

950 CMR 113.00: THE MASSACHUSETTS BUSINESS CORPORATION ACT, M.G.L. c. 156D

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PART 1- FILING REQUIREMENTS

113.01: Purpose

- (1) 950 CMR 113.00 describes the practices and procedures of the Secretary of the Commonwealth relative to M.G.L. c. 156D: *The Massachusetts Business Corporation Act*.
- (2) The Corporations Division, which is under the supervision of the Secretary of the Commonwealth, administers the provisions of the Massachusetts General Laws pertaining to certain corporations and related matters. The chief executive officer of the Corporations Division has the title, "Director of the Corporations Division". The Director may, subject to the approval of the Secretary, make, amend and rescind such rules, forms and orders as are contemplated by the provisions of the Massachusetts General Laws and as are necessary to carry out their purposes. The Director is empowered to hear, examine and investigate matters subject to the provisions of the Massachusetts General Laws.
- (3) From time to time, the Director may authorize exceptions to 950 CMR 113.00 with respect to any specific requirement provided that such exceptions to 950 CMR 113.00 are in conformity with the provisions of the Massachusetts General Laws.

113.02: Definitions.

For purposes of 950 CMR 113.00 unless the context otherwise requires, the following terms shall have the meanings indicated:

Articles of Amendment means any document filed with the Division which amends the permanent information contained in the articles of organization, including articles of dissolution and certificates of reinstatement.

Articles of Organization means the original and any amended and restated articles of organization, articles of merger and special acts of incorporation, articles of domestication, articles of domestication and conversion, and articles of entity conversion filed with the Division.

113.02: continued

Authorized Person means a person authorized to execute documents. An authorized person may be:

- (a) the chairman of the board of directors;
- (b) the president or other officer of the corporation;
- (c) if directors have not been selected or the corporation has not been formed, the incorporator or incorporators; or
- (d) a receiver, trustee or other court appointed fiduciary.

Corporation or Domestic Corporation means a corporation established, organized, or chartered under the Massachusetts General Laws having capital stock whether established before or after July 1, 2004 for the purpose of carrying on business for profit with the following exceptions:

- (a) corporations established by any special acts of incorporation enacted before March 11, 1831 and not subject to amendment, alteration or repeal by the general court if application of M.G.L. c. 156D would be inconsistent with provisions still in force of any special act of incorporation;
- (b) professional corporations subject to M.G.L. c. 156A if application of M.G.L. c. 156D would be inconsistent with the provisions of M.G.L. c.156A;
- (c) corporations organized for the purpose of carrying on the business of a bank, savings bank, cooperative bank, trust company, credit union, surety or indemnity company, or safe deposit company, or for the purpose of carrying on within the Commonwealth the business of an insurance company, railroad, electric railroad, street railway or trolley motor company, telegraph or telephone company, gas or electric light, heat or power company, canal, aqueduct or water company, cemetery or crematory company, and any other corporations which on October 1, 1965 have or may thereafter have the right to take land within the Commonwealth by eminent domain or to exercise franchises in public ways granted by the Commonwealth or by any county, city or town and corporations subject to M.G.L. c. 157 and M.G.L. c. 157A.

Director means the Director of the Corporations Division.

Division means the Corporations Division in the Office of the Secretary of the Commonwealth.

Division's Website means the Secretary of the Commonwealth's website at www.sec.state.ma.us.

Document means a filing required or permitted to be filed with the Division pursuant to M.G.L. c. 156D or to 950 CMR 113.00.

Foreign Corporation means a for-profit or non-profit corporation incorporated under a law other than the laws of the Commonwealth.

Other Entity means any association or entity other than a domestic or foreign business corporation, a domestic or foreign non-profit corporation or a governmental or quasi-governmental organization. The term includes, without limitation, limited partnerships, general partnerships, limited liability partnerships, limited liability companies, joint ventures, joint stock companies, business trusts and profit and non-profit unincorporated associations.

Personal Information means any information concerning an individual not required by law or regulation to be included in a document. Examples of such information include social security number, drivers license number, and date of birth. It may also include a residential address if such is not required by law.

Refusal to File means the determination by the Division that a document does not comply with the relevant provisions of law or regulation. A document may be refused because it does not contain supplemental information required by 950 CMR 113.00.

113.02: continued

Secretary means the Secretary of the Commonwealth.

Singular and Plural Forms Singular nouns shall include the plural form and plural nouns shall include the singular unless the context otherwise requires.

113.03: Place to File

Documents shall be mailed or delivered to the Division at:
Secretary of the Commonwealth
Corporations Division, Input Section
One Ashburton Place, 17th Floor
Boston, MA 02108-1512

If the document is mailed, the envelope shall clearly identify the type of document enclosed. Documents submitted to any other area of the office, to any district office or not properly addressed will not be considered received until received by the Division at the address noted above.

113.04: On-line Services

(1) The Division also offers online services at the Division's website. Services offered online include filing documents, ordering certificates and certified copies and searching records.

(2) General inquiries to the Division may also be made by electronic mail to corpinfo@sec.state.ma.us. Electronic mail cannot be used to file corporate documents, request certificates or searches of the records.

113.05: Division Hours

(1) The regular business hours of the filing and certificate rooms are Monday through Friday from 8:45 A.M. to 4:00 P.M., excluding holidays. The regular business hours of the public search room and phone room are Monday through Friday from 8:45 A.M. to 5:00 P.M., excluding holidays.

(2) Authorized facsimile and electronic transmissions may be made 24 hours per day, 365 days per year, except for scheduled maintenance and unscheduled interruptions of service.

113.06: General Filing Requirements

(1) A document shall be submitted in the English language unless otherwise provided by M.G.L. c. 156D or 950 CMR 113.00.

(2) A document shall be typed or printed. It may not be handwritten.

(3) A document shall contain all of the information required by M.G.L. c. 156D and 950 CMR 113.00. It may also contain other information relevant to the business affairs of the corporation, except that the Division, in its discretion, may reject or redact a document containing any personal information.

(4) A document shall be signed by an authorized person, and further, unless submitted by authorized electronic or facsimile transmission, such signature must be original. The authorized person must state beneath or opposite his signature his name, the capacity in which he signs and the date.

113.07: Forms

The Division supplies forms for documents required to be filed with the Division. The use of official forms is optional. Copies of the forms are available in the Office of the Secretary of the Commonwealth or on the Division's website. Any document submitted to the Division not on an official form must be on standard size paper, 8½ by 11 inches and follow the format specifications contained in 950 CMR 113.00. The minimum font size is 10. A document which does not comply with size requirements, format specifications or font size will be rejected.

113.08: Conformed Copy

Documents submitted to the Division need not be accompanied by an exact or conformed copy. A copy of all filed documents may be obtained from the Division's website.

113.09: Document Delivery

A document may be tendered for filing by:

- (1) personal or courier delivery to the Division at Secretary of the Commonwealth, Corporations Division, Input Section, One Ashburton Place, 17th Floor, Boston, MA during regular business hours;
- (2) postal service delivery addressed to Secretary of the Commonwealth, Corporations Division, Input Section, One Ashburton Place, 17th Floor, Boston, MA 02108. Additionally, the envelope must identify the type of document enclosed.
- (3) facsimile delivery in a manner authorized by the Division on its website; or
- (4) electronic transmission in the manner authorized by the Division on its website.

113.10: Effective Time and Date

- (1) Articles of organization, amendment and merger are effective at the time and on the date received unless the filing is rejected and written notice is provided to the submitter within five days of receipt. If the above documents are delivered in person before the Filing Room is open for business, or after the close of business, or on a day the filing office is not open for business, the document will be deemed received at the time and on the date the filing office is next open for business. If any of the above documents are delivered by mail and properly addressed, the time and date of receipt is the time and date the mail is opened, but not later than the close of business on the day of receipt. If the envelope is not properly addressed, the time of receipt will be the time and date the mail is opened.
- (2) All other documents are effective at the time and on the date approved by the Division.
- (3) Notwithstanding the foregoing, a document may specify a delayed effective time and date not later than the 90th day after the date it was received for filing by the Division. If a delayed effective date but no time is specified, the document is effective at the close of business on that date.

