

COMPARISON OF CORPORATION LAWS

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The following table compares in summary fashion selected provisions of the Massachusetts Business Corporation Law (G.L. c. 156B) and the new Massachusetts Business Corporation Act (G.L. c. 156D). This table is intended to provide a handy and compendious reference tool, but readers are cautioned that, as a summary of statutory provisions, it is necessarily selective and oversimplified and is thus no substitute for a careful analysis of the statutory text.

<u>Subject</u>	<u>156B</u>	<u>156D</u>
<u>PART 1 GENERAL PROVISIONS</u>		
Short Title	Massachusetts Business Corporation Law (§1).	Massachusetts Business Corporation Act (§1.01).
Forms	Use of preprinted forms mandatory.	Use of preprinted forms optional (§1.20(d)); 8 ½ x 11 paper; no handwritten documents.
Signatures on Filings	Various (usually President or Vice President and Clerk or Assistant Clerk) (§§72, 73, 74, 78, 79, 82, 83).	One officer (§1.20(f)).
Electronic Filing	No statutory provision.	Expressly permitted (§1.20(i)). Available 24/7.
Effective Date and Time	Date and time of approval by Secretary of State (§6).	Articles of organization, amendment and merger effective when received, if not rejected within 5 days (§§1.23(a), 125(c)).
Deferred Effective Date	Up to 30 days (§12).	Up to 90 days (§1.23(b)).
Corrections of Filed Documents	Certificate of correction may be filed to correct an “inaccurate record of corporate action” or a defective or erroneous execution of a filed	Articles of correction may be filed to correct any “typographical error” or “incorrect statement,” or a defect in execution (§1.24).

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	document (§6A).	
Notices to Shareholders and Directors	Various. Written notice must be given by mail or hand delivery (§36).	Written notice may be given electronically (including fax and e-mail) (§1.41).
Number of Shareholders	No statutory provision.	Provides rules for counting shareholders (§1.42).

## PART 2 INCORPORATION

Articles of Organization	Must contain corporate name, purposes, number, par value and class of stock and name and address of incorporator (§13).	Must contain corporate name, number of shares and name and address of incorporator (§2.02(a)).
Self-Dealing Transactions	No statutory provision. In practice, most charters provide that self-dealing transactions not invalid if approved by disinterested directors or shareholders.	Statutory rule for validating director transactions with interested directors (§8.31).
Exculpation of Directors	Charter may limit liability of directors for monetary damages for breach of fiduciary duty of care (§13(b) (1-1/2)).	Same (§2.02(b)(4)).
Action by Incorporators	Incorporators <u>must</u> sign articles of organization, adopt bylaws and elect directors, president, treasurer and clerk (§12).	Incorporators must sign articles of organization, and elect initial directors, president, treasurer and secretary; either incorporators or initial directors <u>may</u> adopt bylaws and elect officers (§2.05).

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PART 3 PURPOSES AND POWERS

Corporate Purposes	Must be specified in charter (§13(a)(3)).	Corporation may engage in “any lawful business” (§3.01). No statement necessary in charter (§2.02).
General Powers	Powers enumerated in §9.	Powers enumerated in §3.03.
Corporate Partnering	May be partner if specified in charter (§9A).	No charter provision necessary (§3.02(a)(9)).
Contracts of Guarantee and Suretyship	Contracts of guarantee and suretyship of debts of affiliated corporation may be made even if “not in furtherance of the . . . corporation’s purposes,” if approved by board of directors (§9B). Compare §9(h).	Contracts of guarantee and suretyship of debts of affiliated “entities” may be made, without board approval (§3.02(b)). <u>Compare</u> §3.02(a)(7).

PART 4 CORPORATE NAME

Indication of Corporateness	Must indicate that it is incorporated (§11(a)).	Must contain words “corporation,” “incorporated,” “company,” or “limited” or abbreviations thereof (§4.01(a)).
Name Conflicts	Name may not be the same or “likely to be mistaken for” any name or trade name of a corporation or other person within prior 3 years (§11(a)).	Name may not be the same or “likely to be mistaken for” any name or trade name of a corporation or other entity, or any registered Mass. trademark or service mark (3 year period eliminated) (§4.01(b)).
Reservation of Name	30 days; renewable for 30 days (§11(c)).	60 days; renewable for 60 days (§4.02).

PART 5 REGISTERED OFFICE AND REGISTERED AGENT

Registered Agent	Required if Clerk not Massachusetts resident (§§48, 49)	Required of all corporations. May be an individual or a corporation (§5.01(2))
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Registered Office	No statutory provision.	Corporation must maintain “registered office,” which need not be its place of business, but must be the business office of its registered agent (§5.01(1)).
Change of Registered Office	Board of directors may change “principal office” and Clerk must file certificate of change (§§14, 49).	Corporation may change “registered office” without director vote by filing statement of change (§5.02).
Change of Registered Agent	Board of directors may appoint and change resident agent and Clerk must file certificate of change (§49).	Corporation may change registered agent without director vote by filing statement of change with written consent of new agent (§5.02).

#### PART 6 SHARES AND DISTRIBUTIONS

Terminology	“Stockholder”	“Shareholder”(§1.40).
Authority to Issue Shares	Shares may be issued (1) by stockholder vote or (2) by director vote if authorized by bylaws or stockholder vote (§21).	Shares may be issued by director vote unless reserved to shareholders in charter (§6.21(b)).
Pre-incorporation Subscriptions	No statutory provision.	Irrevocable for 6 months, unless otherwise agreed (§6.20(a)).
Share Certificates	Must be signed by Chairman of the Board, President or Vice President and Treasurer or Assistant Treasurer. Facsimile signatures permitted if certificate signed by a transfer agent (§27(a)).	Must state name of issuer, that it is organized under Mass. law, name of person to whom issued and number and class of shares and designation of series which the certificate represents (§6.25(b)). Must be signed, manually or in facsimile, by 2 officers and bear the <u>corporate seal</u> or its facsimile (§6.25(d)).
Uncertificated Shares	Permitted (§27(d)).	Permitted (§6.26).

