HB

322

HB 322

AN ACT REVISING THE CORPORATIONS CODE; AMENDING ALASKA RULES OF CIVIL PROCEDURE 4, 10, 11, 19, 20, 23.1, 24, 65, 73, and 82 ALASKA RULES OF APPELLATE PROCEDURE 204 and 609, AND ALASKA RULE OF EVIDENCE 803(8); AND PROVIDING FOR AN EFFECTIVE DATE.

SUMMARY OF BILL FOR FLOOR COMMENTS

** EXISTING 10.05.010 ET SEQ. THE "CORPORATIONS CODE" WAS DRAFTED IN 1953 AND TAKEN FROM OREGON LAW IN 1957. THE CODE IS 35 YEARS OLD.

** THE EXISTING CORPORATION CODE IS POORLY ORGANIZED AND HORRIBLY OUT OF DATE, ONLY MINOR CHANGES HAVING BEEN MADE BY LEGISLATIVE AMENDMENTS TO THE CODE SINCE 1957.

** THE EXISTING CODE PROVISIONS ARE ANACHRONISTIC AND DO NOT COME CLOSE TO REFLECTING COURT DECISIONS AND LEGISLATIVE CHANGES TO CORPORATION CODES IN OTHER STATES.

** BECAUSE THE EXISTING CODE IS SO POORLY DRAFTED, FAILS TO ADDRESS SO MANY LEGAL QUESTIONS A CORPORATION MUST ANSWER, IT IS DIFFICULT FOR AN ATTORNEY TO UNDERSTAND AND IMPOSSIBLE FOR A LAY PERSON TO LEARN WHEN OBLIGATIONS EXIST WHEN ONE INCORPORATES.

** HB 322 WAS DRAFTED BY THE ALASKA CODE REVISION COMMISSION OVER A PERIOD OF EIGHT YEARS. OVER 30 PUBLIC SESSIONS WERE HELD BY THE COMMISSION FOR THE PURPOSE OF TAKING PUBLIC COMMENT.

** HB 322 HAS HAD MORE THAN EIGHT LEGISLATIVE HEARINGS OVER THE PAST SIX YEARS. IT HAS BEEN THE SUBJECT OF SEMINARS AND BAR ASSOCIATION CONVENTION TOPICS.

** MORE THAN $500,000 HAS BEEN SPENT BY THE STATE OF ALASKA ON REVISING THE CODE AND THOUSANDS OF MAN HOURS HAVE BEEN SPENT ON REVISING AND REVIEWING THE PROPOSED CODE.

** THE PROPOSED CODE HAS DRAWN HEAVILY FROM THE CORPORATION CODES OF THE STATES OF: ALASKA, CALIFORNIA, NEW YORK, OREGON, WASHINGTON AND DELEWARE.

** THE PROPOSED CODE IS A "MIDDLE OF THE ROAD" CORPORATION CODE. IT NEITHER FAVORS MANAGEMENT OR SHAREHOLDERS ALTHOUGH IT PROVIDES HANDY OPTIONAL PROVISIONS FOR THE ARTICLES OF INCORPORATION WHICH WILL ALLOW THE INCORPORATOR TO CREATE EITHER A MANAGEMENT OR SHAREHOLDER ORIENTED CORPORATION.

** THE MOST CONTROVERSIAL PROVISION OF THE PROPOSED CODE, SECTION 488 HAS BEEN REMOVED FROM THE BILL. THIS PROVISION CREATED SECONDARY LIABILITY OF OFFICERS AND DIRECTORS.

** THE PROPOSED CODE HAS BEEN WRITTEN IN LAY LANGUAGE WHENEVER POSSIBLE, USING A "COOKBOOK" APPROACH. THE INDEX IS BROKEN DOWN INTO LOGICAL SECTIONS DEALING WITH SPECIFIC MATTERS RELATING TO CORPORATIONS; E.G. INCORPORATION, OFFICERS AND DIRECTORS, AMENDMENTS AND DISSOLUTION.

** UNLIKE THE EXISTING CODE, EVERY MATTER HAVING TO DO WITH A CORPORATION IS DEALT WITH IN A LOGICALLY ORGANIZED MANNER. MANY AREAS OF CORPORATION LAW NOT EVEN MENTIONED IN THE EXISTING CODE ARE EXHAUSTIVELY DEALT WITH IN THE PROPOSED DRAFT.

** A LAY PERSON CAN READ, FIND AND UNDERSTAND THE LEGAL REQUIREMENTS FOR INCORPORATION. UNDER THE EXISTING CODE IT IS NECESSARY TO READ THE ENTIRE CODE TO MAKE SURE YOU HAVE FOUND EVERYTHING HAVING TO DO WITH A PARTICULAR TOPIC.

** BECAUSE OF THE ORGANIZATION AND CLEAR, LAY LANGUAGE OF THE PROPOSED CODE, THE SERVICES OF AN ATTORNEY WILL BE MINIMIZED.

** THE PROPOSED CODE CONTAINS IMPORTANT INCORPORATION AND REPORTING REQUIREMENTS NEEDED BY THE DIVISION OF CORPORATIONS.

** THE PROPOSED CODE ADDRESSES IMPORTANT NEEDS AND UNIQUE PROBLEMS OF ALASKA NATIVE CORPORATIONS.

** MUCH OF EXISTING ALASKA LAW IS INCLUDED IN THE PROPOSED CODE.

** THE PROPOSED CODE HAS BEEN SPECIFICALLY TAILORED TO MEET THE NEEDS OF ALASKA CORPORATIONS.

** INTERNAL INCONSISTENCIES CONTAINED IN EXISTING ALASKA LAW HAVE BEEN RESOLVED IN THE PROPOSED CODE ALONG WITH LAN- THAT IS EASIER TO UNDERSTAND.

** THE PROPOSED CODE CONTAINS IMPORTANT SECTIONS NOT PRESENTLY FOUND IN THE EXISTING LAW, INCLUDING:

A COMPLETE FINANCIALS SECTION
A SECTION DEALING WITH SHAREHOLDER DERIVATIVE SHAREHOLDER ACTIONS
A SECTION DEALING WITH DIRECTOR CONFLICTS OF INTERESTS
A SECTION DEALING WITH MINORITY SHAREHOLDER RIGHTS
A SECTION DEALING WITH OPTIONAL PROVISIONS FOR THE ARTICLES OF INCORPORATION

** THE PROPOSED CODE APPLIES TO CORPORATIONS HAVING A LARGE NUMBER OF SHAREHOLDERS OR MOM AND POP CORPORATIONS (CLOSELY HELD CORPORATIONS).

** THE PROPOSED CODE HAS BEEN RECOMMENDED FOR APPROVAL IN PAST LEGISLATIVE COMMITTEE HEARINGS BY:

ALASKA AIRLINES, THE LARGEST CORPORATION IN ALASKA
THE ALASKA FEDERATION OF NATIVES SUBCOMMITTEE
THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT, DIVISION OF CORPORATIONS.

** BECAUSE THE PROPOSED CODE IS SO CLEARLY DRAFTED AND SO DETAILED IN DEALING WITH VIRTUALLY EVERY LEGAL MATTER INVOLVING A CORPORATION, IT SHOULD ENCOURAGE OUTSIDE BUSINESS TO INCORPORATE IN ALASKA. THEY WILL EASILY AND CLEARLY ANTICIPATE THE LEGAL CONSEQUENCES OF THEIR ACTIONS USING THE CORPORATE FORM.

** THE PROPOSED CODE IS REVENUE NEUTRAL. IT WILL NOT COST THE STATE ONE PENNY TO ADOPT OR IMPLEMENT.

ALASKA CODE REVISION COMMISSION
LEGISLATIVE AFFAIRS AGENCY
POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811

March 27, 1988

The Honorable John Sund
Chairman, House Judiciary Committee
Room C-122 State Capitol Building
Juneau, Alaska 99811

Re: HB 322; An Act revising the corporations code; Amendment to Section 10.06.678

Dear Representative Sund:

Recently, I have had brought to my attention a problem involvi inconsistency between two sections of the corporations cod These sections were taken directly, without any language chang from existing Alaska law. The sections deal with the ability a corporation to initiate an action in Alaskan courts. The se tions are as follows:

> Sec. 10.06.678. CONTINUED EXISTENCE OF DISSOLVED CORPORATIONS; PURPOSES; ABATEMENT OF ACTIONS; DISTRIBUTION OF OMITTED ASSETS.
>
> (a) A corporation that is dissolved voluntarily or involuntarily continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it, and enabling it to collect and discharge obligations, dispose of and convey its property, and colleft and divide its assets. A dissolved corporation does not continue to exist for the purpose of continuing business except so far as necessary for winding up the business. (emphasis supplied)
>
> . . . .
>
> Sec. 10.06.848. FAILURE TO PAY TAX OR MAKE REPORT AS PRECLUDING SUIT BY CORPORATION. A domestic or foreign corporation may not commence or maintain a suit, action, or proceeding in

> a court in this state without alleging and proving that it has paid its biennial corporation tax last due and has filed its biennial report for the last reporting period. . . .

As you can see, Sec. 10.06.678 allows a dissolved or dissolvir corporation to initiate an action as a plaintiff while Sectic 10.06.848 specifically prohibits the bringing of an action if th corporation has not filed its biennial report or paid its fees one of the most common reasons for involuntary dissolution.

Since Sec. 10.06.678 implements a good policy requiring corpora tions to be in good standing if they wish to avail themselves c Alaskan courts, it is preferable that this section be left ir tact. The only real sanction that the state has over a corpora tion after it dissolves is to deny it the use of the courts as plaintiff. Nothing in the language would prohibit the dissolve corporation from defending an action brought against it. Whil Section 10.06.848 thoughtfully allows actions for the purpose c marshaling assets of the corporation, it is my belief that a bet ter approach would be to disallow the corporation access to th courts while involuntarily dissolved. The corporation will ha.: a two-year period in which to seek reinstatement by curing th: non-compliance. The only bad result that can occur is if : statute of limitations period runs prior to the reinstatement On balance, it seem preferable to require that a corporation b: in good standing it if desires to bring an action. Of course, i: any judicial supervised dissolution, this question could b: easily addressed. When the dissolution is involuntaril. however, a problem is created.

In summary, it is my recommendation that Section 10.06.~~848~~ 678 b: amended to delete any reference to the corporation's ability to initiate an action, thus leaving in place the proscription of Section 10.06.848. The net result will be in all cases that a corporation not in good standing will be unable to initiate an action and the internal inconsistency between the two sections will be resolved.

Please let me know if you have any questions concerning these two sections or the proposed reconciliation.

Very truly yours,

John W. Abbott

JOHN W. ABBOTT, Chairman

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM April 16, 1988

SUBJECT: Changes to HB 322

TO: Representative John Sund, Chair
House Judiciary Committee

FROM: Theresa L. Bannister TLB
Legislative Counsel

This memo accompanies the version of CSHB 322 (Judiciary) that you have requested. In addition to the changes made in the previous version, this version includes the changes that John Abbott has suggested to coordinate proposed AS 10.06.675, 10.06.678, and 10.06.848, relating to the ability of corporations to bring court actions.

Court actions brought by corporations. This version deletes from proposed AS 10.06.678 the right of dissolved corporations to prosecute actions. In addition, a sentence has been added to subsection (b) to prohibit dissolved corporations from commencing court actions, except under AS 10.06.675 (relating to recovering improper distributions). The application of proposed AS 10.06.848 has been limited to commencing actions, not maintaining actions, and to alleging and proving that at the time of commencing the action the corporation had paid its biennial tax and filed its biennial report. Subsections (b) and (c) have been added to proposed AS 10.06.848. Subsection (b) allows involuntarily dissolved corporations to sue under proposed AS 10.06.675 without having to comply with AS 10.06.848(a). Subsection (c) clarifies that a dissolved corporation can continue to maintain a suit it started if it satisfied subsection (a) when it began the suit.

If I may be of further assistance, please advise.

Attachment

TLB:gc
WKG3:004

MAR 30 1988

ALASKA CODE REVISION COMMISSION
LEGISLATIVE AFFAIRS AGENCY
POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811

March 27, 1988

The Honorable John Sund
Chairman, House Judiciary Committee
Room C-122 State Capitol Building
Juneau, Alaska 99811

Re: HB 322; An Act revising the corporations code.

Dear Representative Sund:

This letter is in response to your recent request for information about HB 322, the corporations code bill.

Existing AS 10.05.010 et seq., Alaska's corporation code, was adopted from Oregon law in 1957. Oregon had previously passed its version of the American Bar Association Model Act, adopted by the ABA in 1953. As such, Alaska's corporation code is approximately 35 years old, having been amended to a small degree in 1976 and 1980. Most of the amendments dealt with specific sections of the code and no attempt was made to overhaul the entire code.

The existing Title 10 is poorly organized and horribly out of date. In order to locate all sections of the code dealing with a specific corporation matter, it is necessary to review the entire title to insure that no provisions have been overlooked. The index provides little guidance to anyone seeking to determine rights and obligations, as well as corporate procedures, under the existing law. It is written in language that makes the code difficult to use by the lay person.

In response to the great need to update and organize the corporation code, the Alaska Code Revision Commission undertook a complete rewrite of the code beginning in about 1980. In furtherance of this effort, the Commission engaged the services of Professor Daniel Wm. Fessler to serve as the reporter for the code revision project. Professor Fessler teaches corporate and business organization law at the University of California, Davis law school. He is presently the reporter for Corbin On Contracts and his texts on corporations and business associations are used

in law schools throughout the United States. The Alaska Code Revision Commission is a legislatively created commission with representatives from all three branches of government as well as public members. Work on the corporations code continued through the period 1980 to the present, with the greatest emphasis on the period from 1981 to 1984. The Commission has spent more than $350,000.00 in consulting fees, has spent literally thousands of man hours in drafting and research, has conducted more than 30 public meetings on the code, has made several presentations to the Alaska Bar Association and attorney groups, and has had a commissioner or its consultant testify before a number of legislative committees. The draft bill has drawn the most articulate statements of corporation law from Alaska, California, New York, Oregon, Washington and Delaware. It is a "middle of the road" bill, meaning that there is a balance between a strong management or strong shareholder corporation model. By using the optional incorporation provisions found in the draft, an incorporator can easily create either a strong management or strong shareholder corporation.

The most controversial provision of the draft bill, Section 488, has been removed from the draft. This provision dealt with secondary liability of officers and directors in the event the corporation became insolvent. Other criticisms of the bill have focused upon provisions of the draft which are only restatements or inclusions of existing Alaska law. While the "financial" provisions of the draft will certainly remove some flexibility from the manner in which corporations declare dividends, they have not been the subject of much attention by businesses or attorneys.

To summarize, the following features of the draft strongly argue in favor of its adoption by the Legislature as a new code for Alaskan corporations:

1. The code uses a "cookbook" approach to organization. All general topics are included in sections dealing only with those topics. One need only look to one section to determine how to incorporate or to dissolve. Under the existing code, it is necessary to review the entire code to make sure that no provision has been overlooked.

2. The topic headings are informative as to the area of substantive law that is covered in each section. The code is written in lay language whenever possible. The design of the format and its organization has been accomplished so that the lay person can easily discover how to incorporate and how to carry on business in the corporate form, thus minimizing the need to have an attorney guide you through simple incorporation matters.

3. The draft bill contains important incorporation a reporting requirements needed by the Division of Corporation The Commission worked closely with the Division in the draftir of its corporations bill so as to insure that the Division needs would be addressed.

4. The draft bill addresses important needs and uniqu problems of Alaska native corporations. The Commission worke closely with a special subcommittee of the Alaska Federation C Natives in the drafting of the bill.

5. Much of existing Alaska law is continued in th present draft, although the language has been rewritten in man instances to make it more understandable to the lay person.

6. Because the language is concisely drafted, interna inconsistencies existing in present Alaska law have bee resolved. and because of its superior organization and length commentary indicating the source of its provisions, the draf should reduce considerably the need for litigation over the mean ing of the language contained in HB 322.

7. The draft contains important new sections not cur rently found in Title 10. They include:

a. A new section dealing with corporation finan- cial activities, specifically defining the conditions when a dis- tribution is appropriate;

b. A new section dealing with shareholder deriva- tive actions, an area only minimally covered by rules of the Alaska Supreme Court under existing law;

c. A new, expanded section dealing with all mat- ters involved in corporation dissolution;

d. New sections dealing with conflicts of inter- est by directors, minority shareholder rights, rights and obliga- tions of various classes of shares, and the purchase of shares of a deceased shareholder.

e. A number of optional provisions for the Ar- ticles that will determine corporate bias for management or shareholders. These provisions can be easily selected and in- serted by the incorporator depending upon what type of corpora- tion is desired.

8. While drawing heavily from the best laws of other states, the draft has been carefully crafted to address corporate problems unique to Alaska. The draft can be truly characterized as an Alaska drafted code. Additionally, the draft incorporates a great many of the substantive provisions found in the recently adopted ABA revised model business corporations act.

No attempt has been made by the Commission to address the extremely complex problem of corporate takeovers. Because of the radical and rapid changes that have taken place in the past 5 or 6 years, such an undertaking would require much study and considerable expenditure of time in order to even formulate policy for dealing with takeovers.

The existing Title 10 is woefully outdated and poorly organized. It is difficult for the lay person and even the practitioner to use. It is full of anachronistic provisions and internal inconsistencies. It does not reflect changes in corporation law that have occurred over the past 35 years. It doesn't even contain much needed sections dealing with shareholder derivative actions, conflict of interest, indemnification of officers and directors or financial accountability. The draft has previously been approved by the Division of Corporations, the Alaska Federation of Natives and Alaska Airlines, the largest private (non-native) corporation in Alaska. It is organized and written so that it can be easily used by the lay person, but contains all of the features needed by the practitioner to advise a corporate client on sophisticated matters. There is nothing in the draft that would discourage outside business from choosing Alaska as a domicile for incorporation because the corporation can be tailored to the needs of any business. It should encourage businesses to locate in Alaska because the rights and obligations of the corporation are so clearly spelled out in the draft. Finally, the code should greatly decrease the need for litigation because of the lengthy and comprehensive commentary accompanying the draft.

If you have any questions concerning the draft, please contact me and I will attempt to answer those questions.

Very truly yours,

John W. Abbott

JOHN W. ABBOTT, Chairman

REVISION OF THE PROPOSED

ALASKA CORPORATIONS CODE

WORKING PAPER # 2

FOR

THE ALASKA CODE REVISION COMMISSION

NOVEMBER MEETING, 1984

BY

THE CODE REVISION PROJECT
231 G. STREET, # 26
DAVIS, CALIFORNIA 95616

TABLE OF CONTENTS

The following are the changes in the content of former House Bill No. 343 (Senate Bill No. 246) and the Official Comment found in the House and Senate Joint Journal Supplement under date of April 8, 1984. These changes reflect preliminary determinations made by the Alaska Code Revision Commission at its August and September, 1984, meetings and are to be formally considered for final adoption at the Commission's November meeting.

THE ALASKA CODE REVISION COMMISSION'S RECOMMENDED CONTENT OF A NEW ALASKA CORPORATIONS CODE:

Item 1: The letter of transmittal.

Dear :

Pursuant to the authority granted in AS 24.20.075(c), the Alaska Code Revision Commission has prepared the attached bill on the Alaska Corporations Code and requests its introduction.

For more than four years the Commission has labored to review the content of existing Alaska statutory law on profit corporations. Comment has been invited and received from numerous Alaskans including a special subcommittee set up by the Alaska Federation of Natives. Most recently, an ad hoc committee of the business law section the Bar Association examined a draft of the Commission's recommendation to the Thirteenth Legislature and made numerous formal and informal suggestions and comments. While there remain differences of opinion among some commentators, there would appear to be widespread agreement that existing legislation on this subject is in serious need of revision. Let me comment first upon the general need for revision, then describe the approach taken by the Commission, and conclude by pointing out some of the more important features of the recommendation which I am forwarding with this letter.

The need for reform of Alaska's statutory law respecting profit seeking corporations: Existing legislation on this subject, currently found as Chapter 5 of Title 10 of the Alaska Statutes, was adopted shortly after statehood and was predicated upon the then existing content of Oregon law. At that time, the State of Oregon had adopted a 1953 version of the Model Business Corporation Act, which was formulated by a committee of the American Bar Association. From the date of that enactment until the present time, this model has served as the foundation of all Alaska legislation in the corporate field. The interest of the Alaska Code Revision Commission in reviewing the current legislation was prompted by several factors. First was a recognition that the level and diversity of business operations in our state has expanded to the point that many of the basic assumptions valid in the 1950's may have produced a statute no longer serviceable as Alaska approaches the 1990's. We were aware that corporations formed in response to the Alaska Native Claims Settlement Act found themselves under provision of a statutory scheme adopted long before Congress conceived the scheme of forcing the corporate organization upon substantial segments of our population and economy. Within less than six years, the stock of these corporations will become freely transferable, special federal law provisions will expire, and Native corporations will be subject to state corporations law for all purposes. These developments and challenges convinced the Commission that no legislation enacted or recommended in other states could be blindly relied upon to best function in the conditions encountered by Alaskans.

In particular, the Commission became convinced that the Model Act, which represented an "off the rack" wholesale adoption of a statute never intended for the needs of any particular state, represented a poor choice for current Alaska law and an even poorer vehicle for our future. Other states have reached similar conclusions. Both New York and California have undertaken systematic revision of their corporate statutes in the past decade, and their work products differ significantly from the Model Act. Even as the Commission was making these determinations, the Business Law Section of the American Bar Association concluded that the Model Act was in serious need of revision. In 1983, a tentative draft of that Section's recommended content of a Revised Model Business Corporation Act was brought to our attention by our consultant. In June, 1984, a final draft of this recommended statute was circulated. The Commission has reviewed both drafts of the Revised Model Act, as well as the current content of corporate statutes in California, New York, Oregon, Washington, and Delaware. In each instance our goal has been to determine the most useful approaches to the enabling of corporate activity in Alaska and securing accountability for such conduct.

The Commission's approach to a recommended revision: In undertaking a revision of the Alaska profit seeking corporations code, the Commission found philosophical as well technical differences in the corporate legislation of sister states. De-

laware is widely regarded as a "pro management" jurisdiction with an approach to corporate regulation which places emphasis upon a strong board of directors calculated to be in a dominant position relative to the interests of shareholders. Standing at the opposite extreme is California, long regarded as a "pro shareholder" jurisdiction with statutes designed to enhance the protection of shareholders at the expense of incumbent management.

A basic enabling statute which leaves the major decisions respecting the power of shareholders and management to the individuals framing the articles of incorporation: An initial decision of the Commission was to avoid mandating either the Delaware or California extreme. Instead, the Commission sought to design a statute that was first and foremost understandable to the average individual desiring to do business in the corporate form. Both the organization and content of the new act are designed to clearly impart the minimum requirements established by the state as a price tag for the privilege of doing business in the corporate form; to set forth the choices which ought to be made by each group seeking incorporation with respect to the division of powers between shareholders and directors; and to standardize the methods of essential reporting on corporate activities made to shareholders and the state. Finally, the proposed statute has gone to substantial length to replace complex and frequently misunderstood accounting concepts with clearly defined guidelines as to the circumstances in which it is permissible to pay a dividend to shareholders. Few areas have presented greater opportunity for abuse in the past. The potentially adverse interests of corporate creditors, shareholders, and directors require that all concerned be readily able to apply the minimum standards for socially responsible behavior which are mandated by the statute.

No attempt to subject foreign corporations to the organizational framework of this recommended statute: The status of "foreign corporations" in Alaska came under close scrutiny. A foreign corporation is organized under the laws of another state or nation and thereafter seeks permission to transact business in Alaska. The degree to which these corporations ought to conform to the structure and practices mandated for entities organized under the laws of Alaska was debated in view of the recent experience in California. California legislators felt that foreign incorporation was frequently used by businesses intending to conduct the bulk of their affairs in California and intending to have as the majority of their employees and shareholders Californians, and yet organized under the laws of other jurisdictions (frequently Delaware) for the sole purpose of avoiding the public policy judgments expressed in the California General Corporations Law. To counter this perceived abuse, the 1977 California Act developed the concept of "pseudo foreign corporations" and as to these entities attempted to apply California law regarding internal management and financial operations. The result has been litigation which will shortly be before the United States Supreme Court. Prominent among the

federal constitutional objections is the charge that California is refusing to extend "full faith and credit" to the public acts of the sister state which created the "pseudo foreign" corporation.

Foreign and domestic corporations treated alike for purposes of disclosure and reporting: After substantial discussion, it was concluded that Alaska should not, for the present, follow the California approach. As noted, the proposed Alaska Corporations Code is a middle of the road statute which does not attempt to force upon domestic corporations a particular bias toward shareholder status. Under the proposed Code, it is possible to create a corporation which features rights for shareholders which go beyond even the California model. However, this is not mandatory. Because the proposed Code has left these matters up to the Alaskans forming the corporation, it was felt that the idea of foreign incorporation was less objectionable. However, the Commission is interested in making foreign corporations which elect the privilege of doing business in Alaska as responsible for their activities as are domestic (Alaska) corporations. To that end, the proposed Code has made uniform the basic reporting and disclosure requirements and has applied them to both domestic and foreign corporate entities. The organizational framework of the Code is designed to make it easy for a non-Alaskan to determine the scope of these responsibilities, since they are gathered together in a single article rather than being intermixed throughout the text, as in the existing statute.

Evolving needs of Alaska Native Corporations anticipated and accommodated within a unitary statute: The proposed Code will enable the Legislature to ensure that when the exemptions and special provisions in federal law relating to Native Corporations expire, those vital entities will be governed by statutory law developed after an extensive survey of their needs. The Commission has adopted the strongly felt sentiment of the Alaska Federation of Natives Task Force that Native corporations should not be governed by a separate code. If they are to play a vital social and economic role in advancing the interests of their shareholders, it was felt that these corporations cannot be hobbled by some unique statutory scheme causing doubt and encouraging litigation as to their powers and responsibilities.

Specific features: Two specific features of the proposed legislation are worthy of special mention. They relate to shareholder litigation and an abuse of limited liability.

Shareholder actions brought in the name of the corporation (derivative suits) were previously unregulated by statute in Alaska. In other jurisdictions few areas of corporate law have proven a greater source of conflict. On the one hand, the ability of a single shareholder to bring an action against a director or officer of that corporation and to recover for a breach of the duty of loyalty or care owed to the entity has been hailed as an essential weapon in the fight for social

responsibility. Yet it cannot be denied that such litigation is both time consuming and costly. Further, there is an unhappy history of shareholders commencing an action on the most tenuous of grounds in the hope that the defendants would buy their peace with an out of court settlement rather than stand and defend their record. Money paid in this fashion was usually pocketed by the shareholder even though the alleged injury had been to the corporation. This obvious abuse has been termed a "strike suit." The challenge is to draft a statute which facilitates the legitimate derivative action while at the same time removing the financial incentives from the strike suit. Section 10.06.435 of the proposed Code is the most balanced and specific derivative suit statute in the United States. It combines the best features of federal, California, New York, and Delaware approaches to this previously unregulated area. In a June, 1984 address before a section of the Alaska Bar Association, Professor Robert Hamilton, who acted as the reporter in framing the recommended content of the Revised Model Act, praised the Commission's efforts and work product in this important regard.

Limited liability is an extraordinary advantage afforded to those citizens who elect to do business in the corporate form. In undertaking its study, the Commission has been concerned with the balance between the legitimate interest of enterprisers against the not infrequent fact of and constant potential for abuse of other citizens who must deal, voluntarily or involuntarily, with a corporate entity. No provision of the proposed Code has drawn more interest, comment, and criticism than Section .488 of the draft introduced by Legislative Council as H.B. 343 and S.B. 246 in the Thirteenth Legislature. Because of this interest and the variety of strongly held beliefs advanced by a number of attorneys who have testified in hearings before the last Legislature, I would like to explain the Commission's perception of a social problem, recount how the Commission originally proposed to resolve that problem, and explain the changes now suggested by the Commission in that approach.

It is an assumption on the part of those doing business in the corporate form that their personal assets are insulated from creditor claims against the corporation. This insulation from personal responsibility is a privilege conferred by the state upon some citizens which works to the substantial economic injury of others. The Commission suggests that such an extraordinary privilege is not, and should not be, without limits. In the marketplace, large institutional lenders and suppliers are protected by the presence of market leverage, the advice of counsel, and significant experience. This strength allows them to insist that participants in a corporate venture considered a poor risk pledge their personal liability as guarantors of the corporate obligation. If a tort claim arises, and the victim's injury or loss exceeds the corporation's assets, there are common law doctrines to "pierce the corporate veil" and obtain the personal assets of shareholders. Contingent fee arrangements, whereby the tort victim's lawyer is paid only if there is

a recovery from the defendant, offer a reasonable probability that the tort victim can find legal representation. However, this combination of economic and legal self-help for third parties has failed to protect the class of individuals most frequently victimized. These are the creditors of businesses which are incorporated with insubstantial assets and thereafter operated for the convenience of owners for so long as this proves advantageous. Thereafter, the corporation is simply abandoned, usually without any effort to comply with the statutory procedures for corporate dissolution. When this happens, suppliers, materialmen, employees, and others who have extended informal credit to the business are left without practical recourse. Because their business relationships have been informal, it is rarely the case that they will have contracted for the personal liability of those operating behind the corporate veil. Because their unpaid claims rarely exceed a few thousand dollars, the cost of litigation makes legal remedies impractical. The net result is that these creditors absorb a loss which they then pass on to the general public in the form of higher prices for their goods and services. In the worst case, they simply go out of business, depriving the public of their presence as competitors, employers, and taxpayers in the community.

To date, the only jurisdiction which has consistently attempted to address this problem has been New York. As early as 1848, that state imposed personal liability on shareholders for any unpaid claims of corporate servants or employees. While that liability has been modified, it remains a feature of New York's Business Corporation Law. After lengthy debate, which included consultation with immediate past and present officials in the Department of Commerce and Economic Development, the Commission decided to confront the problem in a different manner. Placing liability on the shareholders was rejected because it would frequently expose individuals who may have had no active part in running the business along with those who should be held accountable. Instead, the Commission proposed a secondary liability on the part of designated directors and officers, on the theory that these individuals have either made all of the business decisions or have had it within their immediate power to discipline those who have run the corporation. As initially proposed, their liability was both secondary and limited. It was secondary in that all creditors must first exhaust the assets of the defunct corporation before any claim against directors or officers may arise. It was also limited in that Section .488 made no effort to protect parties who had a traditional opportunity to bargain for greater liability, such as banks and other institutional lenders. Liability arose only in favor of contract indebtedness for materials, supplies, inventory, or services furnished within Alaska. Further, that liability was limited to twenty-five thousand dollars on any contract indebtedness. Finally, individuals were free to preclude the liability created by Section .488 by the terms of a written contract.

Critical comment directed at Section .488 has been reviewed and given serious consideration by the Commission. While some persons felt that there should be no discipline of the limited liability privilege beyond that suggested at common law, others objected to two features of the Commission's suggestion: the very large potential for liability when the limitation was $25,000 per creditor; and the potential that a court could interpret the original language to fix liability on an assistant secretary or some other subordinate officer. Upon reconsideration, these criticisms have been deemed valid and accordingly the Commission now recommends a significantly altered provision on secondary liability for directors and certain officers.

As currently revised, the recommended provision on secondary liability differs in three important particulars from the one submitted to the Thirteenth Legislature. First, sub-section (a) has been amended to make clear that the only persons potentially liable are directors (or their delegates) and three specific officers in any Alaska corporation. In the instance of a foreign corporation doing in business in Alaska, if the law of its state of incorporation permits substitutes for the officers who would otherwise have liability, such persons are liable to Alaskans for debts arising from transactions in our state. The objection that any employee performing at the command of the corporate president might be liable is thus expressly precluded. Second, the period of liability for an incorporator is now clearly defined by the new sub-section (b). Third, the maximum exposure has been reduced by 90% to $2,500 per claimant, rather than $25,000, by the amended content of sub-section (d). As redrafted, the liability preserved by this provision will work only in favor of the smallest creditors for whom the cost of litigation would be totally out of proportion to any vindication of their just claims.

