

CHAPTER 3

# Incorporating a Business

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## CHAPTER 3

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### **Scope Note**

This chapter offers step-by-step guidance on the basics of forming a corporation under the Connecticut Business Corporation Act. Sample forms necessary to the process are also included.

## **§ 3.1 INTRODUCTION**

This chapter provides a summary of selected provisions of the Connecticut Business Corporation Act and is intended to assist business law practitioners in the determination as to whether a Connecticut corporation is the right type of entity for a new business venture. While we have attempted to include a comprehensive overview of the provisions we find most relevant to the formation and governance of a Connecticut corporation, this chapter is not meant to serve as a substitute for the full text of the Connecticut Business Corporation Act, which, as of the date of this writing, can be found online at <http://www.cga.ct.gov/2011/pub/chap601.htm>. We have included sample forms used in the organization of a Connecticut business corporation as exhibits to this chapter. Please note, however, that the forms contemplate formation of a “simple” corporation, and there are many instances where the forms will not be sufficient for the practitioner’s intended use.

## **§ 3.2 THE CONNECTICUT BUSINESS CORPORATION ACT**

The predominant authority for the organization of a Connecticut business corporation is Conn. Gen. Stat. §§ 33-600 through 33-998, which is known as the Connecticut Business Corporation Act (the Act).

The Act was enacted by the 1994 session of the Connecticut General Assembly, was amended by the 1995 General Assembly and the 1996 General Assembly, and became effective on January 1, 1997. The Act repealed and replaced the

thirty-five-year-old Connecticut Stock Corporation Act, joining thirty-five other states with corporate statutes based on the Revised Model Business Corporation Act. Since going into effect, the Act has been amended in several respects from time to time to conform with prevailing corporate law.

The Act was not accompanied by drafters' comment, as was the case with the General Corporation Law of Delaware, Del. Code Ann. tit. 8, § 1 et seq. (the Delaware Act) and the Massachusetts Business Corporation Act, Mass. Gen. Laws c. 156D, § 1 et seq. (the Massachusetts Act). However, to the extent the Act is consistent with similar provisions of the Delaware Act and the Massachusetts Act, practitioners may look to the more robust case law that has developed in Delaware and Massachusetts for guidance as to the practical application of the Act.

## **§ 3.3 FILINGS**

### **§ 3.3.1 Forms**

While the secretary of the state may prescribe and furnish on request forms for documents required or permitted to be filed under the Act, their use is generally not mandatory (with limited exception). Conn. Gen. Stat. § 33-609. As of the date of this writing, forms prescribed by the secretary of the state (together with a list of current fees) can be located online at <http://www.concord-sots.ct.gov/CONCORD>.

### **§ 3.3.2 Electronic Transmissions**

Adoption of the Act brought Connecticut into modern practice with regard to electronically transmitted documents. Documents may now be filed with the secretary of the state by way of electronic transmission. Conn. Gen. Stat. § 33-608.

### **§ 3.3.3 Effectiveness of Filing; Corrections**

Documents accepted by the secretary of the state for filing will be deemed effective at the date and time of filing or at the time specified in the document as its effective time on the date it is filed. Conn. Gen. Stat. § 33-610. Documents that contain inaccuracies or that were defectively executed may be corrected by filing a certificate of correction. Conn. Gen. Stat. § 33-611. A more detailed discussion of the content and effectiveness of a certificate of correction is set forth in § 3.5.7(e), below.

## § 3.4 NAME OF THE CORPORATION

### § 3.4.1 Requirements and Prohibitions When Naming a Corporation

Contemplating a name for a new business is often an enjoyable and creative process. However, the desired name must meet the requirements of Connecticut law.

Similar to most states, Connecticut sets out certain requirements that must be met in order gain approval when filing a certificate of incorporation for an entity. The Connecticut General Statutes require that the word “incorporated,” “company,” “Societa per Azioni,” or “limited” be included somewhere in the name. Conn. Gen. Stat. § 33-655(a). Another option is to include the abbreviation “corp.,” “inc.,” “co.,” “S.p.A.,” or “ltd.” in the name. Conn. Gen. Stat. § 33-655(a). The statutes also permit the use of “words or abbreviations of like import in another language.” Conn. Gen. Stat. § 33-655(a).

Connecticut law also contains prohibitions that need to be considered when choosing a name for an entity. The statutes make clear that the name may not contain any language that states or implies that the business is organized for a purpose other than that permitted by statute and its certificate of incorporation. Conn. Gen. Stat. § 33-655(a)(2). Such misleading business names will likely be rejected by the secretary of the state.

Once the requirements above are met, Connecticut law requires that the corporate name be distinguishable upon the records of the secretary of the state from the names of the following entities incorporated or authorized to transact business in the state:

- other corporations,
- a fictitious name adopted by a foreign corporation because its real name is unavailable,
- nonprofit businesses,
- domestic or foreign nonstock corporations,
- domestic or foreign limited partnerships,
- domestic or foreign limited liability companies,
- domestic or foreign limited liability partnerships, and

- any other entity whose name is carried upon the records of the secretary of the state.

Conn. Gen. Stat. § 33-655(b).

The name must also be distinguishable from any name reserved or registered pursuant to Conn. Gen. Stat. §§ 33-656 and 33-657 (explained in § 3.4.2, below). Conn. Gen. Stat. § 33-655(b). However, a corporation may apply to the secretary of the state if it wants to use a name that is not distinguishable according to the statute. Conn. Gen. Stat. § 33-655(c). The secretary of the state must approve the use of the name if the other entity consents to the use in writing and agrees to change its own name. Conn. Gen. Stat. § 33-655(c). The secretary of the state must also approve the use if the applicant delivers a certified copy of a court order establishing the right to use the name in Connecticut. Conn. Gen. Stat. § 33-655(c).

Because distinguishing a new corporate name is such an important aspect of the naming process, the secretary of the state has made available an online business search tool called “C.O.N.C.O.R.D.” This database allows one to quickly check if a desired name is already in use in Connecticut. The database can be accessed through the Web site of the secretary of the state at <http://www.ct.gov/SOTS>, or directly at <http://www.concord-sots.ct.gov/CONCORD/>.

Of course, a corporation is allowed to use another corporation’s name in the event that it has merged with the primary user corporation, has been formed as a result of a reorganization of the primary user corporation, or has acquired all or substantially all of the assets of the primary user corporation. Conn. Gen. Stat. § 33-655(d).

### **§ 3.4.2 Reserving a Corporate Name**

Once a name that conforms to the above-stated requirements and prohibitions has been chosen, one may reserve the desired name by delivering an application to the secretary of the state. Conn. Gen. Stat. § 33-656(a). Such an application must include

- the name and address of the applicant and
- the desired name to be reserved.

If the desired name is available, the secretary of the state shall reserve the desired name for 120 days. Conn. Gen. Stat. § 33-656(a). After reservation, the owner of the reserved name may transfer the reservation to another person by delivering a signed notice of transfer to the secretary of the state. Conn. Gen.

Stat. § 33-656(b). The owner of the reserved name may cancel the reservation at any time during the 120-day period by filing an application for cancellation and by paying the applicable \$60 fee. Conn. Gen. Stat. § 33-656(c). Forms for reservation and cancellation of reservation are easily accessed online at <http://www.ct.gov/SOTS>.

### § 3.4.3 Registered Corporate Names

Foreign corporations may reserve a name in Connecticut as long as it is distinguishable as discussed above in § 3.4.1. Conn. Gen. Stat. § 33-657(a). A foreign corporation can register its name by delivering the following two documents to the secretary of the state:

- an application setting forth
  - the corporate name,
  - the state or country of incorporation,
  - the date of incorporation, and
  - a brief description of the business; and
- a certificate of existence, or similar document, from the state or country of incorporation

Conn. Gen. Stat. § 33-657(b).

Once the registration is made, the name is registered for the exclusive use of the applicant from the date of application until the end of the calendar year in which the application was made. Conn. Gen. Stat. § 33-657(c). Renewal is done upon delivery of a renewal application between October 1 and December 31 of the preceding year. Conn. Gen. Stat. § 33-657(d). Renewal lasts for the entirety of the next calendar year, and the statute makes no mention of a limitation on how many years a name registration can be renewed. Conn. Gen. Stat. § 33-657(d).

## § 3.5 CERTIFICATE OF INCORPORATION

As in many states, a corporation formed in Connecticut begins its existence with a certificate of incorporation. Conn. Gen. Stat. § 33-637. The certificate of incorporation is an important and powerful instrument. It can contain a wide variety of provisions that dictate a great deal about why and how a corporation operates.

One or more incorporators that are seeking to start a corporation must deliver a certificate of incorporation to the secretary of the state for filing. Conn. Gen. Stat. § 33-635. Any method used in conventional commercial practice can be used to deliver the certificate, including delivery by hand, mail, commercial delivery service, and electronic transmission. Conn. Gen. Stat. §§ 33-602(6), 33-602(10)(C), 33-603. Incorporators must also pay a fee of \$100. Conn. Gen. Stat. § 33-603. The secretary of the state will then file the certificate, which is considered by statute to be conclusive proof that the incorporators satisfied all of the conditions precedent to incorporation, unless a very narrow exception applies. Conn. Gen. Stat. § 33-637.

After the filing of the certificate of incorporation, the incorporator may either name the initial board of directors or hold an organizational meeting in order to elect the board and “complete the organization of the corporation.” Conn. Gen. Stat. §§ 33-639. The incorporator is typically an individual who is the primary business person associated with the entity or the attorney representing the entity. In any event, it is advisable to have the incorporator take the following minimal actions required to organize the new venture:

- designate the initial directors and
- adopt the bylaws.

### **Practice Note**

While Conn. Gen. Stat. § 33-640 expressly provides that the directors may adopt the bylaws, it may be prudent to have the incorporator adopt the bylaws (which include provisions governing the permissible actions of the board of directors). After the directors are appointed and shares issued, the board and the shareholders can then ratify the bylaws.

An example of a form of consent of the sole incorporator is included as **Exhibit 3A**.

After being appointed by the incorporator, the directors will want to convene an initial meeting, either in person or by way of unanimous written consent. At the initial meeting, the directors should ratify all the actions of the incorporator and take such other actions as may “complete the organization of the corporation.” Actions taken at the initial meeting may include the election of officers, establishment of the fiscal year of the corporation, adoption of the form of stock certificate, ratification of the bylaws, adoption of the corporate seal, opening of bank accounts, issuance of stock, and approving any contracts the corporation is contemplating (e.g., a subscription agreement or stock purchase agreement). An

example of a form of organizational consent of the board of directors is included as **Exhibit 3B**.

The following subsections explore in more depth the required and permissive content of a certificate of incorporation and the role this document plays in the functioning of Connecticut corporations.