113.11: Procedure upon Refusal to File

If the Division finds that a document does not comply with law or contain the information required by 950 CMR 113.00, the Division shall notify the submitter within 90 days of receipt in the case of annual reports or within five days after receipt in the case of all other documents. The notice shall be in writing and specify the reason for refusal. The notice may be posted on the Division website and/or sent by mail, postage prepaid, to the address provided by the submitter, or if the submitter has provided the Division with an electronic mail address, to such address. Where annual reports are not filed electronically, the only notice will be sent by mail.

113.12: Articles of Correction

- (1) A domestic or foreign corporation may correct a filed document if the document:
 - (a) contains a typographical error or an incorrect statement; or
 - (b) was defectively executed, attested, sealed, verified or acknowledged.
- (2) The articles of correction consist of a form supplied by the Division or a document formatted in the same manner as the Division form. The articles of correction shall set forth:
 - (a) the name of the corporation;
 - (b) the street address of the registered office in the Commonwealth;
 - (c) a description of the document to be corrected;
 - (d) the date the document was filed;

113.12: continued

- (e) the typographical error, the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and
 - (f) the correction of the typographical error, incorrect statement or defective execution.
- (3) Articles of correction are effective on the effective date of the document except as to persons relying on and adversely affected by the correction. As to those persons, articles of correction are effective when filed.
- (4) Articles of correction cannot be used to change the effective date of a filed document provided that if a document has been filed with a delayed effective date, articles of correction may be filed to:
- (a) accelerate the effective date to a date not earlier than filing the articles of correction; or
 - (b) to abandon a merger or amendment to the articles of organization if authority to do so is granted by the merger agreement or the persons approving the amendment.
- (5) Articles of correction cannot be used to correct a substantive error or omission.
- (6) The Division has the authority to determine whether articles of correction are appropriate under the circumstances.

113.13: Fees and Methods of Payment

- (1) The fees for filing and copying documents, the issuance of certificates, and service of process are set forth in 801 CMR 4.00: *Rates*, issued by the Executive Office for Administration and Finance.
- (2) Filing fees, and fees for the copying of documents and the issuance of documents may be paid for by the following methods:
- (a) In person: cash, personal or cashier's check, or money order;
 - (b) By mail: personal or cashier's check, or money order; or
 - (c) By electronic transmission or facsimile: MasterCard, Visa, electronic funds transfer or debit card.
- (3) Personal checks, cashiers checks, and money orders must be payable to the Commonwealth of Massachusetts. The drawer must be acceptable to the filing office. Each check must be for an amount equal to the cost of the service and be drawn on a bank acceptable to the filing office.
- (4) Payment by MasterCard, Visa or debit card shall be accepted by the filing office for electronic or facsimile transactions. Remitters shall provide the Division with the following information:
- (a) The card number;
 - (b) The expiration date of the card;
 - (c) The name of the approved card issuer;
 - (d) The name of the person or entity to whom the card was issued; and
 - (e) The billing address for the card.
- (5) Payment by electronic funds transfer under National Automated Clearing House Association (NACHA) Rules from remitters who have entered into appropriate NACHA approved arrangements for those transfers, and who authorize the relevant transfer pursuant to 950 CMR 113.00, will be accepted only for facsimile and electronic transmissions.
- (6) Payment will not be deemed tendered until the issuer or agent has confirmed to the filing office that payment will be forthcoming.

113.14: Computation of Time

Computation of any period of time referred to in 950 CMR 113.00 shall begin with the first day following the act which initiates such period of time. When the last day of the period so computed is a day on which the Division is closed, the period shall run until the end of business on the date the Division is next open for business. When such period of time, with intervening Saturdays, Sundays and legal holidays counted is five days or less, then said Saturdays, Sundays and legal holidays shall be excluded from the computation.

113.15: Corporate Record Availability

The following methods are available for obtaining copies of corporate documents and data from the corporation information management systems.

- (1) Individually Identified Documents. Copies of individually identified corporate documents are available in the following forms:
 - (a) Paper
 - (b) PDF files
- (2) Bulk Copies of Documents. Bulk copies of corporate documents, filed on or after August 27, 2001 are available in a PDF format on CD ROM.
- (3) Data from the Information Management System. A list of available data elements from the Corporations Information Management System and the file layout of the data elements are available from the filing office upon request. Data from the Information Management System is available as follows:
 - (a) Full extract – a bulk data extract of information from the Corporations Information Management System is available on a monthly basis in weekly increments. The cost is \$4800 per year or \$100 per week. Images are available on a monthly basis for an additional \$1200 per year or \$150 per month.
 - (b) The Corporations Information Management System is available on the Internet at the Division's website.

PART 2 - INCORPORATION

113.16: Articles of Organizaion

- (1) The existence of a corporation begins when its articles of organization become effective.
- (2) The articles of organization consist of a form supplied by the Division or a document formatted in the same manner as the Division form which when filed with the Division with the proper fee becomes evidence of incorporation.
- (3) The articles of organization must contain the following eight articles:
 - (a) Article 1 - Corporate Name. The articles of organization must set forth the exact name of the corporation. The name must include the word "corporation", "incorporated", "company" or "limited" or an abbreviation thereof, or words or abbreviations of like import in another language. The name need not be in English if it is written in English letters or Arabic or Roman numerals. It cannot contain language implying that it is organized for a purpose other than permitted by M.G.L. c. 156D or its articles of organization. The name cannot be the same as the name of another corporate or other entity lawfully conducting business in the commonwealth or so similar to the name of such a corporation or other entity as to be likely to be mistaken therefore, or a name reserved under M.G.L. c. 156D, § 4.02, or on or after September 1, 2004, a trademark or servicemark registered with the Division, except with the written consent of the other entity or a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name in the commonwealth. A corporation may use the name of another entity without written consent if the corporation has merged with the other entity and the articles of merger are filed with the Division. A corporation may also use the name of an entity if it has been formed by the reorganization of the other entity or has acquired all or substantially all of the assets, including the name and marks of the other entity and provides the Division documentation to that effect.

113.16: continued

(b) Article II – Purpose. Unless the articles of organization otherwise provide, all corporations formed pursuant to M.G.L. c. 156D have the purpose of engaging in any lawful business. There is no requirement to specify a particular purpose; if the incorporators wish to limit the purpose of the corporation, a more limited purpose may be specified.

(c) Article III – Authorized Shares. State the total number of shares the corporation is authorized to issue. All corporations must authorize stock. If only one class of stock is authorized, it is not necessary to specify any particular designation. M.G.L. c. 156D eliminates the concept of par value. However, a corporation may specify a par value in Article III. A reference to par value shall not by itself be deemed to be a specification of the minimum amount for which shares can be issued. In order to establish a minimum amount at which the shares can be issued, that amount must be stated explicitly in Article IV. If the corporation authorizes more than one class of stock, it must specify a distinguishing designation for each class.

(d) Article IV – Preferences, Limitations and Rights of Any Class or Series. Prior to the issuance of shares of any class or series, the articles of organization must set forth the preferences, limitations and relative rights of that class or series. The articles may also limit the type or specify the minimum amount of consideration for which shares of any class or series may be issued. If more than one class or series of shares are authorized, this Article must set forth the preferences, limitations and relative rights of each class or series, and if desired, the required type and minimum amount of consideration to be received.

(e) Article V – Restrictions on Transfer. State the restrictions, if any, imposed by the articles of organization upon the transfer of shares of stock. Restrictions on transfer may also be set forth in the by-laws or in an agreement. If there are no restrictions on transfer imposed by the articles of organization, this section may be left blank or state “None”.

(f) Article VI – Other Lawful Provisions. Specify any provisions not inconsistent with law that the incorporators desire to include in the articles of organization. If there are no such provisions, this article may be left blank or state “None”.

(g) Article VII – Effective Date. Unless otherwise provided in the articles of organization, the effective date of organization of the corporation is the date and the time the articles were received for filing unless the articles are rejected within the time prescribed by law and 950 CMR 113.00. If a later date or time is desired, specify such date and/or time, which may not be later than the 90th day after the day the articles are received for filing. If a delayed effective date but no time is specified, the articles of organization will be effective at the close of business on that date.