As the Council is doubtless aware, prior versions of this proposed Alaska Corporations Code were introduced in March, 1982, and March, 1983. The press of business precluded its consideration in the first session of the Thirteenth Legislature. In the second session, the recommended Code was reported with a "do pass" recommendation out of the Senate Labor and Commerce Committee. It had not moved further at the expiration of the Thirteenth Legislature. The Commission has attempted to find in such circumstances further opportunity to refine the proposed Code and to expose its contents to interested segments of the community. In addition to the activities summarized in my letter of March 3, 1983, members of the Commission appeared as witnesses before both House and Senate Committees. Representatives of the Alaska Federation of Natives also appeared expressing orally their support for passage of this Code, which they have asserted in writing to members of the leadership in both bodies. The initial and final drafts of the proposed Revised Model Business Corporation Act were carefully reviewed, as well as the comments of its reporter who appeared in Anchorage during the June convention of the Alaska Bar Association. Many positive suggestions were found in the comments received

from numerous quarters. The original recommended content of the Alaska Corporations Code continued the strong influence of the original Model Act. In a much simplified and more understandable organizational scheme, that influence continues, but is now heavily augmented by the work product of the drafters of the Revised Model Act. The Commission recommends that the organizational scheme of the new Code be adapted from that of the New York Business Corporation Law. In contrast to the more elaborate organization adopted for the Revised Model Act, the attached proposal draws related provisions of the statute together into twelve substantive articles creating a comprehensive and easily understandable organization.

Respectfully submitted,

John W. Abbott, Chairman
Alaska Code Revision
Commission

Attachment

ARTICLE 4: Corporate Finance

Item 2. Restraints upon distributions: at page 71 the Official Comment should be modified and expanded as follows:

Sec.
358-383 Official Comment to ACC Sections 10.06.358-383. INTRODUCTION: STATUTORY RESTRAINTS UPON THE DISSIPATION OF CORPORATE ASSETS -- THE "FINANCIALS" OF THE ALASKA CORPORATIONS CODE. [The official comment, pp. 64-78 of the Journal Supplement should be amended as follows: the text from page 64 up to the first full paragraph on page 71 remains un-

changed. The first full paragraph on page 71 should be modified and expanded as follows]:

In 1980, the Alaska Code Revision Commission concluded that both the substantive scheme and deference to the accounting profession pioneered in California were worthy models for the new Alaska Corporations Code. While this recommendation was pending in the Legislature, a final recommended draft of the Revised Model Business Corporation Act was published. The official comment to Section 6.40 makes it clear that the framers of that recommended statute agree that classical concepts of legal accounting predicated upon various types of "surplus" are to be discarded. However, the Revised Model Act relies upon an equitable insolvency test rather than the ratio/assets surplus standard pioneered in California. Further, the Revised Model Act would not require utilization of Generally Accepted Accounting Principles, insisting only upon "practices and principles that are reasonable in the circumstances. . . ."

In 1984, the Commission considered the position of the framers of the Revised Model Act and partially concurred in their judgment. They rejected total reliance upon an equitable insolvency test and continued to recommend adoption of the ratio/assets surplus test now embodied in Section .358. The Commission noted that the ratio/assets surplus test of Section 500 of

the California General Corporation Law has been in effect in that jurisdiction since 1977 and appears quite successful. Not a single reported case exists suggesting that the concept is difficult to comprehend or apply. By contrast, there is no experience with the test suggested by the Revised Model Act. Finally, the protection of creditors afforded by requiring the retention of five dollars in assets for every four dollars in corporate liabilities was judged part of the prudent balance sought between the legitimate quest for entrepreneurial activity and fiscal responsibility. Under the scheme of the ACC, the criteria of Section .358 are supplemented by the equitable insolvency test embodied in Section .360, and the protection of liquidation preferences for senior shares contained in Section .363.

However, Section .970(5) was amended to remove the general insistence upon the obligatory utilization of Generally Accepted Accounting Principles. For an elaboration of the standard now embodied in that section, see the specific official comment, infra. However, note that in certain sections (e.g. .358(c)), observance of Generally Accepted Accounting Principles for specific determinations is required. Accordingly, with the modifications hereinafter noted, Alaska has become the second state to adopt the ratio/assets surplus test.

[The remaining text beginning with the paragraph THE TEST on page

71 through page 78 is unchanged.]

ARTICLE 5. SHAREHOLDERS

Item 3. Notice Requirements: The Commission has voted to alter the notice formula for shareholder action from the minimum of twenty and maximum of fifty days contained in HB 343. Section 7.05 of the Revised Model Business Corporation Act suggests a formula of a ten day minimum and a sixty day maximum. In reconsidering its position the Commission affirmed the twenty day minimum notice period as accommodating the physical and climactic barriers to communication in Alaska. However, the sixty day maximum period for effective notice was deemed a reasonable substitute for the fifty day period and adopted in the interest of harmony with the Revised Model Act.

CHANGES: Two provisions of HB 343 are in need of amendment to reflect the altered notice formula.

Section 10.06.408. CLOSING OF TRANSFER BOOKS AND FIXING RECORD DATE. [p. 36 of HB 343 should be amended as follows]:
(a) To determine the shareholders entitled to notice of or to vote at a meeting of shareholders or an adjournment of a meeting, or to determine the shareholders entitled to receive payment of a dividend, or to determine the shareholders for any other proper purpose, the board of a corporation may provide that the stock transfer books shall be closed for a stated period not exceeding 60 <u>70</u> days. If the stock transfer books are closed to determine

shareholders entitled to notice of or to vote at a meeting of shareholders, they shall be closed for at least 20 days immediately preceding the meeting.

(b) Instead of closing the stock transfer books, the bylaws or, in the absence of an applicable bylaw, the board may fix a date as the record date for the determination of shareholders. This record date may not be more that ~~50~~ 60 days and, in the case of a meeting of shareholders, not less than 20 days before the date on which the particular action requiring the determination of shareholders is to be taken. If the stock transfer books are not closed and a record date is not fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders or for the determination of shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board declaring the dividend is adopted, is the record date for the determination of shareholders. When a determination of shareholders entitled to vote at a meeting of shareholders has been made as provided in this section, the determination applies to an adjournment of the meeting of shareholders.

Sec. 408 Official Comment to ACC Section 10.06.408 CLOSING OF TRANSFER BOOKS AND FIXING RECORD DATE. [The official comment, pp. 91-92 of the Journal Supplement should be amended to read as follows]:

SCOPE: One of the essential attributes of corpo-

rate status is the free transferability of share interests. Such ongoing transactions threaten havoc when it is necessary to determine the identity of shareholders who may be entitled to vote in an annual or special meeting or to participate in a distribution.

Sec. 408 provides three alternatives for effecting a determination as to share membership for these purposes. Under the first alternative the board may simply close the stock transfer books. Such a closure inhibits trading in the shares and hence the statutory limitation on the period of time during which the transfer books may be closed (60 70 days). A second alternative is for the board to simply declare a "record date" for such determination. Shares traded after that date may be effectively transferred, but the corporation is under no obligation to recognize the transferee for the purpose for which the record date has been declared. Here, too, sec. 408(b) imposes a maximum of 60 days before the action requiring determination of shareholders upon the power of the board to close the stock transfer books. Finally, if the board had neither closed the transfer books nor declared a record date, the default mode for determining the shareholders is to adopt the date on which the notice of the meeting is called or the resolution of the board declaring the distribution is adopted. Shareholders of record on those dates only would be recognized.

CHANGE IN FORMER ALASKA LAW: ACC sec. 408 is predicated upon Section 30 of the Model Act with two modifications. Section 7.05 of the Revised Model Business Corporation Act with one modification. In both subsections (a) and (b), the Revised Model Act's ten day minimum period before the action is taken has been extended to twenty (20) days in sec. 408. Former AS 10.05.144 had utilized the Model Act's ten day period. The change in ACC sec. 408 was adopted in order to further the general use of twenty day notice periods which are deemed a more realistic accommodation to physical and climactic barriers to communication in Alaska. Seventy and sixty day limitations have replaced the fifty day formula in former Alaska law respecting the closing of transfer books or fixing of a record date. This change brings Alaska law into compliance with the terms of the Revised Model Business Corporation Act, Section 7.05. Finally, the ACC follows the Revised Model Act in making a shareholder list compiled from the closed transfer books or by virtue of the record date effective as to any adjournment of the meeting. The phrase in former AS 10.05.144 which modified this concept in the event of closure of the stock transfer books has been eliminated.

Item 4. Notice requirements for shareholder meetings:

Sec. 10.06.410. NOTICE OF SHAREHOLDERS' MEETINGS. [pp.36-

37 of HB 343 should be amended to read as follows:] Written or printed notice stating the place, day, and hour of the meeting and, in the case of a special meeting, the purpose for which the meeting is called, shall be delivered not less than 20 or more than ~~50~~ 60 days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, the officer, or persons calling the meeting, to each shareholder of record entitled to vote at the meeting. If mailed, the notice is considered delivered when deposited with postage prepaid in the United States mail addressed to the shareholder at the address of the shareholder as it appears on the stock transfer books of the corporation, or, if the shareholder shall have filed with the secretary of the corporation a written request that notice be mailed to some other address, then directed to that address. An affidavit of the secretary or other person giving the notice or of a transfer agent of the corporation that the notice required by this section has been given shall be prima facie evidence of the facts therein stated.

Sec. 410 Official Comment to ACC Section 10.06.410 NOTICE OF SHAREHOLDER'S MEETINGS. [The official comment at pp. 92-93 of the Journal Supplement should be amended to read as follows]:

SCOPE: ACC sec. 410 establishes the minimum content and the minimum and maximum time restraints on written or orinted notice for annual or special meetings. Such notice must be "delivered" not less tnan

twenty (20) nor more than ~~fifty (50)~~ sixty (60) days before the date of either an annual or special meeting. In every instance the notice must state the place, day, and hour of the meeting. With respect to special meetings only, the notice must also declare the purpose(s) for which the shareholders are being convened. Note that the general provisions of sec. 410 are subject to specific notice requirements of other sections of this Chapter.

Assuming that there has been compliance with the terms of this section, the risk of delay or non-delivery of the notice by the postal authorities is borne by the addressee. An affidavit which complies with this section is prima facie evidence that such steps have been taken and notice thereby effected. Such a prima facie showing may be overcome by contrary evidence adduced to the satisfaction of the trial court.

CHANGE IN FORMER ALASKA LAW: ACC sec. 410 is predicated upon ~~Model Act Section 29~~ Section 7.05 of the Revised Model Business Corporation Act, Section 605 of the New York Business Corporation Law, and former AS 10.05.141. ~~The only change made is to set a~~ Unlike the recommended content of the RMBCA, sec. 410 sets a twenty (20) day minimum for the delivery of notice as opposed to the previously stated ten (10) day minimum. The sixty (60) day maximum was adopted from the RMBCA. The provision detailing the address to be used in

communicating with shareholders and the prima facie evidence of compliance achieved by the officer's affidavit are taken from the BCL. Again, the intention is to establish a general policy in the ACC to use twenty (20) day notice periods.

Item 5. Civil liability consequences for failure or refusal to accord inspection rights: The Commissioners have voted to retain the policy that the Alaska Corporations Code should not prescribe a duty and then remain silent on the consequences of its non-observance. Accordingly, the sanctions in ACC Sections .430 and .433 are to be retained as set forth in HB 343. Section .413 is to be brought into harmony with this policy by inclusion of a penalty of $5,000 which is to be paid to the shareholder or shareholders jointly making written request for performance of the duties relating to the preparation and availability of the voting list.

Sec. 10.06.413. VOTING LIST; LIABILITY. [p. 37-38 of HB 343 should be amended as follows]: (a) At least 20 days before each meeting of shareholders, the officer or agent having charge of the stock transfer books for shares of a corporation shall make a list of the shareholders entitled to vote at the meeting or an adjournment of the meeting arranged in alphabetical order, with the address of and the number of shares held by each shareholder. The list shall be kept on file at the registered office of the corporation and is subject to inspection by a shareholder or the agent or attorney of a shareholder at any time during

usual business hours for a period of 20 days before the meeting. The list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of a shareholder during the meeting. The original stock transfer books are prima facie evidence as to the shareholders who are entitled to examine the list or transfer books or to vote at a meeting of shareholders.

(b) Failure to comply with the requirements of this section does not affect the validity of the action taken at the meeting.

(c) An officer or agent having charge of the stock transfer books who fails to prepare the list of shareholders, keep it on file for a period of 20 days, or produce and keep it open for inspection at the meeting, as provided in this section, is liable ~~to a shareholder suffering damage because of the failure to the extent of the damage~~ for a penalty of $5,000. This sum shall be paid to the shareholder or shareholders jointly making written request for performance of the duties imposed by this section.

Sec.
413 Official Comment to ACC Section 10.06.413. VOTING LIST; LIABILITY. [The Official Comment, pp. 93-94 of the Journal Supplement, should be amended to read as follows]:

SCOPE: ACC sec. 413 counters a potential disposition on the part of incumbent management ~~counter incumbent management's disposition~~ to keep to itself the shareholder list showing the names, addresses, and

number of shares held by each shareholder. The historical inclination of management not to favor access to this information is the recognition rooted in recognition that it is the precise data which a shareholder intent upon challenging incumbents would desire to obtain in order to calculate strategy. Sec. 413 mandates that at least twenty days prior to each meeting (annual or special) of the shareholders the officer or agent having charge of the stock transfer books shall make a list of all shareholders entitled to vote (sec. 408), and that this list shall be kept open and subject to inspection by a shareholder at any time during usual business hours for a period of twenty days prior to the meeting. The right of inspection prior to the meeting may be exercised by an agent or attorney of the shareholder. Once the meeting is convened, the shareholder list shall be kept open for inspection by shareholders.

Sec. 413(c) imposes a civil liability penalty of $5,000 upon an officer or agent having charge of the stock transfer books who refuses to prepare, pre-exhibit, and exhibit such a list as provided by sec. 413(a). Such liability shall run to any shareholder(s) able to establish damage as a consequence of this failure or refusal and shall be in such amount as the court shall determine necessary to compensate said shareholder(s). Such a penalty shall be paid to the shareholder or shareholders jointly making written request for performance of the duties imposed by this

section. Note that a written request is not necessary to invoke the powers of inspection conferred by this section but is required as a predicate for gaining the remedy imposed by sec. 413(c).

CHANGE IN FORMER ALASKA LAW: ACC sec. 413 is predicated upon former AS 10.05.147 which was based on the pre-1962 version of Section 31 of the Model Act. The legislature has elected to retain the explicit requirement of an exposition of the shareholder list for a period prior to the meeting. The ten day minimum period of former AS 10.05.147 has been supplanted by a twenty (20) day minimum period in ACC sec. 413.

ACC sec. 413(c) is based upon the Model Act Section 31, and former AS 10.05.150. There are two changes. One ~~The only change~~ reflects the enlargement of the pre-exhibition period for ten (10) to twenty (20) days. The second change inheres in the provision of a $5,000 penalty as a civil liability for failure to observe the duties prescribed by this section in the face of a written request that this be done. In enacting this section, it is the intention of the legislature to grant to shareholders an absolute right of inspection during the stipulated periods. Such right is not subject to the "proper purpose" line of common law authorities.

ARTICLE 6. DIRECTORS AND OFFICERS

Item 6. Delegation of board functions: The Commission has opted to preclude substitution of individuals for the directors required by the ACC. Delegation of functions otherwise fixed by the statute upon the directors is permitted if done pursuant to provisions in the articles of incorporation. Both Section .450 and its official comment have been redrafted to make it clear that the directors remain ultimately liable for the powers and duties performed by delegates and do not evade liability for their faithful discharge by setting up an immediate performance obligation in a delegate.

Section 10.06.450. BOARD OF DIRECTORS; DUTY OF CARE; RIGHT OF INSPECTION; FAILURE TO DISSENT. [p. 52-53 of HB 343 should be amended as follows]: (a) All corporate powers shall be exercised by or under the authority of, and the business and affairs of a corporation shall be managed under the direction of, a board of directors except as may be otherwise provided in this chapter. ~~or the articles incorporation.~~ If a provision is made under AS 10.06.468 or in the articles, the powers, duties, privileges, and liabilities conferred or imposed upon the board by this chapter shall be exercised, performed, extended, and assumed to the extent and by the person or persons to whom they are delegated as provided in AS 10.06.468 or in the articles. Directors need not be residents of this state or shareholders of the corporation unless required by the articles or bylaws. The articles or bylaws may prescribe other qualification for directors. The board may fix the compensation of directors unless otherwise provided in the articles.

(b) [no change]

(c) [no change]

(d) [no change]

Sec. 450 Official Comment to ACC Section 10.06.450. BOARD OF DIRECTORS; DUTY OF CARE; RIGHT OF INSPECTION; FAILURE TO DISSENT. [The official comment at pp. 119-121 of the Journal Supplement should be amended to read as follows]:

SCOPE: This section replaces former AS 10.05.174 (Board of Directors), .222 (Presumption of Consent of Director and Filing of Dissent), and .219 (Effect of Good Faith Reliance on Financial Statements). These Alaska provisions were drawn from the pre-1969 version of Model Act Sections 35 and 48. Sec. 450 gathers into one place basic provisions on four major questions: (1) the exercise and potential delegation of board functions; (2) the articulation of a standard for the discharge of the duty of care which must be observed by directors and their right to rely upon certain information, opinions, reports, or statements from officers, experts, or committees of the board on which they do not serve; (3) the grant of an absolute right of inspection to every director as to all corporate books, records, and documents of every kind together with the right to use an agent or attorney and the right to make copies or extracts of such information; and (4) the

consequences of a director's failure to dissent as to any action taken by the board at a meeting at which he such director is present.

Note that under subsection (a), the articles are competent to delegate the powers and duties imposed by this chapter on directors. If the delegation is by the board to a committee consisting of some, but not all of the directors, it is governed by sec. 468. If the delegation is pursuant to the terms of the articles under sec. 450(a), such provisions may also extend to the delegates the privileges and liabilities conferred and exacted in this chapter. However, the mere fact of delegation does not relieve the directors of ultimate responsibility for the faithful discharge of their statutory responsibilities or the duties of care and loyalty owed to the corporation. In the event that a delegate acts or fails to act in a manner which would, in the absence of delegation, constitute an actionable cause against the director or directors, such delegate is liable to the corporation as an intended third party beneficiary of the delegated duty. The delegating directors are liable to the same extent as if they had remained primarily responsible for the act or omission. Recovery by the corporation of full damages against the delegate would exonerate the delegating directors. If recovery is sought directly against the delegating directors, they would have a right to implead the

breaching delegate(s) and, upon satisfaction of any judgment to the corporation, be subrogated to its cause of action.

This chapter does not permit the substitution of persons other than directors as the individuals ultimately liable for the exercise of corporate powers or in the direction of corporate affairs. Because they remain ultimately liable, directors who have delegated their authority pursuant to provisions of the articles retain the full rights of inspection provided in subsection (d), nor are they deprived of their right to rely upon the sources specified in subsection (b).

CHANGE IN FORMER ALASKA LAW: Subsection (a) is premised upon the 1977 revision of Section 35 of the Model Act. Unlike the content of former AS 10.05.174, which required that the business and affairs of a corporation be managed by the board, sec. 450 permits board functions to be delegated to committees consisting of some but not all of the directors (see, sec. 468) or to nondirectors so long as such delegation is provided in this Chapter or in the articles. Like former Alaska law, sec. 450 is not intended to permit substitution of individuals for directors as persons bearing ultimate responsibility and liability for the control and management of the corporation. Sec. 450 does represent a compromise between the traditional insistence upon governance by the board of directors

and the recent position assumed by states following Delaware which would make it competent for a corporation to function without any board at all by substituting in designees the powers and responsibilities of directors. Under sec. 450 there must be a board of directors. There is virtually no substantive limitation upon the extent of the power of delegation contained in sec. 450. Note that the rights, privileges, and duties which the Chapter fixes upon directors devolve upon the delegates. ~~ACC sec. 450 differs from the Model Act language to make it clear that with this delegation flows the liabilities which the Chapter otherwise imposed upon the directors. This modification follows GCL 300(d).~~

Subsection (b) [balance of the text of the comment at pages 120-121 is to be retained as in the Journal Supplement].

Item 7. Minimum size of board committees: The Commissioners voted to adopt the RMBCA position (Section 8.25(a)) and require that any committee of the board have a minimum of two directors.

Section 10.06.468. EXECUTIVE AND OTHER BOARD COMMITTEES. [pp. 59-60 of HB 343 should be amended as follows]: (a) If authorized by the articles or the bylaws of the corporation, the board, by resolution adopted by a majority of the entire board, may designate from among its members an executive committee and other committees of the board. Unless the number of directors

fixed in accordance with AS 10.06.453 is less than three, each committee shall have two or more members, who serve at the pleasure of the board of directors. Each committee, to the extent provided in the resolution or the articles or bylaws of the corporation, has the authority of the board, except that a committee may not

(1) [balance of Section .468 is to remain unchanged from the text found at pages 59-61 of HB 343.]

Sec. 468 Official Comment to ACC Section 10.06.468. EXECUTIVE AND OTHER BOARD COMMITTEES. [The official comment at pp. 128-129 of the Journal Supplement should be amended to read as follows]:

SCOPE: Sec. 468 permits inclusion in the articles or bylaws of provisions empowering the board to set up executive and other committees and to delegate, with noted exceptions, to such committee(s) the powers otherwise vested in the board. The duty of care of directors who are not members of such committees is particularized in sec. 468(b).

Note that sec. 468(a) incorporates the suggestion of the Revised Model Business Corporation Act respecting a minimum composition of board committees. It works an accommodation between the desire to streamline board functions via delegation and the necessity of protecting a meaningful role for representatives of minority interests. Under sec. 468, protection for the

minority is found in two provisions: first, the elimination of "one director" committees in any corporation which is required to have a board of three members; and second, reservation of enumerated, critical board decisions which may not be delegated.

Under the terms of the coordinated coverage of sec. 453, if the corporation is required to have a board of at least three directors, then any committee created by the articles or bylaws must have a minimum membership of two. If the number of shareholders is two, then under sec. 453, the number of directors need not exceed the number of shareholders. Under sec. 468(a), a corporation with a two person board could provide in its articles or bylaws for one or more one director committees. The interests of the non-member director are protected since the committee could not be created nor could its jurisdiction be defined without the active consent of both members of a two person board. On such a board one of the directors could never constitute the "majority."

CHANGE IN FORMER ALASKA LAW: ACC sec. 468 is a modified version of ~~Section 42 of the Model Act~~ Section 8.25 of the Revised Model Business Corporation Act. It clarifies Alaska law, as set out in former AS 10.05.195, in several particulars. Sec. 468(a) departs from AS 10.05.195 by a clear indication that there may be such other committees of the board, in addition to

an executive committee, as may be provided in the articles or bylaws of the corporation. Coordination with sec. 453 precludes one-director committees in any corporation required to have a board of at least three members. Also dropped is the former requirement that two or more directors had to constitute the executive committee. Sec. 468(a) continues to reflect the policy of old .195 in the requirement that the resolution setting up a committee permitted under the articles or bylaws be adopted by an absolute majority of the board and not merely of the directors then in office.

The most significant change worked by sec. 468(a) over former .195 is in the enumerated subjects which may not be delegated by the full board to any committee. This list accords with the suggested content of Section 8.25(e) of the Revised Model Business Corporation Act. The only modification from new Model Act Section 42 is with respect to sec. 468(a)(6) on the capitalization of retained earnings and sec. 468(a)(9) on transactions with interested directors.

Sec. 468(b) expands upon the former provision of .195 with regard to a declaration that the directors who do not serve on board committees are not, by virtue of nonservice, relieved of their duties of care and loyalty with respect to the work of such committees, and that this includes the express recognition of a duty of reasonable inquiry which the ACC has engrafted onto the formulation of the classical and Revised Model

Acts. See, Heit v. Bixby, 276 F.Supp. 217, 231 (E.D. Mo. 1967).

Item 8. Secondary Liability of Officers and Directors: The Commission modified Section .488 of HB 343 on the secondary liability of officers and directors in three particulars. First, subsection (a) has been amended to make clear that the only persons potentially liable are directors (or their delegates) and "officers" (or their substitutes). The objection that an assistant secretary, performing at the command of the corporate president, might be liable, is thus expressly excluded. Second, the period of liability for an incorporator is now clearly defined by new subsection (b). Third, the maximum exposure provided in subsection (d) has been reduced by 90% to $2,500 per claimant, ratner than $25,000 as provided in HB 343.

Sec. 10.06.488. SECONDARY LIABILITY OF DIRECTORS AND OFFICERS. [pp. 67-68 of HB 343 should be amended as follows:] (a) Except as exempted in ~~(b)~~ (c) of this section and limited in ~~(e)~~ (d) of this section, incorporators, directors, other than a provisional director appointed under AS 10.06.640, or individuals exercising the authority of directors as permitted in AS 10.06.450(a), and the president, secretary, and treasurer in a domestic or foreign corporation, or individuals performing the functions of these offices in a ~~domestic or~~ foreign corporation doing business in this state, are, to the extent that the assets of the corporate entity prove insufficient, jointly and several-

ly liable for contract indebtedness, whether formal or otherwise, for materials, supplies, inventory, or services furnished in the state during their period of service.

(b) For the purpose of this section, the period of service of an incorporator shall conclude with the designation (AS 10.06.210(3)) or election (AS 10.06.225) of initial directors.

~~(b)~~(c) The terms of a written contract between a corporation and a third party may modify or preclude the liability created by this section.

~~(c)~~(d) Notwithstanding division by assignment or otherwise, the total secondary liability created by this section for the benefit of a creditor under (a) of this section may not exceed ~~$25,000~~ $2,500 exclusive of costs of collection.

~~(d)~~(e) A party against whom a claim is asserted under this section is entitled to contribution from other persons enumerated in (a) of this section.

Sec.
488 Official Comment to ACC Section 10.06.488. SECONDARY LIABILITY OF DIRECTORS AND OFFICERS. [The official comment to Section .488 at pp. 140-143 of the Journal Supplement should be modified as follows:]

SCOPE: [The text at page 140 of the Journal Supplement through the conclusion of the paragraph which carries over to page 141 is to remain unchanged.]

Under sec. 488(a) officer liability is imposed upon the president, secretary and treasurer of an

Alaska or foreign corporation or upon individuals performing the functions of those offices in a foreign corporation. The reason for restricting the last reference to foreign corporations is because the ACC requires corporations to have these offices although a person may occupy any two offices except those of president and secretary. See, sec. 483(a). In some jurisdictions corporate offices are optional in which case it would be possible to form a corporation without a president, secretary or treasurer. If such a formation decision had been made, the liability imposed by sec. 488 would be fixed upon such person or persons who had performed functions which, were it an Alaska corporation, would have been appropriate to those offices.

If, in disregard of their duty to call an organization meeting and elect initial directors (ACC sec. 2235), incorporators were to transact business on behalf of an entity for which there had been issued a certificate of incorporation, they, too, would incur the potential personal liability created by ~~this section~~ sec. 488(a). As provided in sec. 488(b), for the purpose of such liability their period of service would conclude with the designation or election of initial directors.

Traditional concepts of "limited liability" are venerated in the explicit provision that sec. 488 creates a "secondary liability" on the part of the designated directors, incorporators, and officers.

Funds invested by shareholders as well as accumulated earnings remain the first line of recourse for the contract indebtedness of the corporate entity. Exhaustion of that source, as discussed in Arenwald v. Douglas Machinery Co., 183 Misc. 627, 50 N.Y.S.2d 39 (1944), is a condition precedent to the assertion of the liability created by sec. 488. Further vindication of traditional limited liability is reflected in the imposition of ~~$25,000~~ $2,500 (excluding all costs of collection) as a ceiling upon this secondary liability. This limitation reflects two policy judgments: (1) for sums greater than this amount, the third party should bear the risk of negotiating for liability greater than that of corporate assets; and, (2) for sums in excess of ~~$25,000~~ $2,500, the costs of litigation do not pragmatically preclude the assertion of "thin capitalization" or other abuses of the corporate norm which would, if proven, establish liability upon certain or all of the shareholders. The intention has been to preserve these common law remedies in addition to the liability created in sec. 488. In this connection see, Mohawk Oil Co. v. McKibben, 667 P.2d 1223 (AK 1983); Eagle Air v. Corroon & Black/Dawson & Co., 648 P.2d 1000 (AK 1982).

[The balance of the comment, including the Change in Former Alaska Law discussion at page 143, remains unchanged from that printed in the Journal Supplement.]

Item 9. Indemnification---advances to defendants: The Commissioners voted to adopt the more restrictive provision on advances set forth in Section 8.53(a) of the Revised Model Business Corporation Act in lieu of the current content of ACC Section .490(e).

Section 10.06.490. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS: INSURANCE. [Pp. 68-70 of HB 343 should be amended as follows]: (a) [unchanged from current text].

(b) [unchanged from current text].

(c) [unchanged from current text].

(d) [unchanged from current text].

~~(e) Expenses incurred in defending a civil or criminal action or proceeding may be paid by the corporation in advance of the final disposition of the action or proceeding as authorized in the manner provided in (d) of this section upon receipt of an undertaking by or on behalf of the director, officer, employee, or agent to repay the amount if it is ultimately determined that the person is not entitled to be indemnified by the corporation as authorized in this section.~~

(e) Reasonable expenses incurred in defending a civil or criminal action or proceeding may be paid or reimbursed by the corporation in advance of the final disposition in the manner provided in (d) of this section if:

(1) in the case of a director or officer, the corporation is furnished with a written affirmation of good faith belief that the standard of conduct described in AS

10.06.450(b) or AS 10.06.483(e) of this chapter has been met;

(2) the director, officer, employee, or agent furnishes the corporation a written unlimited general undertaking, executed personally or on behalf of the individual, to repay the advance if it is ultimately determined that an applicable standard of conduct was not met; and

(3) a determination is made that the facts then known to those making the determination would not preclude indemnification under this chapter.

(f) [unchanged from current text].

(g) [unchanged from current text].

Sec. 490 Official Comment to ACC Section 10.06.490. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS: INSURANCE. [The official comment at pp. 143-146 of the Journal Supplement should be amended to read as follows]:

SCOPE: [unchanged from text found at pages 143-144.]

CHANGE IN FORMER ALASKA LAW: [the text at pages 144, 145, through the first full paragraph at page 146 are to be left unchanged].

~~Sec. 490(e), governing the terms and circumstances under which the corporation may advance funds against the expenses incurred in defending either a direct or derivative action or criminal proceeding, differs from former AS 10.05.010(e). Former Alaska law left such a~~

decision to "the board of directors." Recognizing that there may be circumstances in which there is not a disinterested absolute majority of the board able (or willing) to act, sec. 490(e) follows the Model Act in making this decision delegable as under sec. 490(d).

Sec. 490(e) governs the circumstances and specifies the steps which must be observed before a corporation may advance expenses to a director, officer, employee, or agent who is a defendant in a civil or criminal action or proceeding. The provisions are adapted from Section 8.53 of the Revised Model Business Corporation Act.

Under sec. 490(e), a three step procedure must be observed in requesting and granting an advance of corporate assets. First, assuming that a determination has been arrived at under Sec. 490(d), the director or officer must furnish the corporation with a written affirmation of good faith belief that the applicable standard of care has been met. In the instance of a director that standard is set forth in sec. 450(b). The standard of care for corporate officers is set forth in sec. 483(e). In addition to the affirmation of belief in the observance of the applicable standard of conduct, the party seeking a disbursement of corporate assets must furnish a written unlimited general undertaking to repay the advance if it is ultimately determined that an acceptable standard of conduct has not been met. Finally,

those charged with making the determination to comply with such a request must find that the facts then known would not preclude indemnification.

ARTICLE 7. AMENDMENTS AND CHANGES

Item 10. Procedure to amend articles of incorporation: The Commissioners voted to modify Section 504 engrafting a concept suggested by Section 10.02 of the Revised Model Business Corporation Act. Under the terms of the amendment, the board is to be given power to effectuate certain housekeeping amendments to the articles without the necessity of shareholder approval.

Sec. 10.06.504. PROCEDURE TO AMEND ARTICLES OF INCORPORATION. [pp. 73-74 of HB 343 should be amended as follows]: (a) A corporation shall amend its articles of incorporation in the following manner:

(1) If shares have not been issued, the board shall adopt a resolution setting out the proposed amendment or amendments.

(2) Subject to AS 10.06.506, if shares have been issued, an amendment shall be approved by the board and the outstanding shares. Approval may be initiated by the shareholders either before or after consideration by the board. If the board adopts a resolution setting out a proposed amendment, the board shall direct that the amendment be submitted to a vote at a meeting of shareholders that may be either the annual or a special meeting. If approval of the outstanding shares is obtained before action by the board, the board shall consider and either

approve or reject the amendment at the next regular or special meeting.

(3) Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more of the following amendments to the articles of incorporation without shareholder action:

(A) to delete the names and addresses of the initial directors;

(B) to delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the commissioner; or

(C) to change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding.

(b) [no change]

(c) [no change]

Sec 504 Official Comment to ACC Section 10.06.504. PROCEDURE TO AMEND ARTICLES OF INCORPORATION. [The official comment at pp. 149-151 of the Journal Supplement should be amended to read as follows]:

SCOPE: [The text at page 149 through the first full paragraph on page 150 is to be retained unchanged. Thereafter, insert the following]:

requisite vote. See, ACC sec. 508.

