c. 116 (C. 14:12A–1 through C. 14:12A–5)

14A:16–4. Effective Date.

This act shall take effect on January 1, 1969.

CROSS REFERENCE TABLE

Title 14	Revision
14:1–1	14A:1–2
14:1–2	14A:1–3
14:1–3	14A:1–6
14:1–4	14A:1–6
14:1–5	Repealed by P. L. 1942, c. 208
14:1–6	14A:1–3, 14A:1–7
14:2–1	14A:2–1, 14A:2–6
14:2–2	14A:2–1
14:2–3	14A:2–3, 14A:2–6, 14A:2–7
14:2–4	14A:1–9, 14A:2–6, 14A:2–7
14:2–5	14A:9–2, 14A:9–4
14:2–6	14A:1–4
14:2–7	14A:2–6
14:2–8	14A:1–3
14:2–9	14A:1–5
14:3–1	14A:3–1, 14A:6–2
14:3–2	14A:2–9
14:3–3	14A:1–3, 14A:3–1
14:3–3.1	Omitted
14:3–4	14A:2–1
14:3–5	14A:10–10, 14A:10–11, 14A:11–1
14:3–6	14A:10–10
14:3–7	Saved from repeal
14:3–8	14A:1–9
14:3–9	14A:7–5
14:3–10	Saved from repeal
14:3–11	14A:3–1, 14A:5–14
14:3–12	14A:7–5
14:3–13	14A:3–4
C. 14:3–13.1	14A:3–4
C. 14:3–13.2	14A:3–4
C. 14:3–13.3	14A:3–4
C. 14:3–13.4	14A:3–4
C. 14:3–14	14A:3–5
C. 14:3–15	14A:3–6
C. 14:3–16	14A:3–6
C. 14:3–16	14A:3–7
14:4–1	14A:4–1
14:4–2	14A:4–1, 14A:4–2
14:4–3	Omitted
14:4–4	14A:4–3
C. 14:4–4.1	14A:4–3
14:4–5	14A:4–3, 14A:9–2, 14A:13–10
14:4–6	Repealed. P. L. 1963, c. 124, §4
C. 14:4–7	14A:4–4
C. 14:4–8	14A:4–4
14:5–1	14A:5–28
14:5–1.1	14A:5–28
14:5–2	Omitted
14:5–3	14A:5–7
14:6–1	14A:4–2
14:6–2	14A:4–5
14:6–3	Omitted
14:6–4	Omitted
14:7–1	14A:6–1, 14A:6–2, 14A:6–3
14:7–2	14A:6–1
14:7–3	14A:6–4
14:7–4	14A:6–9
14:7–5	Saved from repeal
14:7–6	14A:6–15
14:7–7	14A:6–5, 14A:6–16
14:7–8	Omitted
14:7–9	Omitted
14:7–10	Omitted
14:7–11	Omitted
14:8–1	14A:7–1, 14A:7–4
14:8–2	14A:7–1, 14A:7–2
14:8–3	14A:7–6, 14A:7–16, 14A:7–18
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14:8–4	14A:7–7, 14A:7–9
14:8–5	14A:7–9
14:8–6	14A:7–4, 14A:7–8
14:8–7	14A:7–11
14:8–8	Omitted
14:8–9	14A:7–5
14:8–10	14A:6–11, 14A:6–12
14:8–11	14A:7–11
14:8–12	14A:7–12
14:8–13	14A:5–30
14:8–14	14A:7–3
14:8–15	14A:7–3
14:8–16	Omitted