(h) Article VIII – Supplemental Information. The articles of organization must include the following supplemental information in the order provided in 950 CMR 113.16(3)(h)1. through 7.:

1. the street address of the initial registered office of the corporation in the commonwealth, a post office box is not a sufficient address.
2. the name of its initial registered agent at its registered office. All corporations must have a registered agent. The agent may be an individual, a domestic corporation, a domestic not-for-profit corporation, a foreign corporation qualified to do business in the commonwealth, or other entity authorized by law and whose business address is also the registered office of the corporation;
3. the names and addresses of the individuals who will serve as the initial president, treasurer, secretary and directors of the corporation. An individual may simultaneously hold more than one office in the corporation and may, in fact, hold all offices. The corporation may have other officers if appointed by the board of directors or described in its bylaws. Such officers need not be specified in the articles of organization. A corporation must have at least three directors if it has three or more shareholders, provided that if permitted by its articles of organization it may have as few as a single director regardless of the number of its shareholders. If the corporation has eliminated the board of directors in the manner provided in M.G.L. c. 156D, § 7.32, the articles of organization must specify the persons who will exercise the powers of the directors;
The address of the officers or directors may be either a home or business street address. A post office box is not a sufficient address. An address need not be specified if the business address of the officers and directors is the same as the principal office location;
4. the fiscal year end of the corporation;
5. a brief description of the type of business in which the corporation intends to engage;

113.16: continued

6. the street address of the corporation's principal office; and
7. the street address where the records of the corporation required to be kept in the commonwealth by M.G.L. c. 156D, § 16.01 are located.

The information in Article VIII is not considered a permanent part of the articles.

PART 3 - SUPPLEMENTAL INFORMATION IN THE ARTICLES OF ORGANIZATION

113.17: Changes to Supplemental Information Contained in Article VIII in the Articles of Organization

(1) Supplemental information may be changed by filing a statement of such change with the Division or by noting such change on an annual report that is filed electronically. If the annual report is filed electronically, the following supplemental information may be changed: the names and business addresses of the directors and officers; street address of the corporation's principal office; the description of the type of business in which the corporation engages; and the street address where the records of the corporation are required to be kept in the commonwealth.

(2) A statement of change consists of a form supplied by the Division or a document formatted in the same manner as the Division form. A statement of supplemental change shall set forth:

- (a) the name of the corporation;
- (b) the street address of the corporation's registered office; and
- (c) the change to the supplemental information.

(3) If a corporation fails or refuses to file a statement of change of supplemental information within 30 days following a change in officers or directors of the corporation, any director or officer involved in such change or the personal representative of any deceased director or officer so involved, may evidence such change by filing a certificate of change or resignation with the Division signed under the penalties of perjury including a statement that a copy of the certificate has been delivered to the corporation or has been mailed to the principal office of the corporation postage prepaid.

A certificate of change or resignation consists of a form supplied by the Division or a document formatted in the same manner as the Division form.

A certificate of change or resignation filed by a director, officer or personal representative pursuant to 950 CMR 113.17(3) shall set forth:

- (a) the name of the corporation;
- (b) the street address of the corporation's registered office;
- (c) a statement that the corporation has failed, or refused to, file a statement of change in officers and directors within 30 days following a change in directors or officers;
- (d) the change in the officers and directors;

The certificate must be signed by a director or officer involved in the change or the personal representative of any deceased director or officer.

PART 4 - CORPORATE NAME

113.18: Reservation of a Name

The exclusive use of a name may be reserved with the Division for a period of 60 days.

(1) The Division will approve the exclusive use of a name where the name is not the same or so similar that it is likely to be mistaken for:

- (a) the corporate name or trade name of a corporation organized, authorized to transact business or otherwise lawfully conducting business in the commonwealth;
- (b) a corporate name under reservation;
- (c) the fictitious name adopted by a foreign corporation or other entity authorized to transact business or otherwise lawfully conducting business in the commonwealth because its real or trade name is unavailable;
- (d) the corporate name or trade name of a not-for-profit corporation organized, authorized to conduct its activities or otherwise lawfully conducting activities in the commonwealth;
- (e) the name or trade name of a partnership, business trust or other entity organized, authorized to transact business or otherwise lawfully conducting business in the commonwealth; or
- (f) on or after September 1, 2004, a trademark or servicemark registered with the Division under M.G.L. c. 110B or M.G.L. c. 110H.

113.18: continued

(2) Prior to submitting an application for reservation, the applicant shall determine that the name is available for use in the commonwealth. The Division records may be searched on the Division's website or by telephone at (617)727-9640. A name checked by telephone is preliminary and should not be relied upon. A name may not be reserved by telephone.

(3) The application shall set forth the name and address of the applicant and the name to be reserved, and be accompanied by the appropriate fee. Upon receipt of an application, the Division will check its records. If it finds that the name is available and the fee has been paid, it shall reserve the name for the applicant's use for a period of 60 days. The reservation may be extended by the Division for an additional 60 days upon payment of an additional fee. If the reserving party wishes to reserve the name for a third or subsequent time, one business day must lapse between the expiration of the reservation and the beginning of the next reservation period. If the reserving party files articles of organization or amendment during the reservation period, he must submit the name reservation receipt to the clerk at the time the articles of organization or amendment are presented.

113.19: Protest of Name, Hearing Procedure

Any person who is registered, qualified or otherwise carrying on business in the commonwealth at the time or who has a name under reservation may protest to the Division that the name assumed by a corporation is the same as or so similar that it is likely to be mistaken for the name of such person. The protest must be in writing and must be received by the Division within 90 days after the articles of organization or articles of amendment affecting a change in the name of a corporation have been filed with the Division. The regulations governing the hearing procedures followed by the Division are located in 950 CMR 101.00: *Adjudicatory Proceedings: Corporations Division*.

PART 5 - OFFICE AND AGENT

113.20: Registered Office and Registered Agent

(1) Each domestic corporation and each foreign corporation authorized to transact business in the commonwealth must continuously maintain a registered office in the commonwealth and a registered agent at that office.

(2) The registered office must be a street address. A post office box address is not sufficient. The registered office may, but need not be, the corporation's principal office or its place of business.

(3) The registered agent may be an individual, a domestic corporation, a domestic not-for-profit corporation, a foreign corporation qualified to do business in the commonwealth, or other entity authorized by law.

(4) A domestic corporation that has not previously appointed a registered agent shall file an appointment of registered agent and registered office with the Division.

(5) The appointment of registered agent/registered office consists of a form supplied by the Division or a document formatted in the same manner as the Division form. Such appointment shall set forth:

- (a) the name of the corporation;
- (b) the street address of its registered office in the commonwealth;
- (c) the name of the registered agent at that office; and
- (d) the written consent of the registered agent to the appointment.

113.21: Statement of Change of Registered Agent or Registered Office by Corporation

(1) A domestic corporation or an authorized foreign corporation may change its registered office or registered agent by filing a statement of change of registered office/registered agent.

113.21: continued

(2) The statement of change of registered office/registered agent consists of a form supplied by the Division or a document formatted in the same manner as the Division form. Such change statement shall set forth:

- (a) the name of the corporation;
- (b) the street address of its current registered office;
- (c) the street address of the new registered office if the current registered office is to be changed; and
- (d) the name of the current registered agent;
- (e) the name of the new registered agent if the current registered agent is to be changed; and
- (f) a statement that after the changes are made, the street address of its registered office and the business address of its registered agent will be identical.

(3) If the statement sets forth the name of a new registered agent, the agent must consent in writing to the appointment.

113.22: Statement of Change of Registered Office by Registered Agent

(1) A registered agent may change the street address of the registered office for any corporation for which he is a registered agent by filing a statement of change of registered office.

(2) The statement of change of registered office consists of a form supplied by the Division or a document formatted in the same manner as the Division form. The statement of change shall set forth:

- (a) the name of the registered agent;
- (b) the name of each corporation whose street address is to be changed;
- (c) the street addresses of each corporation's current registered office;
- (d) the street address of each corporation's new registered office;
- (e) a statement that after the change is made, the street address of its registered office and the business address of the registered agent will be identical; and
- (f) a statement that each corporation has been notified in writing of such change.

(3) The statement of change must be signed by the registered agent. The signature may be an original or by facsimile.

113.23: Resignation of Registered Agent

(1) A registered agent may resign by filing a statement of resignation with the Division.