ACC sec. 504(a)(3) adopts an idea suggested by the

Revised Model Business Corporation Act. Unless the articles provide otherwise, the board is given authority to effect three types of amendments without the necessity of shareholder approval. The first two categories involve deletion of the names and addresses of the initial directors and registered agent. The third permits the board to change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding.

ACC sec. 504(c) requires that written notice setting forth the proposed amendment or amendments or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote in accordance with the general ACC provisions on time and manner for the giving of notice of shareholder meetings. If such notice is not given or fails to fairly apprise the shareholders of the content of the amendment or amendments, the vote taken on the question of approval shall be a nullity. In this connection the Legislature intends to approve the holding Holder in Berger v. Amana Society, 253 Iowa 378, 111 N.W.2d 753 (1962).

CHANGE IN FORMER ALASKA LAW: ACC sec. 504's subsections (a)(1), (b), and (c) are taken from former AS 10.05.276 and Section 59 of the Model Act. Sec. 504(a)(2) is adapted from Section 902(a) of the GCL and

changes former Alaska law by explicitly giving shareholders the power to initiate amendments to the articles. Former Alaska law required a two-third's majority of the shareholders to approve amendment to the articles. ACC sec. 504(a)(2) opts for a majority of the outstanding shares entitled to vote (see, ACC sec. 990(5)), but makes the articles competent to establish supermajority voting requirements which cannot be altered by amendment save by the affirmative consent of the supermajority. See ACC sec. 508.

Sec. 504(a)(3)is taken from RMBCA Section 10.02 with the following modifications: the first, fifth, and sixth categories of board amendments are eliminated. The first was unnecessary in Alaska since no prior law limited the life of corporations; the fifth (dealing with name changes) was not carried forward because of a perception that name changes ought to be approved by the shareholders; and the sixth was superfluous since the ACC does not vest the board with any other circumstances in which it is a sufficient power to amend the articles. The concept is new to Alaska law.

ARTICLE 8. ORGANIC CHANGE

Item 11. Dissenting shareholders' right to payment subject to corporate restraints upon distributions.

At its September meeting, the Commissioners directed this

office to undertake a review of Sections .574 to .586 respecting the rights of shareholders to dissent and the payment obligations owed to such dissenters. We were to examine the content of Chapter 13, subchapter A of the Revised Model Business Corporation Act and determine if there were ideas which might improve the original content of the ACC. Accordingly, the following provisions have been extensively redrafted. Pending final action by the Commission, the official comments to the revised sections have not been prepared. What is included is a note which explains the major changes worked by the draft revision and cites the source materials employed in this project.

* [Note that Sec. 10.06.576 has been completely redrafted, and is to replace Sec. .576 found at pp. 91-92 of HB 343.]

Sec. 10.06.576. RIGHTS OF DISSENTING SHAREHOLDERS: PROCEDURE TO ENFORCE SHAREHOLDER'S RIGHT TO RECEIVE PAYMENT FOR SHARES; WITHDRAWAL OF DEMAND. (a) A shareholder electing to exercise a right to dissent shall file with the corporation, before or at the meeting of shareholders at which the proposed corporate action is submitted to a vote, a written objection to the proposed corporate action. The objection shall include a notice of election to dissent, the shareholder's name and residence address, the number and classes of shares as to which the shareholder dissents, and a demand for payment of the fair value of such shares if the action is taken. Such objection is not required from any shareholder to whom the corporation did not give notice of such meeting in accordance with this chapter.

(b) Within 10 days after the date on which the shareholders' vote authorizing such action was taken, the corporation shall give written notice of such authorization to each shareholder who filed written objection or from whom written objection was not required, excepting any shareholder who voted for the proposed action and who thereby is deemed to have elected not to enforce a right of dissent under this chapter.

(c) Within 20 days after the giving of notice under (b) of this section, any shareholder from whom written objection was not required under (a) of this section and who elects to dissent shall file with the corporation a written notice of such election, stating the shareholder's name and residence address, the number and classes of shares as to which the shareholder dissents, and a demand for payment of the fair value of such shares. Any shareholder who elects to dissent from a merger under AS 10.06.554 (Merger of Subsidiary Corporation) or AS 10.06.562 (Merger, Consolidation, or Exchange of Shares Between Domestic and Foreign Corporation) shall file a written notice of such election to dissent within 20 days after the plan of merger has been mailed to the shareholder.

(d) Upon consummation of the corporate action, the shareholder shall cease to have any of the rights of a shareholder except the right to be paid the fair value of the shares as to which dissenter's rights were perfected under this chapter. A notice of election may be withdrawn by the shareholder at any time prior to acceptance in writing of an offer made by the corporation under AS 10.06.578, but in no case later than 60

days from the date of consummation of the corporate action, except that if the corporation fails to make a timely offer under AS 10.06.578, the time for withdrawing a notice of election shall be extended until 60 days from the date an offer is made. Upon expiration of such time, withdrawal of a notice of election shall require the written consent of the corporation. In order to be effective, withdrawal of a notice of election must be accompanied by the return to the corporation of any advance payment made to the shareholder as provided in AS 10.06.578. If a notice of election is withdrawn, or the corporate action is rescinded, or a court shall determine that the shareholder is not entitled to a right to dissent, or the shareholder shall otherwise lose a right to dissent, the shareholder shall not have the right to receive payment for such shares and shall be reinstated to all rights as a shareholder as of the consummation of the corporate action. Such rights include any intervening preemptive rights and the right to payment of any intervening dividend or other distribution or, if any such rights have expired or any such dividend or distribution other than in cash has been completed, in lieu thereof, at the election of the corporation, the fair value thereof in cash as determined by the board as of the time of such expiration or completion, but without prejudice otherwise to any corporate proceedings that may have been taken in the interim.

(e) At the time of filing the notice of election to dissent or within one month thereafter, the shareholder shall submit the certificates representing the shares for which payment is claimed to the corporation, or to its transfer agent, which

shall note conspicuously thereon that a notice of election has been filed, and shall return the certificates to the shareholder or other person who submitted them on the shareholder's behalf. Any shareholder who fails to comply with this subsection shall, at the option of corporation exercised by written notice to such shareholder within 45 days from the date of filing such notice of election to dissent, lose the right to dissent granted by this chapter unless a court, for good cause shown, shall otherwise direct. Upon transfer of a certificate bearing such notation, each new certificate issued therefor shall bear a similar notation together with the name of the original dissenting holder of the shares, and a transferee shall acquire no rights in the corporation except those which the original dissenting shareholder had at the time of transfer.

NOTE TO THE MEMBERS OF THE CODE REVISION COMMISSION:

The provisions of this draft section should be compared to those of Section .576 at pp. 91-92 of HB 343. The format has been altered to conform to the latest revisions of the New York Business Corporation Law. There are no substantive changes.

* [Note that Sec. 10.06.578 has been completely redrafted, and is to replace Sec. .578 found at pp. 92-93 of HB 343.]

Sec. 10.06.578. OFFER AND PAYMENT TO DISSENTING SHAREHOLDERS; CIRCUMSTANCES WHERE PROHIBITED. (a) Within fifteen days after the expiration of the period within which share-

holders may file their notice of election to dissent under AS 10.06.576, or within fifteen days after the proposed corporate action is consummated, whichever is later, the corporation or, in the case of a merger or consolidation, the surviving or new corporation, shall make a written offer by registered mail to each shareholder who has filed such notice of election to pay the amount the corporation estimates to be the fair value of such shares. Such offer shall be made at the same price per share to all dissenting shareholders of the same class, or if divided into series, of the same series.

(b) The offer required by (a) of this section shall be accompanied by:

(1) a balance sheet of the corporation whose shares the dissenting shareholder holds as of the latest available date, which shall not be earlier than twelve months before the making of such offer;

(2) a profit and loss statement or statements for not less than a twelve month period ended on the date of such balance sheet or, if the corporation was not in existence throughout such twelve month period, for the portion thereof during which it was in existence; and

(3) a statement setting forth the aggregate number of shares with respect to which notices of election to dissent have been received and the aggregate number of holders of such shares.

(c) If the corporate action has been consummated, the offer required by (a) of this section shall also be accompanied

by:

(1) advance payment to each such shareholder who has submitted the share certificates to the corporation as provided in AS 10.06.576(e), of an amount equal to eighty percent of the amount of such offer, or

(2) as to each shareholder who has not yet submitted the share certificates a statement that advance payment of an amount equal to eighty percent of the amount of such offer will be made by the corporation promptly upon submission of such certificates.

(d) If the corporate action has not been consummated at the time of the making of the offer required by (a) of this section, such advance payment or statement as to advance payment shall be sent to each shareholder entitled thereto upon consummation of the corporate action.

(e) Every advance payment or statement as to advance payment shall include advice to the shareholder that acceptance of such payment does not constitute a waiver of any dissenters' rights.

(f) If within 30 days after the making of the offer required by (a) of this section, it is accepted by any shareholder the corporation shall pay the remaining twenty percent of the offered price upon surrender of the share certificates. Thereafter, such shareholder ceases to have any interest in the shares or the outcome of any litigation commenced under AS 10.06.580.

(g) Notwithstanding any other provision of this section,

if the payments otherwise required by (c), (d), and (e) of this section would be distributions in violation of AS 10.06.358, .360, .363, .365, or .375, no distribution may be made to any dissenting shareholder. In such event, the corporation which would otherwise have the payment obligation under (c), (d), and (f) of this section shall, in addition to complying with (a) and (b) of this section and within the time limits there provided, give written notice of its inability to make payment to dissenting shareholders. That notice shall include:

(1) an explanation as to why the corporation is unable to make the payments otherwise required by this section; and

(2) a statement that each dissenting shareholder has a present option to:

(A) withdraw that shareholder's notice of election to dissent, which shall be deemed withdrawn with the written consent of the corporation; or

(B) retain the status of a dissenter and, if the corporation is liquidated, be subordinated to the rights of creditors of the corporation, but have rights superior to the non-dissenting shareholders, and if it is not liquidated, retain the right to be paid pursuant to (c), (d), and (f) of this section, which right the corporation shall be obliged to satisfy when the restrictions on distributions do not apply; and

(C) that if no written election is received by the corporation within 60 days after the giving of the notice required by this section, the shareholder will be deemed to have elected to withdraw the notice of election as under (A) of this

section.

NOTE TO THE MEMBERS OF THE CODE REVISION COMMISSION:

This highly amended version of AS 10.06.578 accomplishes two of the directives given this office. First, it incorporates the gist of the idea attributed to Section 13.25 of the Revised Model Business Corporation Act wherein the corporation was obliged to advance payment to dissenting shareholders. Second, it resolves the impasse otherwise left unattended in the ACC and the RMBCA wherein an organic change is approved, shareholder perfect their rights to dissent, but payment would violate the restraints upon distributions. In each instance the draft here submitted reflects an election as between or among competing models provided by other states or the framers of the Revised Model Act.

Advance payment: I have drafted the new Section .578 to follow the New York Business Corporation Law, Section 623 as amended in 1965. You will note that the scheme involves mandating that the corporation formulate an offer to dissenting shareholders to make a uniform payment for what it determines to be the fair value of each dissenting share. Provided that it can do so without violation of the restraints upon distributions created in the ACC to protect corporate creditors and the holders of senior shares, the corporation is then obliged to make immediate tender of 80% of the offered

amount to each shareholder who has perfected dissenters' rights. If the organic change has yet to be consummated, the offer is to make the payment as soon as that is accomplished. This last prudential step is necessary for, in the case of merger or consolidation, the corporation obliged to make the payment may not be the corporation in which the dissenter held shares.

Once the uniform offer is in place and the 80% payment distributed, the shareholder now has the option of either accepting that offer or proceeding to litigate under AS 10.06.580. This precludes any attempted horse trading wherein some shareholders strive for one price while others, ignorant of the private bargaining, settle for the offered price.

Resolving the conflict between payment to dissenters and observance of the restraints upon distribution: At its September meeting the Commission directed that this office look into this matter. We have done so. There are only four possible answers: (1) conclude that in such circumstances the organic change must be abandoned; (2) permit the organic change to go forward making the dissenters settle for the status of creditors of the surviving or resulting corporation; (3) seek some compromise between (1) and (2); or (4) permit the organic change to be consummated while prohibiting any payment to dissenters without any mention of their unresolved status. The few states which have recognized the

potential for conflict have opted for all but the first of these solutions! We have not found any state which aborts the organic change in such circumstances. California follows alternative (2) and makes the dissenting shareholders involuntary, subordinated creditors of the resulting or surviving corporation. New York opts for a variety of alternative (3) and attempts to favor the organic change but gives the dissenting shareholders some freedom of choice. North Carolina is typical of states which may have blundered into alternative (4).

Section .578(g) follows the New York model while improving upon it by making the "default" choice in the event the shareholder fails to exercise the conferred choice. Under the New York scheme, a dissenting shareholder is not entitled to payment if such a step would render the corporation in conflict with statutory restraints upon distribution. In such circumstances, the BCL provides for an election to withdraw the election to dissent (in which case the shareholder goes along with the organic change) or become a corporate creditor of the resulting or surviving entity. We have added some features such as the notice to shareholders of the inability to make payment, the reasons therefore, and have anticipated what should be done if the shareholder merely sits there and does not respond to the invitation to make the election. We treat such a silent shareholder as electing to withdraw the notice of dissent.

The Commissioners should review this draft and the

policy choices which underpin it. It can be altered to reflect any other mixture of policy decision.

* [Note that Sec. 10.06.580 has been completely redrafted, and replaces Sec. .580 found at p. 93 of HB 343. Also note that Sections .582 and .584 of HB 343 have been incorporated into new AcC Sections .576 and .578; thus, Sec. .586 of HB 343 would become Section 10.06.582 in a renumbering of Article 8.]

Sec. 10.06.580. ACTION TO DETERMINE VALUE OF SHARES UPON FAILURE TO ACCEPT CORPORATE OFFER. (a) If the corporation fails to make the offer required by AS 10.06.578(a) or the shareholder fails to accept it within the 30 day period specified in (f) of that section:

(1) the corporation shall, within 20 days after the expiration of the 30 day period specified in AS 10.06.578(f), file a petition in the court of the judicial district where the registered office of the corporation is located, requesting that the fair value of the shares be found and determined. If, in the case of a merger or consolidation, the surviving or new corporation is a foreign corporation, without a registered office in the state, the petition shall be filed in the judicial district where the registered office of the domestic corporation was last located; or

(2) if the corporation fails to institute a proceeding as provided in this section, a dissenting shareholder may institute a proceeding in the name of the corporation. If such proceeding is not instituted within 30 days after the expiration

of the 20 day period granted the corporation under (a)(1) of this section, all dissenters' rights shall be lost unless the superior court, for good cause shown, shall otherwise direct.

(b) All dissenting shareholders who have not accepted the corporate offer extended under AS 10.06.578(f), wherever residing, shall be made parties to the proceeding as an action against their shares quasi in rem. The corporation shall serve a copy of the petition in such proceeding upon each dissenting shareholder who is a resident of this state in the manner provided by law for the service of a summons (?), and upon each nonresident dissenting shareholder either by certified mail and publication, or in such other manner as is permitted by law. The jurisdiction of the court shall be plenary and exclusive. All shareholders who are parties to the proceeding are entitled to judgment against the corporation for the amount determined under (c) of this section to be the fair value of the shares.

(c) The court shall determine whether each dissenting shareholder, as to whom the corporation requests the courts to make such determination, is entitled to receive payment for that shareholder's shares. If the corporation does not request any such determination, or if the court finds that any dissenting shareholder is so entitled, it shall proceed to fix the value of the shares, which, for the purposes of this section, shall be the fair value as of the close of business on the day before the date on which the vote was taken approving the proposed corporate action. In fixing the fair value of the shares, the court shall consider the nature of the transaction giving rise to the right to dissent under AS 10.06.576 and its effects on the

corporation and its shareholders, the concepts and methods then customary in the relevant securities and financial markets for determining fair value of shares of a corporation engaging in a similar transaction under comparable circumstances, and all other relevant factors. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value of the shares. The appraisers shall have the power and authority as specified in the order of their appointment or as amended.

(d) The judgment shall include an allowance for interest at the rate the court finds to be fair and equitable, from the date on which the vote was taken on the proposed corporate action to the date of payment. In determining the rate of interest, the court shall consider all relevant factors, including the rate of interest which the corporation would have had to pay to borrow money during the pendency of the proceeding. If the court finds that the refusal of any shareholder to accept the corporate offer of payment for his shares was arbitrary, vexatious, or otherwise not in good faith, no interest shall be allowed to such shareholder.

(e) Each party to such proceeding shall bear its own costs and expenses, including the fees and expenses of its counsel and of any experts employed by it. Notwithstanding the foregoing, the court may, in its discretion, apportion and assess all or any part of the costs, expenses, and fees incurred by the corporation against any or all of the dissenting shareholders who are parties to the proceeding if the court finds that their refusal

to accept the corporate offer was arbitrary, vexatious, or otherwise not in good faith. The court may, in its discretion, apportion and assess all or any part of the costs, expenses, and fees incurred by any or all of the dissenting shareholders who are parties to the proceeding against the corporation if the court finds any of the following:

(1) that the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay;

(2) that no offer or required advance payment was made by the corporation as provided in AS 10.06.578;

(3) that the corporation failed to institute the special proceeding within the period specified under (a) of this section;

(4) that the action of the corporation in complying with its obligations as provided in this article was arbitrary, vexatious, or otherwise not in good faith.

(f) Within 60 days after final determination of the proceeding, the corporation shall pay to each dissenting shareholder who is a party the amount determined under (e) of this section upon surrender of the certificate or certificates representing the dissenter's shares. Upon payment of the judgment, the dissenting shareholder ceases to have an interest in the shares.

NOTE TO THE MEMBERS OF THE CODE REVISION COMMISSION:

Section .580 represents incorporation of elements of the existing text of Section .582 [p. 93-94 of HB

343] and Section 623 of the New York Business Corporation Law as amended in 1982. If the paragraph contains no underlining you may assume that the language is taken from the BCL. If the paragraph contains underlining, those portions represent BCL interliniations in what is otherwise the text of ACC .582.

In the following particulars important changes have been made:

Resort to litigation: [See Section .580(a)] In the event that the corporation fails to make the offer required in Section .576, or the dissenting shareholder fails to accept it, the burden of inaugurating the judicial proceeding falls upon the corporation. If the corporation defaults on this obligation, the burden shifts to the dissenting shareholder to initiate the proceeding. If they, too, fail to enlist the aid of the court in fixing the fair value of the shares, their rights as dissenters are terminated. Except for this last feature, the provisions on inaugurating the proceeding accord with Section .582 of HB 343.

All remaining dissenters bound: [see Section .580(b)] Again, the object of making all of the shareholders who have not settled with the corporation parties to and bound by the results of this single judicial proceeding was found in Section .582(a) of HB 343. I am uncertain of the correct use of the phrase "service of a summons" given Alaska practice. Please in-

struct me.

Procedure employed by court: [see Section .580(c)]. When contrasted with Section 582(a) of HB 343, you will note that the new draft is far more explicit in guiding the trial court. Its first task is to handle any corporate challenge to the status of dissenters. Assuming that there is no challenge or that dissenters survive it, the next task is to judicially ascertain the "fair value" of the dissenters' shares. Note that I have drafted this language in efforts to make it very plain that what the court is to do is determine a figure which will then govern the rights of all remaining dissenters. It is not to ascertain differing figures as being fair to particular dissenters. Thus, if the corporate offer was uniformly at $100 per share, the court is to determine if this was "fair" and, if not, settle a uniform figure. Let us assume it finds that $115 is the fair value given the formula and indicators specified in this section. I intend that when read in conjunction with Section .580(d) and (e), that the figure awarded under (f) shall reflect the figure of $115 multiplied by the number of shares owned by each dissenter.

The 1982 amendment to the BCL (Section 623(h)(4)) excludes the use of a jury and any resort to appraisers. I have not incorporated these exclusions although you may wish to do so.

Interest: [see Section .580(d)] The only mater-

ial departure from Section .582(b) of HB 343 involves the instructions on the factors to be considered in determining the rate of interest to be allowed, and excluding from such an award any shareholder who refused the corporate offer displaying conduct which was "arbitrary, vexatious, or otherwise not in good faith. . . ." Do you wish such an exclusion?

Costs: [see Section .580(e)] This provision substitutes for Section .582(c) of HB 343. It is adapted from the latest revision of Section 623 of the BCL and is, I believe, quite superior. You will note that attorney fees could be recovered. We had excluded them while allowing a potential for recovery of fees paid to experts. I did not put in the RMBCA provision on the sharing of costs. It reads as follows:

> Section 13.31. COURT COSTS AND COUNSEL FEES
>
> (c) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to these counsel reasonable fees to be paid out of the amounts awarded to the dissenters who were benefited.

Do you favor an inclusion of this provision? If so, it could easily be added to Section 580(e).

Status of dissenting shareholders who have accept-

ed the corporate offer: This is one area of policy judgment which you should address. It is a vexing issue clearly avoided only in Delaware where the value of dissenters' shares is an exclusive matter of chancery court decree and not settlement between the shareholders and the corporation. Suppose, to continue our hypothetical, that XYZ corporation engages in an organic change. Ninety percent of the shareholders approve. Of the ten percent who do not, 100 perfect their status as dissenters by filing the notice of election. As to these shareholders the corporation makes an offer of $100 per share. Eighty accept the offer and surrender their certificates pursuant to AS 10.06.578(e). Twenty do not and litigation is commenced under Section .580. Eventually, the court finds the fair value of the dissenters' shares to be $115. It is clear that each of the 20 shareholders who refused the corporate offer are entitled to this amount. What of the 80 who accepted the offer of $100. Have we not established that their deal was deficient in that they received $15 per share less than the fair value of those shares? Should they, too, be entitled to payment of this larger sum? My current draft, because of the language in Section .578(e), concludes that they are not.

Note that the content of Sections .582 and .584 of HB 343 have been incorporated into the redrafted Sections .576 and .578. Section .586 of HB 343 would become Section 10.06.582 in

a renumbering of Article 8.

ARTICLE 13. GENERAL PROVISIONS

Item 12. Accounting standards and procedures: At its September meeting the Commission voted to make observance of generally accepted accounting principles and practices options rather than mandatory as in 343. This office was directed to make this change while at the same time creating a "safe harbor" presumption of fairness and accuracy in the event such principles and practices had been observed.

Sec. 10.06.970. RULES OF CONSTRUCTION AND INTERPRETATION. [pp. 150-51 of HB 343 should be amended as follows]: Unless a provision or the context otherwise requires, the following general provisions and rules of construction govern this chapter:

(1) [unchanged]

(2) [unchanged]

(3) [unchanged]

(4) [unchanged]

(5) Subject to any specific accounting treatment required by a particular section of this chapter:

(a) References in this chapter to financial statements, balance sheets, income statements, and statements of changes in financial position of a corporation and references to assets, liabilities, earnings, retained earnings, and similar accounting items of a corporation mean financial statements or

items prepared or determined in accordance with generally accepted accounting principles then applicable, and fairly presenting the matters they purport to present, subject to any specific accounting treatment required by a particular section of this chapter. Unless otherwise expressly stated, references in this chapter to financial statements mean, in the case of a corporation that has subsidiaries, consolidated statements of the corporation and those of its subsidiaries, as are required or permitted to be included in the consolidated statements under generally accepted accounting principles then applicable, and all references to these accounting items mean items determined on a consolidated basis in accordance with consolidated financial statements, fairly and reasonably to present the purported matters.

(b) Financial statements prepared or determined in accordance with generally accepted accounting principles then applicable are fair and reasonable.

(c) References in this chapter to financial statements mean, in the case of a corporation that has subsidiaries, consolidated statements of the corporation and those of its subsidiaries, and all references to these accounting items mean items determined on a consolidated basis in accordance with consolidated financial statements.

(6) [continue unchanged balance of existing text]

Sec.
970 REVISION OF THE TEXT OF THE OFFICIAL COMMENT TO ACC Section 10.06.970. RULES OF CONSTRUCTION AND INTERPRE-

TATION. [The official comment at pp. 231-233 of the Journal Supplement should be amended to read as follows]:

SCOPE: [first paragraph (pp. 231-232) unchanged].

Note that subsection (5) makes the reliance on generally accepted accounting principles subject to any particular accounting required in the ACC. The definitions of "paid in capital" and "retained earnings" and the basic requirement of ACC sec. 358 that all distributions, including share redemptions and repurchases, be charged first to "retained earnings" and only when that account is exhausted, to "paid-in capital", are accounting practices mandated by the ACC which may not conform to generally accepted accounting principles' terminology or practice. These particular statutory specifications are necessary to the symmetry and clarity of the ACC and the design of the regulatory system imposed upon the dissipation of corporate assets. No deference to generally accepted accounting principles was made in these areas due to these considerations.

Note also that subsection (5) specifies the use of consolidated statements for corporations with subsidiaries as is required or permitted under generally accepted accounting principles.

Unless some other accounting principle is mandated by specific provision of the ACC, subsection (5)(a) requires that financial statements, balance sheets, income statements, and statements in changes in finan-

cial position of a corporation and references to assets, liabilities, earnings, retained earnings, and similar accounting items of a corporation be determined and expressed so as to fairly and reasonably present the purported matters. Within the specific provisions of the ACC there are two variations from this general norm. In some circumstances (e.g., Section 358(c)), the observance of generally accepted accounting principles is mandatory. In others, the ACC specifically defines terms such as "paid-in capital" and "retained earnings" in a manner which may not conform to generally accepted accounting principles terminology or practice. These particular statutory specifications are necessary to the symmetry and clarity of the ACC and the design of the regulatory system imposed upon the dissipation of corporate assets. For these reasons, no deference to a norm of "reasonableness" or generally accepted accounting principles is made in those areas.

In any area or usage not specifically defined or commanded by a provision of the ACC, subsection (5)(b) creates a safe harbor in the use of generally accepted accounting principles. They are conclusively presumed to be "fair and reasonable." Other principles or practices may meet the "fair and reasonable" standard mandated by subsection (5)(a), but the burden of establishing such compliance would be that of the litigant responsible for or defending the election of an alter-

native method.

Note also that subsection (5)(c) specifies the use of consolidated statements for corporations with subsidiaries.

CHANGE_IN_FORMER_ALASKA_LAW: All of the rules of construction in ACC sec. 970 are new to Alaska law. They derive from GCL Sections 5, 6, 7, 8, 113, 114, 118, 10, 11, 12, 13, 15, and 16, respectively. In adopting subsection (3), the phrase "in the English language" was deleted from GCL Section 8. Under the GCL use of generally accepted accounting principles is mandatory. In adopting subsection (5) the ACC follows the RMBCA suggestion and does not insist upon the use of such practices and procedures. See RMBCA Section 6.40 and official comment 4a. However, use of generally accepted accounting principles does invoke a presumption of a fair and reasonable presentation of the purported matters. In adopting subsection (6) the term "electronic means" was substituted for the GCL language "telephone or wireless."

Item 13. Comparison Charts

The following three charts provide a section by section comparison of the proposed Alaska Corporations Code (ACC), the existing Alaska Business Corporations Law, AS 10.05 (ABCL), and the 1984 Revised Model Business Corporation Act (RMBCA). These charts are intended as a general cross-reference of ACC provisions to comparable provisions in the ABCL and the RMBCA. However, with reference to the ABCL, many of the cross-references indicate provisions of the ABCL that have been substantially modified or completely replaced. The cross-references to the RMBCA indicate the existence of similar or substantially identical provisions; however, no attempt has been made to demonstrate a complete cross-referencing of RMBCA provisions that are not similar to ACC provisions. For these reasons, these charts will be most useful in conjunction with reference to a working paper produced by the Code Revision Commission entitled A Section by Section Comparison of *** The Proposed Alaska Corporations Code With the Revised Model Business Corporartion Act (March 25, 1984). The working paper provides detailed discussion of the origin of ACC sections, a summary of their coverage, and comparison with the tentative draft of the RMBCA. It should be noted that since the date of that working paper, the final draft of the RMBCA has been produced by the American Bar Association. After consideration of the final draft, the Commission has amended a number of ACC provisions to incorporate certain features of the RMBCA.

A section by section comparison of the proposed Alaska Corporations Code (ACC) with the Alaska Business Corporations Law ABCL), AS 10.05 and the 1984 Revised Model Business Corporation Act (RMBCA). N = No comparable provision.

ACC	ABCL	RMBCA
	ARTICLE 1.	
.005	.003	3.01(a)
.010	.009	3.01(b)
.015	.018	3.04
.020	N	N
.025	N	N
	ARTICLE 2.	
.105	.021	4.01
.110	.024	4.02
.115	.027	4.02
.120	.030	4.02
.125	.033	4.03
.130	.034	4.03
.135	.036	4.03
.140	.039	4.03
.145	.042	4.03
.150	.045	5.03
.155	.791	N
.160	.048	N
.165	.051	5.02
.170	.054	5.03
.175	.057	5.04
	ARTICLE 3.	
.205	.252	N
.208	.255	N
.210	.255	N
.213	.258	N
.215	.259	N
.218	.810	2.03
.220	.810	2.04
.223	.267	2.05
.225	N	2.05(2)
.228	.135	10.20
.230	.135	2.06
.233	.237 - .249	N

ACC	ABCL	RMBCA
	ARTICLE 4.	
.305	.060, .069	6.01
.308	.063	6.02
.310	.066	6.03
.313	.069	6.03
.315	.072	6.03
.318	.075	6.03
.320	.078	6.03
.323	.084	6.03
.325	N	6.01(d)
.328	.087	6.20(a)
.330	.090	6.20(c)
.333	.093	6.20(d),(e)
.335	.096	6.21
.338	.099	6.21
.340	.102	6.21
.343	N	6.24
.345	.111	6.28
.348	.114	6.25
.350	.117	6.25
.353	.120	N
.355	.123	6.04
.358	.204(1), .012	6.40
.360	.201	6.40
.363	.207(4)	6.40
.365	.207(3)	6.40
.368	N	N
.370	N	N
.373	.204(5)	6.23
.375	N	6.40
.378	N	8.33(b)(2)
.380	.207(5)	N
.383	N	N
.385	N	6.31
.388	.312 - .345	6.31
.390	.108, .366	N
	ARTICLE 5.	
.405	.138	7.01, 7.02, 7.03
.408	.144	7.07, 7.05(c)
.410	.141	7.05
.413	.147, .150	7.20
.415	.153	7.25
.418	.159, .168	7.22
.420	.156 - .168	7.21, 7.14, 7.28
.423	.807	7.04
.425	.171	7.30, 7.31

ACC	ABCL	RMBCA
.428	.129	6.30
.430	.237 - .249	7.20, 16.01, 16.02, 16.03
.433	N	16.20, 16.21
.435	N	7.40
.438	.125	6.22
	ARTICLE 6.	
.450	.174, .222, .219	8.01, 8.30
.453	.177, .180, .183	8.03, 8.04, 8.05
.455	.186	8.06
.458	N	N
.460	N	8.08
.463	N	8.08
.465	.189	8.10
.468	.195	8.25
.470	.198	8.22, 8.23
.473	.192	8.24
.475	.199	8.20, 8.21
.478	N	8.31
.480	.216, .225	8.33
.483	.228, .231	8.40, 8.41, 8.42, 8.43, 8.44
.485	.213	8.32
.488	N	N
.490	.010	8.51, 8.54, 8.52, 8.53, 8.55, 8.56, 8.57
	ARTICLE 7.	
.502	.270, .273	10.01
.504	.276	10.05, 10.02, 10.03
.506	.282, .279	10.04
.508	N	7.27
.510	.285	10.06
.512	.288	10.06
.514	.291	10.09
.516	.294	10.07
.518	.303	10.07
.520	.306	10.07
.522	N	10.08
.524	N	10.08
.526	N	10.08
	ARTICLE 8.	
.530	.375	11.01, 11.02

ACC	ABCL	RMBCA
.532	.378	11.01, 11.02
.534	.381	11.01, 11.02
.536	.384	11.01, 11.02
.538	N	11.01, 11.02
.540	N	11.01, 11.02
.542	N	N
.544	N	11.03, 13.20(a)
.546	.390	N
.548	.393	11.03(i)
.550	.396	11.05
.552	.402	11.05
.554	N	11.04
.556	N	11.04
.558	N	11.04
.560	.405	11.06
.562	.408, .411, .414	11.07
.564	.250	N
.566	.435	12.01
.568	.438	12.02
.570	.441	12.02
.572	.444	12.02
.574	.417 - .432 .447 - .462	13.02
.576	N	13.20, 13.23
.578	N	13.22, 13.25
.580	.423, .453	13.28
.582	.426, .456	13.30, 13.31
.584	N	13.22, 13.23, 13.24
.586	.429, .462	N
	ARTICLE 9.	
.605	.465, .474, .477	14.02, 14.01
.608	.468, .474, .480, .483	14.03
.610	.492 - .504	14.04
.613	.507	14.04
.615	.486, .489(1)	14.05
.618	.489(3)	14.03(4)
.620	.510	N
.623	.513	N
.625	.516	N
.628	.540 - .543, .552	14.30
.630	N	N
.633	.519	14.20, 14.21, 14.23
.635	.519	14.30, 14.31
.638	.534	14.31
.640	N	14.31(c)
.643	.576, .567	14.32
.645	.537, .546, .549	14.33
.648	.555, .558	14.05, 14.06, 14.07

ACC	ABCL	RMBCA
.650	.573, .579, .582 .585	14.31(c)
.653	.579	14.06, 14.07, 14.40, 14.33
.655	.585	N
.658	.588	N
.660	.489(2), .564, .570	14.05
.663	N	N
.665	.489, .561	14.05(a)(4)
.668	N	14.05(a)(3), 14.40
.670	N	14.05(a)
.673	N	N
.675	N	14.07(d)(2)
.678	.594	14.05(b)

ARTICLE 10.