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Summary of Rights of Classes and Series	Certificate must state, on face or back, the <u>full text</u> of the rights of each class and series or that a copy thereof will be forwarded to the holder without charge (§27(c)).	Certificate must state, on face or back, a <u>summary</u> of rights or that this information will be forwarded to the holder without charge (§6.25(c)).
Restrictions on Transfer Legend	Certificate must state, on face or back, full text of restriction on transfer or that a copy thereof will be forwarded to the holder without charge (§27(b)).	Same (§6.27(b)). Statute provides examples of permissible restrictions (§6.27(c)-(d)).
Authorized Shares	Charter must specify number and characteristics of each class of stock. (§13(a), (4), (5)).	Charter must prescribe the total number of authorized shares, and <u>before issuance</u> , prescribe the number and characteristics of each class or series. Allows a “bank” of undefined shares, to be defined by charter amendment (§6.01(a)).
Classes and Series	Charter may authorize directors to determine number and characteristics of a <u>series</u> of shares within an authorized class (§26).	Charter may authorize directors to create and determine the number and characteristics of new <u>classes and series</u> by charter amendment (§6.02).
Consideration	Stock may be issued for cash, tangible or intangible property, past services, debts, notes or expenses, but not less than par value (§§18, 21).	Stock may be issued for any consideration, including any property or “benefit” to the corporation, past services, or contracts for future services, which is deemed adequate by directors (§6.21).
Par Value	Shares may either have par value or no par value (§13(a)(4))	Par value not necessary, but charter may provide for minimum consideration (§6.21).

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Payment in Installments	Shares may be issued for cash payable in installments, if legended and restricted as to transfer (§19). Shares may be sold at auction upon default in payment (§25).	No comparable provision.
Share Dividends	No statutory provision. <u>See</u> §§45, 61.	Deemed distributed without consideration (no transfer from surplus required) (§6.23)
Stock Splits	No statutory provision.	Not applicable; deemed a stock dividend (§6.23)
Transfer Restrictions	May not be “palpably unreasonable” (case law).	Statute provides examples of permissible restrictions; restrictions on transfers to designated persons or classes of persons may not be “manifestly unreasonable” (§6.27)
Preemptive Rights	May be provided in charter or bylaw adopted by stockholders (§20).	May be provided in charter or by contract (§6.30) (no treasury stock).
Reacquired Shares	Treated as treasury stock unless restored to status of authorized and unissued by vote of stockholders or directors (§21A).	Treated as authorized and unissued (§6.31) (no treasury stock).
Distributions	Stockholders and directors liable for distributions if corporation is or is thereby rendered “insolvent” (§§45, 61).	Distributions must comply with equitable solvency test <u>and</u> balance sheet test (including liquidation preference of senior securities) (§6.40(c)).
Installment Repurchase of Shares	Effect of subsequent insolvency uncertain. <u>See</u> §61.	If lawful when made, repurchase obligations are valid corporate debt, regardless of subsequent insolvency (§6.40(f)).

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Director Liability for Improper Distributions	Joint and several liability of directors who voted for distribution in violation of charter or if corporation insolvent or thereby rendered insolvent (§61).	Personal liability if director votes for distribution and action is in violation of §8.30 (§6.41(a)).
Shareholder Liability for Improper Distributions	Personal liability to extent of amount received (§45).	<u>Pro rata</u> liability for improper dividends to extent of excess over proper amount (§6.41(c)).
Contribution for Improper Distributions	Stockholders entitled to contribution from other stockholders (§45); directors entitled to contribution from other directors (§66).	Directors allowed contribution from shareholders and others (§6.41(b)).
Limitation on Claims for Improper Distributions other than Liquidating Distributions	No statutory provision.	Two years (§§6.41(f) and (g)). See “Liability for Improper Distributions in Liquidation” in Part 14 below.

## PART 7 SHAREHOLDERS

Annual Shareholders Meetings	Within six months of end of fiscal year as provided in bylaws. Special meetings in lieu of annual meeting may be held (§33).	Time and place for annual meetings must be “stated in or fixed” by the bylaws; bylaws may delegate authority to fix time to directors or officers. (Thus, no special meeting in lieu of annual meeting) (§7.01).
Shareholder Meetings Outside Massachusetts	May be held outside of Massachusetts (but within the U.S.), if specified in charter (§35)	May be held anywhere in the world; no charter provision needed (§§7.01, 7.02).
Special Meetings	May be called by President or directors or by 10% of the voting stock (40% for public companies) (§34).	May be called by board of directors or by persons authorized by charter or bylaws or by at least 10% of voting stock (or lesser percentage specified in charter) (no less than 40% for public companies) (§7.02(a)).

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Purposes of Meeting	Notice of meeting must state purposes of meeting (§36).	Only business within the purposes stated in the notice may be conducted; charter may provide otherwise for annual meetings (§§7.01(d), 7.02(d)).
Notice of Meeting	At least 7 days prior written notice by mail or hand delivery (§36).	At least 7 (and no more than 60) days prior written notice (§7.05(a)). Notice may be given electronically (§1.41).
Action by Written Consent of Shareholders	Unanimous written consent (§43).	Charter may provide for less than unanimous written consent (§7.04).
Notice of Action by Less than Unanimous Consent	Not applicable.	Seven days <u>prior</u> written notice required to minority shareholders and non-consenting shareholders (§7.04(d)).
Shareholder Meetings by Remote Communications	No statutory provision. Compare §59 (telephonic meetings of directors).	Except for public companies, meetings may be held by telephone or electronically if shareholders can read or hear proceedings (§7.08).
Shareholder Lists for Meetings	Stockholder list must be maintained in Mass. and must be available for stockholder inspection for a relevant purpose (§32).	Must be available for shareholder inspection prior to and at shareholders meeting; may be in electronic form (§7.20).
Duration of Proxies	Valid for 6 months (§41).	Valid for 11 months, unless a shorter or longer term is provided in proxy (§7.22).
Irrevocable Proxies	Proxies “coupled with an interest” may be irrevocable (§41).	Same; statute provides examples (§7.22).
Voting Rights	Record owners only (§42).	May provide for voting by beneficial owners (§7.23).