(2) The statement of change of resignation consists of a form supplied by the Division or a document formatted in the same manner as the Division form. The statement of resignation shall set forth:

- (a) the name of the registered agent;
- (b) the name of the corporation;
- (c) the street address of the corporation's current registered office;
- (d) a statement that the registered agent has resigned;
- (e) a statement indicating whether the registered office address will be discontinued; and
- (f) a statement that a copy of the resignation has been furnished to the corporation.

(3) The resignation and, if applicable, the discontinuance of the registered office shall be effective on the 31st day after the date on which the statement was filed.

(4) The statement of resignation must be signed by the registered agent. The signature may be original or by facsimile.

PART 9 – DOMESTICATION AND CONVERSION

113.24: Articles of Domestication

(1) A foreign business corporation may become a domestic business corporation by filing articles of domestication with the Division.

113.24: continued

- (2) The articles of domestication consist of a form supplied by the Division or a document formatted in the same manner as the Division form. The articles of domestication shall set forth:
- (a) the current name of the corporation in the jurisdiction of organization;
 - (b) a name that satisfies the requirements of M.G.L. c. 156D, § 4.01 if the name of the corporation is unavailable for use in the commonwealth, or the corporation desires to change its name;
 - (c) the jurisdiction of incorporation;
 - (d) the date the corporation was incorporated in that jurisdiction;
 - (e) whether the corporation was authorized to transact business in the commonwealth;
 - (f) a statement that the domestication of the corporation in the commonwealth was duly authorized as required by the laws of jurisdiction in which the corporation was incorporated;
 - (g) all of the information required to be in the original articles of organization by M.G.L. c. 156D, § 2.02(a) or permitted to be included in the articles of organization by M.G.L. c. 156D, § 2.02(b);
 - (h) the supplemental information required by 950 CMR 113.00 to be included in the articles of organization; and
 - (i) the date and time the articles of domestication will be effective if the articles of domestication are to be effective at a later date and/or time, not more than 90 days after the date and time of filing.
- (3) The articles of domestication shall be accompanied by an original certificate of legal existence or a certificate of good standing issued, not more than 90 days prior to submission, by an officer or agency properly authorized in the jurisdiction of organization. If the certificate is in a foreign language, a translation thereof under oath of the translator shall be attached.

113.25: Articles of Charter Surrender

- (1) A domestic corporation may domesticate in a foreign jurisdiction by filing articles of charter surrender with the Division.
- (2) The articles of charter surrender consist of a form supplied by the Division or a document formatted in the same manner as the Division form. The articles of charter surrender shall set forth:
- (a) the name of the corporation;
 - (b) the street address of the corporation's registered office;
 - (c) a statement that the articles of charter surrender are being filed in connection with the domestication of the corporation in a foreign jurisdiction;
 - (d) a statement that the domestication was duly approved by the shareholders, and if voting by any separate group was required, by each separate voting group, in the manner required by M.G.L. c. 156D and the articles of organization;
 - (e) the corporation's new name and jurisdiction of incorporation;
 - (f) that the corporation appoints the Secretary of the Commonwealth as its agent for service of process in any proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the domestication; and
 - (g) the date and time the articles of charter surrender will be effective if the articles of charter surrender are to be effective at a later date and/or time, not more than 90 days after the date and time of filing.

113.26: Articles of Non-profit Conversion

- (1) A domestic business corporation may become a domestic non-profit corporation by filing articles of non-profit conversion with the Division.
- (2) The articles of non-profit conversion consist of a form supplied by the Division or a document formatted in the same manner as the Division form. The articles of non-profit conversion shall set forth:
- (a) the name of the corporation immediately before filing articles of non-profit conversion;
 - (b) a name that satisfies the requirements of M.G.L. c. 180 if the name of the corporation does not satisfy the requirements of M.G.L. c. 180 or the corporation desires to change its name in connection with the conversion;

113.26: continued

- (c) a statement that the plan of non-profit conversion was duly approved by the shareholders and, if voting by any separate voting group was required, by each separate voting group in the manner required by M.G.L. c. 156D and the articles of organization;
- (d) a statement that the plan of nonprofit conversion was duly approved in accordance with the organic law of the domestic nonprofit corporation;
- (e) all of the information required to be set forth in the articles of organization and any other desired provisions permitted by M.G.L. c. 180; and
- (f) the date and time the articles of non-profit conversion will be effective if the articles of non-profit conversion are to be effective at a later date and/or time, in accordance with M.G.L. c. 180.

113.27: Articles of Charter Surrender upon Foreign Non-profit Conversion

- (1) A domestic business corporation may become a foreign non-profit corporation by filing articles of charter surrender upon foreign non-profit conversion with the Division.
- (2) The articles of charter surrender upon foreign non-profit conversion consist of a form supplied by the Division or a document formatted in the same manner as the Division form. The articles of charter surrender upon foreign non-profit conversion shall state:
 - (a) the name of the corporation;
 - (b) the street address of the corporation's registered office;
 - (c) a statement that the articles of charter surrender are being filed in connection with the conversion of the corporation to a foreign non-profit corporation;
 - (d) a statement that the conversion is permitted by the laws of the foreign jurisdiction;
 - (e) the corporation's new name and jurisdiction of incorporation;
 - (f) a statement that the foreign non-profit conversion was duly approved by the shareholders and if voting by any separate voting group was required, by each such separate voting group, in the manner required by M.G.L. c. 156D and the articles of organization;
 - (g) that the corporation appoints the Secretary of the Commonwealth as its agent for service of process in any proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the conversion; and
 - (h) the date and time the articles of non-profit conversion will be effective if the articles of non-profit conversion are to be effective at a later date and/or time, but not more than 90 days after the date and time of filing.

113.28: Foreign Non-profit Domestication and Conversion

- (1) A foreign non-profit corporation may become a domestic business corporation by filing articles of domestication and conversion with the Division.
- (2) The articles of domestication and conversion consist of a form supplied by the Division or a document formatted in the same manner as the Division form. The articles of domestication and conversion shall set forth:
 - (a) the name of the corporation in the jurisdiction of organization;
 - (b) a corporate name that satisfies M.G.L. c. 156D, § 4.01 if the name of the corporation is unavailable for use in the commonwealth or the corporation desires to change its name;
 - (c) the jurisdiction of incorporation;
 - (d) the date the corporation was incorporated in the jurisdiction;
 - (e) whether the corporation was authorized to transact business in the Commonwealth;
 - (f) a statement that the domestication and conversion of the corporation was duly authorized as required by the laws of the jurisdiction in which the corporation was incorporated.
 - (g) All of the information required to be in the articles of organization by M.G.L. c. 156D, § 2.02(a) or permitted to be included in the articles of organization by M.G.L. c. 156D, § 2.02(b);
 - (h) the supplemental information required by 950 CMR 113.00 to be included in the articles of organization; and
 - (i) the date and time the articles of domestication and conversion will be effective if the articles of domestication and conversion are to be effective at a later date and/or time, not more than 90 days after the date and time of filing.

113.28: continued

(3) The articles of domestication and conversion shall be accompanied by an original certificate of legal existence or a certificate of good standing issued, not more than 90 days prior to submission, by an officer or agency properly authorized in the jurisdiction of organization. If the certificate is in a foreign language, a translation thereof under oath of the translator shall be attached.

113.29: Articles of Entity Conversion of a Domestic Business Corporation to a Domestic Other Entity

(1) A domestic business corporation may become a domestic other entity by filing articles of entity conversion with the Division.

(2) The articles of entity conversion consist of a form supplied by the Division or a document formatted in the same manner as the Division form. Articles of entity conversion shall set forth:

- (a) the name of the corporation;
- (b) the street address of its registered office;
- (c) the name of the converted entity which shall be a name that satisfies the organic law of the surviving entity;
- (d) the type of entity that the surviving entity will be;
- (e) a statement that the plan of entity conversion was duly approved by the shareholders and if voting by any separate voting group was required, by each separate voting group in the manner required by M.G.L. c. 156D and the articles of organization;
- (f) all of the information required to be set forth in the public organic document of the surviving entity; and
- (g) the date and time the articles of entity conversion will be effective if the articles of entity conversion are to be effective at a later date and/or time, in accordance with the organic law of the surviving entity.

113.30: Articles of Entity Conversion of a Domestic Other Entity to a Domestic Business Corporation

(1) A domestic other entity may convert to a domestic business corporation by filing articles of entity conversion with the Division.