### § 3.5.1 Contents

#### (a) *Required Information*

A certificate of incorporation must, at a minimum, include the following:

- a corporate name that satisfies the requirements of Conn. Gen. Stat. § 33-655;
- the number of shares that the corporation is authorized to issue;
- the street address of the corporation's initial registered office and the name of its initial registered agent at that office; and
- the name and address of each incorporator.

Conn. Gen. Stat. § 33-636(a).

An example of a form of certificate of incorporation is included as **Exhibit 3C**.

#### (b) *Optional Information*

A certificate of incorporation is permitted to contain a wide breadth of provisions and information. For its part, Connecticut statutory law explicitly allows a certificate of incorporation to optionally include:

- the names and addresses of the individuals who will serve as the corporation's initial directors;
- provisions regarding the corporation's purpose and the powers of the corporation and its members, the par value of issued stock, and the personal liability of the corporation's shareholders;
- any provision under Conn. Gen. Stat. §§ 33-600 to 33-998 that is required or permitted in the corporation's bylaws;

- a provision limiting the personal liability of a director for breaching his or her duty to the corporation or its shareholders; and
- a provision permitting or obligating the corporation to indemnify directors for liability stemming from their action or failure to act.

Conn. Gen. Stat. § 33-636(b).

Where applicable, these provisions are discussed in more detail below. It should be noted that, in certain circumstances, a corporation can draft the certificate of incorporation so that it relies on facts that are objectively ascertainable, rather than including these facts in the certificate itself. Conn. Gen. Stat. § 33-608.

### § 3.5.2 Name

A corporate name is the first thing that is required to be included in a certificate of incorporation. Conn. Gen. Stat. § 33-636. Other considerations regarding corporate names are discussed in 0, above.

### § 3.5.3 Purpose

A corporation's purpose can be defined as the reason why the corporation exists as a distinct legal entity. If a certificate of incorporation does not specify a purpose for the corporation, statute assigns the purpose of "engaging in any lawful business." Conn. Gen. Stat. § 33-645(a). This default purpose has an extremely broad scope and places few limits on what a corporation can do.

The certificate of incorporation can provide for a corporate purpose other than the default purpose. When so desired, such a provision may limit the corporation to pursuing a narrow goal. In this sense, the certificate of incorporation can be an extremely powerful tool by which to control a corporation's future. Still, any provision regarding corporate purpose that is added to a certificate of incorporation must not be prohibited by law. Conn. Gen. Stat. § 33-636(b)(2)(A).

Connecticut places additional restrictions on those seeking to create certain types of businesses, such as banking-related institutions, insurance companies and utilities. Conn. Gen. Stat. § 33-645(a); *see, e.g.*, Conn. Gen. Stat. § 33-646 (regarding state authorization to create an insurance company).

### § 3.5.4 Powers

#### (a) *Regular Powers*

A corporation's "powers" consist of the allowable means by which the corporation can accomplish its established purpose. Connecticut statute provides by default that every corporation has perpetual duration and has "all the powers of an individual to do all things necessary and convenient to carry out its business and affairs." Conn. Gen. Stat. § 33-647.

Historically, broad corporate power language helped corporations combat the use of the ultra vires doctrine. In the past, shareholders sued under this doctrine, alleging that any particular corporation had exceeded its allowable powers. Statutory law, in conjunction with the use of broad corporate purpose language, has rendered the ultra vires doctrine largely defunct. Conn. Gen. Stat. § 33-649.

Connecticut statutory law provides an explicit list of specific default powers. Conn. Gen. Stat. § 33-647. For example, corporations can own and dispose of property, engage in litigation, and bind themselves to contracts. Conn. Gen. Stat. § 33-647. As with many aspects of a corporation, these default provisions can be limited by the certificate of incorporation or other applicable law.

#### (b) *Emergency Powers*

In the case of a catastrophic event, a corporation's board may find itself unable to assemble a quorum of directors. In such a scenario, the board may be hamstrung in performing its duties. To address this potential problem, Connecticut allows corporate boards to exercise certain enumerated emergency powers. In an emergency, directors do not need to be notified of a board meeting if it would be impractical to do so. Conn. Gen. Stat. § 33-648(b). Furthermore, officers of the corporation can be deemed directors as necessary to achieve a quorum. Conn. Gen. Stat. § 33-648(b). The board of directors may

- modify the lines of succession to accommodate the incapacity of any director, officer, employee or agent and
- relocate the principal office, designate alternative principal offices or regional offices, or authorize corporate officers to do so.

Conn. Gen. Stat. § 33-648(a).

Corporate action taken in good faith during an emergency to further the corporation's business affairs is binding on the corporation and cannot be used to impose

liability on a corporate director, officer, employee or agent. Conn. Gen. Stat. § 33-648(c).

### § 3.5.5 Shares of a Corporation

A certificate of incorporation is required to contain certain information regarding the shares of the corporation. *See* Conn. Gen. Stat. §§ 33-665–33-668. Among other things, the certificate must include the number of shares that the corporation is authorized to issue. Conn. Gen. Stat. § 33-665. For a more detailed discussion regarding the issuance of shares of a Connecticut corporation, see 0, below.

### § 3.5.6 Amending a Certificate of Incorporation

A corporation may from time to time find it desirable to make changes to its certificate of incorporation. The process of amending a certificate of incorporation in Connecticut is governed by a number of statutory provisions. Conn. Gen. Stat. §§ 33-795–33-803. Amending the certificate of incorporation requires payment of a fee of \$100. Conn. Gen. Stat. § 33-603.

Generally speaking, a corporation can amend its certificate at any time to add or change a provision that is required or permitted by law. Conn. Gen. Stat. § 33-795. However, provisions that are mandated by law cannot be deleted. Conn. Gen. Stat. § 33-795.

#### (a) *Amendments Requiring Shareholder Approval*

Shareholder rights would not be adequately protected if a board of directors could change a corporation's certificate of incorporation unilaterally. Therefore, if a corporation has issued stock, shareholder approval is typically required to amend the certificate of incorporation. Passing an amendment that requires shareholder approval involves several steps. First, the board of directors approves the amendment. Conn. Gen. Stat. § 33-797. The board then submits the amendment to the shareholders for approval. Conn. Gen. Stat. § 33-797.

When the board submits the amendment to the shareholders, it must also recommend that the shareholders approve it, unless the board

- determines that such a recommendation would be improper because of a conflict of interest or other special circumstance or
- agrees to submit the amendment but no longer recommends that shareholders adopt it.

Conn. Gen. Stat. §§ 33-797, 33-754.

Notably, the board of directors is allowed to condition its submission of the amendment to the shareholders on any basis that it chooses. Conn. Gen. Stat. § 33-797(c). If the board is going to seek shareholder approval at a meeting, the board must notify every shareholder, regardless of whether any particular shareholder is entitled to vote. Conn. Gen. Stat. § 33-797(d). The board's notice must state that at least one purpose of the meeting is to consider the amendment as well as include the amendment in the notice or attach a copy of it. Conn. Gen. Stat. § 33-797(d).

How shareholders are required to vote, and the number of votes necessary to pass an amendment, are complex issues. By default, to be considered approved by the shareholders the amendment must

- receive a majority of the votes of all enfranchised voting groups for which the amendment would create appraisal rights and
- receive from every other enfranchised voting group the votes required by Conn. Gen. Stat. §§ 33-709 and 33-710.

Conn. Gen. Stat. § 33-797.

This default rule can be altered by the certificate of incorporation, another provision of Conn. Gen. Stat. §§ 33-600–33-998, or the board of directors. Certain amendments require that a corporation with more than one class of shares outstanding allow each class to vote as a separate voting group. Conn. Gen. Stat. § 33-798. The Act provides an in-depth list of rules regarding voting for amendments by voting groups. Conn. Gen. Stat. § 33-798.

Unique requirements are placed on corporations that have more than 100 shareholders of record and that were incorporated in Connecticut prior to January 1, 1997. Conn. Gen. Stat. § 33-797(f). To receive shareholder approval of an amendment to the certificate of incorporation, such corporations must obtain the affirmative vote of at least two-thirds of each enfranchised voting group, unless the certificate of incorporation expressly provides otherwise. Conn. Gen. Stat. § 33-797(f).

### **(b) *Amendments Without Shareholder Approval***

Prior to issuing stock, a corporation's board of directors, or its incorporators if there is no board yet, may adopt amendments to the certificate of incorporation. Conn. Gen. Stat. § 33-799. Since there are no shareholders in this context, no shareholder vote is required. Conn. Gen. Stat. § 33-799.

A corporation's board of directors may also adopt certain amendments without shareholder approval, even after shares are issued, provided that such an opportunity is not foreclosed by the certificate of incorporation. Conn. Gen. Stat. § 33-796. A list of allowable amendments is provided by Conn. Gen. Stat. § 33-796, which generally permits the board to perform certain tasks of a ministerial nature. For example, the board can delete the names and addresses of the initial directors from the certificate of incorporation without shareholder approval. Conn. Gen. Stat. § 33-796.

**(c) *Certificate of Amendment***

After an amendment is adopted and approved, the next step in the amendment process is for the corporation to submit a certificate of amendment to the secretary of the state. The certificate of amendment must include

- the name of the corporation;
- the text of each amendment;
- the date of the amendment's adoption;
- if no shareholder approval was required, a statement that the incorporators or board of directors duly approved the amendment;
- if shareholder approval was required, a statement that the amendment was duly approved by the shareholders;
- if an amendment is being filed pursuant to subsection (l) of Conn. Gen. Stat. § 33-608, which allows certain information to be omitted from the text of an amendment, a statement to that effect; and
- if an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment, if such provisions are not contained in the amendment itself.

Conn. Gen. Stat. § 33-800.

**(d) *Amendment Pursuant to Reorganization***

During a reorganization proceeding, a presiding court may issue an order or a decree amending a corporation's certificate of incorporation. Conn. Gen. Stat. § 33-802. This must occur prior to the entry of a final decree in the proceeding.

Conn. Gen. Stat. § 33-802. In such case, the approval of the corporation's board and shareholders is not required. Conn. Gen. Stat. § 33-802.

The issuing court will designate individuals to file a certificate of amendment with the secretary of the state that includes

- the name of the corporation,
- the text of each amendment approved by the court,
- the date of the court's order or decree approving the certificate of amendment,
- the title of the reorganization proceeding in which the order or decree was entered, and
- a statement that the court has jurisdiction over the proceeding under federal law.

Conn. Gen. Stat. § 33-802.