CROSS REFERENCE TABLE—Continued

Title 14	Revision
14:8–17	14A:5–29
14:8–18	Saved from repeal
14:8–19	14A:6–12, 14A:6–13, 14A:7–14, 14A:7–15
14:8–20	14A:7–14, 14A:7–15
14:8–21	Omitted
14:8–22	Saved from repeal
14:8–23	(14:8–23 through 14:8–46 repealed by Uniform Commercial Code)
14:9–1	14A:8–1, 14A:8–3
14:9–2	14A:8–2
14:9–3	Omitted
14:9–4	14A:8–4
14:9–5	Omitted
14:9–6	14A:8–5
14:9–7	14A:8–6
14:10–1	14A:2–6, 14A:2–8
14:10–2	14A:5–2
14:10–3	14A:5–5
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14:10–5	14A:5–8
14:10–6	14A:5–26
14:10–7	14A:5–15, 14A:5–17
14:10–8	14A:5–13
14:10–9	14A:5–3, 14A:5–9, 14A:5–11, 14A:5–19
C. 14:10–9.1	14A:5–6
14:10–10	14A:5–20
14:10–10.1	14A:5–23
14:10–11	14A:5–3, 14A:6–5
14:10–12	14A:5–10, 14A:5–19
14:10–13	14A:5–9, 14A:5–24
14:10–14	14A:5–25, 14A:5–26
14:10–15	14A:5–24
14:10–16	14A:5–27
14:11–1	14A:7–19, 14A:9–1
14:11–2	14A:1–9, 14A:7–19, 14A:9–2, 14A:9–4
14:11–3	14A:9–3
14:11–4	14A:4–3
14:11–5	14A:7–19
14:11–6	14A:9–1
14:11–7	Omitted
14:11–8	14A:9–1
14:11–9	14A:9–1
14:11–10	Omitted
14:11–11	Omitted
14:11–12	Omitted
14:11–13	Omitted
14:11–14	14A:9–1, 14A:9–2
14:11–15	14A:2–2
14:11–16	Saved from repeal
14:12–1	14A:10–1, 14A:10–2, 14A:10–7
14:12–2	14A:10–1, 14A:10–2
14:12–3	14A:1–9, 14A:10–3, 14A:10–4
14:12–4	14A:10–4
14:12–5	14A:10–6
14:12–6	14A:11–1, 14A:11–2, 14A:11–3, 14A:11–7, 14A:11–8, 14A:11–9, 14A:11–10
14:12–7	14A:11–1, 14A:11–2, 14A:11–3, 14A:11–7, 14A:11–8, 14A:11–9, 14A:11–10
14:12–8	14A:10–1, 14A:10–2
14:12–9	Omitted
C. 14:12–10	14A:10–5, 14A:10–7
C. 14:12A–1 through C. 14:12A–5	Saved from repeal
14:13–1	14A:12–3, 14A:12–4, 14A:12–8, 14A:12–9
14:13–2	Omitted
14:13–3	14A:12–2
14:13–4	14A:12–9
14:13–5	14A:12–9, 14A:12–16
14:13–6	14A:6–12, 14A:12–9
14:13–7	14A:12–15
C. 14:13–7.1	14A:12–10, 14A:12–11
C. 14:13–7.2	14A:2–2
C. 14:13–7.3	Omitted
14:13–8	14A:12–16
14:13–9	14A:12–9
14:13–10	14A:12–18
14:13–11	14A:12–12, 14A:12–13
14:13–12	14A:12–12, 14A:12–14
14:13–13	Saved from repeal
14:13–14	14A:12–9
C. 14:13–15	14A:12–7
14:14–1	Omitted
14:14–2	Omitted

CROSS REFERENCE TABLE—Continued

Title 14	Revision
14:14–3	14A:14–1, 14A:14–2
14:14–4	14A:14–2
14:14–5	Omitted
14:14–6	14A:14–2
14:14–7	14A:14–5, 14A:14–8
14:14–8	14A:14–3
14:14–9	14A:14–4, 14A:14–9
14:14–10	14A:14–19, 14A:14–22
14:14–11	14A:14–5, 14A:14–6
14:14–12	Omitted
14:14–13	Omitted
14:14–14	14A:14–15
14:14–15	14A:14–16
14:14–16	14A:14–17
14:14–17	14A:14–18
14:14–18	Omitted
14:14–19	Omitted
14:14–20	14A:14–7
14:14–21	14A:14–21
14:14–22	14A:14–20
14:14–23	14A:14–21
14:14–24	Omitted
14:14–25	14A:14–13
14:14–26	14A:14–13
14:14–27	14A:14–4
14:14–28	Blank
14:14–29	Blank
14:14–30	14A:14–5
14:14–31	14A:14–5
14:14–32	Repealed. P.L. 1953, c.14
14:14–33	Repealed. P.L. 1953, c.14
14:14–34	Repealed. P.L. 1953, c.14
14:14–35	Repealed. P.L. 1953, c.14
14:14–36	Omitted
14:14–37	Omitted
14:14–38	Omitted
14:14–39	Omitted
14:14–40	Omitted
14:14–41	Omitted
14:14–42	Omitted
14:14–43	Omitted
14:14–44	14A:14–23, 14A:14–24
14:14–45	14A:14–25
14:14–46	14A:14–26
C. 14:14–46.1	14A:14–27
14:15–1	14A:13–3
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14:15–3	14A:4–1, 14A:4–2, 14A:13–2, 14A:13–4, 14A:13–5
14:15–4	14A:13–11
14:15–5	14A:13–1
14:15–6	14A:13–11
C. 14:15–7	14A:13–8, 14A:13–9
C. 14:15–8	Omitted
C. 14:15–9	14A:13–8
C. 14:15–10	Omitted
14:16–1	14A:15–1, 14A:15–2, 14A:15–3
14:16–2	14:15–1
C. 14:17–1	Saved from repeal
C. 14:18–1 through C. 14:18–12	Saved from repeal
C. 14:19–1 through C. 14:19–17	Saved from repeal