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Class Voting	Separate vote of class or series required for charter amendments or mergers adversely affecting class or series (§§71, 77), mergers (§§78, 79), or sales of assets (§75).	Charter may provide for “voting groups” comprised of different classes and series (§7.25). Statute requires class voting for certain charter amendments, mergers, sale of assets or conversions (§§9.21, 9.31, 9.52, 10.04, 12.02).
Quorum	Single set of quorum and voting requirements (§39). Case law permits withdrawal of proxy to break quorum.	Separately established for each voting group; once a quorum is established it may not be broken (§7.25).
Supermajority Vote	Percentage vote required may by charter be increased, or in certain cases, decreased, but not below majority (§§8, 71, 75, 78, 100).	Percentage vote may be increased or decreased by charter, but not below majority (§7.27).
Cumulative Voting	No statutory provision (may be illegal).	May be permitted by charter (§7.28(c)).
Form of Proxy	No statutory provision.	May be written, electronic or facsimile copy (§7.29).
Voting Trusts	No statutory provision, but permitted by case law.	Expressly permitted (§7.30).
Shareholder Voting Agreements	Expressly permitted (§41A).	Expressly permitted (§7.31).
Shareholder Agreements Varying Statutory Provisions	No statutory provision.	Agreement among <u>all</u> shareholders is effective and binds transferees, even if inconsistent with the Act, so long as statutory formalities are complied with (§7.32).

<u>Subject</u>	<u>156B</u>	<u>156D</u>
Derivative Actions: Standing	Plaintiff must be stockholder at time of act complained of (§46). Stockholder must adequately and fairly represent corporation (Mass. R. Civ. P. 23.1; Fed. R. Civ. P. 23.1).	Plaintiff (1) must be a shareholder at the time of the act complained of or have acquired shares by operation of law from such a shareholder, and (2) fairly and adequately represent the interests of the corporation (§7.41).
Derivative Actions: Demand	No statutory provision. <u>See Harhen v. Brown.</u>	Plaintiff must in all cases make written demand on corporation at least 90 days (in some cases, 120 days) before commencing action (§7.42).
Derivative Actions: Dismissal	No statutory provision. <u>See Harhen v. Brown.</u>	Case must be dismissed if (1) majority of independent directors or a committee thereof or a majority of independent shareholders determine in good faith that suit is not in best interests of the corporation, or (2) a panel of independent persons appointed by the court so determines (§7.44).
Derivative Actions: Independence of Directors	Defined by common law. <u>See Harhen v. Brown.</u>	No statutory definition, but (1) nomination or election of director by a defendant, (2) naming of a director as a defendant, or (3) approval of the challenged action by a director is not disqualifying (§7.44 (c)).
Discontinuance or Settlement of Derivative Actions	No statutory provision. <u>See Mass. R. Civ. P. 23.1; Fed. R. Civ. P. 23.1.</u>	A derivative action may not be discontinued or settled without court approval and notice to all shareholders affected (§7.45).
Derivative Actions: Payment of Expenses	No statutory provision. Governed by common law.	On termination of derivative action, court may order either party to pay the other party's counsel fees and expenses (§7.46).

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PART 8 DIRECTORS AND OFFICERS

Powers of Directors	Board of directors has power to manage corporate affairs, except as reserved to shareholders by charter or bylaws (§54).	Board of directors has power to manage corporate affairs, but may be limited by charter or shareholder agreement (§8.01(b)).
Minimum Number of Directors	Not less than 3, or the number of stockholders, if less (§47).	Same, but can be modified by charter (§8.03).
Staggered Board	Mandatory for public companies (§50A).	Mandatory for public companies (§8.06).
Removal of Directors	Removal by stockholders with or without cause; removal by directors for cause if director given reasonable notice and opportunity to be heard (§51). Directors of public companies may be removed only for “cause” (§50A).	Removal by shareholders with or without cause; removal by directors for cause if purpose stated in notice of directors’ meeting (§8.08). Directors of public companies may be removed only for “cause” (§8.03).
Vacancy on Board	May be filled by remaining directors unless otherwise provided in charter or bylaws (§52).	May be filled by shareholders or by majority of remaining directors even if less than a quorum (§8.10).
Compensation of Directors	No statutory provision.	Board of directors may fix compensation of directors unless charter or bylaws provide otherwise (§8.11).
Directors Meetings	May be held by conference telephone or similar communications equipment if all participants can hear each other at same time (§59).	May be held by any means of communication by which all participants may simultaneously hear each other (§8.20(b)).
Action Without Meeting	Unanimous written consent (§59).	Unanimous written consent (§8.21).

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Notice of Meeting	Notice requirements may be prescribed in bylaws; notice of purpose of meeting not required (§58).	No notice required for regular meetings; special meetings require 2 days notice of date, time and place unless charter or bylaws otherwise provide; notice of purpose not required (§8.22).
Waiver of Notice	Director may waive notice in writing, before or after meeting; attendance without objection constitutes waiver (§58).	Director may waive notice in writing or electronically before or after the meeting; attendance at meeting without objection or participation constitutes waiver (§8.23).
Quorum	Majority of directors then in office constitutes a quorum unless otherwise provided in bylaws; majority of a quorum may take action unless otherwise provided in charter or bylaws (§57).	Majority of fixed number of directors (or majority of the number of directors prescribed or of the number then in office, if no fixed number of directors); charter or bylaws may provide for a quorum of no less than 1/3 of the prescribed number or a majority of directors then in office (§8.24).
Committees	Board may delegate certain powers to committees; case law permits one member committee (§55).	Board may delegate certain powers to committees; one member committee permitted (§8.25).
Non-Delegable Powers	Board may not delegate to a committee the power to (1) change the principal office, (2) amend bylaws, (3) elect officers, (4) change the number of directors or fill vacancies on board, (5) remove officers or directors, (6) authorize dividends, (7) reacquire stock, or (8) authorize short-form mergers (§55).	A committee may not (1) authorize distributions, (2) approve or propose shareholder actions, (3) change the number of directors, remove directors or fill vacancies on the board, (4) amend the charter, (5) amend the bylaws, or (6) authorize or approve reacquisition of shares except as prescribed by directors (§8.25(e)).