**(e) *Restated Certificate of Incorporation***

A corporation that has filed numerous certificates of amendment may wish to consolidate them into a single document. A corporation's board of directors can accomplish this by filing what is known as a restatement of the certificate of incorporation. Conn. Gen. Stat. § 33-801. A board does not typically need shareholder approval for a restatement because the consolidation does not result in substantive changes to the certificate's provisions. Shareholder approval is required only if the restatement is adding a new amendment to the certificate of incorporation that would require shareholder approval if proposed independently. Conn. Gen. Stat. § 33-801. Filing a restated certificate of incorporation requires payment of a fee of \$100. Conn. Gen. Stat. § 33-603.

To accomplish a restatement, a corporation simply delivers a certificate of restatement to the secretary of the state that includes

- the name of the corporation;
- the text of the restated certificate of incorporation;
- a statement that the restated certificate of incorporation consolidates all of the amendments into a single document; and

- if a new amendment is included in the restated certificate of incorporation, a statement as required by Conn. Gen. Stat. § 33-800, which governs certificates of amendment.

Conn. Gen. Stat. § 33-801(c).

A duly adopted restated certificate of incorporation supersedes the original certificate of incorporation and all amendments to it. Conn. Gen. Stat. § 33-801(d).

### **(f) *Effective Date of Amendments***

Connecticut law prohibits amendments to the certificate of incorporation from affecting causes of action for or against the corporation that are under current litigation. Conn. Gen. Stat. § 33-803. Likewise, changing the corporation's name will not affect ongoing litigation. Conn. Gen. Stat. § 33-803. Lastly, amendments are prohibited from affecting the rights of persons other than corporate shareholders. Conn. Gen. Stat. § 33-803.

## **§ 3.5.7 Other Lawful Provisions**

As previously discussed, there is a wide variety of provisions that may be included in a corporation's certificate of incorporation. The following subsections provide a nonexhaustive account of some such provisions.

### **(a) *Indemnification of Directors, Officers, and Others***

A certificate of incorporation may include a provision that permits or requires the corporation to indemnify a director for liability. Conn. Gen. Stat. § 33-636(b)(5). Such a provision can cover liability of the director to any person for any action or failure to take action as a director, unless the liability involved

- a knowing and culpable violation of law by the director,
- enabling the director or an associate to receive an improper personal gain,
- a lack of good faith and a conscious disregard for the director's duty to the corporation under circumstances in which the director was aware that his conduct or omission created an unjustifiable risk of serious injury to the corporation,
- a sustained and unexcused pattern of inattention that amounts to an abdication of the director's duty to the corporation, or

- an illegal or prohibited distribution pursuant to Conn. Gen. Stat. § 33-757.

Conn. Gen. Stat. § 33-636(b)(5); *see also* Conn. Gen. Stat. §§ 33-770–33-776 (regarding indemnification by the corporation).

### **(b) *Limitation of Director Liability***

A certificate of incorporation may also include a provision that limits the liability of a director to the corporation or shareholders for monetary damages stemming from a breach of the director's duty. Conn. Gen. Stat. § 33-636(b)(4). However, damages cannot be limited to an amount that is less than the director's compensation for the year during which the violation occurred. Conn. Gen. Stat. § 33-636(b)(4). Furthermore, damages cannot be limited if the breach involved

- a knowing and culpable violation of law by the director,
- enabling the director or an associate to receive an improper personal economic gain,
- a lack of good faith and a conscious disregard for the duty of the director to the corporation under circumstances in which the director was aware that his conduct or omission created an unjustifiable risk of serious injury to the corporation,
- a sustained and unexcused pattern of inattention that amounted to an abdication of the director's duty to the corporation, or
- an illegal or prohibited distribution pursuant to Conn. Gen. Stat. § 33-757.

Conn. Gen. Stat. § 33-636(b)(4).

### **(c) *Preemptive Rights***

By default, a corporation's shareholders do not have preemptive rights to acquire the corporation's unissued shares. However, the certificate of incorporation may prescribe such rights. Pursuant to Conn. Gen. Stat. § 33-683(b), if the certificate of incorporation contains the phrase "the corporation elects to have preemptive rights," shareholders are provided preemptive rights that are mandated in detail by statute. Conn. Gen. Stat. § 33-683(b)(1)–(6).

The default rule is flipped for corporations that were incorporated in Connecticut prior to January 1, 1997. Shareholders of these corporations are entitled to

preemptive rights unless the corporation's certificate of incorporation expressly provides otherwise. Conn. Gen. Stat. § 33-683(b).

**(d) *Number of Directors***

Connecticut allows either a corporation's certificate of incorporation or its bylaws to specify how many directors the corporation will have, although there must be at least one. Conn. Gen. Stat. § 33-737.

**(e) *Errors in a Certificate of Incorporation***

Corporations may correct documents that contain inaccuracies or that were defectively executed by filing a certificate of correction that

- describes the document or attaches a copy of it,
- specifies the inaccuracy or the defect, and
- corrects the inaccuracy or the defect.

Conn. Gen. Stat. § 33-611.

Generally, document corrections are made retroactively effective to the date that the original document was filed. However, when a person has relied on the original document and that person would be adversely affected by a retroactive change, the correction is made effective as to that person on the day it is filed. Conn. Gen. Stat. § 33-611(c). Essentially, this means that the corporation is estopped from using the correction procedure to induce harm.

**(f) *Bylaw Provisions***

The bylaws of a corporation are an important set of rules that govern how the corporation is operated. Bylaws are discussed in depth in 0, below. Importantly, the certificate of incorporation can restrict the bylaws that a corporation's board of directors may pass. Conn. Gen. Stat. §§ 33-640, 33-806–33-807, 33-809. Such restrictions limit the board's power in a manner that is difficult for the board to overcome because the board typically will need shareholder approval to eliminate the restrictions from the certificate of incorporation. The certificate can also prohibit or limit a board's ability to pass emergency bylaws. Conn. Gen. Stat. § 33-641.

**(g) Other Miscellaneous Provisions**

Certificates of incorporation are notable for their elasticity; while there are few minimum requirements for these documents, their permissible expense is significant. In addition to the allowable provisions discussed above, a certificate of incorporation can include provisions that

- prescribe notice requirements not prohibited by statute, Conn. Gen. Stat. §§ 33-603, 33-699;
- authorize cumulative voting for director elections, Conn. Gen. Stat. § 33-695;
- alter certain default rules regarding calling and conducting shareholder meetings; Conn. Gen. Stat. §§ 33-696, 33-699, 33-698, 33-702;
- alter certain aspects of shareholder voting, Conn. Gen. Stat. §§ 33-705, 33-709–33-712;
- for closely held corporations, abrogate certain requirements otherwise dictated by statute, Conn. Gen. Stat. § 33-717;
- limit the authority of a board of directors and specify director qualifications, term limits, removal procedures, etc., Conn. Gen. Stat. §§ 33-735; and
- limit the appraisal rights of shareholders, Conn. Gen. Stat. § 33-856.

Arguably, it is easier to identify the provisions that cannot be included in a certificate of incorporation. *See, e.g.*, Conn. Gen. Stat. § 33-946 (certificate of incorporation cannot limit shareholder inspection rights). Given the importance of certificates of incorporation, incorporators should plan and draft them with great care in order to ensure that they reflect the desired goals of the principals and other interested parties.

**§ 3.6 BYLAWS**

The Act provides that, after a corporation has filed its certificate of incorporation with the secretary of the state, an organizational meeting must be held at the call of either (i) the majority of initial directors (if named in the certificate of incorporation) or (ii) the majority of the incorporators (if initial directors have not

been named). Conn. Gen. Stat. § 33-639(a). The initial bylaws of a Connecticut corporation must be adopted at the organizational meeting. Conn. Gen. Stat. § 33-640(a).

Bylaws contain the basic rules for the management of a business and the regulation of a corporation's affairs. The bylaws may contain any provision regarding such management and regulation "that is not inconsistent with law or the certificate of incorporation." Conn. Gen. Stat. § 33-640(b). The Act grants broad latitude to corporations to adjust its statutory rules to conform to the corporation's needs: "No provision of a certificate of incorporation or bylaw shall be held invalid on the ground that it is inconsistent with [the Act] unless [a] section expressly prohibits variations." Conn. Gen. Stat. § 33-601(a). Therefore, although the Act lays out specific requirements for corporations, many of these requirements may be altered by a corporation's bylaws unless expressly prohibited, and thus it is important to identify the principal areas where flexibility may be considered. An example of a form of bylaws is included as **Exhibit 3D**.

### § 3.6.1 Shareholder Matters

#### (a) *Annual Meetings*

Under the Act, corporations are required to hold an annual meeting of the shareholders at a time stated or fixed by the bylaws, unless directors are elected by unanimous written consent instead of an annual meeting. Conn. Gen. Stat. § 33-695(a). An annual meeting may be held in or out of the state of Connecticut at a location that may be stated or fixed in the bylaws. If no place is stated or fixed, the annual meeting will be held at the corporation's principal office. Conn. Gen. Stat. § 33-695(b). Directors are elected at the "first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered." Conn. Gen. Stat. § 33-737(c). Failure to hold such a meeting does not affect the validity of any corporate action, disenfranchise the directors, or cause dissolution of the corporation. Conn. Gen. Stat. § 33-695(c). However, a shareholder entitled to participate in an annual meeting may file an application with the superior court to order that an annual meeting be held. A court may order an annual meeting to be held if such a meeting was not held or action by written consent did not become effective within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting. Conn. Gen. Stat. § 33-697(a).

#### (b) *Special Meetings*

In addition to annual meetings, the Act provides that special shareholders meetings may be called

- (1) by the board of directors,
- (2) by anyone authorized by the certificate of incorporation or the bylaws to call a special meeting, or
- (3) upon the written request of “holders of at least ten per cent of all the votes entitled to be cast on any issue proposed to be considered” at a special meeting.

Conn. Gen. Stat. § 33-696(a). Ten-percent shareholders demanding a special meeting must sign, date, and deliver a written demand to the corporation’s secretary. Conn. Gen. Stat. § 33-696(a). The record date to determine whether a shareholder is entitled to make such a demand is the date that the first shareholder signs the demand. Conn. Gen. Stat. § 33-696(b).

Notices of special meetings must include the purpose of the meeting, Conn. Gen. Stat. § 33-699(c), and only business described in that purpose may be conducted at a special meeting. Conn. Gen. Stat. § 33-696(d). Similar to annual meetings, special meetings may be held in or out of the state of Connecticut, at a place stated or fixed in the bylaws. If no place is stated or fixed, the special meeting will be held at the corporation’s principal office. Conn. Gen. Stat. § 33-696(c).

A shareholder who has signed a valid demand for a special meeting may apply to a superior court to order a special meeting to be held. Conn. Gen. Stat. § 33-697(a). The court may grant such application if notice of the special meeting was not given within thirty days after the date the demand was delivered or a special meeting was not held in accordance with the notice. Conn. Gen. Stat. § 33-697(a).