(b) The articles of entity conversion consist of a form supplied by the Division or a document formatted in the same manner as the Division form. The articles of entity conversion shall set forth:

- (a) the name of the other entity;
- (b) the name to which the name of the other entity is to be changed, which shall satisfy M.G.L. c. 156D, § 4.01;
- (c) a statement that the plan of entity conversion was duly approved in accordance with the organic law of the other entity;
- (d) all of the information required to be in the articles of organization by M.G.L. c. 156D, § 2.02(a) or permitted by M.G.L. c. 156D, § 2.02(b);
- (e) the supplemental information required by 950 CMR 113.00 to be included in the articles of organization; and
- (f) the date and time the articles of entity conversion will be effective if the articles of entity conversion are to be effective at a later date and/or time, not more than 90 days after the date and time of filing.

113.31: Articles of Entity Conversion of a Foreign Other Entity to a Domestic Business Corporation

(1) A foreign other entity may convert to a domestic business corporation by filing articles of entity conversion with the Division.

(2) The articles of entity conversion consist of a form supplied by the Division or a document formatted in the same manner as the Division form. The articles of entity conversion shall set forth:

- (a) the name of the other entity in the jurisdiction of organization;
- (b) the name to which the name of the other entity is to be changed, which shall satisfy M.G.L. c. 156D, § 4.01;
- (c) the jurisdiction of organization of the other entity;

113.31: continued

- (d) the date the other entity was organized in that jurisdiction;
- (e) a statement that the conversion of the other entity was duly approved in the manner required by its organic law;
- (f) all of the information required to be in the articles of organization by M.G.L. c. 156D, § 2.02(a) or permitted by M.G.L. c. 156D, § 2.02(b);
- (g) the supplemental information required by 950 CMR 113.00 to be included in the articles of organization; and
- (h) the date and time the articles of entity conversion will be effective if the articles of entity conversion are to be effective at a later date and/or time, not more than 90 days after the date and time of filing.

(3) If the foreign other entity is a filing entity, the articles of entity conversion shall be accompanied by an original certificate of legal existence or a certificate of good standing issued, not more than 90 days prior to submission, by an officer or agency properly authorized in the jurisdiction of organization. If the certificate is in a foreign language, a translation thereof under oath of the translator shall be attached.

113.32: Articles of Charter Surrender upon Conversion to a Foreign Other Entity

A domestic business corporation may convert to a foreign other entity by filing articles of charter surrender with the Division.

The articles of charter surrender consist of a form supplied by the Division or a document formatted in the same manner as the Division form. The articles of charter surrender shall set forth:

- (a) the name of the corporation;
- (b) the street address of its registered office;
- (c) that the articles of charter surrender are being filed in connection with a conversion to a foreign other entity;
- (d) a statement that the conversion is permitted by the laws of the foreign jurisdiction;
- (e) the type of entity;
- (f) the corporation's new name and the jurisdiction under the laws of which the surviving entity will be organized;
- (g) that the corporation appoints the secretary of state as its agent for service of process in any proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the conversion;
- (h) a statement that the conversion was duly approved by the shareholders and if voting by any separate voting group was required by each voting group in the manner required by M.G.L. c. 156D and the articles of organization;
- (i) the street address of its executive office immediately after the conversion if the surviving entity will be a non-filing entity; and
- (j) the date and time the articles of charter surrender will be effective if the articles of charter surrender are to be effective at a later date and/or time, not more than 90 days after the date and time of filing.

113.33: Requirement to File Annual Report

In order to file any document under Part 9 - Domestication and Conversion, a corporation shall file all annual reports required to be filed by it for the last ten fiscal years. If the corporation has not completed its current year at the time of filing, it will be required to file an annual report for the current fiscal year if more than six months have passed since the close of its prior fiscal year or if the corporation has issued additional shares during the partial fiscal year.

PART 10 - AMENDMENT OF ARTICLES OF ORGANIZATION

113.34: Articles of Amendment

(1) A corporation may amend articles I through VI of its articles of organization to add or change a provision that is required or permitted in the articles of organization or to delete a provision not required in the articles of organization. After an amendment has been adopted and approved in the manner required by M.G.L. c. 156D and 950 CMR 113.00, the corporation shall deliver articles of amendment to the Division.

113.34: continued

- (2) The articles of amendment consist of a form supplied by the Division or a document formatted in the same manner as the Division form. The articles of amendment shall set forth:
- (a) the name of the corporation;
 - (b) the location of the corporation's registered office;
 - (c) the number(s) of the article(s) being amended;
 - (d) the date the amendment was adopted;
 - (e) whether the amendment was adopted by:
 1. the incorporators;
 2. the board of directors without shareholder approval and shareholder approval was not required; or
 3. by the board of directors and the shareholders in the manner required by M.G.L. c. 156D and the articles of organization;
 - (f) the text of the amendment;
 - (g) the provisions for implementing the action if the amendment authorizes an exchange, or effects a reclassification or cancellation, of issued shares, unless contained in the text of the amendment; and
 - (h) the date and time the articles will be effective if the articles of amendment are to be effective at a later date and/or time, not more than 90 days after the date and time of filing.

113.35: Restated Articles of Organization

- (1) A corporation may restate its articles of organization.
- (2) The restated articles of organization consist of a form supplied by the Division or a document formatted in the same manner as the Division form. The restated articles shall set forth:
- (a) the name of the corporation;
 - (b) the street address of the corporation's registered office;
 - (c) the date the restated articles of organization were adopted;
 - (d) whether the restated articles were adopted by the directors without shareholder approval and shareholder approval was not required, or whether the restated articles were approved by the board of directors and the shareholders in the manner required by M.G.L. c. 156D and the articles of organization;
 - (e) all of the information required to be in the original articles of organization except that the supplemental information provided in for Article VIII of the articles of organization is not required;
 - (f) a certification that the restated articles of organization consolidate all amendments into a single document;
 - (g) the number(s) of the article(s) being amended; and
 - (h) the date and time the restated articles will be effective if the restated articles are to be effective at a later date and/or time, not more than 90 days after the date and time of filing.

PART 11 – MERGER AND SHARE EXCHANGE

113.36: Articles of Merger – Domestic Entities

- (1) One or more domestic corporations may merge with one or more domestic corporations or other entities by filing articles of merger with the Division.
- (2) The articles of merger consist of a form supplied by the Division or a document formatted in the same manner as the Division form. The articles of merger shall set forth:
- (a) the name of each domestic corporation or other entity involved in the merger.
 - (b) the name of the surviving entity which may, but need not, be one of the constituent entities;
 - (c) the date and time the merger will be effective if the articles of merger are to be effective at a later date and/or time not more than 90 days from the date of filing;
 - (d) a statement that the plan of merger was duly approved by the shareholders and, if voting by any separate voting group was required, by each separate voting group, in the manner required by M.G.L. c. 156D and the articles of organization, or a statement that approval of the shareholders was not required.

113.36: continued

- (e) that the participation of each other entity was duly authorized by the law under which the other entity is organized or by which it is governed and by its articles of organization or other organizational documents;
- (f) any amendment to articles of organization of the surviving entity, if such entity is a domestic business corporation;
- (g) the articles of organization of the new domestic business corporation and including all supplemental information required by 950 CMR 113.00.

(3) Requirement to File Annual Report. In order to file articles of merger, a corporation which is merging into a domestic corporation or domestic other entity shall file all annual reports required to be filed by it for the last ten fiscal years. If the corporation has not completed its current year at the time it files articles of merger, it will be required to file an annual report for the current fiscal year if more than six months have passed since the close of its prior fiscal year or if the corporation has issued additional shares during the prior fiscal year.

113.37: Articles of Merger Involving a Foreign Corporation or Foreign Other Entity

(1) One or more domestic corporations and one or more other entities may merge with one or more foreign corporations or foreign other entities by filing articles of merger with the Division.