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Standard of Conduct for Directors	A director shall perform his duties (1) in good faith, (2) in a manner he reasonably believes is in the best interests of the corporation, and (3) with the care an ordinarily prudent person in like position would use in similar circumstances (§65).	A director shall discharge his duties (1) in good faith, (2) with reasonable care, and (3) in a manner he reasonably believes is in the best interests of the corporation (§8.30).
Other Constituencies	Directors may consider interests of employees, suppliers, creditors, customers, the economy, community and society, and the short and long-term interests of the corporation (§65).	Same (§8.30).
Director Conflict of Interests	No statutory provision. Charter customarily validates self-dealing transactions if approved by disinterested directors or stockholders.	Statutory safe harbor: conflict of interest transaction not voidable if (1) approved by disinterested directors after full disclosure, (2) approved by disinterested shareholders after full disclosure, or (3) fair to the corporation (§8.31).
Validity of Loans to Directors	No statutory provision. See “Liability of Directors for Insider Loans” below.	A corporation may not loan money to, or guarantee obligations of a director unless (1) the specific transaction is approved by a majority of the voting shareholders (voting as a single voting group), other than shares owned or controlled by the director, or (2) the board of directors determines the transaction benefits the corporation and approves the specific transaction or a general plan authorizing loans and guaranties (§8.32(a)).

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Liability of Directors for Insider Loans	Directors who vote for, and officers who knowingly participate in, a loan to an officer or director are jointly and severally liable to the corporation for unpaid loan unless disinterested majority of directors or stockholders approve or ratify the loan as one reasonably expected to benefit the corporation (§62).	Governed by standards of §8.30.
Required Officers	President, treasurer and clerk; unless otherwise provided in bylaws, treasurer and clerk must be elected by stockholders and president must be a director; clerk shall be a resident of Massachusetts (§48).	President, treasurer and secretary; secretary need not be a Massachusetts resident (§8.40). Clerk of existing corporation appointed under c. 156B deemed to be secretary until secretary appointed (§1.40).
Standard of Conduct for Officers	Same as directors (§65).	Same as directors (§8.42).
Removal of Officers	Board of directors may remove officers with or without cause; removal for cause requires reasonable notice and opportunity to be heard (§51).	Board of directors may remove officers at any time with or without cause (§8.43).
Certificate of Change of Officers or Directors	Certificate required for change of directors, president, treasurer or clerk (§53).	Certificate required for change in directors, president, treasurer or secretary (§8.45).

<u>Subject</u>	<u>156B</u>	<u>156D</u>
Permissible Indemnification	Corporation may indemnify (1) directors, officers, employees and agents to the extent provided in charter, bylaws or stockholder vote, and (2) officers, employees and agents to the extent authorized by the directors (§67).	A corporation may indemnify a director who is a party to a legal proceeding as a director if (1) he (a) acted in good faith, (b) reasonably believed his conduct was in, or not opposed to, the best interests of the corporation, and (c) in the case of criminal proceedings, had no cause to believe his conduct was unlawful, <u>or</u> (2) his liability is eliminated under a charter provision adopted under §2.02(b)(4) (§8.51). <u>See</u> “Indemnification and Advances for Expenses of Officers” below.
Mandatory Indemnification of Directors	No statutory provision.	A corporation shall indemnify a director against reasonable expenses incurred in the wholly successful defense of any proceedings to which he was a party because he was a director (§8.52).
Advances for Expenses of Directors	A corporation may pay expenses incurred by directors, officers, employees or agents upon receipt of an undertaking to repay such funds if adjudicated not to be entitled to indemnification (§67).	A corporation may advance or reimburse expenses incurred by a director in a legal proceeding if he (1) affirms in writing his good faith belief that his conduct met the standards of §8.51 or his liability is eliminated under a §2.02(b)(4) charter provision and (2) he undertakes in writing to repay such funds if a court determines otherwise (§8.53).
Court-Ordered Indemnification or Advances for Expenses of Directors	No statutory provision.	A director may apply to the court for indemnification or advances for expenses if he is entitled thereto under §8.52 or §8.58 or if the court determines such an order is fair and reasonable (§8.54(a)).

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Limitation on Indemnification	No indemnification shall be provided for any person who is adjudicated not to have acted in good faith in the reasonable belief that his action was in the corporation's best interest (§67).	<u>See</u> "Permissible Indemnification" above.
Determination and Authorization of Indemnification of Directors	See "Permissible Indemnification" above.	Indemnification may be authorized by disinterested directors, by special legal counsel or by the disinterested shareholders (§8.55).
Indemnification and Advances for Expenses of Officers	See "Permissible Indemnification" above.	A corporation may indemnify and advance expenses of an officer to the same extent as a director, and to a greater extent if provided in charter, bylaws or contract and actions are not in bad faith, intentional misconduct or knowing violation of law; officers entitled to mandatory indemnification under §8.52 and court-ordered indemnification under §8.54 (§8.56).
D&O Insurance	A corporation may purchase insurance covering directors, officers, employees or agents, whether or not the corporation has the power to indemnify (§67).	A corporation may purchase insurance covering directors' and officers' liability, whether or not acts covered by indemnification provisions (§8.57).
Advance Commitment for Indemnification	No express statutory provision, but implied by §67.	A corporation may by charter, bylaws, director vote or contract obligate itself in advance to provide indemnification or advance expenses to the extent permitted by the Act (§8.58).