### **(c)     *Notice and Waiver of Meetings***

A corporation must notify shareholders entitled to vote of the date, time, and place of each meeting no less than ten and no more than sixty days before the meeting date. Conn. Gen. Stat. § 33-699(a). Although the Act requires at least ten days’ notice, a requirement for a longer period—up to sixty days—may be set out in the bylaws. Such a requirement may be beneficial to public companies in order to have time to secure proxies.

In addition to including the time, date, and place of each meeting, if the board of directors has authorized participation in a meeting by means of remote communication in the bylaws, the notice must also describe the means of remote communication to be used. Conn. Gen. Stat. § 33-699(a).

Notice must be in writing unless oral notice is reasonable under the circumstances. Conn. Gen. Stat. § 33-603(a). A notice may be sent by any method of delivery, Conn. Gen. Stat. § 33-603(b), except electronic transmission, which must be consented to by the recipient and contain information showing the date of the transmission and sender authorization. Conn. Gen. Stat. § 33-603(d). Consent to electronic transmissions may be revoked by the shareholder through written notice or electronic notice, or consent will be deemed revoked if the corporation is unable to deliver two consecutive electronic transmissions. Conn. Gen. Stat. § 33-603(e).

Notice is effective upon deposit in the U.S. mail if mailed postage prepaid and correctly addressed to a shareholder, Conn. Gen. Stat. § 33-603(i)(2); if oral, when communicated, Conn. Gen. Stat. § 33-603(i)(5); and, if sent through an electronic transmission, notice is effective when it is received by an information processing system that the recipient designated for receiving such transmissions and the transmission can be processed by that system. Conn. Gen. Stat. § 33-603(i)(5). It is important to note that an electronic transmission is considered received even if no individual is aware of its receipt. Conn. Gen. Stat. § 33-603(h).

A shareholder may waive any notice required by the certificate of incorporation, the bylaws, or the Act before or after the date and time stated in the notice. The waiver must be in writing, signed by the shareholder, and delivered to the corporation. Conn. Gen. Stat. § 33-700(a). By attending a meeting, a shareholder waives its right to object to lack of or defective notice unless, at the beginning of the meeting, the shareholder objects to holding the meeting. Conn. Gen. Stat. § 33-700(b)(1). Attendance also waives a shareholder's right to object to considering a particular matter being addressed at a meeting "unless the shareholder objects to considering the matter when it is presented." Conn. Gen. Stat. § 33-700(b)(2).

#### **(d) *Purpose of Meeting***

Notice of an annual meeting does not need to include a description of the purpose for the meeting unless the certificate of incorporation requires otherwise. Conn. Gen. Stat. § 33-699(b). Notice of a special shareholders' meeting, however, must include a description of the purpose for the special meeting. Conn. Gen. Stat. § 33-699(c). This provision protects shareholders who choose not to attend a meeting from unexpected action taking place in their absence.

#### **(e) *Action by Written Consent***

Action required or permitted under any provision of the Act to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced

by one or more written consents bearing the date of signature and describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records. Conn. Gen. Stat. § 33-698(a). An electronic transmission may be used to consent to an action if the electronic transmission contains or is accompanied by information from which the corporation can determine the date on which the electronic transmission was signed and that the electronic transmission was authorized by the shareholder, the shareholder's agent, or the shareholder's attorney-in-fact. Conn. Gen. Stat. § 33-698(h).

### **(f) *Meetings by Remote Communication***

All shareholders may participate in any shareholders' meeting via remote communication to the extent authorized by the board of directors and subject to guidelines and procedures adopted by the board of directors. 2011 Conn. Acts No. 11-147, § 2(a).

Shareholders participating by remote communication will be deemed present and may vote, so long as the corporation has implemented reasonable measures to verify that each person participating remotely is a shareholder and provides remote shareholders a reasonable opportunity to vote and participate in the meeting; remote shareholders must be able to read or hear everything taking place in the proceeding as it takes place. 2011 Conn. Acts No. 11-147, § 2(b).

### **(g) *Mechanics of Meeting***

The Act addresses a variety of mechanical matters such as requirements for a quorum, voting requirements, proxy voting, and fixing the record date. As discussed, the bylaws can alter many of these statutory norms.

Additionally, a chairperson, appointed as provided in the bylaws, must preside over every shareholder meeting. Conn. Gen. Stat. § 33-702(a). Unless the certificate of incorporation or the bylaws provide otherwise, the chairperson determines the order of business of the meetings and has the authority to establish rules for the conduct of shareholder meetings, Conn. Gen. Stat. § 33-702(b), as long as the conduct of the meeting and any rules adopted by the chairperson are fair to the shareholders. Conn. Gen. Stat. § 33-702(c).

### **(h) *Quorum***

Unless the certificate of incorporation provides otherwise, a quorum is a majority of the outstanding shares of a voting group entitled to vote on a matter. Conn.

Gen. Stat. § 33-709(a). Other than when electing directors, if a quorum exists, action on a matter by a voting group is approved by a majority vote unless the certificate of incorporation provides otherwise. Conn. Gen. Stat. § 33-709(c).

**Practice Note**

Unlike in other jurisdictions, in Connecticut, the certificate of incorporation can provide greater or lesser quorum requirements, but the bylaws cannot. Conn. Gen. Stat. § 33-711(a).

**(i) *Voting of Shares; Voting Requirements***

Generally, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting, unless the certificate of incorporation provides otherwise. Conn. Gen. Stat. § 33-705(a). A shareholder may vote his or her shares in person or by proxy, Conn. Gen. Stat. § 33-706(a), appointing a proxy to act for the shareholder by signing an appointment form or by an electronic transmission of the appointment. Conn. Gen. Stat. § 33-706(b). Unless cumulative voting or another method is authorized in the certificate of incorporation, directors are elected by a plurality of the votes of shares entitled to vote in the election at a meeting at which a quorum is present. Conn. Gen. Stat. § 33-712(a)-(b). This means that directors may be elected by less than a majority of shares. For example, if 300 shares of common stock are outstanding and a quorum is constituted at an annual meeting with a majority of 151 shares present at a meeting, then 76 votes is the most necessary to elect a director.

**(j) *Record Date***

To determine whether shareholders are entitled to notice, to demand a special meeting, to vote, or to take any other action, a corporation may fix in its bylaws a record date, on which its stock transfer books are closed, not more than seventy days before a meeting. Conn. Gen. Stat. § 33-701(a)-(b). If the record date is not fixed in the bylaws, the board of directors may fix a future date as the record date. Conn. Gen. Stat. § 33-701(a).

**§ 3.6.2 Director Matters**

**(a) *Qualifications***

The required qualifications for directors may be prescribed in the certificate of incorporation or a corporation's bylaws. Conn. Gen. Stat. § 33-763. Therefore, unless prescribed by the certificate of incorporation or the bylaws, a director is

not required to be a Connecticut resident nor a shareholder. Conn. Gen. Stat. § 33-763. Qualifications provisions can be overly limiting, however, and most bylaws specify the opposite.

**(b) *Number***

A board of directors consists of one or more individuals, the number of which is specified in the certificate of incorporation or the bylaws. Conn. Gen. Stat. § 33-737(a). The number of directors may be altered by amendment to the certificate of incorporation or the bylaws. Conn. Gen. Stat. § 33-737(b).

**(c) *Election***

The initial directors are either named in the certificate of incorporation or elected at the organizational meeting. Conn. Gen. Stat. § 33-639(a). The terms of the initial directors of a corporation expire at the first annual shareholders' meeting at which directors are elected. Conn. Gen. Stat. § 33-739(a). After the first annual shareholders' meeting, directors are elected at each annual meeting thereafter unless their terms are staggered. Conn. Gen. Stat. § 33-737(c). Directors are elected by a plurality of the votes cast by the shareholders entitled to vote unless otherwise provided in the certificate of incorporation. Conn. Gen. Stat. § 33-712(a).

**(d) *Terms and Classification of Directors***

Directors' terms expire at the next annual shareholders' meeting following their election or, if the certificate of incorporation provides that the terms shall be staggered, at the applicable second, third, fourth, or fifth meeting following their election. Conn. Gen. Stat. § 33-739(b). The Act permits a corporation to divide the total number of directors into up to five groups to create staggering terms, with each group containing approximately the same percentage of the total. Conn. Gen. Stat. § 33-740. A corporation must include its decision to stagger the board in the certificate of incorporation for the arrangement to be valid, Conn. Gen. Stat. § 33-740.

**(e) *Vacancies Between Shareholder Meetings***

Unless the certificate of incorporation provides otherwise, if a vacancy occurs on a board of directors for any reason, the vacancy may be filled by a majority vote of either the shareholders or the board of directors, or, if the directors remaining in office constitute less than a quorum of the board, the majority of the remaining directors. Conn. Gen. Stat. § 33-744(a). The term of a director elected to fill

a vacancy expires at the next shareholders' meeting at which directors are elected. Conn. Gen. Stat. § 33-739(d).

**(f)      *Removal***

Shareholders can remove directors with or without cause unless the certificate of incorporation requires that directors may be removed only for cause. Conn. Gen. Stat. § 33-742(a). Shareholders may remove a director only at a meeting called for the purpose of removing the director and the meeting notice must state that one of the purposes of the meeting is removal of the director. Conn. Gen. Stat. § 33-742(d).

If cumulative voting is authorized, a director may be removed only if the number of votes in favor of removal exceeds the number of votes sufficient to elect him or her under cumulative voting. Conn. Gen. Stat. § 33-742(c). If cumulative voting is not authorized, a director may be removed only if the number of votes in favor of removal exceeds the number of votes cast not to remove him or her. Conn. Gen. Stat. § 33-742(c).

**(g)      *Board Committees***

Unless restricted by the certificate of incorporation or the bylaws, a board of directors may create committees and appoint members of the board of directors to serve on such committees. Conn. Gen. Stat. § 33-753(a). Each committee may exercise the powers of the board of directors to the extent specified by the board, the certificate of incorporation, or the bylaws. Conn. Gen. Stat. § 33-753(e). However, a committee may not

- authorize or approve distributions unless the distributions are prescribed by the board of directors;
- approve or propose to shareholders actions required to be approved by shareholders;
- adopt, amend, or repeal bylaws;
- fill vacancies on the board of directors; or
- fill vacancies on any of the board's committees, Conn. Gen. Stat. § 33-753(h), unless authorized to do so by the certificate of incorporation, the bylaws, or the resolution creating the committee.

Conn. Gen. Stat. § 33-753(f).