(2) The articles of merger consist of a form supplied by the Division or a document formatted in the same manner as the Division form. The articles of merger shall set forth:

- (a) the name of each party to the merger;
- (b) the jurisdiction and date of organization of each foreign corporation and foreign other entity that is a party to the merger and the date of organization;
- (c) whether the foreign corporation or other entity is qualified to do business in the commonwealth;
- (d) the name of the surviving entity, which may but need not be one of the constituent entities;
- (e) the jurisdiction under the laws of which the surviving entity will be organized;
- (f) the date and time the articles of merger will be effective if the articles of merger are to be effective at a later date and/or time, not more than 90 days after the date and time of filing.
- (g) for each domestic corporation that is a party to the merger, if the merger required approval by the shareholders, a statement that the plan was duly approved by the shareholders and if voting by any separate voting group was required by each separate voting group in the manner required by M.G.L. c. 156D and the articles of organization.
- (h) if the plan of merger did not require approval by the shareholders of a domestic corporation that was a party to this merger, a statement to that effect;
- (i) that the participation of each other domestic entity foreign corporation or foreign other entity was duly authorized by the law under which the other entity or foreign corporation was organized and by its organization documents;
- (j) any amendment to the articles of organization of the surviving entity, if the surviving entity is a domestic business corporation;
- (k) the articles or organization of a new domestic business corporation including all supplemental information required by 950 CMR 113.00;
- (l) the executive office of a foreign other entity if such information is not on the record of the foreign other entity and such foreign other entity is the survivor of the merger.

(3) Requirement to File Annual Report. In order to file articles of merger, a corporation which is merging into a foreign or domestic corporation or other entity, shall file all annual reports required to be filed by it for the last ten fiscal years. If the corporation has not completed its current year at the time it files articles of merger, it will be required to file an annual report for the current fiscal year if more than six months have passed since the close of its prior fiscal year or if the corporation has issued additional shares during the prior fiscal year.

113.38: Articles of Share Exchange Involving Domestic Corporations and Domestic Other Entities

(1) A domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic corporation or all of the interests of one or more class or series of interests of a domestic other entity in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash or other property or any combination of the foregoing by filing articles of share exchange with the Division.

(2) The articles of share exchange consist of a form supplied by the Division or a document formatted in the same manner as the Division form. The articles of share exchange shall set forth:

- (a) the names of the parties to the share exchange;
- (b) the date and time the share exchange will be effective if the share exchange is to be effective at a later date and/or time, not more than 90 days from the date and time of filing;
- (c) a statement that the plan of share exchange was duly approved by the shareholders of each domestic corporation, and, if voting by any separate group was required, by each separate voting group, in the manner required by M.G.L. c. 156D and the articles of organization or a statement that shareholder approval was not required; and
- (d) a statement that the participation of each other entity was duly authorized by the law under which the other entity is organized or governed, and by its organizing documents.

113.39: Articles of Share Exchange Involving Domestic or Foreign Corporations or Foreign Other Entity

(1) A domestic corporation may acquire all of the shares or other interests of one or more classes or series of shares or other interests of a foreign corporation or foreign other entity in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property or any combination of the foregoing; or a foreign corporation or other entity may acquire all of the shares of one or more classes or series of shares of a domestic corporation in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property or any combination of the foregoing by filing articles of share exchange with the Division.

(2) The articles of share exchange consist of a form supplied by the Division or a document formatted in the same manner as the Division form.

(3) The articles of share exchange shall set forth:

- (a) the names of the parties to the share exchange;
- (b) the jurisdiction of organization for each foreign corporation and foreign other entity;
- (c) the date and time the share exchange will be effective if the share exchange is to be effective at a later date and or time not more than 90 days from the date of filing;
- (d) a statement that the plan of share exchange was duly approved by the shareholders of each domestic corporation, and if voting by any separate group was required, by each separate voting group, in the manner required by M.G.L. c. 156D and the articles of organization or a statement that shareholder approval was not required; and
- (e) a statement that the participation of the foreign corporation or other entity was duly authorized by the laws under which the corporation or other entity is organized and by its organizing documents.

PART 14 - DISSOLUTION

113.40: Voluntary Dissolution of a Corporation Which Has Not Issued Shares or Has Not Commenced Business

(1) A corporation which has not issued shares or has not commenced business may dissolve by majority vote of the incorporators or initial directors.

(2) The articles of dissolution consist of a form supplied by the Division or a document formatted in the same manner as the Division form. The articles of dissolution shall set forth:

- (a) the name of the corporation;
- (b) the street address of the corporation's registered office;
- (c) the date of its incorporation;

113.40: continued

- (d) whether the dissolution was authorized by a majority vote of the incorporators or the initial directors in the manner required by law;
- (e) that none of the corporation's shares has been issued or that the corporation has not commenced business;
- (f) that no debt of the corporation remains unpaid; and
- (g) that the net assets of the corporation remaining after winding up have been distributed to the shareholders, if the shares were issued; and
- (h) the date and time the articles of dissolution will be effective if the articles of dissolution are to be effective at a later date and/or time, not more than 90 days from the date and time of filing.

113.41: Voluntary Dissolution

- (1) A corporation may dissolve at any time after dissolution is authorized by submitting articles of dissolution to the Division.
- (2) The articles of dissolution consist of a form supplied by the Division or a document formatted in the same manner as the form supplied by the Division. The articles of dissolution shall set forth:
 - (a) the name of the corporation;
 - (b) the street address of the corporation's registered office;
 - (c) the date the dissolution was authorized;
 - (d) if dissolution was approved by the shareholders under M.G.L. c. 156D, § 14.02(b):
 - 1. the number of votes entitled to be cast on the proposal to dissolve; and
 - 2. either the total number of votes cast for and against dissolution or the total of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval; and
 - 3. if voting by voting groups was required on a dissolution proposal under M.G.L. c. 156D, § 14.02(b), the information required by M.G.L. c. 156D, § 14.02(a) and (b) shall be separately provided for each voting group entitled to vote on the proposal to dissolve.
 - (e) if dissolution was authorized by a method or procedure specified in the articles of organization pursuant to M.G.L. c. 156D, § 14.02, the articles of dissolution shall set forth such method or procedure, together with sufficient information to establish that the corporation has complied therewith; and
 - (f) the date and time the articles of dissolution will be effective if the articles of dissolution are to be effective at a later date and/or time, not more than 90 days from the date and time of filing.

113.42: Requirement to File Annual Report

In order to file articles of dissolution with the Division, a corporation shall file all annual reports required to be filed by it for the last ten fiscal years. If the corporation has not completed its current fiscal year at the time it files its articles of dissolution, it will be required to file an annual report for the current fiscal year if more than six months have passed since the close of its prior fiscal year or if the corporation has issued additional shares during the partial fiscal year.

113.43: Protection of Name after Dissolution

- (1) A corporation which has filed articles of dissolution with the Division may reserve its name for the corporation's exclusive use during the period of time the corporation is winding up and liquidating its affairs.
- (2) The application for reservation shall set forth the name and address of the applicant and contain a statement that the corporation has dissolved and its legal existence continues for the purpose of winding up and liquidating its affairs. If the Division finds that the name is available, it shall reserve the name for a period of 60 days upon payment of the fee. The name reservation may be extended for a consecutive reservation period upon payment of an additional fee.

113.44: Administrative Dissolution of Corporation

(1) If a corporation has failed to comply with provisions of law requiring the filing of reports with the Division or the filing of tax returns or the payment of any taxes under the Massachusetts General Laws for two or more consecutive years, or if the Director is satisfied that a corporation is inactive and its dissolution would be in the public interest, the Division may commence a proceeding to dissolve the corporation pursuant to M.G.L. c. 156D, § 14.21.

(2) A corporation may be considered inactive and its dissolution in the public interest, if the corporation fails to designate a registered office and a registered agent at that office within 60 days after notice from the Division to the corporation of the requirement to maintain registered office and registered agent in the commonwealth.

113.45: Procedure for Administrative Dissolution

The Division shall give written notice to the corporation's registered office that one or more grounds exist for Administrative Dissolution. The notice shall be made by mail, postage prepaid, to the corporation's registered office, or if the registered agent has agreed, by electronic mail. If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Division that each ground does not exist within 90 days after the date of the notice, the Division shall administratively dissolve the corporation.

113.46: Revocation of Dissolution

(1) A corporation which has voluntarily dissolved may revoke its dissolution by filing articles of revocation of dissolution with the Division within 120 days after the effective date of dissolution.