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PART 9 DOMESTICATION AND CONVERSION

Domestication	No statutory provision.	A foreign corporation may become a Massachusetts business corporation and <u>vice-versa</u> , if permitted by the law of the foreign jurisdiction, upon director and shareholder approval of a “plan of domestication” and filing of articles of domestication (§§9.20-9.25).
Non-Profit Conversion	No statutory provision.	A Massachusetts business corporation may become a non-profit corporation, upon director and shareholder approval of a “plan of nonprofit conversion” and filing of articles of nonprofit conversion (§§9.30-9.35).
Entity Conversion	No statutory provision.	A Massachusetts business corporation may become an “other entity” (including Massachusetts and foreign general and limited partnerships, LLCs, etc.) and <u>vice versa</u> , if permitted by the organic law of the other entity, upon director and shareholder approval of a “plan of entity conversion” and filing of articles of entity conversion (§§9.50-9.56).

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PART 10 AMENDMENT OF ARTICLES OF ORGANIZATION AND BYLAWS

Director Approval	No director approval necessary for charter amendments (§§70-71).	Director approval required (§10.03).
Charter Amendments Requiring Majority Vote	Stockholders may by majority vote amend charter to (1) increase or reduce authorized shares, (2) change par value, (3) change shares into a greater or lesser number of shares, or (4) change corporate name (§70).	Shareholders may by majority vote approve (1) increase or reduction in number of authorized shares, (2) change of shares into a different number of shares of same class or series, or (3) change of corporate name (§10.03(e)(2)).
Charter Amendments Requiring Two-Thirds Vote	Stockholders may by two-thirds vote authorize any lawful charter amendment not covered by §70 (§71).	Two-thirds vote required unless a lesser percentage (not less than a majority) provided in charter or a higher percentage required by charter, bylaws or directors vote for all charter amendments not covered by §10.03(e)(2) (§10.03)(e)(1)).
Class Voting	Any §71 amendment which adversely affects a class or series must be approved by a two-thirds vote of that class or series (§71).	Class voting required (1) if provided by charter, bylaws or director vote or (2) if amendments have certain adverse effects (§10.03(e)(1)). <u>See</u> “Amendments Adversely Affecting Class or Series” below.
Notice Requirements	Notice of proposed amendment must be sent to each stockholder entitled to vote and to each stockholder entitled to notice under charter or bylaws (§36).	Notice of proposed amendment must be sent to all shareholders, with a copy or summary of the proposed amendment (§10.03(d)).

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Amendments Adversely Affecting Class or Series	Class vote required by any class or series which (1) alters or abolishes any preferential rights, (2) creates, alters or abolishes redemption rights, (3) alters or abolishes preemptive rights, (4) creates or alters (other than to abolish) any restriction on transfer, (5) excludes or limits voting rights (other than by granting voting rights to another class) (§77).	Class vote required by any class or series if amendment would (1) increase or decrease number of shares of that class or series, (2) authorize an exchange or reclassification of shares into shares of another class or series, (3) authorize an exchange or redemption of shares of another series into shares of the affected class or series, (4) change the designation, rights, preferences or limitations of the class or series, (5) change shares into a different number of shares, (6) increase the voting rights of another class or series, (7) increase the rights or preferences of another class or series, (8) limit preemptive rights, or (9) cancel or affect accumulated dividends (§10.04).
“Housekeeping” Amendments by Board of Directors	No statutory provision.	Unless charter otherwise provides, directors may adopt certain amendments: (1) extend duration of corporation’s existence, (2) authorize share splits or dividends where only one class, (3) change corporate names in certain minor ways, (4) eliminate reacquired or converted shares, or (5) designate terms of classes or series of shares as authorized by §6.02 (§10.05).

<u>Subject</u>	<u>156B</u>	<u>156D</u>
Power to Amend Bylaws	Stockholders have power to make, amend or repeal bylaws and directors may be so authorized by the bylaws if so provided in charter; any amendment by directors may be amended or repealed by stockholders (§17).	Shareholders have power to make, amend or repeal bylaws, and directors may be so authorized by charter or bylaws; any amendment by directors may be amended or repealed by shareholders (§10.20).
Notice of Bylaw Amendment	Notice of amendments by directors shall be given to all shareholders entitled to vote thereon by the time of notice of the next shareholders meeting (§17).	Notice of amendments by directors shall be given to all shareholders entitled to vote thereon by the time of notice of the next shareholders meeting (§10.20(b)).
Restatement of Charter	Board of directors or stockholders may authorize restatement which does not amend charter (§74).	Board of directors may authorize restatement which does not amend charter in a manner requiring shareholder vote (§10.07).
Bylaw Amendments to Change Quorum or Voting Requirements	No statutory provision.	Bylaw amendments to change shareholder quorum or voting requirements require shareholder vote (§10.21).

#### PART 11 MERGER AND SHARE EXCHANGE

Mergers with Domestic or Foreign Corporations	A corporation may merge with a foreign or domestic corporation if authorized by the law of the foreign state by adoption of an agreement of merger and filing of articles of merger (§§78, 79).	A corporation may merge with a foreign or domestic corporation if authorized by law governing the foreign corporation by adoption of a plan of merger and filing of articles of merger (§11.02).
Merger with Other Entities	A corporation may merge with a domestic or foreign LLC in accordance with applicable law (§83A). See “Short-Form Mergers” below; G.L. c. 156C, §59.	A corporation may merge with a foreign or domestic “other entity” if authorized by law of foreign entity by adoption of plan of merger and filing of articles of merger (§11.02).