**(h) *Meetings: Place, Notice, and Waiver***

The board of directors may hold regular or special meetings in or out of the state of Connecticut. Conn. Gen. Stat. § 33-748(a). Unless the certificate of incorporation or a bylaw provides otherwise, all directors may conduct or participate in such a meeting by any means of communication, as long as all the directors participating in the meeting can simultaneously hear each other. Conn. Gen. Stat. § 33-748(b). Directors who participate in a meeting utilizing alternative forms of communication will be deemed to have been present. Conn. Gen. Stat. § 33-748(b).

The board of directors may hold regular meetings without notice of the date, time, place, or purpose of the meeting, unless the certificate of incorporation or a bylaw provides otherwise. Conn. Gen. Stat. § 33-750(a). Special meetings, on the other hand, must be preceded by at least two days' notice, including the date, time, and place of the meeting, but the purpose of the meeting is not required for notice. Conn. Gen. Stat. § 33-750(b). A corporation may choose to require inclusion of the purpose of the meeting in the notice or a longer period for notice in its certificate of incorporation or bylaws. Conn. Gen. Stat. § 33-750(b).

**Practice Note**

The Act does not require any specific form of notice, but it may be a good idea to require a specific form in the bylaws. Requiring a specific notice form may help ensure that directors are given a reasonable opportunity to find out about the meetings within a reasonable time. Additionally, requiring a specific form will provide evidence that notice was, in fact, given should a dispute arise.

A director may waive notice before or after the date and time stated in the notice. Conn. Gen. Stat. § 33-751(a). The waiver must be in writing, signed by the director, and filed with the minutes. Conn. Gen. Stat. § 33-751(a). Attendance or participation in a meeting waives the right to notice unless the director objects to holding the meeting or transacting business in the meeting at the beginning of the meeting or promptly upon arrival, and the director does not thereafter take any action taken at the meeting. Conn. Gen. Stat. § 33-751(b).

**(i) *Quorum and Authorized Actions***

Unless the certificate of incorporation or a bylaw requires the vote of a greater number of directors, if a quorum is present at a meeting, the majority vote of directors present at such a meeting is considered a valid act of the board. Conn. Gen. Stat. § 33-752(c). A quorum of a board of directors consists of either

- a majority of the fixed number of directors, if the corporation has a fixed board size;
- a majority of the number of directors prescribed; or
- if no number is prescribed and the board is not fixed, the number in office immediately before the meeting begins.

Conn. Gen. Stat. § 33-752(a). The certificate of incorporation or the bylaws, however, may authorize a quorum to consist of no less than one-third of the fixed or prescribed number of directors. Conn. Gen. Stat. § 33-752(b).

### **(j) *Action Without a Meeting***

Unless otherwise provided in the certificate of incorporation or the bylaws, the board of directors may take actions it is required or permitted to take without a meeting if each director signs a consent describing the action taken, or to be taken, and delivers it to the corporation. Conn. Gen. Stat. § 33-749(a). Actions taken without a meeting are deemed valid acts of the board of directors when the required consent is unanimously signed by all the directors and delivered to the corporation. Conn. Gen. Stat. § 33-749(b).

### **(k) *Voting by Proxy***

As discussed, the Act permits shareholders to vote by proxy; however, there is no comparable provision with respect to directors. As a result, a director is not permitted to exercise his or her authority by proxy.

### **(l) *Compensation***

Unless the certificate of incorporation or a bylaw provides otherwise, the board of directors may fix the compensation of directors. Conn. Gen. Stat. § 33-745.

## **§ 3.6.3 Officer Matters**

### **(a) *Offices***

A corporation prescribes its offices in the corporation's bylaws and the board of directors, in accordance with the bylaws, designates such positions. Conn. Gen. Stat. § 33-763(a).

**(b) *Elections and Appointment***

The board of directors elects individuals to fill the offices of the corporation or an officer may appoint one or more officers if authorized under the bylaws or by the board of directors. Conn. Gen. Stat. § 33-763(b).

**(c) *Duties***

Officers have the authority and the duty to perform the functions set forth in the bylaws or, to the extent consistent with the bylaws, the functions prescribed by either the board of directors or another officer authorized to prescribe the functions of other officers. Conn. Gen. Stat. § 33-764.

**(d) *Removal and Resignation***

An officer may resign at any time by delivering notice to the corporation. Conn. Gen. Stat. § 33-766(a). A resignation is effective when the notice is delivered, unless the notice specifies a later effective date. Conn. Gen. Stat. § 33-766(a).

An officer may be removed at any time, with or without cause, by the board of directors or, to the extent consistent with the bylaws, the officer who appointed such officer or any other officer authorized to remove other officers. Conn. Gen. Stat. § 33-766(b).

**§ 3.6.4 Fiscal Year**

The Act does not require a corporation to designate a fiscal year in the bylaws, although one frequently is.

**§ 3.6.5 Amendments**

Bylaws may be amended by the board of directors unless the certificate of incorporation or sections of the Act reserve the power to amend bylaws exclusively to shareholders. Conn. Gen. Stat. § 33-806(b). However, when amending, repealing, or adopting a bylaw, shareholders may expressly provide that the board may not amend, repeal, or reinstate it. Conn. Gen. Stat. § 33-806(b).

**§ 3.6.6 Emergency Bylaws and Emergency Powers**

Unless the certificate of incorporation provides otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency. Conn.

Gen. Stat. § 33-641(a). An emergency exists if a quorum of the directors cannot assemble because of some catastrophic event. Conn. Gen. Stat. § 33-641(d). Subject to amendment or repeal by the shareholders, emergency bylaws make provisions for managing a corporation during an emergency. Conn. Gen. Stat. § 33-641(a).

### **§ 3.7 INCORPORATOR ACTION, ROLE OF INCORPORATORS, AND FIRST MEETING OF DIRECTORS**

As discussed in 0, above, the actions of the incorporator will likely be minimal. If the initial directors are not named in the certificate of incorporation, then after the filing of the certificate of incorporation and the action of the incorporator to elect them, the board of directors will want to hold an initial meeting to “complete the organization of the corporation.” Conn. Gen. Stat. § 33-639. One of the most important actions that the board will take is to authorize the issuance of the corporation’s shares.

### **§ 3.8 ISSUANCE OF SHARES**

The Act gives corporations broad latitude to create and issue shares of varying characteristics. While the certificate of incorporation sets forth the authorized capital structure of a corporation, the board of directors has substantial discretion to issue, accept consideration for, and “buy back” the shares of a corporation.

#### **§ 3.8.1 Shares**

Shares are “units into which the propriety interests in a corporation are divided.” Conn. Gen. Stat. § 33-602(25). Generally, shareholders are not personally liable for the acts or debts of a corporation. Conn. Gen. Stat. § 33-673(b).

Any classes of shares and series of shares within such classes must be set forth in the certificate of incorporation, along with a description of the terms, including preferences, of each class or series and the number of shares in each class or series. Conn. Gen. Stat. § 33-665(a). At least one class of shares must have unlimited voting rights, and at least one class of shares, which may be the same class as that with unlimited voting rights, must be entitled to receive the net assets of the corporation upon dissolution. Conn. Gen. Stat. § 33-665(b). The terms of the shares within a given class may vary, provided that such variations are expressly noted in the certificate of incorporation. Conn. Gen. Stat. § 33-665(d).

## § 3.8.2 Issuance and Consideration

The board of directors may issue shares authorized by the certificate of incorporation unless the power to do so is reserved to the shareholders by the certificate of incorporation. Conn. Gen. Stat. § 33-672(a), (b). Reserving such power to the shareholders may be a prudent strategy if the exact number of outstanding shares is critical to maintaining a balance of control among shareholders.

Before issuing shares, the board of directors must determine that adequate consideration is received on account of such shares. Conn. Gen. Stat. § 33-672(c). Once consideration is received and determined to be adequate, the shares are validly issued, outstanding, fully paid, and nonassessable. Conn. Gen. Stat. §§ 33-667(a), 33-672(c), 33-672(d). Consideration may consist of a range of tangible and intangible property including cash, promissory notes, patents, and contracts for services to be performed. Conn. Gen. Stat. § 33-672(b); *Trotta v. Metalmold Corp.*, 139 Conn. 668, 674 (1953).

Corporations typically accept personal services contracts as consideration from founders who will work for the corporation in the future. To address concerns about the nonperformance of personal services contracts, the corporation may place in escrow the shares issued on account of such contracts until the services are performed. Conn. Gen. Stat. § 33-672(e). If the services are not performed, the corporation may rescind the shares escrowed. Conn. Gen. Stat. § 33-672(e).

## § 3.8.3 Preincorporation Subscription Agreements

When raising startup capital before incorporation, incorporators may enter into subscription agreements for the purchase of shares. Such agreements are irrevocable for six months unless the agreement itself provides a longer or shorter period or the parties agree to revocation. Conn. Gen. Stat. § 33-671(a). When the corporation receives the consideration specified in the subscription agreement, the shares issued thereunder are fully paid and nonassessable. Conn. Gen. Stat. § 33-671(c). If a subscriber defaults under the subscription agreement, the corporation may collect the amount owed as a debt. Conn. Gen. Stat. § 33-671(d). If that debt remains unpaid for twenty days after a written demand for payment, the corporation may rescind the subscription agreement and sell the shares. Conn. Gen. Stat. § 33-671(d).

### § 3.8.4 Share Certificates

Shares need not be represented by certificates. Conn. Gen. Stat. § 33-676(a). Indeed, the rights and obligations of shareholders are identical regardless of whether their shares are represented by certificates. Conn. Gen. Stat. § 33-676(a).

If share certificates are issued, each must state the following:

- the name of the issuing corporation;
- that the issuing corporation is organized under the laws of Connecticut;
- the name of the person to whom the shares are issued; and
- the number and class of shares and the designation of the series, if any, that the certificate represents.

Conn. Gen. Stat. § 33-676(b).

Moreover, if a corporation is authorized to issue different classes of shares or different series within a class, each certificate must either (i) summarize the rights, preferences, and limitations of the represented shares or (ii) state conspicuously that such information is available upon written request and without charge. Conn. Gen. Stat. § 33-676(c). If there is a valid restriction on the transfer of shares represented by a certificate, the certificate should conspicuously note the restriction; otherwise, the restriction is not enforceable against a person without knowledge of it. Conn. Gen. Stat. § 33-678(b). Finally, each certificate must be signed by two officers or by the board of directors. Conn. Gen. Stat. § 33-676(d).

If shares are issued without certificates, all of the above information required to be printed on certificates must be sent to the shareholder within a reasonable time after issuance. Conn. Gen. Stat. § 33-677.

### § 3.8.5 Other Issuances and “Buyback”

After an initial issuance, a corporation may effect a share dividend, whereby shares are issued pro rata and without consideration to the corporation’s shareholders. Conn. Gen. Stat. § 33-674(a). Generally, such dividends are not taxable to the shareholders. IRS Publ’n 17, at 66 (Dec. 21, 2011), *available at* <http://www.irs.gov/pub/irs-pdf/p17.pdf>.