.705	.597	15.01(a)
.708	.687	17.02
.710	.696	15.02(d)
.713	.690	15.04
.715	.693	15.02(e)
.718	.600	15.01(b)
.720	.606	15.06
.723	.607	15.06
.725	.609	15.06
.728	.612	15.01(a)
.730	.615	15.01(b)
.733	.618, .621	15.01
.735	.624	15.05(a)
.738	.657	15.04
.740	.603	15.05(b)
.743	.675	15.30
.745	.678	15.31
.748	.681	15.31
.750	.684	15.31
.753	.627	15.07
.758	.633	15.08
.760	.635	15.08
.763	.639	15.10
.765	.642	N
.768	.645	N
.770	.648	N
.773	.651	N
.775	.654	N
.778	.660	15.20
.780	.663	15.20
.783	.666	N
.785	.669	15.20
.788	.672	15.20

ACC	ABCL	RMBCA
	ARTICLE 11.	
.805	.699	16.22
.808	.702	16.22
.811	.705	16.22
.813	.706	N
.815	.771	N
.818	.777	N
.820	.780	N
.823	.783, .786, .777	N
.825	.786	1.29
.828	.708	1.22(a)
.830	.714	1.22(a)
.833	.750	1.22(a)
.835	.753	1.22(a)
.838	.756	1.22(a)
.840	.762	1.22(a)
.843	.747	1.22(a)
.845	.717	N
.848	.720	N
.850	.723	N
.853	.726	N
.855	.765	N
.858	.768	N
.860	.773	N
.863	.792	1.26
.865	.794	N
.868	.798	1.21
.870	.799	N
	ARTICLE 12.	
.905	N	N
.910	.081, .258, .288, .303, .321, .339, .357, .402, .468, .483, .504, .513, .621, .669	1.25
.915	.792	1.25, 1.26
.920	N	1.24
.925	.795	1.27
.930	N	1.27
.935	.804	7.05(a)
	ARTICLE 13.	
.950	.813	1.30

ACC	ABCL	RMBCA
.953	.823	N
.955	.816	17.01, 17.02
.958	N	N
.960	.005	N
.963	N	17.04
.965	.822	1.02
.968	N	N
.970	N	6.40
.990	.825	1.40
.995	.828	1.01

Sec. 3	N
Sec. 4	N
Sec. 5	N
Sec. 6	.276, .279, .282
Sec. 7	N

Sec. 8	N
Sec. 9	N
Sec. 10	N
Sec. 11	N

A section by section comparison of the Alaska Business Corporation Law (ABCL), AS 10.05, with the proposed Alaska Corporations Code (ACC) and the 1984 Revised Model Business Corporation Act (RMBCA). N = No comparable provision.

ABCL	ACC	RMBCA
	ARTICLE 1.	
.005	.960	N
.003	.005	3.01(a)
.009	.010	3.01(b)
.010	.490	8.51, 8.54, 8.52, 8.53, 8.55, 8.56, 8.57
.012	.358	6.40
.018	.015	3.04
.021	.105	4.01
.024	.110	4.02
.027	.115	4.02
.030	.120	4.02
.033	.125	4.03
.034	.130	4.03
.036	.135	4.03
.039	.140	4.03
.042	.145	4.03
.045	.150	5.03
.048	.160	N
.051	.165	5.02
.054	.170	5.03
.057	.175	5.04
.060	.305	6.01
.063	.308	6.02
.066	.310	6.03
.069	.305, .313	6.01, 6.03
.072	.315	6.03
.075	.318	6.03
.078	.320	6.03
.081	.910	1.25
.084	.323	6.03
.087	.328	6.20(a)
.090	.330	6.20(c)
.093	.333	6.20(d),(e)
.096	.335	6.21
.099	.338	6.21
.102	.340	6.21
.108	.390	N
.111	.345	6.28
.114	.348	6.25
.117	.350	6.25
.120	.353	N
.123	.355	6.04

ABCL	ACC	RMBCA
.125	.438	6.22
.129	.428	6.30
.135	.228, .230	2.06, 10.20
.138	.405	7.01, 7.02, 7.03
.141	.410	7.05
.144	.408	7.07, 7.05(c)
.147	.413	7.20
.150	.413	7.20
.153	.415	7.25
.156	.420	7.21, 7.14, 7.28
.159	.418, .420	7.22, 7.21, 7.14, 7.28
.162	.420	7.21, 7.14, 7.28
.165	.420	7.21, 7.14, 7.28
.168	.420	7.21, 7.22, 7.14, 7.28
.171	.425	7.30, 7.31
.174	.450	8.01, 8.30
.177	.453	8.03, 8.04, 8.05
.180	.453	8.03, 8.04, 8.05
.183	.453	8.03, 8.04, 8.05
.186	.455	8.06
.189	.465	8.10
.192	.473	8.24
.195	.468	8.25
.198	.470	8.22, 8.23
.199	.475	8.20, 8.21
.201	.360	6.40
.204	.358, .373	6.23, 6.40
.207	.363, .365, .380	6.40
.213	.485	8.32
.216	.480	8.33
.219	.450	8.01, 8.30
.222	.450	8.01, 8.30
.225	.480	8.33
.228	.483	8.40, 8.41, 8.42, 8.43, 8.44
.231	.483	8.40, 8.41, 8.42, 8.43, 8.44
.237	.233, .430	7.20, 16.01, 16.02, 16.03
.240	.233, .430	7.20, 16.01, 16.02, 16.03
.243	.233, .430	7.20, 16.01, 16.02, 16.03
.246	.233, .430	7.20, 16.01, 16.02, 16.03
.249	.233, .430	7.20, 16.01, 16.02, 16.03
.250	.564	N

ARTICLE 2.

.252	.205	N
.255	.208, .210	N
.258	.213, .910	1.25

ABCL	ACC	RMBCA
.426	.574, .582	13.02, 13.30, 13.31
.429	.574, .586	13.02
.432	.574	13.02

ARTICLE 5.

.435	.566	12.01
.438	.568	12.02
.441	.570	12.02
.444	.572	12.02
.447	.574	13.02
.450	.574	13.02
.453	.574, .580	13.02, 13.28
.456	.574, .582	13.02, 13.30, 13.31
.459	.574	13.02
.462	.574, .586	13.02

ARTICLE 6.

.465	.605	14.02, 14.01
.468	.608, .910	14.03, 1.25
.474	.605, .608	14.02, 14.01, 14.03
.477	.605	14.02, 14.01
.480	.608	14.03
.483	.608, .910	14.03, 1.25
.486	.615	14.05
.489	.615, .618, .660	14.03, 14.05
	.665	
.492	.610	14.04
.495	.610	14.04
.498	.610	14.04
.501	.610	14.04
.504	.610, .910	14.04, 1.25
.507	.613	14.04
.510	.620	N
.513	.623, .910	1.25
.516	.625	N
.519	.633, .635	14.20, 14.21, 14.23, 14.30, 14.31
.534	.638	14.31
.537	.645	14.33
.540	.628	14.30
.543	.628	14.30
.546	.645	14.33
.549	.645	14.33
.552	.628	14.30
.555	.648	14.05, 14.06, 14.07
.558	.648	14.05, 14.06, 14.07
.561	.665	14.05(a)(4)

ABCL	ACC	RMBCA
.259	.215	N
.267	.223	2.05

ARTICLE 3.

.270	.502	10.01
.273	.502	10.01
.276	.504, Sec. 6	10.05, 10.02, 10.03
.279	.506, Sec. 6	10.04
.282	.506, Sec. 6	10.04
.285	.510	10.06
.288	.512, .910	10.06, 1.25
.291	.514	10.09
.294	.516	10.07
.303	.518, .910	10.07, 1.25
.306	.520	10.07
.312	.388	6.31
.315	.388	6.31
.318	.388	6.31
.321	.910, .388	1.25, 6.31
.324	.388	6.31
.327	.388	6.31
.330	.388	6.31
.333	.388	6.31
.336	.388	6.31
.339	.910, .388	1.25, 6.31
.342	.388	6.31
.345	.388	6.31
.357	.910	1.25
.366	.390	N

ARTICLE 4.

.375	.530	11.01, 11.02
.378	.532	11.01, 11.02
.381	.534	11.01, 11.02
.384	.536	11.01, 11.02
.390	.546	N
.393	.548	11.03(i)
.396	.550	11.05
.402	.552, .910	11.05, 1.25
.405	.560	11.06
.408	.562	11.07
.411	.562	11.07
.414	.562	11.07
.417	.574	13.02
.420	.574	13.02
.423	.574, .580	13.02, 13.28

ABCL	ACC	RMBCA
.426	.574, .582	13.02, 13.30, 13.31
.429	.574, .586	13.02
.432	.574	13.02

ARTICLE 5.

.435	.566	12.01
.438	.568	12.02
.441	.570	12.02
.444	.572	12.02
.447	.574	13.02
.450	.574	13.02
.453	.574, .580	13.02, 13.28
.456	.574, .582	13.02, 13.30, 13.31
.459	.574	13.02
.462	.574, .586	13.02

ARTICLE 6.

.465	.605	14.02, 14.01
.468	.608, .910	14.03, 1.25
.474	.605, .608	14.02, 14.01, 14.03
.477	.605	14.02, 14.01
.480	.608	14.03
.483	.608, .910	14.03, 1.25
.486	.615	14.05
.489	.615, .618, .660 .665	14.03, 14.05
.492	.610	14.04
.495	.610	14.04
.498	.610	14.04
.501	.610	14.04
.504	.610, .910	14.04, 1.25
.507	.613	14.04
.510	.620	N
.513	.623, .910	1.25
.516	.625	N
.519	.633, .635	14.20, 14.21, 14.23, 14.30, 14.31
.534	.638	14.31
.537	.645	14.33
.540	.628	14.30
.543	.628	14.30
.546	.645	14.33
.549	.645	14.33
.552	.628	14.30
.555	.648	14.05, 14.06, 14.07
.558	.648	14.05, 14.06, 14.07
.561	.665	14.05(a)(4)

ABCL	ACC	RMBCA
.564	.660	14.05
.567	.643	14.32
.570	.660	14.05
.573	.650	14.31(c)
.576	.643	14.32
.579	.650, .653	14.31(c), 14.06, 14.07, 14.40, 14.33
.582	.650	14.31(c)
.585	.650, .655	14.31(c)
.588	.658	N
.594	.678	14.05(b)

ARTCLE 7.

.597	.705	15.01(a)
.600	.718	15.01(b)
.603	.740	15.05(b)
.606	.720	15.06
.607	.723	15.06
.609	.725	15.06
.612	.728	15.01(a)
.615	.730	15.01(b)
.618	.733	15.01
.621	.733, .910	15.01, 1.25
.624	.735	15.05(a)
.627	.753	15.07
.633	.758	15.08
.635	.760	15.08
.639	.763	15.10
.642	.765	N
.645	.768	N
.648	.770	N
.651	.773	N
.654	.775	N
.657	.738	15.04
.660	.778	15.20
.663	.780	15.20
.666	.783	N
.669	.785, .910	15.20, 1.25
.672	.788	15.20
.675	.743	15.30
.678	.745	15.31
.681	.748	15.31
.684	.750	15.31
.687	.708	17.02
.690	.713	15.04
.693	.715	15.02(e)
.696	.710	15.02(d)

ABCL	ACC	RMBCA
	ARTICLE 8.	
.699	.805	16.22
.702	.808	16.22
.705	.811	16.22
.706	.813	N
	ARTICLE 9.	
.708	.828	1.22(a)
.714	.830	1.22(a)
.717	.845	N
.720	.848	N
.723	.850	N
.726	.853	N
.747	.843	1.22(a)
.750	.833	1.22(a)
.753	.835	1.22(a)
.756	.838	1.22(a)
.762	.840	1.22(a)
.765	.855	N
.768	.858	N
.771	.815	N
.773	.860	N
	ARTICLE 10.	
.777	.818, .823	N
.780	.820	N
.783	.823	N
.786	.823, .825	1.29
.791	.155	N
.792	.863, .915	1.25, 1.26
.794	.865	N
.795	.925	1.27
.798	.868	1.21
.799	.870	N
.804	.935	7.05(a)
.807	.423	7.04
.810	.218, .220	2.03, 2.04
	ARTICLE 11.	
.813	.950	1.30

ABCL	ACC	RMBCA
.816	.955	17.01, 17.02
.822	.965	1.02
.823	.953	N
.825	.990	1.40
.828	.995	1.01

A section by section comparison of the 1984 Revised Model Business Corporation Act (RMBCA) with the proposed Alaska Corporations Code (ACC) and the Alaska Business Corporation Law (ABCL), AS 10.05. N = No comparable provision.

RMBCA	ACC	ABCL
	CHAPTER 1.	
1.01	.995	.828
1.02	.965	.822
1.21	.868	.798
1.22	.828, .830, .833, .835, .838, .840, .843	.708, .714, .747, .750, .753, .756, .762,
1.24	.920	N
1.25	.910, .915	.081, .258, .288, .303, .321, .339, .357, .402, .468, .483, .504, .513, .621, .669, .792
1.26	.863, .915	.792
1.27	.925, .930	.795
1.29	.825	.786
1.30	.950	.813
1.40	.990	.825
	CHAPTER 2.	
2.03	.218	.810
2.04	.220	.810
2.05	.223, .225	.267
2.06	.230	.135
	CHAPTER 3.	
3.01	.005, .010	.003, .009
3.04	.015	.018
	CHAPTER 4.	
4.01	.105	.021
4.02	.110, .115, .120	.024, .027, .030
4.03	.125, .130, .135, .140, .145	.033, .034, .036, .039, .042

RMBCA	ACC	ABCL
	CHAPTER 5.	
5.02	.165	.051
5.03	.150, .170	.045, .054
5.04	.175	.057
	CHAPTER 6.	
6.01	.305, .325	.060, .069
6.02	.308	.063
6.03	.310, .313, .315, .318, .320, .323	.066, .069, .072, .075, .078, .084
6.04	.355	.123
6.20	.328, .330, .333	.087, .090, .093
6.21	.335, .338, .340	.096, .099, .102
6.22	.438	.125
6.23	.373	.204(5)
6.24	.343	N
6.25	.348, .350	.114, .117
6.28	.345	.111
6.30	.428	.129
6.31	.385, .388	.312 - .345
6.40	.358, .360, .363, .365, .375, .970	.204(1), .012, .201 .207(3),(4)
	CHAPTER 7.	
7.01	.405	.138
7.02	.405	.138
7.03	.405	.138
7.04	.423	.807
7.05	.410, .408, .935	.141, .144, .804
7.07	.408	.144
7.14	.420	.156 - .168
7.20	.413, .430	.147, .150, .237 - .249
7.21	.420	.156 - .168
7.22	.418	.159, .168
7.25	.415	.153
7.27	.508	N
7.28	.420	.156 - .168
7.30	.425	.171
7.31	.425	.171
7.40	.435	N

RMBCA	ACC	ABCL
	CHAPTER 8.	
8.01	.450	.174, .222, .219
8.03	.453	.177, .180, .183
8.04	.453	.177, .180, .183
8.05	.453	.177, .180, .183
8.06	.455	.186
8.08	.460, .463	N
8.10	.465	.189
8.20	.475	.199
8.21	.475	.199
8.22	.470	.198
8.23	.470	.198
8.24	.473	.192
8.25	.468	.195
8.30	.450	.174, .222, .219
8.31	.478	N
8.32	.485	.213
8.33	.480	.216, .225
8.40	.483	.228, .231
8.41	.483	.228, .231
8.42	.483	.228, .231
8.43	.483	.228, .231
8.44	.483	.228, .231
8.51	.490	.010
8.52	.490	.010
8.53	.490	.010
8.54	.490	.010
8.55	.490	.010
8.56	.490	.010
8.57	.490	.010
	CHAPTER 10.	
10.01	.502	.270, .273
10.02	.504	.276
10.03	.504	.276
10.04	.506	.282, .279
10.05	.504	.276
10.06	.510, .512	.285, .288
10.07	.516, .518, .520	.294, .303, .306
10.08	.522, .524, .526	N
10.09	.514	.291
10.20	.228	.135

RMBCA	ACC	ABCL
	CHAPTER 11.	
11.01	.530, .532, .534, .536, .538, .540	.375, .378, .381, .384
11.02	.530, .532, .534, .536, .538, .540	.375, .378, .381, .384
11.03	.544, .548	.393
11.04	.554, .556, .558	N
11.05	.550, .552	.396, .402
11.06	.560	.405
11.07	.562	.408, .411, .414
	CHAPTER 12.	
12.01	.566	.435
12.02	.568, .570, .572	.438, .441, .444
	CHAPTER 13.	
13.02	.574	.417 - .432 .447 - .462
13.20	.544, .576	N
13.22	.578, .584	N
13.23	.576, .584	N
13.24	.584	N
13.25	.578	N
13.28	.580	.423, .453
13.30	.582	.426, .456
13.31	.582	.426, .456
	CHAPTER 14.	
14.01	.605	.465, .474, .477
14.02	.605	.465, .474, .477
14.03	.608, .618	.468, .474, .480 .483, .489(3)
14.04	.610, .613	.492 - .504, .507
14.05	.615, .648, .660, .665, .668, .670 .678	.486, .489, .555 .558, .561, .564, .570, .594
14.06	.648, .653	.555, .558, .579
14.07	.648, .653, .675	.555, .558, .579
14.20	.633	.519
14.21	.633	.519
14.23	.633	.519
14.30	.628, .635	.540, .543, .552, .519

RMBCA	ACC	ABCL
14.31	.635, .638, .640 .650	.519, .534, .573, .579, .582, .585
14.32	.643	.576, .567
14.33	.645, .653	.537, .546, .549 .579
14.40	.653, .668	.579

CHAPTER 15.

15.01	.705, .718, .728, .730, .733	.597, .600, .612, .615, .618, .621
15.02	.710, .715	.693, .696
15.04	.713, .738	.690, .657
15.05	.735, .740	.624, .603
15.06	.720, .723, .725	.606, .607, .609
15.07	.753	.627
15.08	.758, .760	.633, .635
15.10	.763	.639
15.20	.778, .780, .785, .788	.660, .663, .669, .672
15.30	.743	.675
15.31	.745, .748, .750	.678, .681, .684

CHAPTER 16.

16.01	.430	.237 - .249
16.02	.430	.237 - .249
16.03	.430	.237 - .249
16.20	.433	N
16.21	.433	N
16.22	.805, .808, .811	.699, .702, .705

CHAPTER 17.

17.01	.955	.816
17.02	.955, .708	.816, .687
17.04	.963	N

THE ALASKA CODE REVISION COMMISSION

August Meeting, 1984

A WORKING PAPER IN THREE PARTS

THE ORIGINS OF THE ALASKA CORPORATIONS CODE

A SECTION BY SECTION COMPARISON OF THE ALASKA CORPORATIONS CODE with the FINAL DRAFT OF THE REVISED MODEL BUSINESS CORPORATIONS ACT

SUGGESTED AMENDMENTS TO THE ALASKA CORPORATIONS CODE

Prepared by

THE CODE REVISION PROJECT.

Professor Daniel Wm. Fessler
James J. Banks

231 G. Street # 26
Davis, California 95616

PREFACE

This study paper consists of three parts each designed to familiarize the reader with the contents of the proposed Alaska Corporations Code [ACC] and its relationship to the final exposure draft of the Revised Model Business Corporations Act [RMBCA] (June 1, 1984). In Part I the reader will find a chart showing the origin of each provision of the ACC and its comparable coverage in existing Alaska law, the classical Model Act, and the Revised Model Act. Part II follows the organizational structure of the ACC and gives a brief description of the origin of each section, its content, and a specific comparison to provisions of the RMBCA. Part III sets an agenda for the August, 1984, meeting at which time the Code Revision Commission will consider modifications to the draft of the ACC incorporating potential improvements found in the RMBCA. The list reflects the consultant's tentative conclusions and should not be deemed exhaustive. Indeed, the August Commission meeting is an appropriate forum for the consideration of any modification to the draft content of the ACC.

TABLE OF CONTENTS

PART ONE

CORRESPONDING STATUTORY COVERAGE TO EACH SECTION OF THE PROPOSED ALASKA CORPORATIONS CODE

ACC	ABCL	MBCA	GCL	NBCL	OTHER	RMBCA
		ARTICLE 1. CORPORATE PURPOSES AND POWERS				
.005	P	X				X
.010	X	X				P
.015	P	P	P	P		X
.020			X			
.025			X			
		ARTICLE 2. NAME AND SERVICE OF PROCESS				
.105	X	X				X
.110	X	X				X
.115	X	X				X
.120	X	X				X
.125	X	X				X
.130	X	X				P
.135	X	X				X
.140	X	X				X
.145	X	X				X
.150	X	X				X
.155	X					
.160	X					
.165	X	X				X
.170	X	X				P
.175	X	X			ORE	P
		ARTICLE 3. FORMATION OF CORPORATIONS				
.205	X					
.208	X	X	X			
.210	X	X	X		DEL	
.213	X	X				
.215	X	X				
.218	X	X				P
.220	X	X				P
.223	X	X				X
.225			X		DEL	X
.228			X		DEL	P
.230			X			P
.233			X			
		ARTICLE 4. CORPORATE FINANCE				
.305	X	X	X			X
.308	X	X				X
.310	X	X				P
.313	X	X				P
.315	X	X				P
.318	X	X				P
.320	X	X				P
.323	X	X				P
.325			X			P

ACC	ABCL	MBCA	GCL	NBCL	OTHER	RMBCA
.328	X	X				X
.330	X	X				X
.333	X	X				X
.335	X	X				X
.338	X	X				X
.340	X	X				X
.343		X				P
.345	X	X				P
.348	X	X				P
.350	X	X				P
.353	X	X				
.355	X	X				X
.358			X			P
.360			X			P
.363			X			P
.365			X			P
.368			X			
.370			X			
.373	X	X				X
.375	X					X
.378			X			P
.380			X			
.383			X			
.385			X			P
.388			X			X
.390	X					

ARTICLE 5. MEETINGS OF SHAREHOLDERS

.405		X	P			P
.408		P				X
.410	X	X				X
.413	X	X				X
.415	X	X	P			X
.418			X			X
.420		X	P			P
.423	X	X	P			P
.425	X	X	P			P
.428		X				
.430	X	X				P
.433			X			P
.435		P		P		P
.438	X	X				X

ARTICLE 6. DIRECTORS AND OFFICERS

.450		X				P
.453				P		P
.455		X				P
.458			X			
.460			X			P
.463			X			X
.465			X			P

X = functionally identical
P = partially identical

ACC	ABCL	MBCA	GCL	NBCL	OTHER	RMBCA
.468		X				X
.470			X			X
.473	X	X				X
.475	X	X				X
.478			X			X
.480	X	X				X
.483			X	X		X
.485		X	X			
.488				P		
.490	X	X				X

ARTICLE 7. AMENDMENTS AND CHANGES

.502	X	X	X			X
.504	X	X	X			P
.506	X	X				P
.508			X			X
.510	X					
.512	X					X
.514	X	X				P
.516	X					P
.518	X					P
.520	X					P
.522		X				X
.524		X				X
.526		X				X

ARTICLE 8. ORGANIC CHANGE

.530	X	X				X
.532	X	X				X
.534	X	X				
.536	X	X				X
.538	X	X				X
.540	X	X				X
.542			X			
.544		X				P
.546	X	X				
.548	X	X				X
.550		X				X
.552	X	X				X
.554		X				X
.556		X				X
.558		X				X
.560		X				P
.562		X				X
.564	X					
.566		X				X
.568		X				P
.570	X	X				P
.572	X	X				P
.574	X	X				P
.576		X				X

ACC	ABCL	MBCA	GCL	NBCL	OTHER	RMBCA
.578		X				P
.580	X	X				P
.582		X				P
.584			X			P
.586	X	X				

ARTICLE 9. DISSOLUTION

.605	X		X			P
.608	X	X	X			X
.610	X	X	X			P
.613	X	X				P
.615			X			X
.618	X	X	X			P
.620			X			
.623	X	X				
.625	X	X				
.628			X			P
.630			X			
.633	X	X				P
.635	X				ORE	X
.638	X	X				
.640			X			P
.643	X	X	X			
.645			X			
.648			X			X
.650			X			P
.653			X			X
.655			X			
.658	X	X				
.660			X			P
.663			X			
.665			X			
.668			X			
.670			X			
.673			X			
.675			X			X
.678	X	X				X

ARTICLE 10. FOREIGN CORPORATIONS

.705	X	X				X
.708	X	X				X
.710	X	X				X
.713	X	X				X
.715	X					X
.718	X	X				X
.720	X	X				X
.723	X	X				X
.725	X	X				X
.728	X	X				X
.730	X	X				X
.733	X	X				X

ACC	ABCL	MBCA	GCL	NBCL	OTHER	RMBCA
.735	X	X				X
.738	X	X				P
.740	X	X				X
.743	X	X				P
.745	X	X				X
.748	X	X				X
.750	X	X				X
.753	X	X				X
.758	X	X				X
.760	X	X				X
.763	X	X				P
.765	X	X				
.768	X	X				
.770	X	X				
.773	X	X				
.775	X	X				
.778	X	X				X
.780	X	X				P
.783	X	X				
.785	X	X				X
.788	X	X				X

ARTICLE 11. REPORTS, FEES, AND PENALTIES

.805	X	X				P
.808	X	X				P
.811	X	X				X
.813	X					
.815	X	X				
.818	X	X				
.820	X	X				
.823	X	X				
.825	X	X				P
.828	X	X				P
.830	X	X				P
.833	X	X				P
.835	X	X				P
.838	X	X				P
.840	X	X				P
.843	X	X				P
.850	X	X				
.853	X	X				
.855	X	X				
.858	X	X				
.860	X					
.863	X	X				X
.865	X					
.868	X	X				P
.870	X					

ARTICLE 12. MISCELLANEOUS PROVISIONS

ACC	ABCL	MBCA	GCL	NBCL	OTHER	RMBCA
.905			X			
.910	P					X
.915	X	X				P
.920				X		X
.925	P	P		P		P
.930				X		
.935	X	X				X
		ARTICLE 13. GENERAL PROVISIONS				
.950	X	X				X
.953	X					
.955			P	P		X
.958			X			
.960	X					
.963				X		X
.965	X	X		P		X
.968			X			
.970			X			
.990	P	P	P			P
.995	P					P

"X" indicates the presence of identical or functionally identical statutory language.

"P" indicates the presence of partial congruence between the ACC and the source code or the RMBCA. The "origin" and "comparison" discussion for each section of the ACC should be consulted in order to determine the differences.

ACC: CSSB 246/HB 343, The Alaska Corporations Code

ABCL: AS 10.05, The Alaska Business Corporations Law

MBCA: Model Business Corporations Act

GCL: California General Corporations Law

NBCL: New York Business Corporations Law

RMBCA: Tentative exposure draft of the Revised Model Business Corporations Act

PART TWO

A COMPARATIVE SURVEY OF THE CONTENTS

of the

PROPOSED ALASKA CORPORATIONS CODE

with the

REVISED MODEL BUSINESS CORPORATIONS ACT

ARTICLE 1. CORPORATE PURPOSES AND POWERS

Section .005 PURPOSES

ORIGIN: ACC Section .005 alters the content of AS 10.05.003 to conform to the content of Section 3 of the Model Business Corporation Act (MBCA).

SUMMARY OF COVERAGE: ACC Section .005 permits an Alaska corporation to be formed for any lawful purpose(s) other than insurance and banking. Stock and mutual insurance companies are formed under AS 21.69; the companies are of a corporate nature and are governed by the ACC to the extent provided in AS 21.69.020. Reciprocal insurance companies, noncorporate in nature, are formed under AS 21.75.

COMPARED WITH THE FINAL DRAFT OF THE RMBCA: ACC Section .005 is functionally identical to RMBCA Section 3.01(a). The limitations spelled out in RMBCA Section 3.01(b) are found in ACC Section .010.

Section .010 GENERAL POWERS

ORIGIN: ACC Section .010 is predicated upon AS 10.05.009 which was, in turn, predicated upon Section 4 of the Model Business Corporation Act.

SUMMARY OF COVERAGE: The introductory phrase was adopted from Section 207 of the California General Corporation Law (hereafter the "GCL") and makes explicit that while the general grant of powers are co-extensive with that of a natural person, this grant is subject to limitation by provisions in the articles of incorporation or other law. Subsection (6) makes direct reference to the new provisions on loans to officers and directors (Section . 485). Subsection (15) adds "stock option plans" to the list of incentive plans which a corporation may establish for its directors, officers and employees.

COMPARED WITH THE FINAL DRAFT OF THE RMBCA: Section 3.02 also contains a general grant and specific enumeration of corporate powers. It is functionally identical to ACC Section .009, except that it does not contain express authority to make loans to corporate officers and directors. Within the RMBCA loans to directors are governed by Section 8.32. They are licit if approved by a majority of the outstanding voting shares. The loan may also be authorized by the direc-

tors if the board, in its collective judgment, determines that the loan is in the best interest of the corporation.

Section 3.02 follows ACC Section .009 in specifically listing "share option plans" among the incentive plans which a corporation may establish. The idea that a corporation has powers which are presumptively coextensive with those of a natural person is explicit in ACC Section .009. It is left to implication in the comment to RMBCA 3.02.

Section .015 DEFENSE OF ULTRA VIRES

ORIGIN: ACC Section .015(a) is predicated upon Section 203 of the New York Business Corporation Law (hereafter the "NBCL"). It is a modified version of former AS 10.05.018 and Section 7 of the MBCA. Section .015(b) is new and is taken from Section 208 of the GCL.

SUMMARY OF COVERAGE: ACC Section .015 governs the limited circumstances in which a claim of "ultra vires" may affect the rights of third parties who have dealt with a corporate entity and the impact of such behavior in creating liability on the part of the corporate officers and directors of the corporation. While the concept of "ultra vires" is frequently included in the discussion of agency problems within the corporate framework, properly understood it is not a traditional doctrine of agency law. A transaction is ultra vires when it is beyond the powers of the corporation as those powers are conferred by law and the terms of the articles of incorporation.

COMPARED WITH THE FINAL DRAFT OF THE RMBCA: The provisions of ACC Section .015 and those of RMBCA 3.04 are functionally identical.

Section .020 LIMITATIONS ON AUTHORITY OF CORPORATE AGENTS

ORIGIN: ACC Section .020 is predicated upon GCL Section 208.

SUMMARY OF CONTENT: Unlike conduct assailed as beyond the powers of the corporation, a subject covered by ACC Section .015, Section .020 deals with the consequences of an abuse of authority which was within the power of the corporate principal to confer. The provisions of Section .020 confront the common law of agency as it has been applied to the unique problems generated by an artificial corporate person as principal. The thrust of Section .020 is to shift the risk of transactions which exceed the authority of corporate agents to the corporation thus relieving the interests of innocent third persons. Subsection (3) makes it clear that either the corporation or a shareholder suing in a derivative capacity may assert lack of authority in any action against the faithless agent.

COMPARED WITH THE FINAL DRAFT OF THE RMBCA: The official comment to RMBCA Section 3.04 makes it clear that the Model Act has no coverage of this important question at all. See pp. 3-17, 18.

Section .025 CONTRACTS OR CONVEYANCES BINDING DOMESTIC AND FOREIGN CORPORATIONS

ORIGIN: ACC Section .025 is predicated upon GCL Section 208.

SCOPE OF COVERAGE: ACC Section .025 settles two important questions associated with contracts or conveyances entered by corporate agents who have exceeded their actual authority. If the transaction is within the scope of the agent's "apparent authority", it is binding upon the corporate principal and upon the third party. Thus, the defect in the authority of the agent does not defeat the corporation's liability on the transaction, nor does it prevent it from acquiring rights against the third party measured by the terms of the transaction.

COMPARED WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA has no statutory provision covering this important question.

Notes

ARTICLE 2. NAME AND SERVICE OF PROCESS

Section .105 CORPORATE NAME

ORIGIN: ACC Section .105 is a reenactment of AS 10.05.021 as amended.