<u>Subject</u>	<u>156B</u>	<u>156D</u>
“Other Entities”	No statutory provision.	Defined as any association or entity other than a domestic or foreign corporation or governmental or quasi-governmental organization; includes limited and general partnerships, joint ventures, business trusts and other unincorporated associations (§1.40).
Share Exchange	No statutory provision.	Shares of one corporation may be exchanged for shares of another domestic or foreign corporation or other entity, cash or property, upon director and shareholder approval and filing of articles of share exchange (§§11.03, 11.06).
Required Approvals	No director vote required for merger; no stockholder vote required if (1) merger does not amend charter, (2) no more than 15% of shares issued in merger, <u>and</u> (3) issuance of stock approved by directors (§78).	Plan of merger or share exchange must (1) be adopted by directors and (2) submitted to shareholders <u>unless</u> (a) the corporation is the survivor, (b) no charter amendment requiring shareholder approval, (c) no change in shares, <u>and</u> (d) if a merger, no more than 20% of shares issued (§10.04).
Required Approvals of Domestic Other Entities	No statutory provision. <u>See</u> G.L. c. 15C, §§59-62 (mergers of LLCs with corporations).	If the organic law of the domestic other entity does not provide procedures for merger, then the Act governs, and the “interest holders” of the other entities are deemed shareholders and the managers are deemed directors (§11.02(b)).
Shareholder Vote	Two-thirds vote for merger (charter may provide for lesser percentage, but not below majority) (§78, 79).	Two-thirds vote plus two-thirds of each voting group (charter may increase or decrease percentage, but not below majority) (§11.04).

<u>Subject</u>	<u>156B</u>	<u>156D</u>
Class Vote	Class voting required (1) by each class if required by charter or bylaws, and (2) by each class or series “adversely affected” by merger (§§8, 78, 79).	Class voting a class or series of shares required if (1) provided in charter, or (2) if plan contains a provision which would require class voting if a charter amendment (§10.04(6)).
Transactions Resulting in Personal Liability of Shareholders	No statutory provision.	No merger or share exchange may result in personal liability for a corporate shareholder unless the plan of merger or share exchange, requires separate written consent of each shareholder (§11.04(8)).
Notice to Shareholders	Notice of time, place and purpose of meeting must be provided to <u>all</u> stockholders of record at least 20 days before meeting (§§78, 79).	Notice of meeting must be given to <u>all</u> shareholders together with a copy of summary of the plan of merger or share exchange and of the organizational documents of the surviving entity into which the corporation is to be merged (§11.04(4)).
Short-Form Mergers	Parent corporation may merge 90% owned subsidiary corporation or business trust into parent by director vote; notice must be provided to subsidiary’s other stockholders within 10 days after effective date (§§82, 83).	Parent corporation may merge with or into 90% owned subsidiary corporation by director vote; notice of merger must be provided to subsidiary’s other shareholders within 10 days after effective date (§11.05).
Abandonment of Merger or Share Exchange	Merger may be abandoned pursuant to agreement of merger (§§78, 79).	A merger or share exchange may be abandoned pursuant to plan of merger or share exchange or by directors (§11.08).

Subject

156B

156D

PART 12 SALE OF ASSETS

Sales Not Requiring Shareholder Vote	No stockholder vote required for mortgage, pledge or security interest in corporate property or assets (§75(b)).	A corporation may by director vote without shareholder approval sell or dispose of all o the usual and regular course of business, (2) by mortgage or pledge, including a foreclosure sale, (3) to a wholly-owned subsidiary, or (4) by distribution of assets to shareholders (§12.01).
Sales Not in Regular Course of Business	A corporation may by stockholder vote authorize the sale, lease or exchange of all or substantially all of its assets including goodwill (§75(a)).	A corporation may sell, lease, exchange or otherwise dispose of all or substantially all of its assets upon director approval and by vote of its shareholders (§12.02).
Notice of Meeting	Corporation shall notify all stockholders of record of time, place and purpose of meeting at least 20 days prior to meeting (§75(a)).	Corporation shall notify all shareholders of the date, time, place and purpose of the meeting and shall provide a description of the proposed transaction (§12.02(c)).
Required Shareholder Vote	Two-thirds vote, unless charter provides for a lesser percentage (not less than a majority) (§75(a)).	Two-thirds vote, unless (1) a greater percentage required by charter, bylaws or director vote, or (2) a lesser percentage (not less than a majority) required by charter (§12.02(e)).
Class Voting	Class vote by each class of stock outstanding and entitled to vote thereon (§75(a)).	Class vote by all voting groups entitled to vote separately by charter, bylaws or director vote (§12.02(e)).
Corporate Divisions	No statutory provision.	Spin offs and similar corporate divisions are not subject to §12.02 (Comment to §12.02).

Subject

156B

156D

PART 13 DISSENTERS' RIGHTS

Triggering Events	Sale of assets, merger, certain charter amendments adversely affecting stockholder rights (§§76, 77, 82, 83, 85).	Certain mergers, share exchanges and sale of assets, charter amendments materially and adversely affecting shareholders, charter or bylaw amendments or contracts adding or amending restrictions on transfer of shares, conversions into a non-profit corporation or other entity, or any corporate action for which appraisal rights are provided by charter, bylaw or director vote (§13.02).
Prerequisites to Exercise of Appraisal Rights	Except in short-form mergers, stockholder must (1) file written objection before the stockholder vote and (2) not vote in favor of proposed action (§86)	Except in short-form mergers, shareholders must (1) deliver to corporation before vote is taken written notice of intent to demand payment and (2) not vote or permit shares to be voted in favor of proposed action (§13.21).
Notice of Dissenters' Rights	Notice of stockholders meeting must contain a statement of rights of objecting stockholders; statute provides a specimen form of notice (§87).	Except in short-form mergers, notice of meeting or solicitation of consents must state (1) whether the corporation has concluded that appraisal rights are available, (2) requirement of notice of intent to demand appraisal rights and that shares not be voted in favor, and (3) a copy of Part 13 of the Act (§13.20(a)).
Notice of Effectiveness	Corporation taking action (or survivor in a merger) shall notify objecting stockholders within 10 days after action becomes effective (§§82, 83, 88).	In a short-form merger, corporation must notify all other shareholders of subsidiary that corporate action has become effective within 10 days of effective date (§13.20(b)). Within 10 days of effectiveness of action requiring appraisal rights under §13.02, corporation must provide notice to all shareholders who satisfied the requirements of §13.21 or did not consent to action taken by written consent (§13.22(a)).