Furthermore, a corporation may issue options for the purchase of shares. Conn. Gen. Stat. § 33-675. Such options are often used as compensation for a corporation’s

employees. The board of directors determines the terms of such options and may impose restrictions that limit the exercise of such options by any person owning a specified percentage of the outstanding shares of the corporation. Conn. Gen. Stat. § 33-675. In this way, the board may prevent an option holder from acquiring a controlling stake in the corporation.

Finally, a corporation may acquire its own shares. Conn. Gen. Stat. § 33-684. This procedure is known as a “buyback” and is often used to increase the value of outstanding shares or eliminate threats by shareholders seeking to acquire a controlling stake in the corporation. Note, however, that buyback may be prohibited if the corporation does not have enough assets.

## **§ 3.9      ADDITIONAL CONSIDERATIONS**

### **§ 3.9.1    Annual Reports**

The Act requires domestic and foreign corporations to file annual reports with the secretary of the state in order to reveal limited information about their business to the general public and shareholders. Each domestic corporation is required to electronically file its first annual report within thirty days of its organizational meeting and then annually thereafter by the end of the month marking the anniversary of the original incorporation date. Conn. Gen. Stat. § 33-953(b). The annual report must be dated as to reflect the present circumstances of the company, meet the execution requirements outlined in Section 33-608(f), and include the following:

- the corporation’s name;
- the corporation’s principal office; and
- the directors’ and officers’ names and business addresses, as well as home addresses, unless there is good cause indicating a risk to personal security.

Conn. Gen. Stat. § 33-953(c)-(d).

If the filing entity is a foreign corporation, the Act dictates that the annual report meet the above requirements but authorizes, in place of listing the principal office of the corporation, disclosing one of following:

- the principal office in the foreign corporation’s state of incorporation,

- the address of the foreign corporation's executive offices, or
- the foreign corporation's principal office address in Connecticut.

Conn. Gen. Stat. § 33-953(c).

For the annual report to be accepted, a filing fee of \$150 via Visa or MasterCard must accompany the annual report. Conn. Gen. Stat. §§ 33-617(a)(13), 33-953(e). Failure to timely file an annual report places the corporation in default. Conn. Gen. Stat. § 33-954(a). While a corporation is in default, the secretary of the state will not accept any future filings from the corporation and will not issue a certificate of good standing until such failure is remedied. Conn. Gen. Stat. § 33-954(b).

### **§ 3.9.2 Corporate Records; Shareholder Inspection Rights**

The Act specifies the location, scope, and form of a corporation's record-keeping obligations. Companies must maintain a permanent record of all meeting minutes and actions taken by the shareholders or the board of directors without a meeting and keep a record of any action by a committee of the board of directors on behalf of the corporation. Conn. Gen. Stat. § 33-945(a). In addition to maintaining appropriate accounting records and an alphabetized list of its shareholders' names and addresses, indicating the class and number of shares held by each, a corporation shall keep a copy of the following in its principal office:

- an updated certificate of incorporation;
- its current bylaws;
- board resolutions listing shareholder rights, preferences, and limitations by class or series of shares;
- shareholder meeting minutes and a record of shareholder action for the past three years;
- communications generally with shareholders, including financial statements, for the past three years;
- names and business addresses of current directors and officers; and
- its most recent annual report.

Conn. Gen. Stat. § 33-945(b)-(e).

A shareholder's right to view corporate records cannot be limited by a corporation's bylaws or certificate of incorporation. Conn. Gen. Stat. § 33-946(d). Shareholders, in person or through an agent or attorney, are permitted to inspect and copy at the principal place of business and during regular business hours the specific records listed in the bullets above by submitting written notice to the corporation at least five business days in advance. Conn. Gen. Stat. §§ 33-946(a), 33-947.

Shareholders have a limited right to inspect and copy relevant excerpts of meeting minutes, accounting records, and shareholder records by submitting written notice at least five business days in advance, stating in good faith a proper purpose, with reasonable particularity, for desiring the records. Conn. Gen. Stat. § 33-946(b)-(c). The desired records must be directly connected to the stated purpose. Conn. Gen. Stat. § 33-946(c). A corporation may require that these records be reviewed at a reasonable location, separate from the principal place of business, during regular business hours. Conn. Gen. Stat. § 33-946(b).

### **Practice Note**

A shareholder's right to inspect certain records is curtailed by the proper purpose requirement in order to protect the company from harassing requests. However, proper purpose has been interpreted broadly to include any reason that is related to the status of being a shareholder and not contrary to the interests of the corporation. The failure to comply with a shareholder request may result in a court ordered inspection. Conn. Gen. Stat. § 33-948.

The Act permits paper or electronic record requests. Conn. Gen. Stat. § 33-947(b). Corporations may impose a reasonable fee for the labor and reproduction cost of complying with the shareholder request. Conn. Gen. Stat. § 33-947(d).

Directors have the right to inspect and copy corporate records at any reasonable time in the course of their duties as directors. Conn. Gen. Stat. § 33-949.

## **§ 3.9.3 Corporate Seal**

Corporations have broad power to adopt and use a corporate seal and may alter the seal at any time. Conn. Gen. Stat. § 33-647(2). Among its potential uses, a corporate seal can be affixed to a stock certificate to mark its authenticity, Conn. Gen. Stat. § 33-676(d)(2), embossed on an instrument as evidence of its approval, or used in accordance with evidentiary rules in civil proceedings to prove a record. Conn. Gen. Stat. § 52-165. Additionally, the Act allows a corporation that affixes a seal to a filing to correct the filing if the document was defectively

sealed. Conn. Gen. Stat. § 33-611(a). Generally, arrangements are made for a corporate seal in a corporation's bylaws.

### § 3.9.4 Qualification to Do Business in Other States

Companies considering conducting business outside of Connecticut should carefully consider the laws of the relevant jurisdictions in order to determine whether they need to seek authorization from the foreign state. The failure to obtain permission to do business in another state may lead to serious penalties. For example, if a foreign corporation fails to qualify in Connecticut, the Act prevents a company from maintaining a proceeding in any state court. Conn. Gen. Stat. § 33-921. While often no definition is provided by the foreign jurisdiction of what constitutes "transacting business," Connecticut, like many states, provides a list of activities that are not considered transacting business in the state, including, but not limited to, the following:

- maintaining, defending, or settling any proceeding;
- holding meetings concerning internal corporate affairs;
- writing checks, depositing funds, and maintaining bank accounts;
- having offices or agencies for the transfer, exchange, and registration of the corporation's own securities;
- sales through independent contractors;
- soliciting or obtaining orders if the orders require acceptance outside of the state;
- securing or collecting or enforcing mortgages or security interests in property securing debts;
- passive ownership of real estate or personal property;
- conducting a single or isolated transaction; and
- transacting business in interstate commerce.

Conn. Gen. Stat. § 33-920(b).

To qualify a foreign corporation in Connecticut, a certificate of authority can be obtained from the secretary of the state by submitting an application reflecting the name and relevant addresses of the corporation, as well as the state and date of incorporation. Conn. Gen. Stat. § 33-922.

### § 3.9.5 Legal Existence or Authorization Certificates

Any person can verify the legal existence or authorization of a corporation through the secretary of the state. The secretary will issue a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation after receiving an application and payment of a fee. Conn. Gen. Stat. § 33-615(a). The certificate will be conclusive proof that the corporation has filed its most recent annual report and has not filed a certificate of dissolution or a certificate of withdrawal. Conn. Gen. Stat. § 33-615(b).

### § 3.9.6 Professional Responsibility: Lawyer as Officer or Director, Representation

Corporations are free to establish the qualifications for officers and directors in their bylaws, opening the door for attorneys to serve in these capacities. Conn. Gen. Stat. §§ 33-736, 33-763. Before being elected or appointed to one of these positions, attorneys should carefully consider the implications of the standard of conduct imposed on officers and directors. Conn. Gen. Stat. §§ 33-756, 33-765.

An attorney representing a corporation assumes representation of the corporation's constituents, including officers, directors, employees, and shareholders. *See* Conn. R. Prof. C. 1.13(a). All of the professional responsibility considerations apply to each constituent unless the scope of representation is limited through the use of an engagement letter. The lawyer may concurrently represent a principal shareholder or any member of the board with appropriate consent. Conn. R. Prof. C. 1.7(b)(4).

At any time, the relationship between the attorney and any constituent may become adverse, such as in the case of a derivative action where shareholders challenge the board of directors. In such case, it is necessary for the attorney to determine the identity of the client, the scope of the attorney-client privilege, and the nature of the conflict of interest. Attorneys should refer to the Connecticut Rules of Professional Conduct for further information regarding these questions.

*The author expresses his thanks to the Wiggin and Dana summer associate class of 2012 (including Rob Canning, J.D. Hall, Sarah Keller, Eric LaPre and Josh Taylor) for their hard work and diligence in helping prepare this chapter.*

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**EXHIBIT 3A—Form of Consent of Sole Incorporator**

[\_\_\_\_\_] , INC.

CONSENT OF THE SOLE INCORPORATOR

IN LIEU OF ORGANIZATIONAL MEETING

The undersigned, being the sole incorporator of [\_\_\_\_\_] , INC., a Connecticut corporation (the “Corporation”), pursuant to Section 33-639 of the Connecticut Business Corporation Act, does hereby adopt the following resolution with the same force and effect as if adopted at a duly held incorporators’ meeting, effective as of the date of this written consent:

RESOLVED, that the following persons be and they hereby are, elected as the initial directors of the Corporation, to serve as directors until their respective successors shall have been duly elected and have qualified:

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

RESOLVED, that the Bylaws attached hereto be and hereby are adopted as the Bylaws of the Corporation.

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the [\_\_\_\_\_] day of [\_\_\_\_\_], 20[\_\_\_].

\_\_\_\_\_

[name]

Sole Incorporator

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**EXHIBIT 3B—Form of Organizational Consent  
of Board of Directors**

[\_\_\_\_\_], INC.