SUMMARY OF COVERAGE: ACC .105 requires that a corporation adopt as part of its name one of the listed alternatives designed to warn third parties that they are dealing with a corporate entity. ACC .105 also prohibits a person from adopting a name that contains words suggesting a corporation unless that person has either been issued a certificate of incorporation in Alaska or has obtained a certificate of authority for a foreign corporation.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: ACC Section .105 is functionally identical to RMBCA Section 4.01(a) and (b). There are, however, differences in content.

RMBCA Section 4.01(a)(1) requires that a corporation include as part of its name one of the traditional words or abbreviation designed to indicate corporate status. In a break with the prior Model Act and exposure draft, the final version would allow this requirement to be satisfied by the inclusion of "words or abbreviations of like import in another language. . . ." The official comment merely indicates that the change has been made. It offers no justification. At least two reasons to oppose such permission come to mind. First, I doubt that many persons would appreciate the import of initials such as "GmbH" as a signal that this was a limited liability entity. Further, even if one knew that this was a German designation for a corporation she might be fooled into belief that the entity was in fact a German entity.

RMBCA Section 4.01(c) contains provisions whereby a corporation may give written consent to the use by another entity of a name which would otherwise be deceptively similar.

The final draft of Section 4.01(b)(4) requires that a corporate name be distinct from the name of a registered nonprofit corporation. This provision is not contained in the ACC.

ACC Section .105(b) continues a 1976 amendment by the terms of which the Legislature forbade a corporation from adopting a name which contained the word "city", "borough", or "village" or otherwise implying that the corporation is a municipality. Reflecting its detachment from Alaskan concerns, RMBCA Section 4.01 contains no similar prohibition.

Section .110 RESERVATION OF CORPORATE NAME

Section .115 APPLICATION TO RESERVE CORPORATE NAME

Section .120 TRANSFER OF RESERVED NAME

ORIGIN: ACC Sections .110, .115, and .120 are reenactments without change of former AS 10.05.024, .027, and .030 which were, in turn, predicated upon Section 9 of the MBCA.

SUMMARY OF COVERAGE: ACC Sections .110, .115, and .120 set forth the natural or corporate persons who may reserve a corporate name.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 4.02 is functionally identical to these provisions of the ACC except for their substitution of the commissioner for the "secretary of state."

Section .125 REGISTRATION OF CORPORATE NAME

Section .130 USE OF SAME OR DECEPTIVELY SIMILAR NAME

Section .135 PROCEDURE FOR REGISTRATION OF CORPORATE NAME

Section .140 FEE FOR AND DURATION OF REGISTERED NAME

Section .145 RENEWAL OF REGISTERED NAME

ORIGIN: ACC Sections .125, .130, .135, .140, and .145 are reenactments of AS 10.05.033, 034, .036, .039, and .042, and are based on Sections 10 and 11 of the MBCA. Section .034 was added by the Legislature in 1966. Minor language changes have been incorporated to recognize the recently enacted scheme to allow the Department of Commerce and Economic Development to determine various fees by administrative regulation.

SUMMARY OF COVERAGE: ACC Sections .125, .130, .135, .140, and .145 provide for the registration, protection, duration, and renewal of a corporate name. Under ACC Section .130, registration of a corporate name gives the registered holder the right to seek an injunction against the use of that name or a deceptively similar name by another. The registered name must be renewed each year under ACC Section .145.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 4.03 combines the coverage of former Model Act Sections 10 and 11. Unlike ACC Section .130, RMBCA Section 4.03 does not explicitly confer exclusive right to the use of a registered corporate name, nor does it declare that a person who has registered the corporate name may enjoin the use of the same or a deceptively similar name. Section .130 clearly provides that the remedy available for abuse of a registered corporate

name is not limited to injunctive relief, but may be a cause of action for damages. RMBCA Section 4.03 contains no such provision.

Section .150 REGISTERED OFFICE AND REGISTERED AGENT

ORIGIN: ACC Section .150 is a reenactment without change of AS 10.05.045 which was based on Section 12 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .150 establishes the requirement that a corporation maintain both a registered office and a registered agent in the State of Alaska. The agent is necessary for service of process; and, the office is required to serve as the depository for various books and records as provided or required by the the ACC.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 5.03 is functionally identical to ACC Section .150.

Section .155 REGISTRATION OF AGENT BY NONRESIDENT WITH CONTROLLING INTEREST

ORIGIN: ACC Section .155 is a reenactment without substantive change of AS 10.05.791 as amended in 1980. A rewording has been undertaken to make explicit that the designated agent must be within the State of Alaska.

SUMMARY OF COVERAGE: In order that the commissioner may readily establish official contact with a nonresident possessed of a controlling interest (ACC Section .955(12)), ACC Section .155 requires such a person to designate an agent within Alaska upon whom notice and process may be served.

Service on the Section .155 agent is equivalent to personal service on the controlling nonresident. Section .155(b) enforces this requirement by forbidding, in the event of noncompliance, either the controlling person or the controlled corporation use of the courts of the State of Alaska.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: Again, reflective of its concern with the problems of no particular jurisdiction, the content of the Revised Model Act contains no provision requiring designation of agents by nonresidents with a controlling interest.

Section .160 FILING LIST OF REGISTERED CORPORATIONS WITH SUPERIOR COURT; UPDATING AND PUBLISHING

ORIGIN: ACC Section .160 is a reenactment of AS 10.05.048 which, has been changed to require yearly compilation and weekly updating of the stipulated information.

SUMMARY OF COVERAGE: ACC Section .160 reflects the view that

it is vital that the practicing attorney be able to quickly ascertain information concerning the corporate name, address of the registered office, and the name and address of the registered agent of both domestic and authorized foreign corporations. Both geographical and communications considerations have dictated that such information be available locally and updated frequently.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.20 contains absolutely no provision requiring that this vital information be maintained or made available.

Section .165 CHANGE OF REGISTERED OFFICE OR AGENT

ORIGIN: ACC Section .165 is a reenactment of AS 10.05.051 which was, in turn, predicated upon Section 13 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .165 establishes the procedure whereby a domestic or foreign corporation may change its registered office or agent.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 5.02(a) is identical to ACC Section .165. Subsection (b) differs only in that the ACC has a uniform provision on filing with the commissioner which is not reflected in the RMBCA.

Section .170 CHANGE OR RESIGNATION OF REGISTERED AGENT

ORIGIN: ACC Section .170 is a reenactment of AS 10.05.054, which was based on Section 13 of the MBCA. The final sentence has been changed to permit a resignation of the registered agent, to become effective sooner than 30 days after the filing of written notice with the commissioner if the corporation appoints a successor within this shortened period. This change is based upon Section 57.070(3) of the Oregon Revised Statutes.

SUMMARY OF COVERAGE: ACC Section .170 establishes the procedure by which a registered agent may change address or resign. Unless and until the registered agent follows these statutory procedures, the commissioner may continue to regard the last address of record as effective for all notice provisions under the ACC.

Subsection (b) sets forth the procedures which must be observed for a registered agent to effectively resign. Unless and until such procedures are followed, the commissioner may continue to deal with the agent and effectively notice or bind the corporate principal. In the event that such an agent ceases to function without observing these statutory provision, there would be a breach of the contract of agency with the corporation but such a breach would not serve as a defense to the corporate principal in dealing with or ac-

counting to the commissioner.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 5.03 does not provide for a shortened effective date if the corporation appoints a successor registered agent. The minimum information to be contained in the written resignation is governed by Section 5.02. The "circularity problems" noted in the official comment to RMBCA Section 5.03 have been directly solved by ACC Section .170(b). The commissioner is directed to mail a copy of the written notice of resignation to "the corporation at its principal office."

Section .175 SERVICE OF PROCESS ON CORPORATION

ORIGIN: ACC Section .175(a), (c), and (d) are a reenactment of AS 10.05.057, and are based on Section 14 of the MBCA. ACC Section .175(b) is new to the law of Alaska. It is taken from Section 57.075(3) and (4) of the Oregon Revised Statutes and eliminates the commissioner's burden under prior law to transmit process served on the commissioner given the default of a registered agent. Under ACC Section .175(b), that burden is placed upon the party seeking to initiate litigation against the corporation.

SUMMARY OF COVERAGE: To assure that notice sent to a corporation without a registered agent is the best available under the circumstances, ACC Section .175(b)(2)(B) requires that the moving party send notice to such address as it knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice. Under ACC Section .175(b)(3), the moving party is obliged to file proof of the attempted service in the appropriate superior court or other tribunal.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 5.04 admits that there were substantial problems with the provisions of former MBCA Section 14. It, too, eliminates the burden formerly placed upon a state official to serve the substitute process. Unlike the Oregon law and the ACC, RMBCA Section 5.04(b) does not require that a best effort be made to find the actual address of the corporation. It is content if the notice is mailed to the principal office. Given the official comment's express solicitude that actual notice be communicated to the foreign corporation, it would appear that the Oregon/ACC approach is superior.

ARTICLE 3. FORMATION OF CORPORATIONS

Section .205 INCORPORATORS

ORIGIN: ACC Section .205 is a reenactment with one change of AS 10.05.252 as amended in 1976 by the Legislature.

SUMMARY OF COVERAGE: The minimum age for an incorporator has been reduced from 19 to 18 to bring Section .205 into conformity with Alaska's general policy on legal majority. ACC Section .205 varies from Section 53 of the MBCA in the requirement that incorporators be natural persons. This is a continuation of prior Alaska law.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 2.01 differs from ACC Section .205 and existing Alaska law by permitting artificial persons (including unincorporated associations, partnerships, trusts, estates, and governments) to act as incorporators. There is no minimum age for natural persons to so function. Further, the requirement that the incorporators sign a verified copy of the articles has been eliminated.

Section .208 ARTICLES OF INCORPORATION

Section .210 ARTICLES OF INCORPORATION; OPTIONAL PROVISIONS

ORIGIN: ACC Section .208 subsections (1),(2), and (3) are predicated upon AS 10.05.255(1), (3), and (10), which were derived from Section 54 of the MBCA. Subsections (4) and (5) are taken from Section 202 of the GCL. Subsection (6) reenacts AS 10.05.255(13) as amended. The provision of the ACC governing the content of the articles is modeled upon Sections 202 and 204 of the GCL. ACC Section .210 is based upon GCL Section 204, Delaware Section 102(b)(4) and (5), and AS 10.05.255.

SUMMARY OF COVERAGE: In addition to the specific changes noted, Sections .208 and .210 make vital a drafting decision which was unimportant under prior Alaska law. The goal of the ACC is to follow California's example requiring that the articles of incorporation function as the fundamental agreement which structures the basic purpose of the corporation, the prerogatives of management, and the rights of shareholders. Section .208 requires that several fundamental decisions be addressed in the articles. While the provisions may be amended by following the procedures outlined in the ACC, at all times the subject matter content of Section .208 must

be defined in the current corporate articles. Section .210 enumerates provisions which are optional as contents of the articles. The critical point is that if the subject matters enumerated in Section .210(1) are not settled by the initial or amended provisions of the articles, they may not be resolved or governed by the bylaws, shareholder agreements, or any other form of treaty.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: An initial comparison between RMBCA Section 2.02 and ACC Sections .208 and .210 would suggest significant differences. It would be misleading. It is true that RMBCA Section 2.02(a) has a rather short list of mandatory provisions when contrasted with ACC Section .208. In part this is because ACC Section .208(4) reflects Alaska's concern for identification of alien affiliates, a concept unknown to the Model Act. Further, there is no single provision in the RMBCA which is comparable to ACC Section .210 in gathering into one convenient place all of the optional decisions which cannot be made effective unless they are reflected in the articles. The MBCA does have such requirements, only they are scattered throughout the act. See the official comment to RMBCA Section 2.02 at page 2-9,10.

The topics which are conveniently gathered in ACC Section .210(1) and scattered throughout the lengthy text of the RMBCA are not identical. In general, it may be said that the ACC is more protective of the interests of shareholders (both actual and potential) and their interest in locating in one document a definitive statement of these basic decisions. Under the RMBCA, such decisions could be found in extrinsic resolutions or agreements which might be known and available to some but not to others.

Section .213 FILING OF ARTICLES OF INCORPORATION

ORIGIN: ACC Section .213 continues the policy of AS 10.05.258, which had been predicated upon Section 55 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .213 also reflects the general scheme of the ACC to standardize the procedures for filing with the commissioner as set forth in ACC Section .910.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 2.03 suggests to the legislatures of the several states that they abolish the concept and practice of a "certificate of incorporation." Instead, filing is completed upon delivering a copy of the articles to the secretary of state and having it "stamped and filed." There is to be no certificate of incorporation. Elimination of the certificate of incorporation would destroy the "bright line" event selected by the Commission for fixing the de jure commencement of corporate existence.

Section .215 DISCLOSURE OF CORPORATE PURPOSES

ORIGIN: ACC Section .215 is a reenactment without change of AS 10.05.259, as amended in 1980.

SUMMARY OF COVERAGE: ACC Section .215 perpetuates a decision of the Legislature made in 1980 which requires that a corporation disclose to the Department of Commerce and Economic Development the activities in which it will initially engage. This is not done for the purpose of limiting corporate activity. Under the ACC, incorporation can still be as general as the pursuit of "any lawful purpose." The information is elicited so that the state may obtain a clearer idea of the dimension of economic activity.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: Again, reflecting its lack of familiarity with the aspirations of the Alaska Legislature, the standard recommended text of the RMBCA contains no provision requiring disclosure of corporate purposes.

Section .218 EFFECT OF ISSUANCE OF CERTIFICATE OF INCORPORATION

ORIGIN: ACC Section .218 is derived from AS 10.05.810.

SUMMARY OF COVERAGE: ACC Section .218 fixes the issuance of the certificate of incorporation as the point in time when the de jure existence of a corporation commences. In adopting this "bright line" rule, the ACC goes beyond Section 56 of the MBCA and AS 10.05.810 to expressly abolish the common law doctrines of de jure compliance, de facto incorporation, and corporation by estoppel.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 2.03 would also create a "bright line" event fixing the initial existence of a corporation. Under RMBCA Section 2.03, that event is "the secretary of state's filing of the articles of incorporation. . . ."

RMBCA Section 2.04 leaves the current body of conflicting and confusing common law on de facto incorporation and corporation by estoppel unreformed. This notwithstanding the official comment that: "Incorporation under modern statutes is so simple and inexpensive that a strong argument may be made that nothing short of filing articles of incorporation should create the privilege of limited liability." ACC Section .218 adopts that "strong argument".

Section .220 ASSUMPTION OF PURPORTED POWERS OF NONEXISTENT CORPORATION: LIABILITY

ORIGIN: ACC Section .220 is a modification of former AS 10.05.810, which had been predicated upon Section 146 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .220 determines the liability consequences of persons who assume to act as a corporation for which there has been no issuance of a certificate of incorporation (Section 218). Unless there is a written agreement, wherein a third party agrees to deal on a limited liability basis with individuals purporting to act for a corporation for which no certificate has been issued, those persons are jointly and severally liable.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 2.04 imposes joint and several liability on all persons purporting to act as or on behalf of a corporation who knew that there was no incorporation [effective filing with the secretary of state]. It does nothing to relieve the conflicting interpretations given to prior Model Act provisions dealing with the consequences of defective incorporation. See, e.g., Sherwood & Roberts-Oregon, Inc. v. Alexander, 269 Or. 389, 525 P.2d 135 (1974), which is in direct conflict with Heintze Corp. v. Northwest Tech-Manuals, Inc., 7 Wash. App. 759, 502 P.2d 486 (Div.One. 1972).

Section .223 ORGANIZATION MEETING

ORIGIN: ACC Section .223 is a reenactment of AS 10.05.267 and is based upon Section 57 of the MBCA. Language modifications have been made to coordinate with Section .210(3), which makes optional the naming of initial directors in the articles. Another modification is the phrase in the first sentence which is intended to preclude a construction of Section .223 as a precondition to the attainment of corporate existence.

SUMMARY OF COVERAGE: ACC Section .223 defines the transition by which the entity being formed passes from the control of incorporators to that of the initial board of directors. In a reform designed to facilitate corporate formation, the articles are competent to name initial directors in which case they, and not incorporators, hold the initial meeting.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 2.05 parallels the ACC and permits the articles to name the initial directors.

Section .225 POWERS OF INCORPORATORS BEFORE DIRECTORS' ELECTION

ORIGIN: ACC Section .225 is new to Alaska law being predicated upon Section 210 of the GCL and Section 107 of the

General Corporation Law of the State of Delaware.

SUMMARY OF COVERAGE: Since the naming of initial directors in the articles is optional, Section .255 defines the powers which incorporators shall have in the event that they, and not the initial directors, shall hold the organizational meeting.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 2.05(2) is in substantial accord with the California, Delaware, and ACC innovations.

Section .228 BYLAWS: ADOPTION, AMENDMENT OR REPEAL

ORIGIN: ACC Section .228 is taken from Section 211 of the GCL and works a major change in AS 10.05.135.

SUMMARY OF COVERAGE: Under current Alaska law the power to adopt, amend, and repeal provisions of the bylaws is vested exclusively in the board unless reserved to the shareholders in the articles of incorporation.

Absent provisions in the articles, ACC Section .228 vests equal powers in the board and the shareholders with respect to determining the content of the bylaws. However, the articles are competent to restrict or eliminate the power of either the board or the outstanding shares. There are thus three possibilities: (1) concurrent, independent power in the board and the outstanding shares (the default rule); (2) an article provision restricting or eliminating the power of the board; or, (3) an article provision restricting or eliminating the power of the outstanding shares.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 10.20 provides a default rule identical to ACC Section .228. In the absence of a provision in the articles, the power to adopt, amend, or repeal bylaws is shared by the directors and shareholders. The RMBCA does not use the term "adopt", but the official comment makes explicit that it is to be included within the meaning of "amend." Under RMBCA Section 10.20(a)(1), the articles are competent to extinguish the power of the board. Apparently they cannot extinguish the power of the shareholders who, under RMBCA Section 10.20(b), are guaranteed power over the content of the bylaws. Thus the flexibility available under California, Delaware, and ACC provisions is not attainable under the RMBCA.

The ACC's concern that shareholders ultimately control the corporation is manifested in Section 460 wherein they are given the right to remove any or all of the directors at any time for any reason.

Section .230 BYLAWS: NUMBER OF DIRECTORS AND OTHER CONTENT

ORIGIN: ACC Section .230 is predicated upon Section 212 of

the GCL, and substantially enlarges the coverage of AS 10.05135, which had been based on Section 27 of the MBCA.

SUMMARY OF COVERAGE: Under ACC Section .230, the bylaws have a mandatory content only if the articles have not fixed the number of directors or established a formula from which that number may be derived. The ACC's provisions on the number of directors establish three as the default minimum unless the corporation has fewer than three shareholders. In that instance, the number of directors need not exceed the number of shareholders. This will provide significant flexibility in the formation and operation of closely held corporations. Any bylaw which would change the number of directors must obtain approval of the outstanding shares. Further, if the effort is to reduce the number of positions on the board to fewer than five, subsection 230(d) protects the interests of minority shareholders by invalidating the attempt if sixteen and two-thirds percent of the outstanding shares vote against it.

Under subsection (e), the optional content of the bylaws is partially enumerated. These provisions need not be adopted but are intended to suggest to those forming corporations some of the important matters governing procedures, e.g. for shareholder and director meetings, the qualifications, duties, authority and compensation of directors and officers, and such other matters relating to the day to day management of the corporation as are usefully stabilized in a formal agreement.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 2.06(b) simply states that the bylaws may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles. This is in accord with ACC Section .230(e). The absence of the enumerated list of optional provisions should not be taken to suggest that the RMBCA is less exacting than the ACC. The cross-references to RMBCA Section 2.06 indicate twenty-two matters which should be considered for regulation in the bylaws. Rather than the convenience of ACC Section .230(e), one has to page through the provisions of the RMBCA.

Section .233 BYLAWS TO BE KEPT AT OFFICE; INSPECTION BY SHAREHOLDERS

ORIGIN: ACC Section .233 is taken from Section 213 of the GCL.

SUMMARY OF COVERAGE: The corporation is obligated to keep at its principal business office in Alaska a copy of its bylaws reflecting all current provisions including amendments. The shareholders are to have a right to inspect the bylaws at all reasonable times. A foreign corporation which does not have a principal business office in Alaska is obligated to furnish a copy of its current bylaws to any Alaska shareholder who

makes a written request.

AS 10.05.237 through .249 cover the content of ACC Section .233, but do not clearly obligate a foreign corporation to make a copy of its bylaws available to requesting shareholders who are citizens of Alaska.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains a similar requirement although it is somewhat difficult to locate. Section 16.02 directs that a corporation keep copies of the records required in Section 16.01(c). One of the items set forth in in Section 16.01(c) is a copy of the corporate bylaws.

Notes

ARTICLE 4. CORPORATE FINANCE

Section .305 CREATION, CLASSES, AND ISSUANCE OF SHARES

ORIGIN: ACC Section .305 is premised upon GCL Section 400, with modifications to accommodate MBCA Sections 15 and 16, which were the basis of AS 10.05.060 and .069. Section .305(a) replaces AS 10.05.060 without substantive change, and Section .305(b) replaces AS 10.05.069 without substantive change.

SUMMARY OF COVERAGE: ACC Section .305 permits great flexibility to the corporation in creating distinctions as among various classes or series of shares with respect to voting rights, as well as preferences or privileges regarding distributions during the life or at the dissolution of the entity.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.01 is functionally identical to ACC Section .305. ACC Section 210(6)'s warning that the rights, privileges, and limitations on classes of stock must be contained in the articles is reflected in RMBCA Section 6.01(b).

Section .308 ISSUANCE OF PREFERRED OR SPECIAL CLASSES OF SHARES

ORIGIN: ACC Section .308 is largely a reenactment of AS 10.05.063, which was predicated upon Section 15 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .305 allows the establishment of classes and series with varying rights and liabilities. ACC Section .308 specifies a number of particulars which may be the subject of variation between different classes. This list should aid the practitioner in discussing with clients the variations possible in such areas as redemption, dividend preferences, liquidation preferences and conversion options.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.02 is functionally identical to ACC Section .308.

Section .310 ISSUANCE OF SHARES IN SERIES

Section .313 VARIATION IN RIGHTS AND PREFERENCES OF SHARES

Section .315 SERIES RIGHTS AND PREFERENCES ESTABLISHED BY BOARD

Section .318 MANNER OF ESTABLISHING SERIES

Section .320 FILING OF STATEMENT BEFORE ISSUANCE OF SERIES

ORIGIN: ACC Section .310 is based upon AS 10.05.066 and MBCA Section 16 without substantive change.

MBCA Section 16 and AS 10.05.069 form the basis for ACC Section 313. Subsection (7), which permits a variation in voting rights in preferred or special classes, is new to Alaska law. The provision was added to MBCA Section 16 in 1966, after enactment of AS 10.05.069. This section thus represents an updating of Alaska law to conform to the Model Act.

ACC Section .315 is predicated upon MBCA Section 16 and reenacts AS 10.05.072 without substantive change.

ACC Section .318 is a reenactment without substantive change of AS 10.05.075 and MBCA Section 16.

ACC Section .320 is essentially a reenactment of AS 10.05.078, which was predicated upon MBCA Section 16. A modification has been made to the language of Section .320(a) to accord with the broader power of delegation to the board to fix by resolution an unissued class.

ACC Section .323 is a reenactment of AS 10.05.084, which was modeled upon Section 16 of the MBCA. A wording change has been made to reflect the broader power of a board to fix by resolution the rights and privileges of an authorized but wholly unissued class.

SUMMARY OF COVERAGE: ACC Section .310 makes clear that preferred and special classes of shares may be divided into series.

ACC Section .313 enumerates the rights and preferences which may vary between series of the same preferred or special class of shares.

ACC Section .315 specifies that the board may be granted the power by the articles to divide a class into series and fix the relative rights and preferences of the shares of a series. This power is subject to any limitation placed upon it by the articles or by ACC Sections 305-323.

ACC Section .318 specifies the procedure for establishing a series.

ACC Section .320 vindicates the interest of the state in securing information as to the equity interests outstanding for Alaska corporations. This information is supplied by the articles or any amendment thereto in cases not involving board power to fix the relative rights and preferences. However, when the power has been delegated to the board (ACC Section .208(5)(B)(C)), Section 320 requires that this information be filed with the commissioner.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.03 establishes with fewer guidelines to the practicing lawyer, the authority, scope, manner, and steps which must be taken to create series within a class of preferred shares and

to report the same to the secretary of state.

RMBCA Section 6.03 departs from prior provisions of the Model Act and the statutory law of all states, including Alaska, by permitting creation of a repurchase obligation in the corporation with respect to all or a part of a series. This precedent breaking suggestion would create a "put" in the hands of the holders of such shares to force the corporate issuer to reacquire the stock.

Section .325 REDEMPTION OF SHARES; CREATION OF SINKING FUND; REPURCHASE AGREEMENTS

ORIGIN: ACC Section .325 is new and has no precedent in Alaska law. It is taken from GCL Section 402(a), (b), and (d).

SUMMARY OF COVERAGE: ACC Section 325 covers three crucial questions: (1) it establishes the right of the corporation to create classes or series of shares which are redeemable at the option of the corporate issuer; (2) it forbids (subject to an exception for an open-end investment company) the creation of shares which vest a right to demand redemption in the shareholders; and, (3) it permits the creation a sinking fund or similar provision, or an agreement outside of the articles which covers the subject of redemption.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.01(d) covers the topics addressed in ACC Section .325. Under the RMBCA, the extent of redemption rights, if any, must be authorized in the articles. It would thus appear that the flexibility attainable under ACC Section .325(c) is not possible under the RMBCA.

Section .328 IRREVOCABILITY OF SUBSCRIPTIONS FOR SHARES

ORIGIN: This section is a verbatim reenactment of AS 10.05.087, modeled after MBCA Section 17.

SUMMARY OF COVERAGE: A subscription for shares of a corporation to be organized is basically a promise to buy shares under specified terms. Many common law cases have held that a subscription is deemed an offer and as such inherently revocable at any time prior to acceptance. These holdings cast doubt upon the ability of promoters to insure an adequate financial start for a fledgling corporate entity. In order to settle the issue of the nature of a subscription, provide a fair result to those who act in reliance on subscriptions, and put an end to any litigation over the question of revocability, ACC Section .328 makes a subscription irrevocable for a period of six months.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.20(a) is identical to ACC Section .328.

Section..330 PAYMENT OF SUBSCRIPTION FOR SHARES

ORIGIN: ACC Section .330 is in substance a reenactment of AS 10.05.090. Minor changes in language have been made to conform Alaska law to MBCA Section 17.

SUMMARY OF COVERAGE: ACC Section .330 places the power to determine the time of payment for subscriptions with the board. A call for payment by the board must be uniform as to all shares of the same class or series.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.20(b) and (c) is identical to ACC Section .330. Section 6.20 controls share subscriptions issued before incorporation. The initial board is given complete control over their disposition. Section 6.20(f) states that subscriptions entered into after incorporation are treated as a contract between the corporation and the subscriber and governed by Section 6.21. Unless the shareholders reserve powers granted under Section 6.21, the board has the power to control the disposition of post incorporation subscriptions.

Section .333 FORFEITURE OF SHARES FOR DEFAULT IN PAYMENT

ORIGIN: ACC Section .333 reenacts AS 10.05.093, which was based upon MBCA Section 17. The terms "penalties" and "penalty" have been changed to "remedies" and "remedy" to reflect the approved case law construction.

SUMMARY OF COVERAGE: ACC Section .333 establishes the general rights of the corporate issuer in the event of default in the payment obligation for shares.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.20(d) and (e) are identical to ACC Section .333.

Section .335 CONSIDERATION FOR SHARES

Section .338 PAYMENT FOR SHARES

Section .340 JUDGMENT OF BOARD OR SHAREHOLDERS AS TO VALUE OF CONSIDERATION CONCLUSIVE

ORIGIN: ACC Section .335 retains the essence of AS 10.05.096, which was derived from MBCA Section 18. Much of the former section has been deleted in the wake of the new financials (ACC Sections .358 to .370), which eliminate the concepts of par value, treasury shares, stated capital, and surplus accounts.

ACC Section .338 is a verbatim reenactment of AS

10.05.099, which was derived from Section 19 of the MBCA.

ACC Section .340 is a reenactment of AS 10.05. 102, which was modeled upon Section 19 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .335 recognizes two modes for fixing the amount of consideration (expressed in dollars) for the issuance of shares. Unless the power has been reserved to the shareholders in the articles (ACC Section .210(1)(H)), it is vested in the board. The exercise of this power is subject to the fraud standard articulated in ACC Section .340.

ACC Section .338 specifies what may and may not be received as consideration for shares. Common law authorities which have attempted to prevent "watered shares" by requiring that consideration be limited to cash are rejected in favor of a more realistic recognition that the corporation may be advantaged by the receipt of other valuable property (tangible and intangible) as well as services.

ACC Section .340 sets proof of fraud as the standard necessary to overturn a determination of the value of consideration received by the corporate issuer. The most common victim of an improper consideration exchanged for shares is the corporate creditor whose claims against the entity go unsatisfied in the wake of corporate bankruptcy, dissolution, or simple door-closing. The ACC provides considerable protection to creditors in its provision on financials and in ACC Section .488 on secondary liability of officers and directors. These provisions substantially mitigate the harshness to creditors of the fraud standard provided in ACC Section .340.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.21 is functionally identical to ACC Sections .335, .338, and .340.

Section .343 STOCK RIGHTS AND OPTIONS

ORIGIN: ACC Section .343 is new to Alaska law and is predicated upon Section 20 of the MBCA with one modification. This section eliminates the final sentence of the Model Act provision to conform to the financial provisions of the ACC. This section was adopted to clarify and regulate the exercise of the the corporation's right to issue stock rights and options under the general power to contract.

SUMMARY OF COVERAGE: Unless otherwise defined or restricted in the article, ACC Section .343 gives the corporation acting through its board broad powers to create and issue rights or options covering authorized but unissued shares of any class or classes. The only substantive command of ACC Section .343 is that if such rights or options are to be made available to directors, officers, or employees of the corporation, or to any subsidiary but not to the shareholders generally, issuance shall not be licit until the plan is approved by the

outstanding shares.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.24 is identical to ACC Section .343, except that it does not protect shareholders by requiring their prior approval for a plan which would grant share rights and options to directors, officers, or employees only. The omission of this protection from the RMBCA is unprecedented in existing law and at variance with the Model Act. It may also contravene the rules of the New York Stock Exchange. See, Section A-25 of the Company Manual. The official comment state that shareholder approval of such a plan may be required in order to comply with SEC regulations.

Section .345 EXPENSES OF ORGANIZATION, REORGANIZATION, AND FINANCING

ORIGIN: ACC Section .345 is a reenactment of AS 10.05.111 with a minor language modification in order to parallel MBCA Section 22.

SUMMARY OF COVERAGE: ACC Section .345 recognizes that there are costs incurred in the issuance and marketing of shares, and protects the purchasers from further liability on the theory that since it received only the "net amount" from the gross price paid, the shares are not "fully paid" and thus "assessable."

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.28 is identical to ACC Section .345 except that it does not contain the express protection for purchasers precluding a claim that their shares are assessable. The framers of the tentative draft recognize that this language is standard in nearly all state codes, but feel that the problem has rarely arisen and the language is thus surplusage.

Section .348 CERTIFICATES REPRESENTING SHARES

Section .350 INFORMATION REQUIRED TO BE STATED ON CERTIFICATE

ORIGIN: ACC Section .348 is a verbatim reenactment of AS 10.05.114, and is modeled upon MBCA Section 23.

ACC Section .350 is a verbatim reenactment of AS 10.05.117 with the deletion of paragraph (4) regarding par value, which is no longer a matter of consequence under the ACC. With this modification Section .350 is predicated upon MBCA Section 23.

SUMMARY OF COVERAGE: ACC Section 348 is designed to facilitate the trend toward electronic substitutes for the traditional share certificate by permitting the seal of the corporate issuer to be affixed in a facsimile form, and to permit the signatures of the corporate officers to be facsimiles so

long as the "certificate" is countersigned by a transfer agent or a registrar who is not an employee of the corporation.

ACC Section .350 recognizes that information regarding the rights, preferences, and limitations of the shares is of importance to shareholders. If the corporation is authorized to issue only one class of stock, such shares enjoy all attributes of participation, control, and ownership defined by the ACC. However, if the corporate articles authorize the issuance of more than one class, it is both possible and likely that the relative rights, privileges, preferences, and limitations of the classes will differ. In this instance, ACC Section .350(a) requires that the corporation furnish to each shareholder either a statement or summary of the designations, preferences, limitations, and relative rights of shares of the class she has purchased, and similar basic information regarding the shares of any other authorized class. This information may be printed on the certificate, or the certificate may be imprinted with a legend that the corporation will furnish the information without charge.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: In yet another break with the prior act and the statutory content of Alaska and other states, the framers of the tentative draft recommend that the issuance of share certificates be optional with the board. This suggestion allows the corporation the ability to decide that it will issue shares which have no tangible expression at all. If the corporation does opt for share certificates, RMBCA Section 6.25(b) sets forth a minimum content which is identical to that of ACC Section .350(b). RMBCA Section 6.25(c) is functionally identical to ACC Section .350(a).