<u>Subject</u>	<u>156B</u>	<u>156D</u>
Content of Notice of Effectiveness	No statutory provision.	Notice must contain (1) a form of certificate as to the eligibility of shareholder, (2) place and date (not less than 40 nor more than 60 days after date of notice) for return of form and deposit of shares, (3) corporation's estimate of fair value of shares, (4) copy of Part 13 of the Act, and (5) certain other matters (§13.22(b)).
Demand for Payment	Within 20 days of notice of effectiveness, stockholder must demand payment (§89).	Shareholder must return §13.22 form and deposit shares with corporation within the 40-60 day period specified in §13.22 (§13.23).
Pro Tanto Payment	No statutory provision.	Within 30 days after return date under §13.23, corporation shall pay shareholder the estimated fair value of shares plus interest, together with (1) financial statements, (2) estimate of fair value, and (3) statement of shareholder's rights to demand a specified further payment within 30 days under §13.26 (§13.24).
Commencement of Court Action	If within 30 days after expiration of 20-day period, parties fail to agree on value, stockholder has 4 months in which to commence action (§90).	Corporation shall either (1) commence equitable proceedings within 60 days after receiving demand for further payment, or (2) pay the shareholder the further payment demanded (§13.30(a)).
Parties to Court Action	All objecting stockholders become parties to appraisal action (§91).	All shareholders whose demands for further payment are not satisfied are made parties to the proceeding (§13.30(c)).

<u>Subject</u>	<u>156B</u>	<u>156D</u>
Decree Determining Fair Value	After hearing, court shall determine “fair value” of shares as of the day preceding the vote, exclusive of any element of value arising from expectation or accomplishment of corporate action (§92). Case law requires use of “enterprise value.”	After hearing, court shall enter judgment for the amount by which the fair value of the shares, plus interest, exceeds the pro tanto payment (§13.30). “Fair value” is defined in a manner similar, but not identical, to the BCL (§13.01). Case law is preserved (Comment to §13.01).
Dividends and Voting Rights	Stockholder has no dividend or voting rights after date of demand for payment unless court action is not commenced or is dismissed or parties agree to withdrawal of objection (§96).	Upon deposit of shares under §13.23, a shareholder loses all rights as a shareholder unless he withdraws from the appraisal process (§13.23(a)).
Exclusive Remedy	Appraisal rights are stockholder’s exclusive remedy, except in case of illegality or fraud (§98).	Appraisal rights are shareholder’s exclusive remedy except in case of unlawful or fraudulent corporate action (§13.02(e)).
Beneficial Holders	No statutory provision.	A record shareholder (such as a nominee) may assert appraisal rights on behalf of all shares owned by a beneficial shareholder if it provides the name and address of the beneficial shareholder to the corporation. A beneficial shareholder may assert appraisal rights only as to all beneficially owned shares with the consent of the record owner (§13.03).
Number of Shares	No statutory provision.	A shareholder may seek appraisal rights only as to <u>all</u> of his shares (§13.02(b)).

Subject

156B

156D

PART 14 DISSOLUTION

Dissolution Before Commencing Business	No statutory provision.	Incorporators or initial directors may dissolve corporation before issuance of shares or commencement of business (§14.01).
Dissolution in Accordance with Charter	Corporation may be dissolved in compliance with provisions of its charter (§§100(a)(2), 13(b)(2)).	A corporation (other than a public company) may be dissolved by procedures specified in charter (§14.02(a)).
Dissolution	In absence of charter provision, corporation may be dissolved by (1) vote of two-thirds of each class entitled to vote thereon, (2) notice to DOR, and filing of articles of dissolution (§100).	In absence of charter provision, corporation may be dissolved by (1) vote of directors and (2) two-thirds vote of voting shareholders (unless a higher percentage required by charter, bylaws or director vote, or a lower percentage (not less than a majority) required by charter and (3) filing of articles of dissolution (§14.02).
Effect of Dissolution	A dissolved corporation continues in existence for 3 years (or 90 days after final judgment in any lawsuit, if later) for purposes of continuing lawsuits, closing its affairs, disposing of assets, paying debts and obligations and making distributions to stockholders (§102).	A dissolved corporation continues in existence indefinitely solely for purpose of winding up its affairs and distributing assets to creditors and shareholders (§14.05).
Distributions in Liquidation	Corporation must pay debts or obligations before making distributions (§102).	Distributions in liquidation must make adequate provision for (1) existing and foreseeable liabilities, including contingent liabilities and (2) liquidation preferences of senior securities (§6.40(h)).

<u>Subject</u>	<u>156B</u>	<u>156D</u>
Director Liability for Improper Distribution Liquidation	Directors liable for improper liquidation distributions (§61). <u>See</u> “Director Liability for Improper Distributions” in Part 6 above.	Directors who vote for liquidating distributions in violation of the Act are liable if in violation of standard of care under §8.30 (§6.41(a)).
Shareholder Liability for Improper Distributions in Liquidation	Stockholders liable for improper liquidation distributions (§45). <u>See</u> “Shareholder Liability for Improper Distributions” in Part 6 above.	Shareholder knowingly receiving liquidating distributions in violation of the Act is liable for excess over lawful amount. If liquidating distribution made prior to 3 years after date of dissolution, all shareholders are liable for pro rata share of all unpaid claims (§6.41).
Disputed and Contingent Claims	No statutory provision.	Creditors holding disputed, unknown or contingent claims are limited to assets of the corporation, any insurance proceeds and return of improper distributions under §6.41(h), if corporation follows the safe harbor procedures of §§14.06, 14.07 or 14.08 (§14.09).
Safe Harbor for Known Disputed Claims	Corporation may petition SJC or superior court for leave to distribute, after notice to Secretary of State, DOR and creditors and publication in newspaper; decree protects directors from liability (§103).	Dissolved corporation may notify creditors with known disputed claims requiring response within 3 years after date of dissolution or 120 days after notice, if later. Failure to respond limits claims against shareholders and directors (§14.06).
Safe Harbor for Unknown Claims	No statutory provision.	Corporation may publish notice of dissolution in newspaper and on website; failure to respond within 3 years of publication, or failure to object within 90 days and commence action within 270 days of notice of rejection of claim limits director and shareholder liability (§14.07).