UNANIMOUS WRITTEN CONSENT

OF THE

BOARD OF DIRECTORS

The undersigned, being all of the members of the Board of Directors of [\_\_\_\_\_], Inc., a Connecticut corporation (the “Corporation”), acting pursuant to the provisions of Section 33-749 of the Business Corporation Act of the State of Connecticut, do hereby waive all notice of the time, place and purpose of a special meeting of the Board of Directors and hereby consent and agree to the adoption of the following resolutions:

RESOLVED, that the following persons be, and they hereby are, elected to the offices of the Corporation set forth opposite their names in accordance with and subject to the Bylaws of the Corporation, to serve as such officers until their respective successors shall have been duly elected and shall have qualified:

<u>Name</u>	<u>Title</u>
[_____]	President
[_____]	Secretary
[_____]	Treasurer

; and be it further

RESOLVED, that the specimen stock certificate attached hereto, representing shares of common stock, [\$0.01] par value per share, of the Corporation, is hereby approved in all respects and adopted as the certificate to represent shares of the Corporation's common stock and that the Secretary of the Corporation is hereby directed to file this specimen stock certificate in the corporate minute book of the Corporation; and be it further

RESOLVED, that the Bylaws in the form presented to the Board of Directors are hereby approved in all respects and adopted as the Bylaws of the

***ORGANIZING A BUSINESS IN CONNECTICUT***

Corporation and the Secretary is hereby directed to file the Bylaws in the corporate minute book of the Corporation; and be it further

-OR-

RESOLVED, that the Bylaws of the Corporation adopted and attested by the [sole] incorporator[s] are hereby ratified and approved and the Secretary is hereby directed to file the Bylaws in the corporate minute book of the Corporation; and be it further

RESOLVED, that the corporate seal with the name of the Corporation impressed thereon, is hereby adopted as the corporate seal of the Corporation; and be it further

RESOLVED, that the fiscal year of the Corporation shall begin on the first day of [January]; and be it further

RESOLVED, that in consideration of the amounts set forth on Schedule A, the officers of the Corporation be and hereby are authorized and directed to issue fully paid and non-assessable shares of common stock of the Corporation to those named persons or entities in the number set forth on Schedule A attached hereto; and be it further

-OR-

RESOLVED, that the Corporation agrees to issue [\_\_\_\_\_] shares of its common stock at a subscription price of \$[1.00] per share to [\_\_\_\_\_]; and be it further

RESOLVED, that upon issuance against payment of the subscription price payable thereunder, the aforementioned shares of common stock being issued pursuant thereto shall be duly and validly issued, fully-paid and non-assessable; and be it further

[RESOLVED, that the Corporation does not elect to be treated as a Subchapter S corporation; and be it further]

RESOLVED, that for purposes of authorizing the Corporation to do business in any state, territory or dependency of the United States, or in any foreign country in which it is necessary or expedient for the Corporation to transact business, each of the officers of the Corporation are hereby authorized to appoint and substitute all necessary agents or attorneys for service of process, to designate and change the location of all necessary offices and to make and file all necessary certificates, reports, powers of attorney and other instruments as may be required by the laws of such state, territory, dependency or country to authorize

## ***INCORPORATING A BUSINESS***

the Corporation to transact business therein and whenever it is expedient for the Corporation to cease doing business therein and withdraw therefrom, to revoke any appointment of agent or attorney for the service of process, and to file such certificates, reports, revocations of appointment, or surrenders of authority as may be necessary to terminate the authority of the Corporation to do business in any such state, territory, dependency or country; and be it further

RESOLVED, that the officers of the Corporation are hereby authorized to open bank accounts at such banks and with such authorized signatories as they deem appropriate; and that the officers of the Corporation are hereby authorized and directed to deliver to such banks any certificates regarding resolutions of the Corporation and to execute and deliver other such forms and documents as the banks may require in furtherance of the foregoing, and to attach such certificates to this consent, all such resolutions being hereby adopted as if set forth in full in this resolution; and be it further

RESOLVED, that each officer of the Corporation, acting or signing singly, is hereby authorized and empowered on behalf of and in the name of the Corporation, to execute and deliver all such other instruments and documents, to pay all fees and expenses and to do all such other acts and things as, in each officer's judgment, may be necessary or advisable to carry out the purposes and intent of the foregoing resolutions; and be it further

RESOLVED, that all actions taken by each of the officers and the [sole] incorporator[s] in respect of the Corporation and furtherance of the business of the Corporation from the date of incorporation up to and including the date of this written consent are hereby approved, confirmed and ratified in all respects; and be it further

RESOLVED, that this Consent may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature page follows.]

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IN WITNESS WHEREOF, the undersigned have executed this instrument as of the [\_\_\_\_\_] day of [\_\_\_\_\_], 20[\_\_\_].

\_\_\_\_\_

[Name]

\_\_\_\_\_

[Name]

## **EXHIBIT 3C—Form of Certificate of Incorporation**

### CERTIFICATE OF INCORPORATION

OF

[\_\_\_\_\_]

\*\*\*\*\*

The undersigned Incorporator hereby forms a corporation under the Business Corporation Act of the State of Connecticut, as the same may be amended and supplemented from time to time (the “Act”).

FIRST: The name of the Corporation is: [\_\_\_\_\_] (the “Corporation”).

SECOND: The name and address of the registered agent of the Corporation in the State of Connecticut is as follows:

Name	Home Address	Business Address
[_____]	[_____]	[_____]
	[_____]	[_____]

The undersigned hereby accepts appointment as registered agent:

[\_\_\_\_\_] , Registered Agent

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be formed under the Act.

FOURTH: The total number of shares of stock which the Corporation shall be authorized to issue is [One Thousand] ([1,000]) shares of common stock, par value of \$[0.01] per share.

FIFTH: The Corporation’s Board of Directors shall have the power to adopt, amend or repeal the bylaws of the Corporation.

SIXTH: In addition to, and not in derogation of, any other rights conferred by law, a director of the Corporation shall not be liable for monetary damages for breach of duty as a director in an amount greater than the compensation received by the director for serving the Corporation during the year of the violation, except as provided under Section 33-636 of the Act.

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SEVENTH: The Corporation shall, to the fullest extent permitted by Sections 33-636 and 33-771 of the Act, indemnify and advance expenses to (a) its directors and officers and (b) any person who at the request of the Corporation is or was serving as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, from and against any and all liability, as defined in Section 33-770 of the Act; provided, however, that, except with respect to proceedings to enforce rights to indemnification, the Corporation shall not indemnify any director, officer or such person in connection with a proceeding (or part thereof) initiated by such director, officer or such person unless such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The Corporation, by action of its Board of Directors, may provide indemnification or advance expenses to employees and agents of the Corporation or other persons only on such terms and conditions and to the extent determined by its Board of Directors in its sole and absolute discretion. The indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in their official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

EIGHTH: The Corporation hereby renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any business opportunities that are presented to any of its directors who are not otherwise employed by the Corporation other than business opportunities that are presented to any director acting in his or her capacity as a director of the Corporation. No amendment to or repeal of this Article Eighth shall adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such amendment or repeal.

NINTH: Any action that may be taken by stockholders at a meeting of stockholders may be taken without a meeting of stockholders by consent, in writing, setting forth the action to be taken, signed by persons (or their authorized attorneys) holding shares representing at least that portion of the voting power of shares entitled to vote on such action as would be required to approve such action at a meeting at which all stockholders entitled to vote thereon were present; provided, however, that the approval of such action by consent is not prohibited by, and such consent is obtained in accordance with, the Act.

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TENTH: The name and mailing address of the Incorporator is as follows:

Name

Address

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

[Signature page follows.]

***ORGANIZING A BUSINESS IN CONNECTICUT***

I, THE UNDERSIGNED, being the incorporator, for the purpose of forming a corporation under the Act, do make, file and record this Certificate of Incorporation, do certify that the facts herein stated are true and, accordingly, have hereto set my hand this [\_\_\_\_\_] day of [\_\_\_\_\_], 20[\_\_\_].

\_\_\_\_\_

[name]

Incorporator

## **EXHIBIT 3D—Form of Bylaws**

### BYLAWS

#### OF

[\_\_\_\_\_]

Adopted on [\_\_\_\_\_] [\_\_\_\_], 20[\_\_]

\* \* \* \* \*

### ARTICLE I

#### OFFICES

SECTION 1.01. Principal Office. The address of the principal office of the Corporation shall be the address of its principal place of business in the State of Connecticut as such may be determined by the Board of Directors from time to time.

SECTION 1.02 Other Offices. The Corporation may also have offices at such other places within or without the State of Connecticut as the Board of Directors may from time to time determine.

### ARTICLE II

#### MEETINGS OF SHAREHOLDERS

SECTION 2.01. Annual Meeting. The annual meeting of shareholders, for the purpose of electing a Board of Directors, electing officers and for the transaction of any other business relating to the affairs of the Corporation which may come before the meeting, shall be held annually on such date and time as shall be designated by the Board of Directors or, in the absence of action by the Board of Directors, by the President.

SECTION 2.02. Special Meetings. Special meetings of shareholders may be called at any time by the Board of Directors, the President or, in the absence or disability of the President, by a Vice President, and shall be called by the President upon the written request of a majority of Directors or upon the written request, stating the purpose or purposes of the proposed meeting, of shareholders entitled to call such a meeting pursuant to Section 33-696(a)(2) of the Business Corporation Act of the State of Connecticut.

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SECTION 2.03. Place of Meetings. Each annual or special meeting of shareholders shall be held at such place within or without the State of Connecticut, as the Board of Directors or, in the absence of action by the Board of Directors, the President may designate. In the absence of such designation with respect to any such meeting, it shall be held at the principal office of the Corporation in the State of Connecticut.

SECTION 2.04. Notice of Meetings. A notice in writing of each meeting of shareholders, stating the date, time and place of the meeting shall be given by or at the direction of the Secretary or the officer or persons calling the meeting to each shareholder of record entitled to vote at the meeting, by leaving such notice with him or at his residence or usual place of business, or by mailing a copy thereof addressed to him at his last known post office address as last shown on the stock records of the Corporation, postage prepaid, not less than ten (10) days nor more than sixty (60) days before the date of the meeting. If notice is duly given by mail, the day on which the notice is deposited in the mail shall be deemed the day on which the notice is given. Notice of a special meeting of shareholders shall include a description of the purpose or purposes for which the meeting is called.

SECTION 2.05. Quorum. At any meeting of shareholders, the holders of a majority of the voting power of all shares entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum, except where otherwise provided by law, the Certificate of Incorporation or these Bylaws. In the absence of a quorum, the holders of a majority of the voting power of the shares entitled to vote, present at the meeting in person or by proxy, may adjourn the meeting from time to time without further notice until a quorum shall be present, and thereupon any business may be transacted which might have been transacted at the meeting as originally called.

At any duly held meeting of shareholders at which a quorum is present, the holders of the shares entitled to vote at the meeting, present in person or by proxy, may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

SECTION 2.06. Voting. Each outstanding share shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, unless and except to the extent that voting rights of shares of any class are increased, limited or denied by the Certificate of Incorporation. All voting at meetings of shareholders shall be by voice vote, except where a vote by ballot is required by law or is determined to be appropriate by the officer presiding at such meeting.

When a quorum is present at any duly held meeting of shareholders, the affirmative vote of the holders of a majority of the voting power of the shares

## ***INCORPORATING A BUSINESS***

entitled to vote on the subject matter, present in person or by proxy, shall be the act of the shareholders, except where otherwise provided by law, the Certificate of Incorporation or these Bylaws.