(2) The articles of revocation of dissolution consist of a form supplied by the Division or a document formatted in the same manner as the Division form. The articles of revocation of dissolution shall set forth:

- (a) the name of the corporation;
- (b) the street address of the corporation's registered office in the commonwealth;
- (c) the effective date of the dissolution that was revoked;
- (d) the date that the revocation of dissolution was authorized;
- (e) if the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;
- (f) if the corporation's board of directors revoked a dissolution authorized by the shareholders under M.G.L. c. 156D, § 14.02(b), a statement that revocation was permitted by action of the board of directors alone pursuant to that authorization;
- (g) if shareholder action was required under M.G.L. c. 156D, § 14.02(b) to revoke the dissolution:
 1. the number of votes entitled to be cast on the proposal to revoke dissolution;
 2. either the total number of votes cast for and against the revocation of dissolution or the total of undisputed votes cast for dissolution and a statement that the number cast was sufficient for approval; and
 3. if voting by voting groups was required on a proposal to revoke dissolution, the information provided by M.G.L. c. 156D, § 14.02(a) and (b) shall be separately provided for each voting group.
- (h) if the dissolution was revoked by any method or procedure specified in its articles of dissolution, sufficient information to establish that the corporation has complied with the provisions of its articles governing such revocation; and
- (i) the date and time the articles of revocation of dissolution will be effective if the articles of revocation of dissolution are to be effective at a later date and/or time, not more than 90 days from the date and time of filing.

(3) The Division waives the requirement that the articles of revocation of dissolution must be accompanied by a copy of the of articles of dissolution, unless specifically requested by the Division.

113.47: Reinstatement Following Administrative Dissolution

- (1) A corporation that has been administratively dissolved by the Division may apply for reinstatement at any time.
- (2) The application for reinstatement consists of a form supplied by the Division or a document formatted in the same manner as the Division form. The application for reinstatement shall set forth:
 - (a) the name of the corporation;
 - (b) the street address of the corporation's registered office and the registered agent at that office;
 - (c) the effective date of the corporation's administrative dissolution;
 - (d) either that the grounds for administrative dissolution did not exist or that the grounds for administrative dissolution have been eliminated;
 - (e) that the corporation's name satisfies the requirements of M.G.L. c. 156D, § 4.01 or a statement that the corporation is simultaneously submitting a certificate of amendment to change its name to a name that satisfies the requirements of M. G. L. c. 156D, § 4.01; and
 - (f) the date and time the application for reinstatement will be effective if the application for reinstatement is to be effective at a later date and/or time, not more than 90 days after the date and time of filing.
- (3) The application for reinstatement must be accompanied by a certificate from the Department of Revenue reciting that all corporate excise taxes and any related penalties have been paid or contain a request to the department of revenue for said certificate. The request shall instruct the department of revenue to provide the certificate to the secretary of state and recite that all tax returns required to be filed by the corporation under M.G.L. chs. 62C and 63 have been filed and all taxes due on such returns and related penalties have been paid. The secretary of state shall forward the request to the department of revenue. If the secretary of state does not receive the certificate within six months from the date the application for reinstatement is filed, he may revoke the reinstatement. Such revocation will be effective seven days from the date notice is provided to the corporation.
- (4) The Division may reinstate the corporation's authority to transact business without limitation or may reinstate for a limited purpose not to exceed one year. The application is deemed to be an amendment of the corporation's articles of organization.
- (5) In order to file an application for reinstatement without limitation with the Division, a corporation shall file all annual reports required to be filed by it for the last ten fiscal years

PART 15 - FOREIGN CORPORATIONS

113.48: Foreign Corporation Certificate of Registration

- (1) A foreign corporation shall file a certificate of registration within ten days after it commences transacting business in the commonwealth.
- (2) The certificate of registration consists of a form supplied by the Division or a document formatted in the same manner as the Division form. The certificate of registration shall set forth:
 - (a) the exact name of the foreign corporation;
 - (b) the name under which it will transact business in the commonwealth if its name does not satisfy the requirements of M.G.L. c. 156D, § 15.06; if applicable, attach an agreement to refrain from use of the unavailable name in the Commonwealth, a copy of the doing business certificate filed in the city or town where the corporation maintains a registered office and a copy of the resolution of the corporation's board of directors certified by its secretary adopting the fictitious name.
 - (c) the date and jurisdiction of incorporation and period of duration;
 - (d) the street address of its principal office;
 - (e) the street address of its registered office in the commonwealth and its registered agent at that office, and the agent's written consent to serve, either on the certificate or attached to it;
 - (f) its fiscal year end;

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- (g) a brief description of the activities to be conducted in the commonwealth; and
- (h) the names and business address of its current officers and directors.

(3) The certificate of registration shall be accompanied by an original certificate of legal existence or a certificate of good standing issued, not more than 90 days prior to submission, by an officer or agency properly authorized in the jurisdiction of organization. If the certificate is in a foreign language, a translation thereof under oath of the translator shall be attached.

113.49: Certificate of Amendment

- (1) A foreign corporation shall file a certificate of amendment with the Division if it changes:
- (a) its corporate name;
 - (b) the period of its duration;
 - (c) the state or country of its incorporation;
 - (d) the street address of its principal office;
 - (e) its fiscal year end;
 - (f) the activities conducted by the foreign corporation in the commonwealth; or
 - (g) its officers and directors.

A foreign corporation may file an amended certificate for any other reason.

(2) The certificate of amendment consists of a form supplied by the Division or a document formatted in the same manner as the Division form. The amended certificate shall set forth:

- (a) the name of the corporation as contained on the Division's records;
- (b) the street address of the corporation's registered office; and
- (c) the amendment.

(3) If the amendment includes a change of its corporate name, or the state or country of its incorporation, the certificate of amendment will be accompanied by an original certificate evidencing the changes issued, not more than 90 days prior to submission, by an officer or agency properly authorized in the jurisdiction of organization. If the certificate is in a foreign language, a translation thereof under oath of the translator shall be attached.

113.50: Name of Foreign Corporation

(1) The name of a foreign corporation may not be the same as, or so similar that it is likely to be mistaken for:

- (a) the corporate name or trade name of a corporation organized, authorized to transact business or otherwise lawfully conducting business in the commonwealth;
- (b) a corporate name under reservation;
- (c) the fictitious name adopted by a foreign corporation or other entity authorized to transact business or otherwise lawfully conducting business in the commonwealth because its real or trade name is unavailable;
- (d) the corporate name or trade name of a not-for-profit corporation organized, authorized to conduct its activities or otherwise lawfully conducting its activities in the commonwealth;
- (e) the name or trade name of a partnership, business trust or other entity organized, authorized to transact business or otherwise lawfully conducting business in the commonwealth; or
- (f) after September 1, 2004, a trademark or servicemark registered with the secretary of state under M.G.L. c. 110B or M.G.L. c. 110H.

(2) A foreign corporation may apply to the Division to use a name which does not comply with the requirements of M.G.L. c. 156D, § 15.06(b) if the other entity consents in writing or the applicant delivers to the Division a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name.

(3) A foreign corporation may use the name, including the fictitious name or mark, of another entity that is used in the commonwealth if the foreign corporation has merged with the other entity, has been formed by the reorganization of the other entity or has acquired all or substantially all of the assets of the other entity, including the name or mark.

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(4) If the name of the foreign corporation is not available for use in the commonwealth, it may use a fictitious name to transact business in the commonwealth if it delivers a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name and a copy of the doing business certificate filed in the city or town where it maintains its registered office.

113.51: Withdrawal of Foreign Corporations

(1) A foreign corporation authorized to transact business in the commonwealth may withdraw by filing a certificate of withdrawal with the Division.

(2) The certificate of withdrawal consists of a form supplied by the Division or a document formatted in the same manner as the Division form. The certificate shall set forth:

- (a) the name of the corporation;
- (b) the state or country under the laws of which it is incorporated and the date of incorporation;
- (c) a statement that it is not transacting business in the commonwealth;
- (d) a statement that it surrenders its authority to transact business in the commonwealth;
- (e) a statement revoking the authority of its registered agent to accept service on its behalf;
- (f) a statement that it appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in the commonwealth;
- (g) a mailing address to which the Division may mail a copy of any process served on it;
- (h) a commitment to notify the Division in the future of any change in the mailing address by filing a certificate of amendment;
- (i) a certification that all taxes known to the corporation to be due the commonwealth have been paid or provided for; and
- (j) date and time the withdrawal will be effective if the withdrawal is to be effective at a later date and or time not more than 90 days from the date of filing.