<u>Subject</u>	<u>156B</u>	<u>156D</u>
Safe Harbor for Reserves	No statutory provision.	Corporation may establish reasonable reserves or insurance for (1) unasserted product liability claims and publish a notice thereof and (2) all remaining known contingent claims and send notice to claimants. Such action will limit director and shareholder liability (§14.08).
Administrative Dissolution	Secretary of State may dissolve corporation for failure to file annual reports or tax returns or pay taxes for 2 consecutive years, or if satisfied that corporation is inactive and dissolution is in public interest, after 90 days notice (§101).	Secretary of State may dissolve a corporation failing to file annual reports or paying taxes for 2 or more consecutive years or if satisfied that the corporation is inactive and dissolution would be in the public interest, after 90 days notice (§§14.20-14.21).
Reinstatement after Dissolution	Secretary of State may on application reinstate a dissolved corporation at any time, upon terms and conditions he deems in public interest; reinstatement has retroactive effect (§108).	Secretary of State may on application reinstate a dissolved corporation at any time, upon terms and conditions he deems in public interest; reinstatement has retroactive effect (§14.22).
Judicial Dissolution on Deadlock	Petition for dissolution may be filed in SJC if (1) corporation desiring to dissolve authorizes same by majority vote of each class entitled to vote, <u>or</u> (2) holders of 40% of shares entitled to vote file petition and directors or stockholders are deadlocked (§99).	Superior Court may authorize dissolution on petition of 40% of combined voting power of all shares if (1) directors are deadlocked or shareholders unable to break deadlock, and irreparable injury threatened or suffered, or (2) shareholders are deadlocked in voting power and have failed to elect directors for 2 consecutive annual meetings and irreparable injury threatened or suffered (§14.30-14.31).

<u>Subject</u>	<u>156B</u>	<u>156D</u>
Judicial Dissolution by Creditor	SJC or superior court may appoint receiver if corporation fails to pay a judgment for 30 days (§105).	Superior court may dissolve corporation in a proceeding by a creditor if (1) creditor's claim is reduced to judgment and corporation is insolvent or (2) corporation has admitted in writing that the creditor's claim is due and it is insolvent (§14.30(3)).

PART 15 FOREIGN CORPORATIONS

Foreign Qualification	Governed by Chapter 181.	Part 15 replaces c. 181 (§§15.01-15.32).
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PART 16 RECORDS AND REPORTS

Corporate Records	Articles of organization, bylaws, minutes, stock and transfer records and stockholder list must be maintained in Mass. (§32).	Articles of organization, bylaws, directors resolutions creating classes or series of stock, shareholders minutes and shareholder communications for past 3 years, list of current officers and directors and most recent annual report must be maintained in Mass.; all minutes of directors and shareholders meetings and consents, accounting records and shareholder records must be maintained in Mass. or elsewhere (§16.01).
Shareholder Rights of Inspection	Stockholders entitled to inspect records required to be kept in Mass. (§32).	Shareholders entitled to inspect and copy (1) records required to be kept in Mass. and (2) minutes, accounting records or audited financial statements and stock records (§16.02(a) and (b)).

<u>Subject</u>	<u>156B</u>	<u>156D</u>
Standards for Inspection	Corporation may defend an action for damages or equitable relief for failure to produce stock records by showing that stockholder's purpose for inspection was to obtain information for sale to others or for a purpose other than in the interest of the stockholder relative to the affairs of the corporation (§32).	Shareholder may inspect and copy records only if (1) demand is in good faith and for a proper purpose, (2) he describes records and purpose with particularity, (3) records requested are directly connected with his purpose, and (4) corporation determines in good faith that disclosure would not adversely affect the corporation or constitute material nonpublic information of a public company (§16.02(c)).
Judicial Enforcement	Stockholders entitled to damages and equitable relief for failure to produce records (§32).	Shareholders entitled to court order summarily ordering inspection on an expedited basis (§16.03).
Directors' Rights of Inspection	No statutory provision.	Directors entitled to inspect and copy books and records if reasonably related to performance of duties as director; enforceable by court order on expedited basis (§16.05).
Non-Statutory Rights of Inspection	No statutory provision, but discovery in litigation and common law inspection rights exist independently.	Right of inspection of shareholder list under §7.20, discovery in litigation, and common law inspection rights preserved (§16.02(e)).
Notices to Shareholders	No statutory provision.	No notice need be given to a shareholder if (1) notice of 2 consecutive annual meetings have been returned as undeliverable, or (2) all, but not less than 2, dividend payments in a 12-month period, or 2 consecutive dividend payments during a period of more than 12 months have been returned as undeliverable (§16.06).

Subject

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Financial Statements

No statutory provision.

Annual financial statements, or a written notice of their availability, must be given to all shareholders before the earlier of (1) notice of annual meeting or (2) 120 days after end of the fiscal year. Annual financial statements must be furnished to shareholders upon request (§16.20).

Annual Report

Each domestic corporation shall prior to the 15<sup>th</sup> day of the 3rd month following the end of its fiscal year file an annual report with the Secretary of State containing name, address of principal office, authorized and issued shares, names and addresses of president, treasurer, clerk and directors and resident agent (if any) (§109). Foreign corporations qualified in Mass. file similar reports under c. 181, §4.

Each domestic and foreign corporation qualified in Mass. shall file an annual report with the Secretary of State within 2 ½ months of the end of its fiscal year; report must contain similar information plus name of registered agent and address of registered office (§16.22).