Every shareholder entitled to vote may do so in person or by one or more agents authorized by a written proxy executed by him.

**SECTION 2.07. Action Without Meeting.** Any action which may be taken at a meeting of shareholders may be taken without a meeting by consent in writing, setting forth the action so taken or to be taken, signed by all of the persons who would be entitled to vote upon such action at a meeting, or by their duly authorized attorneys. Such consent shall be filed in the corporate minute book and shall have the same effect as a unanimous vote at a shareholders' meeting.

Unless otherwise provided by the Certificate of Incorporation, any action which may be taken at a meeting of shareholders, except for the election of directors, may also be taken without a meeting by consent in writing, setting forth the action so taken and signed by persons holding not less than a majority of the voting power of the shares entitled to vote thereon or take such action, or by their duly authorized attorneys all in accordance with the provisions contained in Section 33-698(a)(2) of the Business Corporation Act of the State of Connecticut.

### **ARTICLE III**

#### **DIRECTORS**

**SECTION 3.01. General Powers.** The business, property and affairs of the Corporation shall be managed by its Board of Directors, which may exercise all the powers of the Corporation except such as are by law, the Certificate of Incorporation or these Bylaws expressly conferred on or reserved to the shareholders.

The Board of Directors shall have authority to fix the fees of Directors, including reasonable allowance for expenses actually incurred in connection with their duties.

**SECTION 3.02. Number and Term of Office.** The number of Directors of the Corporation shall be not less than one (1). The number of Directors within the limits set forth herein shall be set by resolution of the shareholders or directors. Directors shall be elected at each annual meeting of shareholders and shall hold office until the next annual meeting of shareholders and until their successors have been elected and shall qualify.

## ***ORGANIZING A BUSINESS IN CONNECTICUT***

SECTION 3.03. Resignation of Directors. The resignation of a Director shall be effective immediately upon its receipt by the Corporation if no time is specified, or at such later time as may be specified in the resignation. In the case of a resignation to take effect at a date later than the receipt thereof by the Corporation, appropriate action to elect a successor to take office when the resignation becomes effective may be taken at any time after such receipt but the new director may not take office until the vacancy occurs.

SECTION 3.04. Removal Of Directors. Any Director may be removed from office with or without cause at any time, regardless of the term for which he had been elected, by the affirmative vote of the holders of a majority of the voting power of all shares then having the right to vote for the election of Directors. Such action may only be taken at a special meeting of shareholders, duly called for such purpose and upon notice that the purpose of the meeting is or includes the removal of the Director.

SECTION 3.05. Vacancies. In case of any vacancy in the Board of Directors by reason of death, resignation, removal or failure of the shareholders to elect as many Directors as the number of directorships fixed by them, or otherwise, the remaining Directors, though less than a quorum, by the concurring vote of a majority of such remaining Directors may elect a successor to hold office until his successor has been elected.

SECTION 3.06. Organization Meetings. The Board of Directors may meet for the purpose of organization, for the election of officers and for the transaction of other business immediately following the adjournment of the annual meeting of shareholders, and, if a quorum be then present, no prior notice of such meeting shall be required; provided, that the organization meeting of the Board of Directors may be called in the same manner as a special meeting.

SECTION 3.07. Regular and Special Meetings. Regular meetings of the Board of Directors may be held at such time and places within or without the State of Connecticut as the Board of Directors may determine.

Special meetings of the Board of Directors may be called by the President, and shall be called upon the written request of a majority of the Directors. Each special meeting shall be held at such time and place within or without the State of Connecticut as shall be designated in the call of the meeting.

SECTION 3.08. Notice of Meetings. No notice need be given of regular meetings of the Board of Directors held at the time and place designated by the Board of Directors. Special meetings of the Board of Directors may be held on such notice, written or oral, as may be reasonable under the circumstances. Neither the business to be transacted at, nor the purpose of, any regular or special

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meeting of the Board of Directors need be specified in the notice of such meeting unless required by law, the Certificate of Incorporation or these Bylaws.

SECTION 3.09. Quorum. A majority of the number of directors prescribed by the shareholders, or if no number is prescribed, the number in office immediately before the meeting begins, shall constitute a quorum for the transaction of business; provided, however, that if there be an even number of directors, one half of the number of directors shall constitute a quorum. The act of a majority of the Directors present at any meeting at which a quorum is present at the time of the act shall be the act of the Board of Directors, unless the act of a greater number is required by law, the Certificate of Incorporation or these Bylaws. In the absence of a quorum, a majority of the Directors present at any meeting may adjourn the meeting from time to time without further notice until a quorum shall be present.

SECTION 3.10. Action Without Meeting. If all of the Directors, consent in writing to any action taken or to be taken by the Corporation, such action shall be as valid corporate action as though it had been authorized at a meeting of the Board of Directors. The Secretary shall file such consent or consents with the minutes of the meetings of the Board of Directors.

### **ARTICLE IV**

#### **OFFICERS, AGENTS AND ATTORNEYS**

SECTION 4.01. Officers. The officers of the Corporation shall be a President, Treasurer and Secretary, all of whom shall be elected by the shareholders or by the Board of Directors. The shareholders or the Board of Directors may also elect or may authorize the appointment of such additional officers, including but not limited to one or more Vice Presidents, Assistant Secretaries, and Assistant Treasurers, as in its judgment may be necessary or advisable. Any two or more offices may be held by the same person. The election or appointment of an officer for a given term shall not of itself create contract rights.

SECTION 4.02. Powers and Duties of Officers. When present, the President shall preside at all meetings of shareholders and of the Board of Directors. In the absence of the President, the Directors present shall appoint one of their number to preside at all such meetings.

The officers of the Corporation shall have such powers and duties as customarily appertain or are incident to their respective offices and, in addition, such powers and duties as the shareholders or the Board of Directors may from time to time confer and designate.

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SECTION 4.03. Bonds. Every officer, agent or employee of the Corporation may be required, in the discretion of the shareholders or the Board of Directors, to give bond, in such sum and with such sureties as shall be satisfactory to the shareholders or the Board of Directors, for the faithful performance of his duties.

SECTION 4.04. Resignation of Officers. The resignation of an officer shall be effective immediately upon its receipt by the Corporation if no time is specified, or at such later time as may be specified in the resignation. In the case of a resignation to take effect at a date later than the receipt thereof by the Corporation, appropriate action to elect a successor to take office when the resignation becomes effective may be taken at any time after such receipt, but the successor may not take office until the effective date.

SECTION 4.05. Removal of Officers. Officers may be removed from office, with or without cause, by the affirmative vote of a majority of all of the shareholders or the Directors, but without prejudice to their contract rights, if any.

SECTION 4.06. Vacancies. All vacancies among the officers from whatsoever cause may be filled by the shareholders or the Board of Directors.

SECTION 4.07. Agents and Attorneys. The Board of Directors may appoint such agents and attorneys with such powers and to perform such acts and duties on behalf of the Corporation as the Board of Directors may determine.

### **ARTICLE V**

#### **SHARES AND SHAREHOLDERS**

SECTION 5.01. Certificates. Every shareholder shall be entitled to a certificate or certificates certifying the number and class of shares owned by him in the Corporation. Each such certificate may be under seal, or facsimile seal, of the Corporation and shall be signed by the President or a Vice President and by the Secretary or an Assistant Secretary.

SECTION 5.02. Holders of Record. The Corporation shall be entitled to treat the holder of record of any share or shares as the owner and holder thereof in fact, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it has actual or other notice thereof, except as and to the extent otherwise provided by law.

SECTION 5.03. Transfers. Shares shall be transferable on the records of the Corporation by the holder of record thereof, or by his attorney thereunto duly authorized, upon the surrender and cancellation of a certificate or certificates

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for a like number of shares of the same class with such proof of the authenticity of the signature of such holder or of such attorney and such proof of the authority of such attorney as the Corporation or its transfer agent, transfer clerk or registrar may reasonably require.

SECTION 5.04. Record Date. The Board of Directors by resolution may fix a date as the record date for the purpose of determining the shareholders entitled to notice of and to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution, or for any other purpose, such date in any case to be not earlier than the date such action is taken by the Board of Directors and not more than seventy days (70) before the meeting or action requiring a determination of shareholders. If no record date is so fixed, the date on which notice of a meeting is mailed shall be the record date for the determination of shareholders entitled to notice of and to vote at such meeting and the date on which the resolution of the Board of Directors declaring such dividend or other distribution is adopted shall be the record date for the determination of shareholders entitled to receive payment of such dividend or other distribution. Shareholders actually of record at a record date shall be the only shareholders entitled to receive notice of or to vote at the meeting, or receive the dividend or other distribution, or otherwise participate in respect of the event or transaction, to which such date relates, except as otherwise provided by law.

SECTION 5.05. Lost Certificates. If a share certificate be lost, destroyed or mutilated, another may be issued in its stead upon proof of such loss, destruction, or mutilation upon the giving of a bond of indemnity satisfactory to the Corporation, unless these requirements be dispensed with by the Board of Directors, and upon compliance with such other conditions as the Board of Directors may reasonably require.

### **ARTICLE VI**

#### **DIVIDENDS**

SECTION 6.01. Declaration. Dividends with respect to the shares of the corporation's capital stock, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, pursuant to applicable law. Dividends may be paid in cash, in property, or in shares of capital stock, subject to the provisions of the Certificate of Incorporation.

SECTION 6.02. Reserve. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion,

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think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interest of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

### **ARTICLE VII**

#### **MISCELLANEOUS**

SECTION 7.01. Seal. The seal of the Corporation shall be circular in form and shall bear the name of the Corporation and indicate the state of incorporation.

SECTION 7.02. Waiver of Notice. Whenever any notice of time, place, purpose or any other matter, including any special notice or form of notice, is required or permitted to be given to any person by law, the Certificate of Incorporation, these Bylaws or a resolution of shareholders or Directors, a written waiver of notice signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. The Secretary shall cause any such waiver to be filed with or entered upon the records of the Corporation or, in the case of a waiver of notice of a meeting, the records of the meeting. The attendance of any person at a meeting without protesting, prior to or at the commencement of the meeting, the lack of proper notice shall be deemed to be a waiver by him of notice of such.

### **ARTICLE VIII**

#### **AMENDMENTS**

These Bylaws may be amended, repealed or supplemented at any annual or special meeting of shareholders or directors, by the affirmative vote of the holders of a majority of the voting power of shares entitled to vote thereon or a majority of the directorships. The directors may only amend these bylaws in accordance with applicable law. Any notice of a meeting of shareholders or directors at which these Bylaws are to be amended, repealed or added to shall include notice of such proposed action.