If the corporation opts to issue shares without certificates, RMBCA Section 6.26(b) requires that it send the "shareholder a complete written statement of the information required on certificates by Section 6.25(b) and (c)." As a result of this last provision, the only accomplishment of the suggested innovation would be to place the owners of "uncertificated shares" in grave danger that they would have no tangible evidence of their interest in the corporation. Should such an individual die, the burden of one charged with marshalling the assets of the estate would be obvious.

Section .353 FULL PAYMENT REQUIRED FOR CERTIFICATE

ORIGIN: ACC Section .353 is a reenactment of AS 10.05.120, which is predicated upon Section 23 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .353 continues the Alaska policy of insisting that a share certificate may not be issued until the agreed consideration has been fully paid.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: This classical restriction from Section 23 of the original Model Act is

repeated in a rather obscure manner in the RMBCA. In Section 6.21(c) and (d) shares are deemed non assessable when fully paid. Further, the corporation is empowered to escrow shares for which the full consideration has yet to be received.

Section .355 ISSUANCE OF FRACTIONAL SHARES OR SCRIPT

ORIGIN: ACC Section .355 is a verbatim reenactment of AS 10.05.123, and as such is a modification of Section 24 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .355 provides two basic options to the board under which it may deal with claims to fractional share ownership. The board may issue a certificate for a fractional share in which case the holder is entitled to the privileges conferred by shares of that class; or, the board may issue scrip entitling the holder to receive a certificate for a full share upon surrender of scrip aggregating a full share. If the second alternative is selected, the holder of the scrip is not entitled to the privileges of share ownership until the exchange of scrip aggregating a full share. Under subsection (c), the board may establish machinery to eliminate the outstanding scrip so long as it is noticed on the scrip at the time of issuance.

ACC Section .355 continues the Legislature's prior determination that it would not follow the Model Act which gives the board a third option, under which it could eliminate fractional shares by simply paying their fair market value. Given the difficulties experienced with that Model Act provision (see, e.g., Teschner v. Chicago Title & Trust Co., 59 Ill.2d 452, 322 N.E.2d 54 (1974)), that decision seems wise. A further reason for opting to continue prior Alaska policy is to prevent the use of this "cash out" option to facilitate management strategies to eliminate outside shareholders in a move to "go private". The technique is a board ordered reverse stock split that is calculated to reduce outsider shareholdings to fractions which can then be cashed out irrespective the wishes of those shareholders.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.04 is functionally similar to ACC Section .355, except that it grants the third, or "cash out", option previously rejected by the Alaska Legislature.

Section .358 DISTRIBUTIONS; CONDITIONS

Section .360 PROHIBITED DISTRIBUTION; INABILITY TO MEET MATURING DEBTS AND LIABILITIES

Section .363 PROHIBITED DISTRIBUTION OF JUNIOR SHARES; LIQUIDATION PREFERENCE

Section .365 PROHIBITED DISTRIBUTION TO JUNIOR SHARES; RATIO OF

RETAINED EARNINGS

ORIGIN: ACC Section .358 supplants the earned surplus test of AS 10.05.204(1) (payments of dividends) and .012 (repurchase of shares). With the additions and deletions noted in the Official Comment, it is premised upon the amended version of Section 500 of the GCL.

ACC Section .360 replaces AS 10.05.201 and is based on GCL Section 501.

ACC Section .363 is taken from GCL Section 502, and replaces AS 10.05.207(4).

ACC Section .365 adopts the language of GCL Section 503, and supplants AS 10.05.207(3).

SUMMARY OF COVERAGE: In general: ACC Sections .358 through .368 contain the essence of a major reform, in which antiquated and unworkable concepts of "balance sheet" and "earned surplus" (with the myriad of exceptions) are replaced by a simple ratio of assets to liabilities in determining the circumstances in which the board of directors has discretion to declare and pay distributions of corporate assets to shareholders. With minor modifications they are predicated upon the 1977 California General Corporations Law.

Pending passage of CSSB 246/HB 343, Alaska continues to rely upon a mid-1950's version of the Model Act. To its credit, the Alaska Legislature did not authorize certain aspects of Section 45 of the Model Act, which would have further enhanced the circumstances in which the board could dissipate corporate assets to the prejudice of creditors and the holders of preferred and other senior shares. Alaska, for instance, did not adopt a "nimble dividends" provision such as that suggested by alternative Section 45(a) of the Model Act. Further, if the distribution had to be charged to "capital accounts", Alaska insisted upon a two-thirds authorization of the shareholders rather than the simple majority suggested by the Model Act.

Notwithstanding these prudential rejections of Model Act suggestions, Alaska was committed to a system predicated upon an equitable insolvency test supplemented by an exception ridden earned surplus test. Though not as weak as the system in some states, this scheme is still premised upon unsound norms of "legal accounting" and mired in statutory and common law exceptions which make it nearly impossible to draw sensible limits upon the power of the board. Such a status quo is objectionable not only because it fails to deter those bent upon abusing corporate creditors, but for the more important reason that it fails to guide the honest director who is seeking maximum, licit flexibility.

In the mid-1970's, the California Legislature joined the bar association of that state in the creation of a committee to study, with a view toward revision, the California Corporations Code. At that time, California law relied upon the earned surplus test burdened by the possibilities of reduction surplus and nimble dividends. Two irrebuttable

criticisms set the stage for reform: (1) the existing restraints upon dissipation of corporate assets afforded insufficient protection to corporate creditors; and, (2) the language of the law meant little to accountants who were relied upon to prepare and audit the books and records. After a substantial debate, the 1977 California Corporations Code was framed in a manner designed to meet both of these problem areas. The earned surplus test was junked. Also discarded were the concepts of par value, stated capital, and all manner of capital surplus. In their place the statute articulated a simple test of the ratio of assets to corporate liabilities. For the purpose of complying with this test, the corporate books were to be kept in accordance with Generally Accepted Accounting Principles (GAAP).

In 1980, the Alaska Code Revision Commission concluded that both the substantive scheme and deference to the accounting profession pioneered in California were worthy models for a new Alaska Corporations Code. Accordingly, with the modifications hereinafter noted, Alaska is presented with the opportunity to become the second state to adopt the ratio/assets surplus test.

Two part test: ① Insolvency ②

Protection of Creditors: Protection for the legitimate interests of corporate creditors begins with ACC Section .360's injunction that no distribution (defined by ACC Section .990(17) as a transfer of cash or property by a corporation to its shareholders without consideration) may be undertaken when the result would produce equitable insolvency. The content of this equitable insolvency restraint has been altered in several particulars:

> Neither a corporation nor any of its subsidiaries shall make any distribution to the corporation's shareholders if the corporation or the subsidiary making the distribution is, or as a result thereof would be, likely to be unable to meet its liabilities as they mature.

Reforms: → ①

Two significant changes are incorporated in this formulation of the equitable insolvency standard.

The "likelihood" element of the formula is intended to be more restrictive than the traditional inquiry. AS 10.05.201 asked whether the corporation is now, or, giving effect to the dividend, would be insolvent. ACC Section .360 is more cautious, prohibiting distributions if the corporation is, or giving effect to the distribution, would likely be unable to meet its liabilities as they mature.

② The inclusion of subsidiaries is the second reform. A parent corporation and its subsidiaries are to be considered as a unit; the various corporate shells are disregarded in favor of viewing the financial position of the total operations of an affiliated group. For a definition of "subsidiary" see ACC Section .990(42).

Assuming that insolvency within the meaning of ACC Section .360 is not threatened, ACC Section .358 establishes two circumstances under with the board enjoys discretion to

IF NO INSOLVENCY LIKELY, TWO ADD'L TESTS

declare and pay a distribution to shareholders.

Distributions in cash or other assets may be declared and paid against "retained earnings" (ACC Section .358(a)(1)). Like the earned surplus test, this requirement reflects a legislative judgment that routine distributions should only be made from operating profits. Unlike the Model Act, the ACC contains no provision for permitting net operating losses to be charged off by writing down capital surplus. There is no such concept. If the corporation cannot make the payment out of assets charged against retained earnings, the ACC deems it a distribution in partial liquidation.

2d TWO part test

Distributions in partial liquidation are within the discretion of the board if a two part test is met.

① The first requirement is that the assets of the corporation which would remain after the distribution are at least equal to 1.25 time liabilities. Compliance with this ratio guarantees a minimum cushion to creditors in that the corporation must continue to hold five dollars of assets for every four dollars of liabilities.

The second requisite focuses upon current liquidity of the corporation. The general rule is that the corporation's current assets be at least equal to current liabilities. Both current assets and current liabilities are defined by Generally Accepted Accounting Principles. Special concern is manifest for corporations which have a recent history of paying more in interest on their debt than their earnings would reflect if interest and taxes were not deducted in computing net profits. Such corporations must comply with a further requirement that current assets be at least 1.25 times current liabilities.

Protecting the interests of senior shares: The basic thrust of both classical and the ratio/assets restraints upon distributions has been the protection of creditors. This emphasis is natural, for by definition the creditor is an "outsider" precluded from any direct voice in corporate management. The ACC also attempts to accommodate a second source of recurrent tension respecting distribution: the interests of quasi-outsiders who have purchased shares with either a dividend or liquidation preference.

"Senior shares" achieve this status by dent of a contract between the corporate issuer and the holder of the securities. The specific terms used to identify this arrangement is "the indenture." While the content of an indenture may reflect specific understandings between the potential investors and the corporation, most are comprised of either or both of the following elements: (1) a "dividend preference" (the holders of this class of stock are "guaranteed" a dividend preference over subordinated or "junior" classes of stock); and (2) a "liquidation preference" (in the event of dissolution, the holders are guaranteed a preferential claim to assets which exceed the claims of all creditors). Neither of these guarantees is chiseled in stone. Performance is permitted only if the corporation can otherwise meet its legal obligations. Thus if the distribution

would threaten the security of creditors mandated by ACC Section .358, it cannot be made to even senior shares.

Adding to the vulnerability of the holders of these securities is a third classical feature of their status: they normally do not enjoy a right to elect members to the board of directors. The directors are, instead, elected by the owners of the junior, or "common", shares. Unless restrained by easily understood guidelines, there is danger that the directors will advance the interests of their constituents at the expense of the non-voting senior shares.

continues theory of ex. law

AS 10.05.207 and .210 show that the Legislature has long been interested in affording protection to senior shares. ACC Section .365 continues this policy by restricting the board's authority so that there can be no distribution to junior shares unless the amount of retained earnings immediately prior thereto equal or exceeds the amount of the proposed distribution plus the aggregate amounts of cumulative dividends in arrears on all shares having a dividend preference. The net effect of ACC Section .365 is to foreclose the use of payments in partial liquidation to holders of junior shares so long as the indenture obligations to senior shares are unmet.

The liquidation preference of senior shares is guarded by ACC Section .363. By its terms neither a corporation nor any of its subsidiaries may make any distribution to junior shares if, after giving effect to the proposed distribution, the excess of corporate assets over liabilities would be less than the liquidation over the class or series to which the distribution is made.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: If supporters could be found for a continuation of the baroque concepts of "legal accounting" contained in current Alaska law, they will find no comfort in the RMBCA. The official comment to RMBCA Section 6.40 makes it clear that it is intended to "sweep away all the distinctions among the various types of surplus and impose realistic restrictions on distributions build around the equity insolvency test of earlier statutes." (p. 6-60). The RMBCA also follows the California/ACC approach and yields all notions of legal accounting. It stops short, however, of requiring that books and records according to generally accepted accounting principles. While it expects that ". . .their use will be the basic rule in most cases. . . ." the final judgment is left within the business judgment of the board. (6-78).

There are differences between the existing California and proposed Alaska statutes and RMBCA Section 6.40. While the former use the equity insolvency test as the first of a two prong concept, RMBCA Section 6.40 relies upon it almost exclusively. Put most simply, the cushion of $5 in assets to every $4 in liabilities is not mandatory under RMBCA Section 6.40. The standard is explicit under the proposed content of the ACC. It would present a moving target under the RMBCA. A miss would ensure harm to creditors and promote litigation against the directors and shareholders of the defaulting

entity. Neither seems a desirable outcome.

RMBCA Section 6.40(c)(2) does contain protection for the holder of senior securities which is similar in object to ACC Section .360.

Section .368 EXCEPTION FOR PURCHASE OR REDEMPTION OF SHARES OF DECEASED SHAREHOLDER

ORIGIN: ACC Section .368 is new to Alaska law; it is taken verbatim from GCL Section 503.1.

SUMMARY OF COVERAGE: It is often desirable in smaller corporation to provide for the death of a shareholder with a plan permitting the corporation to purchase or redeem the shares of the deceased. Such a plan prevents the potentially troublesome problems of having the deceased's heirs participating in the business. A common method used in effecting such plans is a corporate purchase of insurance on the shareholder's life. The insurance proceeds are to be used for the purchase or redemption. ACC Section .368 provides that, notwithstanding an inability to comply with Sections 358 through .365, the amount of the proceeds from the policy in excess of the total amount of premiums paid may be used to purchase or redeem the decedent's shares.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains no explicit provision enabling such limited repurchase plans.

Section .370 INAPPLICABILITY TO REGULATED INVESTMENT COMPANY

ORIGIN: ACC Section .370 is new to Alaska law, and is derived from GCL Section 504.

SUMMARY OF COVERAGE: In order to avoid any conflict with federal law, an exception to the provisions of ACC Section .358 is made for corporations defined as regulated investment companies under the United States Internal Revenue Code.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA appears to have no comparable exception, although the result would doubtless be reached through litigation.

Section .373 SHARE DIVIDENDS: RESTRICTIONS

ORIGIN: This section is a reenactment without change of AS 10.05.204(5), and is predicated upon Section 45(e) of the MBCA.

SUMMARY OF COVERAGE: Share dividends present no direct threat to creditors who are protected by the ratio/assets surplus test of ACC Section .358. However, if the corpo-

ration has more than one class of shares, the power of the board to distribute shares of the "senior" or "preferred" class to the common shareholders as a dividend is a direct threat to their proportional interest in the corporation. ACC Section .373 continues Alaska law by prohibiting the board from taking such a step unless it is authorized in the articles or is the subject of a majority vote of the holders of the senior shares.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.23 is functionally identical to ACC Section .373.

Section .375 ADDITIONAL RESTRICTIONS IN ARTICLES, BYLAWS, INDENTURES OR AGREEMENTS

ORIGIN: This section does not change prior Alaska law; it merely makes the law explicit.

SUMMARY OF COVERAGE: ACC Section .375 makes it explicit that the provisions of the ACC on the declaration of dividends and purchase or redemption of shares do not "occupy the field" and thereby prevent further regulation by the articles, by-laws, indentures or agreements.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.40 contains a prefatory clause which accomplishes the same result as ACC Section .375.

Section .378 LIABILITY OF SHAREHOLDERS RECEIVING PROHIBITED DISTRIBUTIONS; SUIT AGAINST SHAREHOLDERS

ORIGIN: ACC Section .378 is new to Alaska law, and is derived from GCL Section 506. It supplements ACC Section .480(b), itself a reenactment of AS 10.05.225.

SUMMARY OF COVERAGE: ACC Section .378 provides a non-exclusive remedy against shareholders who have received any distribution with knowledge that it is illicit. The remedy runs to the corporation and may be asserted to the use of the corporation by any non-consenting creditor for violation of Sections .358 or .360, provided that the creditor's claim had arisen prior to the distribution. Under subsection (b), non-consenting holders of senior shares may commence the action for violation of Section .363 or .365 provided that the senior shares were held at the time of the distribution.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 8.33(b)(2) achieves the goal of ACC Section .378 by indirection. Shareholders are rendered liable for contribution to a director sued for an illicit distribution to the extent that they knew it to be in violation of the act or provisions of the articles.

Section .380 IDENTIFICATION OF DISTRIBUTION IN NOTICE TO SHAREHOLDERS

ORIGIN: ACC Section .380 is taken from GCL Section 507. It replaces AS 10.05.207(5).

SUMMARY OF COVERAGE: In order to set the stage for recovery of illicit distributions and to inform shareholders when a dividend represents a partial liquidation (as opposed to a distribution of profits), ACC Section .380 requires that management identify the source and accounting treatment of a dividend charged against any source other than the retained earnings account. Such a policy is consistent with current Alaska practice. AS 10.05. 207(5) requires identification of distributions in partial liquidation.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.40 does not require that shareholders be given this prudential information. Omitting such a step fails to alert Alaskans of potentially favorable tax treatment of the dividend on their federal returns.

Section .383 INAPPLICABILITY TO WINDING UP AND INVOLUNTARY OR VOLUNTARY DISSOLUTION

ORIGIN: ACC Section .383 is taken from GCL Section 508.

SUMMARY OF COVERAGE: The provisions of Article 9 for the winding up of corporate affairs and the involuntary or voluntary dissolution of the corporation are plenary in their coverage. No additional law is required to protect the interest of creditors and holders of senior shares. Thus, the provisions of Sections .358 through .365 are made inapplicable to such procedures by ACC Section .383.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: There is no comparable provision in the RMBCA.

Section .385. REDEMPTION OF SHARES AT THE OPTION OF CORPORATION; MANNER

ORIGIN: Current Alaska law provides no statutorily approved procedure for the redemption of shares. ACC Section .385 is derived from GCL Section 509, with the deletion of language in subsection (c) which would have, nonsensically, required a corporation to send a notice to itself if it did not have the shareholder's address.

SUMMARY OF COVERAGE: ACC Section .385 creates a statutory procedure for redemption. The notice provisions of subsection (b) are subject to modification by the articles of incorporation.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.31 empowers a corporation to acquire its own shares. However, the RMBCA does not appear to contain any provision defining the manner of taking such a step.

Section .388 ACQUISITION OF CORPORATION'S OWN SHARES; REISSUANCE OR RETIREMENT

ORIGIN: ACC Section .388 is taken from GCL Section 510. It continues existing Alaska law (AS 10.05.312 to .345) in requiring a filing with the commissioner of an amendment to the articles. It departs from and simplifies existing law by the elimination of the concept of "treasury shares".

SUMMARY OF COVERAGE: ACC Section .388 specifies the treatment to be given redeemed or repurchased shares. They return to the status of authorized but unissued shares unless the articles prohibit reissuance. If reissuance is prohibited, the articles stating the number of authorized shares must be amended to reflect the lower number. Such an amendment must be filed with the commissioner. Shareholder approval of the required amendment is unnecessary.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.31 is functionally identical to ACC Section .388

Section .390 CAPITALIZATION OF RETAINED EARNINGS

ORIGIN: ACC Section .390 continues the policy of existing Alaska law, which permits directors to increase either the stated capital (AS 10.05.108) or the capital surplus (AS 10.05.366) accounts by charging the earned surplus account. There is no corresponding provision in the GCL financials.

The accounting provisions of existing law require that an amount equal to the total par value of shares distributed as dividends be transferred to the stated capital account from a surplus account (AS 10.05.204(4)(A)). No such accounting treatment is required under the ACC since the use of par value has been eliminated.

SUMMARY OF COVERAGE: ACC Section .388 permits the board to pass a resolution which transfers amounts properly allotted to the retained earnings account into the paid-in account. The effect of such a transfer would limit the ability of the board in future to make distributions under ACC Section .358(a).

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains no similar provision.

ARTICLE 5. MEETINGS OF SHAREHOLDERS

Section .405 MEETINGS OF SHAREHOLDERS

ORIGIN: ACC Section .405 is predicated upon Section 28 of the MBCA and Section 500(d) of the GCL. It replaces AS 10.05.138.

SUMMARY OF COVERAGE: ACC Section .405 requires that shareholders of any corporation organized under or subject to this Chapter meet at least once annually. For the first time in Alaska law, a shareholder is provided with standing to seek a summary court order to convene an annual meeting if such a meeting has not been held within the prior thirteen month period. ACC Section .405(c) differs from the Model Act in conferring the power to summon special meetings of the shareholders upon the chairman of the board and the president of the corporation. AS 10.05.138 confers such power upon the president, but does not reach the chairman of the board.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The content of ACC Section .405 is paralleled in RMBCA Sections 7.01, 7.02, and 7.03. RMBCA Section 7.01 requires an annual meeting of shareholders. RMBCA Section 7.03(a)(1) is similar to ACC Section .405(b) in authorizing aggrieved shareholders summary access to a court ordered meeting in the event the annual meeting is not held. Special meetings may be called by shareholders under both ACC Section .405(c) and RMBCA Section 7.02. The ACC continues current Alaska law and the original recommended content of the Model Act by requiring that 10% of the voting shares are needed to call a special meeting. In the exposure draft Section 7.02(a)(2) recommended that the minimum be lowered to 5%. In the final draft the figure was restored to the traditional 10%.

Section .408 CLOSING OF TRANSFER BOOKS AND FIXING RECORD DATE

ORIGIN: ACC Section .408 is predicated upon Section 30 of the MBCA with two modifications. In both subsections (a) and (b), the Model Act's ten day minimum period before the action is taken has been extended to twenty days, to further the use of the twenty day notice periods found throughout the ACC. AS 10.05.144 utilizes a ten day period. Also, sixty day limitations have replaced the fifty day formula now found in Alaska law respecting the closing of transfer books or fixing of a record date. Finally, the ACC follows the Model Act in making a shareholder list compiled from the closed transfer

books or by virtue of the record date effective as to any adjournment of the meeting.

SUMMARY OF COVERAGE: ACC Section .408 provides three alternatives for effecting a determination as to shares entitled to vote in an annual or special meeting, or to participate in a distribution. Under the first alternative, the board may simply close the stock transfer books. A second alternative is for the board to declare a "record date" for such determination. Finally, the default mode for determining the shareholders if the board has not exercised its options under the first or second alternative is to adopt the date on which the notice of the meeting is called, or the date that the resolution of the board declaring the distribution is adopted.

COMPARISON WITH THE FINAL DRAFT DRAFT OF THE RMBCA: RMBCA Sections 7.07 and 7.05(d) contain the three alternatives specified in ACC Section .408 with slightly differing minimum and maximum times.

Section .410 NOTICE OF SHAREHOLDERS' MEETING

ORIGIN: ACC Section .410 is predicated upon MBCA Section 29 and AS 10.05.141. The only change is to set a twenty day minimum for delivery of notice, a general policy running throughout the ACC.

SUMMARY OF COVERAGE: ACC Section .410 establishes the minimum content and the minimum and maximum time restraints on written or printed notice for annual or special meetings. The notice must be "delivered" not less than twenty nor more than fifty days before the date of an annual or special meeting, and in every instance, the notice must state the place, day, and hour of the meeting. For special meetings only, the notice must also declare the purpose(s) for which the meeting is being convened.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 7.05 is in substantive accord with ACC Section .410. The RMBCA does propose a minimum of 10 and a maximum of 60 days for notice. The ACC uses 20 and 50.

Section .413 VOTING LIST; LIABILITY

ORIGIN: ACC Section .413 is predicated upon AS 10.05.147, which was based upon the pre-1962 version of Section 31 of the MBCA. ACC Section .413(c) is based upon MBCA Section 31 and AS 10.05.150.

SUMMARY OF COVERAGE: ACC Section .413 mandates that at least twenty days prior to each meeting of shareholders, the officer or agent having charge of the stock transfer books make a list of all shareholders entitled to vote. This list must be

kept open and subject to inspection by a shareholder at any time during usual business hours for a period of twenty days prior to the meeting. This right of inspection prior to the meeting may be exercised by an agent or attorney of the shareholder.

ACC Section .413(c) imposes a civil liability upon an officer or agent having charge of the stock transfer books who fails or refuses to exhibit such a list as above provided. Such a liability runs to any shareholder able to establish damage as a consequence of this failure or refusal, in an amount determined by the court's discretion.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 7.20 substantially mirrors the provisions of ACC Section .413. RMBCA Section 7.20(d) sanctions a summary court ordered inspection in the case that the access to the shareholder list mandated is denied. A similar provision is found in ACC Section .430(d). RMBCA Section 7.20 does not establish any potential civil liability in the event of a denial of inspection rights. In his address to the Alaska Bar Association Convention Professor Hamilton stated the view that personal liability sanctions are rarely imposed and thus do not serve as a pragmatic deterrent.

Section .415 QUORUM OF SHAREHOLDERS

ORIGIN: ACC Section .415(a) is predicated upon MBCA Section 32 and AS 10.05.153, and reflects no change in existing Alaska law. ACC Section .415(b) is predicated upon GCL Section 602(b), and is unprecedented in Alaska law.

SUMMARY OF COVERAGE: Absent a provision in the articles or bylaws, the default quorum requirement is the presence, in person or by proxy, of an absolute majority of the shares entitled to vote. The articles or the bylaws may establish a greater than majority quorum requirement. Only the articles are competent to establish a less than majority quorum requirement, which may not be less than one-third of the voting shares. The affirmative vote of the majority of the shares represented at which a quorum is present is the act of the shareholder. Once a quorum has been established, it is not possible for a disgruntled minority to defeat the capacity of the majority to transact business by simply "walking out" of the meeting.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 7.25 is functionally identical to ACC Section .415.

Section .418 PROXIES

ORIGIN: ACC Section .418 is taken from GCL Section 705, with a modification to eliminate Section 705(e)(3) (rights of creditors). Section .418 replaces AS 10.05.159 and .168,

which had been based on Section 33 of the MBCA. The explicit treatment of the question of "revocation" and the circumstances under which a proxy may be made "irrevocable" by agreement are unprecedented in Alaska law.

SUMMARY OF COVERAGE: ACC Section .418 permits a shareholder to create a legal power in a nominee to vote his or her shares, the life of which can not exceed eleven months. A revocable proxy is treated as destructible at the will of the proxy giver. This Section regulates the circumstances or acts which will "revoke" the proxy, thus disabling management from recognizing the power of the nominee to cast the votes represented by the shares. Finally, for the first time, Alaska law contains explicit provisions defining the circumstances under which a proxy may be made irrevocable.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 7.22 is identical to ACC Section .418.

Section .420 VOTING OF SHARES

ORIGIN: ACC Section .420 is predicated upon MBCA Section 33, with the exception of subsections (d) and (i). Section .420(d) is predicated upon GCL Section 708(a), and replaces AS 10.05.156 to .168. Section .420(i) is new and unprecedented in Alaska law. It is based upon GCL Section 509(d).

SUMMARY OF COVERAGE: ACC Section .420 establishes a cumulative voting scheme designed to enhance the opportunity for minority share interests to obtain representation on the board. Section .420(d) makes cumulative voting optional and presumptive unless eliminated by a provision of the articles. It goes beyond the Model Act to provide that if elimination of cumulative voting is sought via amendment to the articles, such an amendment shall not be effective if a sufficient number of votes are cast against it as would elect a single director if voted cumulatively in an election for the entire board. Shares held by the corporation or its controlled subsidiary may not be voted or counted towards the outstanding shares entitled to vote.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 7.21, 7.14, and 7.28 cover the subject matter addressed in ACC Section .420. There is substantial accord except with respect to the presumptive status of cumulative voting. Cumulative voting rights exist under ACC Section .420(d) unless extinguished in the articles. This is a continuation of historic Alaska practice and reflects a Legislative solicitude for representation of minority share interests on the board. Under RMBCA Section 7.28(a) such rights do not exist unless the articles make affirmative provision.

Section .423 ACTIONS TAKEN WITHOUT MEETING: WRITTEN CONSENT;

REVOCATION OF CONSENT

ORIGIN: ACC Section .423(a) is predicated upon Section 145 of the MBCA and AS 10.05.807, with language added to make it clear that the written consents are invalid unless of identical content as to all shareholders. Section .423(b) is adapted from GCL Section 603(c), and is unprecedented in Alaska law.

SUMMARY OF COVERAGE: ACC Section .423 provides for informal action by shareholders, as long as the action is taken by the unanimo written consent of the shares. The Commission conside and rejected the California and Delaware positions which would tolerate informal action by less than unanimous consent, believing that the unanimous consent requirement was a valid trade-off for the abolition of a formal meeting. This presumption for informal action may be extinguished by the articles or the bylaws.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 7.04 is in substantial accord with ACC Section .423. The prudential requirement that the consents be identical in content is not contained in Section 7.04. The official comment (7-17, 18) makes it clear that, like the Code Revision Commission, the framers of the RMBCA do not advocate adopting a position wherein informal action may be taken by less than the unanimous consent of the voting shares.

Section .425 VOTING TRUSTS AND AGREEMENTS AMONG SHAREHOLDERS

ORIGIN: ACC Section .425(a) is taken from MBCA Section 34 and AS 10.05.171. Unlike existing Alaska law, Section .425(a) has adopted the Model Act's language designed to require disclosure of the terms and identity of voting trusts. Section .425(b) is taken from GCL Section 706(d), and is unprecedented in Alaska law.

SUMMARY OF COVERAGE: ACC Section .425 permits a voting trust, regulates its duration, and mandates disclosure of its terms and members. Shares committed to a voting trust must be surrendered to the trustee in exchange for trust certificates, while all incidents of share ownership other than voting rights remain with the shareholder/participant. The Model Act language on the extension of voting trusts has not been adopted, in the belief that at the end of the ten year maximum life, the parties are capable of forming a new trust. Section 425(b) tolerates other agreements such as pooling agreements and share classification, leaving to common law any limitations upon their use.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Sections 7.30 and 7.31 cover the subject of voting trusts and voting agreements among shareholders. Their content is in substantial accord with ACC Section .425, except for the provision

on extending the period of time for a voting trust.

Section .428 SHAREHOLDERS' PREEMPTIVE RIGHTS

ORIGIN: ACC Section .428 is predicated upon MBCA Section 26A and replaces AS 10.05.129. Existing Alaska law contains no provision comparable to Section .428's presumptions as to shares or offerings to which preemptive rights are not extended.

SUMMARY OF COVERAGE: Unless limited or denied by provisions of the articles, ACC Section .428 establishes preemptive rights in certain shareholders to acquire under fair and reasonable terms unissued shares or convertible securities. Preemptive rights do not exist in holders of any class of preferred shares, nor do common shareholders have preemptive rights to the issuance of nonconvertible preferred shares. If a majority of the shares approve, preemptive rights do not exist as to shares issued to directors, officers, or employees. This provision is intended to facilitate the implementation of qualified deferred compensation schemes under the Internal Revenue code. Section .428 expressly recognizes that the articles are competent to enlarge or diminish the scope of preemptive rights.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.30 reverses the statutory presumption on preemptive rights. Under ACC Section .428 such rights exist unless limited or extinguished in the articles. Under RMBCA Section 6.30(a), such rights do not exist unless affirmatively provided in the articles. Assuming the presence of such rights, the balance of RMBCA Section 6.30 is in accord with the provisions of ACC Section .428.

Section .430 BOOKS AND RECORDS

ORIGIN: ACC Section .430 is based upon Section 52 of the MBCA and AS 10.05.237 to .249.

Section .430(a) continues the content of AS 10.05.237 with added provisions for minutes of meetings of board committees and for electronic processing. Section .430(b) continues the policy of AS 10.05.237(b), but has eliminated the durational and numerical qualifications of AS 10.05.240. Section .430(c) continues the policies of AS 10.05.243, with the modification of imposing a minimum liability of $5000. Section .430(d) has modified AS 10.05.246 in view of the standing requirements eliminated under Section .430(b). Section .430(e) adopts without change the content of AS 10.05.249 regarding the right to demand a copy of the most recent financial statement.

SUMMARY OF COVERAGE: ACC Section .430(a) creates the obligation for any corporation organized under this Chapter to keep

specified books and records of account, minutes of proceedings, and a record containing the names and addresses of all shareholders and the number and class of shares held by each. This subsection facilitates the collection and keeping of such data by electronic processing so long as such data can be reduced to writing.

Subsection .430(b) creates the right of inspection and vests that right in any shareholder and the Department of Commerce and Economic Development. The shareholder must make written demand and state the purpose(s) for which inspection is demanded. The inspection may be made in person or by agent or attorney, and at a reasonable time and for a proper purpose.

Subsection .430(c) creates personal liability in any officer or agent who denies a right of inspection which the shareholder can establish was properly demanded, with certain affirmative defenses available to defeat this liability.

Subsection .430(d) affirms the power of a competent court to enforce a right of inspection properly demanded.