(3) Requirement to File Annual Report. In order to file a certificate of withdrawal, the foreign corporation shall file all annual reports required to be filed by it for the last ten fiscal years. If the corporation has not completed its current year at the time it files the certificate of withdrawal, it will be required to file an annual report for the current fiscal year if more than six months have passed since the close of its prior fiscal year or if the corporation has issued additional shares during the partial fiscal year.

113.52: Withdrawal upon Conversion to a Nonfiling Entity

(1) A foreign corporation authorized to transact business in the commonwealth that converts into a form of domestic or foreign non-filing entity shall withdraw by filing a certificate of withdrawal upon conversion to a non-filing entity.

(2) The certificate of withdrawal consists of a form supplied by the Division or a document formatted in the same manner as the Division form. The certificate of withdrawal shall set forth:

- (a) the name of the corporation;
- (b) the state or country under whose laws it was incorporated;
- (c) the type of other entity into which it has been converted;
- (d) the jurisdiction the laws of which govern its internal affairs;
- (e) if it has been converted into a foreign other entity:
 - 1. a statement revoking the authority of its registered agent to accept service on its behalf; and
 - 2. a statement that it appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in the commonwealth;
- (f) a mailing address to which the Division may mail a copy of any process served on it;
- (g) a commitment to notify the Division in the future of any change in the mailing address by filing a certificate of amendment;
- (h) a certification that all taxes known to the corporation to be due the commonwealth have been paid or provided for; and

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(i) the date and time the withdrawal upon conversion will be effective if the withdrawal upon conversion is to be effective at a later date and/or time, not more than 90 days after the date and time of filing.

(3) Requirement to File Annual Report. In order to file a certificate of withdrawal, the foreign corporation shall file all annual reports required to be filed by it for the last ten fiscal years. If the corporation has not completed its current year at the time it files the certificate of withdrawal, it will be required to file an annual report for the current fiscal year if more than six months have passed since the close of its prior fiscal year or if the corporation has issued additional shares during the partial fiscal year.

113.53: Transfer of Authority

(1) A foreign business corporation authorized to transact business in the commonwealth that converts into any form of foreign other entity or foreign non-profit corporation required to register to transact business in the commonwealth may transfer its authority to transact business in the commonwealth by filing an application for transfer of authority.

(2) The application for transfer of authority consists of a form supplied by the Division or a document formatted in the same manner as the Division form. The application shall set forth:

- (a) the name of the corporation;
- (b) the type of other entity into which it has been converted;
- (c) the jurisdiction the laws of which govern its internal affairs;
- (d) all other information required in a filing under the laws of the commonwealth by an other entity of the type the corporation has become seeking authority to transact business in the commonwealth;
- (e) the date and time the transfer of authority will be effective if the transfer of authority is to be effective at a later date and/or time, not more than 90 days from the date and time of filing; and

(3) If the other entity is a filing entity, the transfer of authority shall be accompanied by an original certificate evidencing such change issued, not more than 90 days prior to submission, by an officer or agency properly authorized in the jurisdiction of organization. If the certificate is in a foreign language, a translation thereof under oath of the translator shall be attached.

(4) The fee for filing the transfer of authority shall be the withdrawal fee plus the fee for filing a certificate of registration of the foreign other entity.

(5) Requirement to File Annual Report. In order to file a transfer of authority, a foreign corporation shall file all annual reports required to be filed by it for the last ten fiscal years. If the corporation has not completed its current year at the time it files the certificate of withdrawal, it will be required to file an annual report for the current fiscal year if more than six months have passed since the close of its prior fiscal year or if the corporation has issued additional shares during the partial fiscal year.

113.54: Revocation of Authority to Transact Business in the Commonwealth

If a foreign corporation has failed to comply with the provisions of law requiring the filing of reports with the Division or the filing of any tax returns or the payment of any taxes under M.G.L. c. 62C or M.G.L. c. 63 for two or more consecutive years, the Division may commence a proceeding to revoke the authority of the corporation to transact business in the commonwealth.

113.55: Procedure for Revocation

The Division shall give written notice to the registered agent of a foreign corporation at its registered office that one or more grounds exist for revocation of its authority to transact business in the commonwealth. The notice shall be made by mail, postage prepaid to the foreign corporation's registered office, or if the registered agent has agreed, by electronic mail. If the foreign corporation does not correct each of the grounds for revocation or demonstrate to the reasonable satisfaction of the division that each of the grounds does not exist within 90 days after notice is given, the Division shall revoke the foreign corporation's authority to transact business in the commonwealth.

113.56: Reinstatement of Authority to Transact Business

- (1) A foreign corporation whose authority to transact business in the commonwealth was revoked may apply to the Division for reinstatement.
- (2) The application for reinstatement consists of a form supplied by the Division or a document formatted in the same manner as the Division form. The application for reinstatement shall set forth:
 - (a) the name of the foreign corporation;
 - (b) the effective date of the revocation;
 - (c) that the name satisfies the requirements of M.G.L. c. 156D, §§ 4.01 and 15.06 or, if the name of the foreign corporation is unavailable, the name under which it will transact business in the commonwealth; and
 - (d) either that the grounds for revocation did not exist or that the grounds for revocation of authority have been eliminated; and
 - (e) all of the information required to be in the foreign corporation certificate by M.G.L. c. 156D, § 15.03.
- (3) The application for reinstatement shall contain a request to the department of revenue for the certificate required by M.G.L. c. 156D, § 15.32(a)(4). The request shall instruct the department of revenue to provide the certificate to the secretary of state and recite that all tax returns required to be filed by the corporation under M.G.L. chs. 62C and 63 have been filed and all taxes shown due on such returns and related penalties have been paid. The secretary of state shall forward the request to the department of revenue. If the secretary of state does not receive the certificate within six months from the date the application for reinstatement is filed, he may revoke the corporation's authority to do business in the Commonwealth. Such revocation will be effective seven days from the date notice is provided to the corporation.
- (4) The application for reinstatement shall be accompanied by an original certificate of legal existence or a certificate of good standing issued, not more than 90 days prior to submission, by an officer or agency properly authorized in the jurisdiction of organization. If the certificate is in a foreign language, a translation thereof under oath of the translator shall be attached.
- (5) The Division may reinstate the foreign corporation's authority to transact business without limitation or may reinstate for a limited purpose not to exceed one year. The application is deemed to be an amendment of the foreign corporation's certificate of registration.
- (6) In order to file an application for reinstatement without limitation with the Division, a corporation shall file all annual reports required to be filed by it for the last ten fiscal years. If the corporation has not completed its current fiscal year at the time it files its application for reinstatement, it will be required to file an annual report for the current fiscal year if more than six months have passed since the close of its prior fiscal year or if the corporation has issued additional shares during the partial fiscal year.

PART 16 – RECORDS AND REPORTS

113.57: Annual Reports

- (1) Each domestic corporation and each foreign corporation authorized to transact business in the commonwealth shall file an annual report with the Division within 2½ months after the close of the corporation's fiscal year end.

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- (2) The annual report consists of a form supplied by the Division or a document formatted in the same manner as the Division form. The annual report shall set forth:
- (a) the name of the corporation;
 - (b) the state or country under whose law it is incorporated;
 - (c) the street address of the corporation's registered office in the commonwealth;
 - (d) the name of the registered agent at that office;
 - (e) the street address of the corporation's principal office;
 - (f) the names and business addresses of its board of directors and its president, treasurer and secretary, and if different, its chief executive officer and chief financial officer;
 - (g) a brief description of the nature of its business;
 - (h) the total number of authorized shares, itemized by class and series, if any, within each class;
 - (i) the total number of issued and outstanding shares, itemized by class and series, if any, within each class;
 - (j) the stock of the corporation is publicly traded; and
 - (k) fiscal year end.
- (3) The information provided in the annual report must be current as of the date the report is executed.
- (4) If the annual report is filed electronically, the following supplemental information may be changed on the annual report: the names and business addresses of the directors and officers; the street address of the corporation's principal office; and the description of the type of business in which the corporation engages.

REGULATORY AUTHORITY

950 CMR 113.00: M.G.L. c. 156D.