COPY

SENATE COMMITTEE AMENDMENTS TO
SENATE, NO. 884

STATE OF NEW JERSEY

ADOPTED NOVEMBER 15, 1968

Amend page 54, section 14A:7-3, after '(3)", insert "A subscriber shall not become a holder of any shares for which the full consideration to be received by the corporation has not been paid."; omit sub-paragraph (a) in its entirety; omit "(b)", insert "(a)"; omit "(c)", insert "(b)"; omit "(d)", insert "(c)".

Amend page 58, section 14A:7-6, in subsection (4), lines 2 and 3, omit "the last sentence of".

Amend page 67, section 14A:7-16, in subsection (7), line 3, before "assets remaining", insert "net".

Amend page 110, section 14A:12-12, line 4, omit "twice", insert "3 times".

Amend page 110, section 14A:12-12, line 5, omit "two", insert "3".

Amend page 113, Chapter 13, Schedule, after "14A:13-12. Injunction Against Foreign Corporation.", insert "14A:13-13. Vesting of Title to Real Property Upon Merger or Consolidation of Foreign Corporations.".

Amend page 120, after section 14A:13-12, insert a new section as follows:

"14A:13-13. Vesting of Title to Real Property Upon Merger or Consolidation of Foreign Corporations.

(1) As used in this section, unless the context clearly requires otherwise:

(a) "Surviving foreign corporation" means a foreign corporation into which one or more other foreign corporations have merged.

(b) "New foreign corporation" means a foreign corporation formed by the consolidation of two or more other foreign corporations.

(c) "Certificate of merger" means the instrument, by whatever name it is called, filed or issued under any statute to merge one or more foreign corporations into another foreign corporation.

(d) "Certificate of consolidation" means the instrument, by whatever name it is called, filed or issued under any statute to consolidate two or more foreign corporations into a new foreign corporation.

(e) "Certified copy", when used with reference to a certificate of merger or a certificate of consolidation, means a copy of the certificate of merger or of the certificate of consolidation, as the case may be, which was filed in or issued by the jurisdiction of the surviving corporation, as the case may be, to make the merger or consolidation effective, certified by the official of such jurisdiction having custody of its records pertaining to corporations.

(2) Whenever a foreign corporation shall merge into or consolidate with another foreign corporation, and a certified copy of the certificate of merger or certificate of consolidation, as the case may be, is filed in the office of the secretary of state of New Jersey, any and all real property in New Jersey and any and all interests therein, owned by each of the merging or consolidating foreign corporations, shall be deemed to have been vested in the surviving foreign corporation or the new foreign corporation, as the case may be, upon the effective date of the merger or consolidation, without further act or deed.

(O V E R)

Such merger or consolidation shall be valid and effectual to vest title to such real property and interests therein in the surviving foreign corporation or the new foreign corporation, as the case may be, as fully and completely as if regularly conveyed to it by deed.

(3) The provisions of this section shall apply to every merger and to every consolidation of foreign corporations which became effective before the effective date of this act, as well as to every merger and every consolidation of foreign corporations which shall become effective after the effective date of this act, whether the certified copy of the certificate of merger or of the certificate of consolidation, as the case may be, was filed in the office of the secretary of state of New Jersey before the effective date of this act or shall be so filed thereafter. In the case of mergers or consolidations of foreign corporations which became effective before the effective date of this act, the title of each surviving foreign corporation and of each new foreign corporation to all real property in New Jersey and to all interests in real property in New Jersey which at the time of the merger or consolidation was owned by each foreign corporation which was a party to the merger or consolidation is hereby confirmed and made valid and effectual, provided a certified copy of the certificate of consolidation, as the case may be, is filed in the office of the secretary of state of New Jersey.".

Amend page 137, section 14A:16-2, before "R. S. 14:3-7", insert "R. S. 14:2-2"; omit "R. S. 14:3-8".

Amend page 138, section 14A:16-2, omit "R. S. 14:13-14".

Amend page 138, section 14A:16-3, in Schedule, after "P.L. 1951, c.254 ....", insert "P.L. 1952, c.33 (C. 14:12-10)"; after "P.L. 1967, c.116 ....", insert "P.L. 1968, c.151 (C. 14:15-1.1); P.L. 1968, c.168 (C. 14:1-3.1); P.L. 1968, c.262 (C. 14:3-18)".