Subsection .430(e) gives the shareholder a right to receive, upon written request, a copy of the corporation's most recent financial statement.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 7.20 requires that the corporation maintain and make available for inspection a list of the names and addresses of its shareholders. RMBCA Section 16.01 requires the keeping of books, records of account and minutes of the proceedings of all shareholder, board and board committee meetings. RMBCA Section 16.02 creates a right of inspection in shareholders asserting a proper purpose to inspect reasonably related portions of the Section 16.01 materials. RMBCA Section 16.04 details the circumstances under which a court may order observance of the Section 16.03 inspection rights. In total, these provisions accord with those of ACC Section .430, except that they do not expressly allow for civil liability on the part of the officer or agent who wilfully frustrates what are later determined to have been valid assertions by shareholders of inspection rights.

Section .433 ANNUAL REPORT TO SHAREHOLDERS: CONTENT; FINANCIAL STATEMENT ON REQUEST

ORIGIN: ACC Section .433 is new and without precedent in Alaska law. It is adapted from Sections 1501 and 2000 of the GCL. GCL Section 1501(g) on attorney fees and costs was omitted from Section .433.

SUMMARY OF COVERAGE: ACC Section .433 establishes the obligation of the board to send an annual report to shareholders within 180 days after the close of the fiscal year. The report must contain a balance sheet and an income statement prepared according to generally accepted accounting principles. The report need not be prepared by independent ac-

countants, but if so prepared it must be certified by the independent accountant.

If the corporation has fewer than 100 shareholders the articles are competent to waive the obligation to provide an annual report.

If the corporation has more than 100 shareholders the content of the annual report is expanded to include a brief description of all "insider transactions" (transactions, other than compensation, in which the corporation has engaged with one of its officers, directors, or a controlling shareholder) involving an amount in excess of $40,000. Corporations reporting under Section 12 of the Federal Securities and Exchange Act, and those reporting under Sections 7(c), 8(c), and 28 of the Alaska Native Claims Settlement Act are exempted from ACC Section .433(b) on the grounds that their federal reporting obligations cover these important items.

Section .433(c) permits shareholders holding at least 5% of the outstanding shares of any class to make written requests for periodic income statements.

Section .433(f) establishes the penal consequences of any failure, refusal, or neglect to make or disseminate the reports and statements required by this section, and also provides that a competent court may specifically enforce these rights.

Section .433(g) makes this section applicable to foreign corporations with principal executive offices in or meetings held in Alaska.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 16.20 follows the California/ACC example and imposes an annual reporting obligation upon corporations. It does <u>not</u> contain any exemption for small corporations and the comment (16-20) makes it clear that it will have ". . .its principal impact on small, closely held corporations. . . ." Corporations which report under federal law would <u>not</u> be exempt from the RMBCA Section 16.20 obligation. Thus Native Corporations would face the duplicative burden of reporting.

RMBCA Section 16.21 requires that some of the "insider transactions" addressed in ACC Section .433(b) be reported to shareholders. In general, it does not require disclosure of major transactions with directors, officers or controlling shareholders. Yet it would require special reports of every instance of advances or indemnification. ACC Section .433(b)(2) requires this only if the instances aggregate more than $10,000 to an individual officer or director during the fiscal year.

The RMBCA does not guarantee access on the part of shareholders holding at least 5% of the outstanding shares to quarterly financial statements. Nor does it contain any express sanction for defiance of the reporting obligations it does impose. This last point reveals a distinction between the attitudes of the framers of the two statutes. The Alaska Code Revision Commission felt that it is unwise for a statute to create any positive obligation and then fail to spell out the consequences of a refusal on the part of affected persons

to comply with its terms.

Section .435 SHAREHOLDERS' DERIVATIVE ACTION

ORIGIN: ACC Section .435 is new and without statutory precedent in Alaska. Shareholders' derivative actions are presently regulated by the Alaska Supreme Court's adoption of Federal Rule of Civil Procedure 23.1.

Subsection .435(a) is taken in modified form from Section 626(a) of the NBCL. Subsection .435(b) is taken from GCL Section 800(b)(1). Subsections .435(c) through (i) represent original work by the Code Revision Commission. Subsection (h), security for expenses, is taken from MBCA Section 49. Subsections (j) and (i) are predicated upon NBCL Section 626(d) and (e).

SUMMARY OF COVERAGE: ACC Section .435(a) subjects shareholders' derivative actions to statutory regulation for the first time. Section .435(b) establishes a limited departure from what is otherwise a contemporaneous share ownership requirement. If a noncontemporaneous shareholder can establish to the satisfaction of the court that the criteria enumerated in Sections .435(b)(1)-(5) are satisfied, the statute empowers the court to grant standing to such a plaintiff.

Section .435(c) requires that a qualified shareholder make a demand upon the board to secure such action as the plaintiff desires, unless the shareholder can show that such demand would be futile. Under Section .435(d), the burden to establish excuse is upon the plaintiff-shareholder. If a demand on the board is not excused, Section .435(e) provides that a decision by the board, consonant with its duties of care and loyalty, that in its business judgment such litigation would not be in the best interest of the corporation, terminates the right created by Section .435(a). A shareholder is not thereafter precluded from offering evidence that any or all of the directors who have decided that the litigation not go forward are implicated in the wrong complained of.

If an initial demand on the board has been excused, or if the shareholder is able to prove that the recommendation by a board upon which demand has been made should be ignored as tainted, Section .435(f) provides for the subsequent intervention by allegedly disinterested directors asserting that, in their good faith, independent, and informed business judgment, the action should be dismissed as inimical to the best interests of the corporation. Assuming that these disinterested directors are able to meet their burden of establishing good faith, independence, and informed business judgment, the trial court is directed to make an independent assessment in exercising its own judgment as to whether the action should be maintained.

Section .435(g) aligns Alaska with California and New York in omitting the requirement that a shareholder make a

demand upon the outstanding shares.

Section .435(h) enables a corporation or the actual defendants to move the court at any time before final judgment to require the plaintiffs to give security for the reasonable expenses, including attorney fees, that may be incurred by the petitioners. The amount of security shall be determined by the court in its discretion, except that if the plaintiff shareholder(s) hold 5% or more of any class of outstanding shares or voting trust certificates representing shares, there shall be no security for expenses requirement.

Section .435(i) forbids any form of "out of court settlement" of a derivative action without court approval.

Section .435(j) provides that any recovery should be accounted for to the corporation, however, the court may award the prevailing party reasonable expenses, including attorney fees.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 7.40 accords with the Commission's recommendation that demands upon shareholders be eliminated. However, RMBCA Section 7.40 also would eliminate the security for expenses provided by ACC Section .435(h). Finally, the official comment to RMBCA Section 7.40 (7-85) make it clear that it takes no position on the question of the power of independent directors to seek dismissal of the derivative action on the ground that, in their collective business judgment, it is not in the best interests of the corporation. Such matters are resolved by ACC Section .435.

Section .438 LIABILITY OF SHAREHOLDERS AND SUBSCRIBERS

ORIGIN: ACC Section .438 is predicated upon MBCA Section 25 and AS 10.05.125.

SUMMARY OF COVERAGE: ACC Section .438 establishes the basic proposition of limited liability of shareholders, except for their liability to pay the full consideration for the shares which runs to designated classes of successors in interest.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.22 is functionally identical to ACC Section .438 except that it does not clarify the non-liability of executors, administrators, conservators, guardians, trustees, assignees for the benefit of creditors, receivers or pledgees.

ARTICLE 6. DIRECTORS AND OFFICERS

Section .450 BOARD OF DIRECTORS; DUTY OF CARE; RIGHT OF INSPECTION; FAILURE TO DISSENT

ORIGIN: ACC Section .450(a) is premised upon the 1977 revision of the MBCA Section 35. The rights, privileges, and duties which are fixed upon the board devolve upon delegates. ACC Section .450 differs from the Model Act language to make it clear that with this delegation flows the liabilities which the Chapter otherwise imposes upon the directors. This modification follows GCL Section 300(d).

Subsection (b) is also premised upon the revised content of MBCA Section 35. Presently, there is no statutorily defined duty of care to be observed by a corporate director. One deviation from the MBCA is the provision in ACC Section .450(b) in which the duty of care includes the duty of reasonable inquiry. This is taken from GCL Section 300(d).

This section replaces AS 10.05.174, .222, and .219.

SUMMARY OF COVERAGE: Under Section .450 there must be a board of directors. ACC Section .450 provides for the exercise and delegation of board functions; the duty of care which must be observed by the directors and their right to rely upon certain information, opinions, reports, or statements from officers, experts, and committees of the board; the grant of an absolute right of inspection to every director as to all corporate books, records, and documents, together with the right to use an agent or attorney and the right to make copies or extracts; and, the consequences of a director's failure to dissent as to any action taken by the board at a meeting at which she is present.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 8.01 parallels ACC Section .450(a) in requiring a board of directors. The authority to delegate board functions is more limited under RMBCA Section 8.01 in that the corporations with more than 50 shareholders may not delegate board functions.

RMBCA Section 8.30 establishes the standards of care which must be observed for directors. Like ACC Section .450(b) it imposes a standard of honesty in fact augmented by the requirement that the conduct meet the level which an "ordinarily prudent person in a like position would exercise under similar circumstances. . . ." Unlike the California and ACC standard, the one articulated in the RMBCA does not reference a duty of reasonable inquiry. RMBCA Section 8.30(b) and (c) are similar to ACC Section .450(b) in enabling a director to rely upon information, opinions, reports and statements from officers, experts, or committees of the

board. This right of reliance is qualified and inapplicable if the director knows, or as a reasonable person ought to know, that, as to the mater in question, reliance is unwarranted.

Section .453 NUMBER AND ELECTION OF DIRECTORS

ORIGIN: ACC Section .453(a) and (b) are premised upon a modification of New York Business Corporation Law Section 702(a) and (b), and were adopted in lieu of comparable provisions of Section 36 of the MBCA. Section .453(c), (d), and (e) are taken from MBCA Section 36. This section replaces AS 10.05.177, .180, and .183.

SUMMARY OF COVERAGE: Section .453(a) continues the policy of AS 10.05.177, which sets the minimum number of directors at three, save for a corporation with less than three shareholders. In a corporation with less than three shareholders, the number of directors need not exceed the number of shareholders. The Model language which would permit a corporation to function with a board of one regardless of the number of shareholders was rejected. Further, Section .453(a) makes it impossible for a board to adopt bylaws changing the number of directors without participation of the shares (as now provided in AS 10.05.177), unless the board acts under a provision of the articles or bylaws adopted by approval of the outstanding shares.

This section also directs that there shall be an election of directors at each annual meeting except in the case of a classified board, and defines the tenure in office of incumbent directors. Subsection (c) sanctions a provision in the articles which would secure the election of one or more directors to the holders of the shares of a class or series voting as a class or series. Subsection (e) makes clear that a director serves until the expiration of the term for which he is elected and until a successor has been elected and qualified.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 8.03 governs the number and election of directors. It perpetuates the concept previously not adopted by the Legislature which would permit a board of a single director regardless of the number of persons who own shares. RMBCA Section 8.03 tracks ACC Section .453(b) in permitting the articles or bylaws to establish a formula permitting either the shareholders or the board to increase or decrease the number of positions on the board. The RMBCA limits the power of the board under such a provision to an increase or decrease of no more than 30 percent from the number last approved by the shareholders. It, too, establishes the norm of one year terms unless the board is classified with staggered terms.

RMBCA Section 8.04 parallels ACC Section .453(c) in permitting the articles to permit classes to elect certain positions on the board. Unlike the ACC, it would not permit

series of shares to have discrete voting rights.

RMBCA Section 8.05 is functionally identical to ACC Section .453(e) respecting terms of directors and the continuation of a director's liability until a successor shall have been elected and qualified.

Section .455 CLASSIFICATION OF DIRECTORS

ORIGIN: ACC Section .455 is an enactment of MBCA Section 37, and works an important change from AS 10.05.186. Under existing Alaska law, the decision to classify the board could be taken by a bylaw adopted by the board without shareholder participation. Subsection (b), continuing the concern for minority shareholder representation on the board, is new. Section .455 replaces AS 10.05.186.

SUMMARY OF COVERAGE: ACC Section .455 provides for optional classification of the board if there are nine or more board members, as long as the option is specified in the articles. However, if the corporation has not eliminated cumulative voting, an amendment to the articles attempting to provide for board classification is ineffective if the number of shares voting against classification is sufficient to elect one director under a cumulative voting scheme.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: 8.06 is functionally identical to ACC Section .455(a). Classification cannot be made unless there are nine or more directors and there may not be more than three classes serving staggered one year terms. Unfortunately, the RMBCA does not contain any protective mechanism for those corporations which have elected cumulative voting rights.

Section .458 VACANCIES ON THE BOARD

ORIGIN: ACC Section .458 is adapted from GCL Section 302. It has no direct parallel in Alaska law.

SUMMARY OF COVERAGE: ACC Section .458 provides that the board may declare vacant the office of a director who has been declared of unsound mind by a court order, or who has had civil rights suspended due to imprisonment as provided in AS 33.30.310.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains no comparable provision.

Section .460 REMOVAL OF DIRECTOR WITHOUT CAUSE

ORIGIN: ACC Section .460 is premised upon Section 303 of the GCL, and has no parallel in Alaska law. This section provides an important shareholder check upon the incumbent di-

rectors innovated in California (as mandatory), and now found in Delaware (optional), New York (optional), and in the MBCA (optional). Section .460 follows the California version, and is mandatory. The special provisions regarding notice are original, having no parallel in statutory precedent, and apply only to those corporations with 500 or more record shareholders.

SUMMARY OF COVERAGE: ACC Section .460 provides for removal of incumbent directors at any time without any reason by a vote of the outstanding shares, subject to specific notice provisions. If the attempted removal is to be made at a special meeting, or at a regular meeting of a corporation with more than 500 record shareholders, notice of the removal action must be given. Provisions are also made for the protection of representatives of a minority of the shares, or the directors elected by a class or series of shares.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 8.08 continues the Model Act tradition of suggesting that this provision be made optional according to provisions of the articles. It contains no notice provisions respecting corporations with a relatively large number of shareholders. Like ACC Section .460, RMBCA Section 8.08 contains provisions to protect directors seated through cumulative voting or as the representatives of a particular class of shares.

Section .463 REMOVAL OF DIRECTOR BY SUPERIOR COURT

ORIGIN: ACC Section .463 is taken from GCL Section 304, and is without parallel in Alaska law. This section modifies the GCL by adding "gross neglect of duties" as a ground for judicial removal, and in granting standing to the board to seek removal.

SUMMARY OF COVERAGE: The primary recourse for shareholders dissatisfied with the performance of a director is to seek removal under ACC Section .460. However, if there are insufficient votes, ACC Section .463 specifies the serious grounds under which the holders of at least ten percent of the shares of any class or a majority of the board of directors have standing to seek removal in the superior court.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: 8.09 is functionally identical to ACC Section .463.

Section .465 VACANCIES AND RESIGNATION; SPECIAL MEETING OF SHAREHOLDERS

ORIGIN: ACC Section .465 is modeled upon GCL Section 305 with certain modifications. Section .465(a) continues the policy of AS 10.05.189 in vesting broad authority to fill vacancies with the remaining member(s) of the board, yet

unlike AS 10.05.189, this presumption may be modified by provisions in the articles or bylaws. The 1976 amendment to AS 10.05.189, requiring expansion vacancies to be filled by shareholders, has been dropped, given shareholders' expanded mandatory role in ACC .453. Section .465(b) has no parallel in Alaska law. Section .465(d) is a substantial modification of GCL Section 305(c), omitting Section 305(c)(2) (eliminating the role of the superior court).

SUMMARY OF COVERAGE: This section and Section .458 define when a vacancy exists upon the board. ACC Section .465 provides that in the absence of contrary provisions in the articles or bylaws, and unless the vacancy has occurred by removal by shareholders (Section .460), the vacant position(s) may be filled by the director(s) remaining in office, even though there may be less than a quorum of the entire board. This section also provides for resignation by a director and his status until the election and qualification of a successor.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 8.10 differs from ACC Section .465 in two particulars. It fails to make clear that, unless otherwise provided in the articles or bylaws, a sole remaining director may act to fill vacancies on the board. This provision may be especially important in the event of a disaster in which nearly all of the directors may have perished. To some extent this omission is remedied by Section 3.03(b)(2) under which one or more officers of the corporation may be deemed directors for a meeting during a defined period of emergency. RMBCA Section 8.10 does not contain a comparable provision to ACC Section .465(c) whereby if the directors elected by the shareholders constitute less than a majority of the board, shareholders holding as few as 10% of the outstanding shares may call a special meeting to elect the entire board.

Section .468 EXECUTIVE AND OTHER BOARD COMMITTEES

ORIGIN: ACC Section .468 is a modified version of the new Section 42 of the MBCA, and clarifies AS 10.05.195.

SUMMARY OF COVERAGE: ACC Section .468 permits the articles or bylaws to empower the board to set up executive and other committees, and to delegate to such committees the powers otherwise vested in the board, with certain exceptions. The duty of care of directors not members of such committees is provided for in Section .468(b).

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 8.25 is functionally identical to ACC Section .468 with two exceptions. RMBCA Section 8.25(a) requires that each committee have two or more director-members. This limitation is not found in ACC Section .468. RMBCA Section 8.25 does not explicitly cover the creation of committees and the delega-

tion of board functions to the duty of care owed by non-member directors.

Section .470 MEETINGS: CALL, PLACE, NOTICE, AND WAIVER

ORIGIN: ACC Section .470 is a modified version of GCL Section 307, which replaces AS 10.05.198 (which was predicated upon MBCA Section 43).

SUMMARY OF COVERAGE: ACC Section .470 defines the officers or directors who have authority to call regular or special meetings of the board or board committee, the notice requirements that must be observed, and the waiver of such notice requirements by unnoticed directors.

ACC Section .470(a) is unprecedented in Alaska law and for the first time defines the corporate officers or directors who have authority to call regular or special or special meetings of the board or board committee.

ACC Section .470(b) follows the Alaska's existing no notice policy for regular meetings. With respect to special meetings there is a standardization of a twenty day written notice requirement with broad authority to use the instrumentalities of electronic telecommunications in which case the time provision is the 72 hour requirement observed for personal communication. Section .470(b) goes beyond either the GCL or the Model Act in requiring that notice of special meetings disclose the purpose or business to be transacted. Section .470(c) defines the circumstances under which an unnoticed director can or will be taken to have waived the notice requirements.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Sections 8.22 and 8.23 contain coverage comparable ACC Section .470(b) and (c). RMBCA Section 8.22 does not specify who may call meetings of the board or board committees, nor does it, in the absence of a requirement in the article cr bylaw, necessitate that notice of special meetings disclose the purpose and business to be transacted. This omission may prove troublesome in the context of a closely held corporation in which the minority's only pragmatic protection may be to refrain from attending a special meeting thus blocking the formation of a quorum.

RMBCA Section 8.23 on waiver of notice is substantively identical to ACC Section .470(c).

Section .473 QUORUM OF DIRECTORS

ORIGIN: ACC Section 473 continues the policy and language of AS 10.05.192 and MBCA Section 40.

SUMMARY OF COVERAGE: ACC Section .473 fixes the quorum of the board or any board committee at an absolute majority of the positions of such body. The articles or bylaws are

competent to set a higher quorum requirement, but may not go below the majority requirement. This position reflects a continuation of prior Model Act policy which opposed less than majority quorum requirements. ACC Section .473 also establishes the norm that the act of the majority of the directors at a meeting at which a quorum is present is the act of the board unless the articles require a greater number.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 8.24(a) and (c) are functionally identical to ACC Section .473. RMBCA Section 8.24(b) deviates from prior Model Act policy and would permit the articles or bylaws to fix the quorum requirement as low as one-third of the number of members of the board or committee.

Section .475 INFORMAL ACTION BY DIRECTORS

ORIGIN: ACC Section .475(a) is a straight enactment of the last paragraph of MBCA Section 43. Section .475(b) is a modified version of AS 10.05.199 and MBCA Section 44.

SUMMARY OF COVERAGE: ACC Section .475 provides for board meetings to be conducted via telecommunications equipment allowing simultaneous contact of all participants. It also provides for business to be transacted without any form of meeting via the use of written consents identical in content obtained from all directors.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 8.20(b) is functionally identical to ACC Section .475(a) in permitting board meetings to be conducted via communications equipment. RMBCA Section 8.21 is functionally identical to ACC Section .475(b) in permitting the board to act without a meeting utilizing written consents signed by all of the members. The prudential requirement that those consents be identical in content is omitted from the RMBCA.

Section .478 DIRECTOR CONFLICTS OF INTEREST

ORIGIN: Existing Alaska law has no statutory law on director conflicts of interest. ACC Section .478 is modeled upon GCL Section 310, with modifications designed to produce a more stringent standard regarding director conflict of interest. One departure from the GCL was the omission of its provision permitting a committee of the board to validate certain interested transactions. Also omitted was California's third alternative for validation, which would be a showing by the proponent of a contract or transaction that such transaction was just and reasonable. Instead of being an independent vehicle for validation, such a requirement is imposed as an <u>additional</u> ground for validation under Section .478(a)(2).

SUMMARY OF COVERAGE: ACC Section .478 addresses conflict of

interests in two distinct and classical instances: (1) where the contract or other transaction is between the corporation and one or more of its directors; and (2) where the contract or transaction is between two corporations sharing a common director or directors.

ACC Section .478(a) provides that transactions between the corporation and a director or a business entity in which the director has a material financial interest must be approved either by validation via the informed approval of the shareholders, or by the approval of a disinterested and fully informed majority of a quorum of the full board. The director's shares are not to be computed either for purposes of determining a quorum of the shares or a quorum of the board. The proponent of the contract has the additional burden to show that the contract or transaction is just and reasonable.

In the case of a common director(s) on the boards of each of the corporate parties to a transaction, there is no objection as long as the other directors are fully apprised of all facts, including the common directorship. Nothing in ACC Section .478(c) is intended to influence Alaska's antitrust laws, nor does this section intend to operate in derogation of a director's common law duty of loyalty in the context of the corporate opportunity doctrine.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 8.31 parallels ACC Section .478 is primarily concerned with conflicts of interest in which the director has a direct or indirect adverse financial interest. Its coverage is very similar to ACC Section .478(a). There is no explicit RMBCA coverage of the secondary conflict of interest situation in which a common director or directors serve on the boards of both corporate parties to a contract or transaction.

Section .480 LIABILITY OF DIRECTORS

ORIGIN: ACC Section .480 is an augmented version of new Model Act Section 48, and replaces AS 10.05.216 and .225. Section .480(a) continues the policy of AS 10.05.216 imposing joint and several liability upon directors. Section .480(a)(3) continues an imposition of liability for illicit loans to officers or employees contained in AS 10.05.216(d), which is not found in MBCA Section 48. The affirmative defense by a director that she observed the duty of care defined in ACC Section 450(b) is new to Alaska law.

SUMMARY OF COVERAGE: ACC Section .480 imposes joint and several liability upon directors who vote for or assent to three types of illicit transactions: distributions to shareholders contrary to provisions of Article 4 of this Chapter; distributions to shareholders which are prejudicial to the rights of creditors during the liquidation of the corporation; and loans or extensions of corporate credit to any officer or employee contrary to the restrictions of ACC Section .485 and any provisions of the articles of incorpora-

tion. A defense to liability is proof by the defendant(s) of an observance of the duty of care articulated in Section .450(b).

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 8.33(a) is functionally identical to ACC Section .480(a)(1) in dealing with the consequences of a director's personal liability for voting for or assenting to illicit distributions. The rights of contribution recognized in ACC Section .480(b) are mirrored in RMBCA Section 8.33(b). The ACC's coverage of distributions which are illicit during the course of liquidation are not contained in the RMBCA. Illicit loans to officers or directors, covered by ACC Section .480(a)(3), are the subject of RMBCA Section 8.32. The circumstances under which such loans may be licitly extended are covered by ACC Section .485. They are more stringent than the circumstances recognized under RMBCA Section 8.33(a)(1) and (2).

Section .483 OFFICERS: TENURE, RESIGNATION, AGENCY, DUTY OF CARE

ORIGIN: ACC Subsection .483(a) is adapted from GCL Section 312(a), former GCL Section 821, and NBCL Section 715(e). Unlike AS 10.05.228, Section 483(a) eliminates the necessity of a vice president.

Subsection .483(b) is taken from GCL Section 312(b), and differs from AS 10.05.228 by providing that officers must be selected by the board.

Subsection .483(c) is taken from NBCL Section 715(g), and replaces AS 10.05.231; it reflects no substantive change in defining the source of real authority of officers.

Subsection .483(d) is taken from GCL Section 313, which in turn, is adapted from Pennsylvania BCL Section 305.

Subsection .483(e) is premised upon NBCL 715(h), without inclusion of the specific "right of reliance" provision of the New York act. For the first time, the ACC defines the duty of care for officers, however, unlike NBCL Section 715, ACC Section 483(e) makes it clear that the duty of care includes a duty of reasonable inquiry.

SUMMARY OF COVERAGE: Five major topics are addressed by ACC Section .483: (1) the minimum number of offices which a corporation must have; (2) the manner of selection and the right of resignation of officers; (3) the source of real authority of corporate officers; (4) a strategy by which a third party can preclude a corporate principal's denial of the authority of an officer as agent; and, (5) a definition of the standard of care according to which officers are to discharge their responsibilities to the corporation.

COMPARISON OF THE FINAL DRAFT OF THE RMBCA: The five topics covered by ACC Section .483 are treated in five separate sections of the RMBCA.

RMBCA Section 8.40 deals with the required officers.

It differs from ACC Section .483(a) in several particulars. Section 8.40 merely requires that the corporation have "the officers described in its bylaws or appointed by the board of directors. . . ." Thus it would appear that under the RMBCA a corporation could be headed by the "Great PooBah", an individual assisted by the "Supreme Tweeb." Notwithstanding, there must be at least one officer who has the functions of the corporate secretary and who assumes all statutorily imposed duties of that office.

RMBCA Section 8.41 is in accord with ACC Section .483(a) in describing the duties of officers. They are fixed by the terms of the bylaws or, the the extend permitted, by the board. The RMBCA misses the accomplishment of ACC Section .483(c) in making explicit the grant of real agency authority to corporate officers.

RMBCA Section 8.42 joins ACC Section .483(e) in defining a duty of care for corporate officers. Unlike the ACC, the RMBCA does not make an express reference to a duty to make reasonably inquiry as part of the "reasonable person in like circumstances" standard. RMBCA Section 8.42 parallels its treatment of the duty of care for corporate directors by articulating "safe harbor" provisions wherein an officer may rely upon reports and representations of others. The ACC does not spell out this concept.

RMBCA Section 8.43 parallels ACC Section .483(b) in providing that officers serve at the pleasure of the board. It also recognizes circumstance under which an officer may resign her position.

RMBCA Section 8.44 is functionally identical to ACC Section .483(b) in providing that the removal of an officer does not prejudice any contract rights which the officer might have in the event that removal was in breach of a contract of employment. Both the ACC and RMBCA language aim to forestall circumstances in which a corporation could be ordered to specifically perform a contract with an officer in whom the board no longer reposed confidence. Such a corporation may, however, be liable in damages.

Section .485 LOANS TO DIRECTORS, OFFICERS, AND EMPLOYEES

ORIGIN: ACC Section .485 is unique, borrowing from MBCA Section 47 and GCL Section 315, but reflecting policies which are more protective of the corporate fisc than either of those provisions. It replaces AS 10.05.213.

SUMMARY OF COVERAGE: ACC Section .485 repudiates AS 10.05.213's flat prohibition against loans to corporate directors or officers. However, loans may not be made to directors without the approval of two-thirds of the voting shares. The board is competent to extend loans to officers and employees. A "loan" is defined broadly, to include securities or real or personal property, as well as cash. Directors, officers, and employees of parent, subsidiary, and sibling corporate affiliates are restrained under this section for purposes of

obtaining a corporate loan.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: 8.32 also prohibits a corporation from extending loans or guarantees to corporate directors. It does not cover loans to officers or employees. Further, the power to loan or guarantee the loans of directors is easier to achieve under RMBCA Section 8.32. Either a simple majority of the voting shares may approve or the board may determine that the loan or guarantee benefits the corporation and, having so determined, approves it.

Section .488 SECONDARY LIABILITY OF DIRECTORS AND OFFICERS

ORIGIN: ACC Section .488 is new and without direct precedent in corporate law. This section was adapted from NBCL Section 630, which imposes personal joint and several liability upon the ten largest shareholders of a non-publicly traded corporation for all debts, wages, or salaries due and owing to any of the corporation's laborers and employees.

SUMMARY OF COVERAGE: The social problem targeted for redress by ACC Section .488 is the abuse of unsecured creditors, including employees, who are precluded by the relatively small dimension of their demands, contrasted with the high costs of litigation, from asserting the more traditional common law efforts to "pierce the corporate veil".

Section .488 creates a "secondary liability" on the part of incorporators, directors (other than a provisional director appointed under Section 640), and the president, secretary, and treasurer in the event that corporate assets prove insufficient to meet corporate obligations for contract indebtedness, materials, supplies, inventory, or services furnished in the state during their period of service. This secondary liability is joint and several, and may amount to a maximum of $25,000 for each creditor. The terms of a written contract between a corporation and a third party may modify or preclude the liability created by this section. The liability of this section also extends to directors, incorporators, and officers of every foreign corporation doing business within Alaska to the extent that materials, supplies, inventory, or services were furnished within the state.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The exposure draft of the RMBCA contained nothing comparable to the New York precedent or the ACC provision on secondary liability. However, the final draft states in Section 2.02 that the articles can impose personal liability on shareholders for specified amounts in specified conditions.

Section .490 INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS: INSURANCE

ORIGIN: ACC Section .490 is premised upon Section 5 of the Model Act and works few changes on the provisions of AS 10.05.010.

SUMMARY OF COVERAGE: Corporate director, officers, and employees are vulnerable to attack in their personal capacity for acts done in their corporate roles. There is an understandable demand for financial protection from potentially ruinous costs and liabilities. Standing in opposition to this demand are social policies implicit in the condemnation of activity or behavior as criminal, violative of administrative regulations, or harmful to the interests of the corporation. These competing interests must be confronted in any statutory provision covering indemnification.

ACC Section .490 distinguishes between those circumstances in which a claim for indemnification may be made as of "right" from those in which it is addressed to the discretion of the corporation. As a further limitation upon discretionary indemnification, ACC Section .490(a) and (b) specify standards which must have obtained as to both the conduct and state of mind of the defendant. Finally, the corporation is empowered to purchase and maintain insurance which would recompense a defendant for any costs or liabilities incurred irrespective of the power of the corporation to have effected indemnification for its own resources.

Indemnification as a matter of right under ACC Section .490(c) can be asserted by a defendant who has been exonerated on the merits. Discretionary indemnification is provided in two circumstances. ACC Section .490(a) deals with a defendant in direct civil, administrative or criminal proceedings. While the decision to indemnify is left to the judgment of the corporation under subsection (d), it is conditioned upon a finding that the defendant ". . .acted in good faith an in a manner reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to a criminal action pro proceeding, had no reasonable cause to believe the conduct unlawful. . ." ACC Section .490(b) deals with the even more troubling situation of discretionary indemnification where the defendant has been assailed in a derivative proceeding. If the defendant has been adjudged guilty of violating either the duty of care or loyalty, the power of the corporation to indemnify against the very harm which it has suffered, or the court incurred costs in resisting liability, can only be exercised pursuant to a specific finding by and order of the court in which the action was tried.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: Chapter 8, sub-chapter E of the RMBCA contain the coverage on indemnification. RMBCA Section 8.51(a), (b) and (c). deals with the authority of a corporation to indemnify. It is functionally equivalent to ACC Section .490(c). RMBCA Section 8.51(d) prohibits indemnification in the instance of a successful derivative suit or other proceeding charging personal benefit to the defendant. However this ironclad prohibition

is later qualified by RMBCA Section 8.54(2) where it is recognized that the court may order indemnification. The combination of these two provisions is a result not unlike ACC Section .490(b). RMBCA Section 8.52 on mandatory indemnification deals with the defendant who was wholly successful. It accords with ACC Section .490(c).

RMBCA Section 8.53 adopts a stricter attitude toward advances against th defendant's anticipated expenses. ACC Section .490(e) leaves the question within the discretion of the corporation conditioned only upon an undertaking by or on behalf of the defendant that the amount will be repaid if it is ultimately determined that there is no indemnification as a matter of right. The RMBCA would require a prior determination of the defendant's good faith, the furnishing of a written personal undertaking to repay the advance, and a determination that the facts then known would not preclude indemnification.

RMBCA Section 8.55 is in substantial accord with ACC Section .490(d)'s position on how and by whom the corporate decision to indemnify is to be made. The primary responsibility is that of disinterested and uninvolved directors so long as they constitute a majority of a quorum. If this quorum cannot be mustered the decision may be reached by independent legal counsel or approved by the outstanding shares.

RMBCA Section 8.56 extends the provisions on the indemnification of directors to employees and officers. This accords with the provisions of ACC Section .490.

RMBCA Section 8.57 accords with ACC Section .490(g) permitting a corporation to purchase and maintain a policy of insurance covering directors, officers and employees which would cover any liability arising out of that status whether or not the corporation would have the power to indemnify with its own funds.

ARTICLE 7. AMENDMENTS AND CHANGES

Section .502 AUTHORIZATION: PERMITTED AND PROHIBITED AMENDMENTS

ORIGIN: ACC Section .502(a) is taken from GCL Section 900. It repeats the substance of AS 10.05.270, which it replaces. Section .502(b) is largely a reenactment of AS 10.05.273, with several deletions reflecting the elimination of the concept of par value. The language under Section .502(b)(2) is new, and reflects a major change in Alaska law, in order to carefully and unequivocally authorize only changes which extend limitations imposed upon a corporation's duration. Subsections .502(b)(5) and (6) follow MBCA Section 58, in order to conform Alaska law to the language of the Model Act.

SUMMARY OF COVERAGE: ACC Section .502 permits a corporation to amend its articles in "any and as many respects as may be desired." Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 10.01 confers a power to amend the corporate articles in the most general of terms. It does not differ substantively from ACC Section .502 but does not contain the non-exhaustive list of permitted amendments found in the ACC. This reflects a differing drafting style in which the Alaska statute would contain illustrations and examples to guide both lay persons and counsel.

Section .504 PROCEDURE TO AMEND ARTICLES OF INCORPORATION

ORIGIN: ACC Section .504's subsections (a)(1), (b), and (c) are taken from AS 10.05.276 and MBCA Section 59. Section .504(a)(2) is adapted from Section 902(a) of the GCL, and changes Alaska law by explicitly giving shareholders the power to initiate amendments to the articles.

SUMMARY OF COVERAGE: ACC Section .504 sets forth the mandatory procedures which must be followed to amend the articles. Under Section .504(a)(2), once shares have been issued, the power to initiate amendments resides concurrently in the board and with the voting shares. An amendment initiated by the shares does not become effective until approved by the board; likewise, an amendment initiated by the board requires shareholder approval to become effective. Alaska law presently requires a two-thirds majority of the shareholders to approve amendments; ACC Section .504(a)(2) opts for a majority of the outstanding shares entitled to vote, but makes the articles competent to establish a supermajority voting re-

quirement. This section also provides for notice as well as the power of the board alone to amend the articles if no shares have been issued.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: Several provisions of the RMBCA contain coverage of topics addressed in ACC Section .504. RMBCA Section 10.05 accords with ACC Section .506(a)(1) in providing that if no shares have been issued the power to amend the articles is with the board. Once shares have been issued ACC Section .504 requires the approval of both the directors and an absolute majority of the shares to amend the articles. RMBCA Section 10.02 creates a limited exception to this norm for what the official comment terms "housekeeping amendments" (10-9). These amendments can be affected by board approval only. Among them are two which Alaska law has always prohibited: deleting the names and address of the original registered agent and initial directors.

Once shares are outstanding RMBCA Section 10.03 severely restricts the power of shareholders. They cannot initiate amendments but can only approve those proposed by the board. Both statutes require that shareholders be given notice of the amendment whether it is to be considered at a regular or special meeting of the shares.

Section .506 CLASS VOTING ON AMENDMENTS

ORIGIN: ACC Section .506 is largely a reenactment of AS 10.05.282. Section .506(6) amends AS 10.05.282 to conform with Section 60 of the MBCA, and includes an increase in the authorized number of shares of a superior class as an amendment giving a right to class voting. This section also replaces AS 10.05.279.

SUMMARY OF COVERAGE: ACC Section .506 provides for "class voting", which obtains irrespective of any provisions in the articles, and may not be impaired or denied by any internal rule. Further, as to any amendment on which there is a right to vote by class, there is no "approval by the shareholders" unless the amendment receives the affirmative vote of a majority of the affected class as well as a majority of the other shares entitled to vote.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 10.04 accords with ACC Section .506(a) in mandating class voting rights under circumstances where an amendment would affect the rights, privileges, or restrictions imposed upon that class of shares. Unfortunately, there is nothing in the RMBCA or its official comments which parallels ACC Section .506(b)'s express statement that if the holders of shares of a class are entitled to vote as a class then the amendment is not approved unless it receives a majority vote of the outstanding shares of that class and also receives an absolute majority of the outstanding shares.

Section .508 GREATER VOTING REQUIREMENTS

ORIGIN: ACC Section .508 is taken from GCL Section 902(e), and is new to Alaska law.

SUMMARY OF COVERAGE: This section permits the articles to set up supermajority or even unanimous voting requirements. An amendment affecting such an article must be approved by the same supermajority vote.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 7.27 directly parallels the content of ACC Section .508. The official comment (7-65) makes it clear that the articles may establish unanimous voting requirements.

Section .510 ARTICLES OF AMENDMENT

Section .512 FILING OF ARTICLES OF AMENDMENT

ORIGIN: ACC Section .510 is a reenactment of AS 10.05.285, with the deletion of the provision regarding stated capital. Section .512 is a reenactment of AS 10.05.288.

SUMMARY OF COVERAGE: In order for an amendment to the articles to become effective, it is necessary to make a filing with the commissioner (ACC Section .512) and receive a certificate of amendment. Section .510 specifies what the articles of amendment are to include.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 10.06 is functionally identical to ACC Section .512 except that it would require filing with the secretary of state and it omits the requirement that the articles of amendment be signed by designated corporate officers.

Section .514 EFFECT OF CERTIFICATE OF AMENDMENT

ORIGIN: ACC Section .514 is essentially a reenactment of AS 10.05.291, with language added from MBCA Section 63 permitting up to a 30-day delay in effectiveness.

SUMMARY OF COVERAGE: An amendment to the articles is not effective until the commissioner has reviewed the amendment to ascertain its conformity with law, and has issued a certificate of amendment. Section .514(b) specifies that an amendment does not have a retroactive effect so as to compromise any pending litigation.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 10.09 provides that, unless a delayed effective date is specified, the amendment or restatement becomes effective

when the articles of amendment or restatement are filed.

Section .516 RESTATED ARTICLES OF INCORPORATION

Section .518 FILING OF RESTATED ARTICLES OF INCORPORATION

Section .520 EFFECT OF ISSUANCE OF RESTATED CERTIFICATE OF INCORPORATION

ORIGIN: ACC Section .516 is a reenactment of AS 10.05.294. ACC Section .518 is a reenactment of AS 10.05.303; Section .520 is a verbatim reenactment of AS 10.05.306.

SUMMARY OF COVERAGE: This section authorizes a corporation to restate its articles as they may have been amended as a matter of form by resolution of the board. The substantive provisions cannot be so amended, and in fact, Section .516 requires that a statement be filed with the restated articles averring that the restated articles correctly set out without change the corresponding provisions of the articles.

ACC Section .518 specifies the procedure to be followed by the corporation and the commissioner in the filing and administrative handling of the restated articles. Section .520 provides that the restated articles become effective and supersede the original articles and all amendments to them upon the issuance of the restated certificate of incorporation.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 10.07(e) and (f) follow the provisions of ACC Section .516 except that the restated articles may contain an amendment not previously reported to the state. Under this section the filing is again with the Secretary of State, not the commissioner as provided in ACC Section .518.

Section .522 AMENDMENT OF ARTICLES OF INCORPORATION IN REORGANIZATION PROCEEDINGS

Section .524 FILING OF AMENDMENT OF ARTICLES IN REORGANIZATION PROCEEDINGS

Section .526 EFFECT OF ISSUANCE OF CERTIFICATE OF AMENDMENT IN REORGANIZATION PROCEEDINGS

ORIGIN: ACC Section .522 is taken from MBCA Section 65, and is new to Alaska law.

ACC Sections .524 and .526 are derived from MBCA Section 65, and are new to Alaska law, being added in the wake of Section .522. Section .526 varies from the MBCA by omitting the 30-day effectiveness delay provision found in the Model Act.

SUMMARY OF COVERAGE: ACC Section .522 is designed to coordinate Alaska law with the Federal Bankruptcy Act. It permits

amendment of the articles as part of the reorganization proceedings, which amendment might otherwise not obtain the affirmative vote of the shares. Without this provision, an involuntary dissolution and reincorporation may be necessary to achieve the desired result of the bankruptcy reorganization, with a possible increase in federal income tax liability.

ACC section .524 specifies the filing procedure for any amendments to the articles accomplished by bankruptcy reorganization under ACC Section .522. Section .526 provides for the effectiveness of the amendments upon the issuance of a certificate of amendment by the commissioner.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 10.08 is functionally identical to ACC Section .522 -- .526.

ARTICLE 8. ORGANIC CHANGE

Section .530 MERGER

Section .532 PROCEDURE FOR MERGER

Section .534 CONSOLIDATION

Section .536 PROCEDURE FOR CONSOLIDATION

Section .538 SHARE EXCHANGE

Section .540 PROCEDURE FOR SHARE EXCHANGE

ORIGIN: ACC Sections .530 and .532 (pertaining to the definition of and procedure for merger) are taken from MBCA Section 71, and reflect without change AS 10.05.375 and .378. ACC Sections .534 and .536 (pertaining to the definition and consolidation) are taken from MBCA Section 72, and reflect without change AS 10.05.381 and .384. ACC Sections .538 and .540 (define and determine the procedure for a share exchange). They are taken from MBCA Section 72A, and are without precedent in Alaska law.

SUMMARY OF COVERAGE: These sections define and set create uniform procedures for the proposal of the three classic furms of organic change. In the event of either a merger or consolidation, one or both of the participating corporations formally ceases to exist. In the case of a share exchange there is no formal suppression of a constituent corporation but it becomes a wholly owned subsidiary of the acquiring corporate entity. In each instance, the ACC places the responsibility for the framing of the proposal within the discretion of the boards of the participating corporations. The ACC provides for a share exchange for the first time in Alaska law.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Sections 11.01 and 11.02 cover the subjects addressed in ACC Sections .530 -- .540. The RMBCA provisions on merger and share exchange parallel those of the ACC. There is no separate treatment of consolidation in the RMBCA. This departure from the prior provisions of the Model Act and the statutory laws of all jurisdictions currently following it is explained by the drafters of the RMBCA as reflecting sentiment that consolidations are currently out of fashion. If the plan is that both participating corporations are to cease existence and emerge and a new, third corporation, the RMBCA would require the extra steps of prior formation of that third corporation and then merging the two constituent corporations into it. Under ACC Section .534 this result can be effected

in a single, and far simpler step.

Section .542 DISPARATE TREATMENT OF SHARES OF THE SAME CLASS OR SERIES PROHIBITED: EXCEPTIONS

ORIGIN: ACC Section .542 is predicated upon, but not adapted from GCL Section 1101, and is unprecedented in Alaska law.

SUMMARY OF COVERAGE: ACC Section .542 establishes a legal presumption against treating the holders of shares of the same class or series in any plan for an organic change in a different manner. A major question much litigated in the last decade is whether organic changes may be used to eliminate certain shareholders by forcing them to accept cash or non voting stock for their shares while other holders of identical stock receive voting shares in the surviving corporation. ACC Section .542 resolves this issue for Alaska in a manner that comports with Delaware and California decisional law. The fiduciary duties of majority or controlling shareholders are recognized in Section .542(a). Section 542(b) recognizes that disparate treatment may be necessary to preserve a Subchapter S election under the Internal Revenue Code. Disparate treatment may also be necessary for other sound business reasons, but the proponents of the plan have the burden to prove it is consistent with fiduciary duties owed to all the shareholders.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The official comment to the RMBCA (11-4, 5) makes it clear that the framers of that statute did not resolve this basic question. Any state which chooses to follow this recommendation will condemn to totally unstructured litigation all participants in any organic change which is challenged for its discriminatory treatment of shareholders. Under ACC Section .542 the presumption is against discriminatory treatment unless it can be justified on the predicate of some corporate business reason, as opposed to the personal goals of dominant shareholders.

Section .544 NOTICE TO AND APPROVAL BY SHAREHOLDERS

ORIGIN: ACC Section .544 is a modified version of new Section 73 of the MBCA, and has been extended to treat share exchange in a manner identical to merger or consolidation.

SUMMARY OF COVERAGE: This section mandates the steps necessary to seek the approval of shareholders of each corporation participating in a merger, consolidation, or share exchange. Written notice stating that one of the purposes of the meeting is to consider the proposed organic change, a copy of the plan for such change, and the text of the ACC provisions on the rights of dissenting shareholders must be given to each shareholder irrespective of voting rights.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 11.03 follows ACC Section .544 in requiring notice to shareholders which specifies that an organic change is to be proposed by the board and accompanied by a summary of the plan. This notice is statutorily deficient unless it also includes notice of dissenter's rights. However, unlike ACC Section .544 which express this important obligation in the provision entitled "notice to and approval by shareholders", the RMBCA command that there be notice of dissenter's rights is found in Section 13.20(a).

Section .546 MANNER OF APPROVAL BY SHAREHOLDERS

ORIGIN: ACC Section .546 is premised upon new Section 73 of the MBCA, with a modification to retain the two-thirds voting requirement found in AS 10.05.390. The only change worked by Section .546 pertains to the inclusion of share exchanges.

SUMMARY OF COVERAGE: ACC Section .546 enfranchises all shares of every class or series of each constituent corporation to an organic change. The plan prepared by the board and noticed to the shareholders is "approved" upon receiving the affirmative vote of an absolute two-thirds majority of all outstanding shares. If the articles of any of the participating corporations provide for class voting on plans for organic change, then in addition to the two-thirds voting requirement for approval by the outstanding shares, there is also a two-thirds affirmative vote requirement for that class. If the articles do not provide for class voting, but the plan for organic change contains provisions which, had they been proposed as amendments to the articles, would have required the affirmative vote of a class, then class voting is required under Section .546.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 11.03 differs radically from both existing and proposed Alaska law. Unless a greater number is required by the articles, a plan of merger or share exchange is approved by the holders of a simple majority of the shares. RMBCA Section 11.03 does not enfranchise all shares regardless of the presence or absence of voting rights under the articles. It does recognize class voting in a manner not unlike ACC Section .576. In a departure from the 1977 position of the Model Act (Section 73) and the laws of those states which currently accord with that section, the recommended content of RMBCA Section 11.03(g) would create certain circumstances in which mergers and share exchanges can be effected without shareholder approval. As explained in the official comment (11-15), "shareholders' votes should be required only if the transaction fundamentally alters the character of the enterprise or substantially reduces the shareholders' participation in voting or profit distribution." Unfortunately, RMBCA Section 11.03(g) pays no attention at all to the basic economic pursuit of the corporate entity before and after the

organic change. So long as the number of outstanding shares is not changed plus or minus 20%, shareholders who had invested in a corporation historically tied to the fishing industry could find themselves tied to the fate and fortune of a hulla hoop concern. They would never have been consulted, their approval would not have been required, and they would have no dissenter's rights!

Section .548 ABANDONMENT OF PLAN OF MERGER, CONSOLIDATION, OR EXCHANGE

ORIGIN: ACC Section .548 is taken from MBCA Section 73, and reflects without change the content of AS 10.05.393, save for the inclusion of share exchange.

SUMMARY OF COVERAGE: This section provides that, notwithstanding approval by the shareholders, the plan may fail without further action if any condition precedent or concurrent is not satisfied, or if any condition subsequent is triggered.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 11.03(i) accords with ACC Section .548.

Section .550 ARTICLES OF MERGER, CONSOLIDATION, OR EXCHANGE

Section .552 FILING OF ARTICLES OF MERGER, CONSOLIDATION, OR EXCHANGE

ORIGIN: ACC Sections .550 and .552 are predicated upon new Section 74 of the MBCA. Section .550 changes AS 10.05.396 by the inclusion of share exchanges. Section .552 technically restates AS 10.05.402 to reflect the uniform processing procedures found in ACC Section 910.

SUMMARY OF COVERAGE: These sections establish the formal requirements necessary to reflect the combination. Section .550 provides that each constituent corporation must execute a set of recombination articles, including the mechanics of the shareholder vote. Section .552 directs that a duplicate copy of the recombinate articles be delivered to the commissioner.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 11.05 is functionally identical identical to ACC Section .552

Section .554 MERGER OF SUBSIDIARY CORPORATION

Section .556 PROCEDURE FOR MERGER OF SUBSIDIARY CORPORATION

Section .558 FILING OF ARTICLES OF MERGER OF SUBSIDIARY CORPORATION

ORIGIN: ACC Section .554 is taken from MBCA Section 75, and has no precedent in Alaska law.

ACC Section .556 is taken from MBCA Section 75, with a modification to create a presumption against disparate treatment of the shares.

ACC Section .558 is taken from MBCA Sectio 75.

SUMMARY OF COVERAGE: This section authorizes a merger between a parent and a subsidiary whenever at least 90 percent of all outstanding shares of each and every class are owned by the parent corporation.

ACC Section .556 places the power to propose and implement a merger of the subsidiary in the board of the parent. No shareholder approval is required. Disparate treatment of shares must pass muster under ACC Section .542.

ACC Section .558 continues the uniform filing procedures established in ACC Section .910.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 11.04 is functionally identical to ACC Sections .554, 556 and .558 in the treatment of "short form mergers" between a parent and a 90% owned subsidiary. It does not, however, contain the ACC Section .556(a)(2)'s language creating the presumption of non-discriminatory treatment of all shares of the subsidiary.

Section .560 EFFECT OF MERGER, CONSOLIDATION, OR EXCHANGE

ORIGIN: ACC Section .560 is predicated upon revised MBCA Section 76. The provision for an optional delayed effective date, the inclusion of share exchanges, and the elimination of net surplus reflect the changes made to AS 10.05.405.

SUMMARY OF COVERAGE: ACC Section .560 governs the date, circumstances when an organic change becomes effective. It is a sufficient authority for the succession by the surviving or resulting corporation to all of the rights and liabilities of the constituent corporations. To the extent that the recombination articles purport to amend the articles of incorporation, such change is given effect. Finally, ACC Section .560(c) determines the fate of all shares of the constituent corporations which are to be converted or exchanged. The ownership claims and interests of shareholders in the constituent corporations are defined subject to any rights which may be asserted by a dissenting shareholder under ACC Section .574.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 11.06 is functionally identical to ACC Section .560 except for its failure to spell out the consequences of a consolidation in which constituent corporations A and B emerge as resulting corporation C.

Section .562 MERGER, CONSOLIDATION, OR EXCHANGE OF SHARES BETWEEN DOMESTIC AND FOREIGN CORPORATIONS

ORIGIN: ACC Section .562 is predicated upon new Section 77 of the MBCA, and replaces AS 10.05.408, .411, and .414. The inclusion of share exchange is unprecedented.

SUMMARY OF COVERAGE: ACC Section .562 removes potential conflicts of laws when domestic and foreign corporations undergo organic change. This section provides that if the surviving or resulting corporation is foreign, it must as a condition of merging with a domestic corporation agree to service of process in Alaska, and to pay promptly all dissenting shareholders.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 11.07 is functionally identical to ACC Section .562 except that the substantive law referenced and made applicable to the surviving foreign corporation differs as noted above.

Section .564 REORGANIZATION: DISCLOSURE OF ALIEN AFFILIATES

ORIGIN: ACC Section .564 reflects the content of AS 10.05.250, as amended in 1980.

SUMMARY OF COVERAGE: This section requires the disclosure of alien affiliates and the percentage of their outstanding shares in any corporation organized under this Chapter.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA is indifferent to the status of alien affiliates.

Section .566 SALE OF ASSETS IN REGULAR COURSE OF BUSINESS; MORTGAGE OR PLEDGE OF ASSETS

ORIGIN: ACC Section .566 is predicated on the 1962 version of Section 78 of the MBCA, and modifies the content of AS 10.05.435.

SUMMARY OF COVERAGE: The proposed Alaska Corporations Code distinguishes between a sale of assets in the normal course of business (such as a sale of all inventory) and a sale of all or substantially all assets not in the regular course of business. Shareholder approval is necessary for the latter on the theory that, like a merger or share exchange, it represents another fundamental change.

ACC Section .566 is concerned with the sale, lease, exchange, or other disposition of all or substantially all of the property and assets of the corporation in the usual and regular course of its business. The power to effectuate such a transaction resides with the board; it does not require shareholder approval. A mortgage or pledge of these assets

may be made under similar authority irrespective of whether or not it is in the regular course of business. This last provision would change existing Alaska law which required shareholder approval of such mortgages or pledges of corporate property.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 12.01 is functionally identical to ACC Section .556 and would also change existing Alaska law by not requiring shareholder approval for any pledge or mortgage of corporate assets.

Section .568 SALE OF ASSETS NOT IN REGULAR COURSE OF BUSINESS

Section .570 APPROVAL OF TRANSACTION BY SHAREHOLDERS

Section .572 ABANDONMENT OF TRANSACTION BY BOARD

ORIGIN: ACC Section .568 is predicated upon MBCA Section 79. AS 10.05.438 is modified to eliminate a mortgage or pledge of all or substantially all assets (now covered under Section .566). This section differs from the Model Act by requiring shareholder notice also to include a copy of the ACC Sections on the rights of dissenting shareholders.

ACC Section .570(a) is predicated upon MBCA Section 79(c), and preserves the two-thirds voting requirement of AS 10.05.441. Section .570(b) is new.

ACC Section .572 is predicated upon MBCA Section 79(d), and reflects without change AS 10.05.444.

SUMMARY OF COVERAGE: ACC Section .568 treats the sale, lease, exchange, or other disposition of all or substantially all of the assets of a corporation as the equivalent of an organic change if not made in the usual course of business. When not in the regular course of business, written notice of the proposed disposition of assets and a copy of the ACC provisions on dissenters' rights must be given to all shareholders regardless of voting rights

The proposal for the sale of all or substantially all of the assets is approved by the affirmative vote of two-thirds of all outstanding shares, with all shares being enfranchised regardless of restrictions or limitations in the articles. Class voting is recognized. Section .572(b) requires the extraordinary absolute 90 percent approval by outstanding shares (with all shares franchised) when the buyer is in control of or under the control of the seller.

This section permits the board, in its discretion, to abandon a section .568 transaction notwithstanding its approval by the shareholders.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 12.02 accords with ACC Sections .568 -- .572 in treating the sale, lease or exchange of all or substantially all corporate property other than in the usual and regular course of business as an organic change. The proposal must originate with

the board and cannot be effectuated without shareholder approval. Unlike existing and proposed Alaska law, the RMBCA requires only majority approval. The official comment makes it clear that class voting can be had in appropriate circumstances even though the section is silent on the question. The official comment also warns of the existence of dissenter's rights, a topic upon which RMBCA Section 12.02 is also silent. By contrast,the ACC gathers all of these important provisions into the three related sections rather than scattering them across a lengthy code.

Section .574 RIGHT OF SHAREHOLDERS TO DISSENT

ORIGIN: ACC Section .574 is predicated upon MBCA section 80, with alterations to allow dissenters' rights for shareholders in corporations party to a share exchange. This section consolidates AS 10.05.417 through .432 and AS 10.05.447. through .462.

SUMMARY OF COVERAGE: ACC Section .574 provides that a shareholder who has dissented from an organic change has a right to have the corporation purchase her shares at "fair valuation." Section .574(b) changes Alaska law by recognizing that a shareholder need not dissent with respect to all of her shares. Section .574(c) changes Alaska law by denying dissenters' rights in the case of a "short form" merger (Section .556). There is an additional change by the presumptive denial of dissenters' rights for holders of shares traded on a national securities exchange on the record date fixed for ascertaining the shares entitled to vote on the organic change.

ACC Sections .576 through .586 establish the criteria for perfecting dissenter's rights, withdrawal of a demand, notice, payment for shares, action to determine value of shares upon failure to agree, presentation of and status of shares reacquired by the corporation. Aside from the right to litigate the regularity of any organic change, or to challenge any disparate treatment of shares (Section .542), the right to claim the status of a dissenter is intended to be the exclusive remedy available to shareholders.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 13.02 parallels ACC Section .574 in recognizing the right of shareholders to dissent in the case of an organic change, including the sale of all or substantially all of the corporate property other than in the usual and regular course of business. However, RMBCA Section 13.02(a)(4) goes beyond existing or proposed Alaska law, or the prior content of MBCA Section 80, in creating dissenter's rights in the event the corporation amends its articles to impair the shareholder's preemptive, redemption, or voting rights. The final draft of the RMBCA has added yet another circumstance in which dissenter's rights are recognized. It would allow a shareholder to dissent to an amendment which would reduce her shares to a

fraction of a share if the fractional share could be acquired for cash under Section 6.04.

The Model Act exception, reflected in ACC Section .574(d), which denies preemptive rights if the securities were readily marketable on a national exchange is not carried over into RMBCA Section 13.02.

Section .576 RIGHTS OF DISSENTING SHAREHOLDERS: WITHDRAWAL OF DEMAND

ORIGIN: ACC Section .576 is predicated upon MBCA Section 81. The provisions which explicitly determine the impact upon the status of the dissenting shareholder, the restoration of full shareholder status, and the exclusion of price movement in anticipation of the organic change are new to Alaska law.

SUMMARY OF COVERAGE: ACC Section .576 mandates a three-step procedure for the perfection of the status of a "dissenter." First, the shareholder must file a written objection to the plan; second, the shareholder must not vote in favor of the proposal; and third, within ten days after the vote, the shareholder who complies with steps one and two must make a written demand upon the corporation to be paid the "fair valuation" of his shares. Absent a written waiver by the corporation, a shareholder who fails to make a written demand within the time limitations set forth in this section shall be bound by the terms of the organic change.

Once a shareholder has complied with these three steps, he loses the right to vote and other shareholder rights. Section .576 provides for the restoration of these rights if the shareholder withdraws his demand for dissenters' rights (which withdrawal requires the consent of the corporation), or if the corporation rescinds, abandons, or otherwise is disabled from carrying through with the organic change.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 13.20 mirrors the first two steps outlined in ACC Section .576 for the asserting of a dissenter's rights. The third step, a written demand upon the corporation to be paid for the affected shares is found under RMBCA Section 13.23.

Section .578 NOTICE TO DISSENTING SHAREHOLDER

ORIGIN: ACC Section .578 is predicated upon MBCA Section 81.

SUMMARY OF COVERAGE: This section requires that the surviving corporation make the first move by making a written offer to each dissenting shareholder which includes a copy of a recent financial statement. These provisions are not found in AS 10.05.420 and .450.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section

13.22 requiring that the corporation notify shareholders of their rights to dissent and the means of exercising that right are covered by provisions of the ACC which require that this information be supplied to shareholders at the time the organic change is submitted for shareholder approval. The duty of the surviving or resulting corporation is set forth in ACC Section .578. RMBCA Section 13.25 requires that the corporation tender what it estimates to be the fair value of the shares accompanied by a current balance sheet. By contrast, ACC Section .578 requires that the corporation make a written offer to purchase the shares at a price considered to be their fair value.

Section .580 PAYMENT TO DISSENTING SHAREHOLDER AFTER AGREEMENT ON VALUE OF SHARES

ORIGIN: ACC Section .580 is predicated upon MBCA Section 81, and reflects without change AS 10.05.423 and .453.

SUMMARY OF COVERAGE: ACC Section .580 provides for a thirty day period during which the dissenting shareholder and the corporation have to reach an agreement on the fair valuation of the dissenter's shares. If agreement is reached within 30 days, the price is to be paid and the shares surrendered within 90 days. If no agreement is reached, recourse must be had through ACC Section 582.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 13.28 addresses the options of a shareholder dissatisfied with the amount tendered by the corporation under Section 13.25. Within 30 days she must notify the corporation in writing of the amount of money she will accept for the shares and make demand for that sum. If no demand is made within this period the right to contest the fair value as determined by the corporation is deemed waived.

Section .582 ACTION TO DETERMINE VALUE OF SHARES UPON FAILURE TO AGREE

ORIGIN: ACC Section .582 is taken from MBCA Section 81, and replaces AS 10.05.426 and .456.

SUMMARY OF COVERAGE: If a dissenting shareholder and the corporation do not reach an agreement as to the fair valuation of the dissenter's shares, Section .582 directs that the corporation invoke the jurisdiction of a superior court to judicially determine the fair value. All dissenters are to be joined in this action. Section .582(b) provides for an award of interest. Section .582(c) vests the court with broad discretion respecting litigation costs and expenses, excluding attorneys' fees.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section

13.30 parallels ACC Section .582. However, if the corporation does not file for a judicial determination of fair value within the time proscribed, it is automatically obligated to pay the shareholder the amount demanded. The strategy of the ACC for coping with this eventuality is to grant to any dissenting shareholder the right to commence the judicial proceeding and then bind all shareholders to that single determination by assertion of quasi-in rem jurisdiction of the superior court.

RMBCA Section 13.31 parallels ACC Section .582(c) permitting the court to assess the costs associated with the determination of fair value. There is one important difference, the RMBCA would permit this award to include an assessment of counsel fees. The ACC would not.

Section .584 PRESENTATION OF DISSENTERS' SHARES TO CORPORATION

ORIGIN: ACC Section .584 has no counterpart in Alaska law. It is predicated upon Section 1320 of the GCL.

SUMMARY OF COVERAGE: This section provides that the corporation may demand the physical production of the dissenters' share certificates within twenty days from the perfection of their status (Section .576), so that the corporation may confirm its potential liability. Failure of a dissenter to comply terminates all his dissenters' rights. ACC Section .584 also restricts the transferability of shares for which a demand for payment has been made.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 13.22(b) gives the corporation obliged to honor an assertion of dissenter's rights the authority to stipulate when and where the certificates must be deposited. The obligation on the part of the shareholder to deposit the shares is created by RMBCA Section 13.23(a). RMBCA Section 13.24 recognizes the right of the corporation to restrict the transfer rights of shares from the date of demand for their payment until the proposed corporate action is effectuated.

Section .586 STATUS OF SHARES ACQUIRED FROM DISSENTING SHAREHOLDERS

ORIGIN: ACC Section .586 is predicated upon MBCA Section 81, and consolidates AS 10.05.429 and .462, with the substituted reference to "reacquired" for "treasury" shares.

SUMMARY OF COVERAGE: ACC Section .586 establishes that shares purchased from dissenters may be used by the surviving corporation as reacquired shares, except that in the case of merger or consolidation, they may be held and disposed of as the plan may otherwise provide.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: It would ap-

pear that the RMBCA has failed to include a provision comparable to former MBCA Section 81.

ARTICLE 9. DISSOLUTION

Section .605 VOLUNTARY DISSOLUTION BY VOTE, WRITTEN CONSENT OF SHARES, OR ELECTION OF THE BOARD

ORIGIN: Dissolution is to a corporate entity what death is to a natural person. As with the provisions respecting the articles and bylaws, amendments and organic change, the protection of the interests of shareholders and creditors and the imposition of duties of care and loyalty upon directors and officers are addressed in the ACC provisions governing dissolution. Article 9 carefully distinguishes between two fact patterns which are united only in the conclusion that the corporation ceases to exist. The distinction is predicated upon whether the decision to dissolve is that of a majority of the shareholders, or whether that result is inflicted upon the corporation by judicial decree because of the valid contention of a minority of shareholders or the commissioner that the continued existence of the corporate entity is intolerable. If majority consent is the key, the dissolution is said to be "voluntary." If the life of the corporation is to be taken as a consequence of gross abuse of the minority or persistent and serious flaunting of the state's regulation, then corporate termination is "involuntary."

The ACC provisions on voluntary dissolution reflect substantial modification of prior Alaska law and follow the format and content of the California General Corporation Law. However, the California model proved unacceptable as a basis for most of the provisions respecting involuntary dissolution where the decision was made to pattern the proposed code after the Model Business Corporation Act and historic Alaska statutes. Notwithstanding, certain innovations from the GCL have been engrafted onto the involuntary provisions and are noted in the official comments to the specific sections.

ACC Section .605 is an adapted version of GCL Section 1900, and a consolidation of AS 10.05.465, .474, and .477. This section differs from Alaska law insofar as it curtails the role of the board in initiating and approving a plan of voluntary dissolution.

SUMMARY OF COVERAGE: ACC Section .605 places the decision to voluntarily dissolve a functioning corporation with the shareholders. Under the ACC, the board of directors is given no role in either proposing or passing upon the decision to voluntarily dissolve. Thus, the shareholders initiate the proposal, and must cast at least a two-thirds affirmative vote of the shares in order to approve the plan. Alternatively, unanimous written consent of the franchised shares will eliminate the need for a noticed meeting. Three excep-

tions, where the board does possess the power to voluntarily dissolve, are: (1) where the corporation has been adjudged bankrupt, (2) the corporation has no assets and a history of having transacted no business for the preceding five years, or (3) where the corporation is still-born having issued no shares.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA also distinguishes between voluntary and what is termed "judicial dissolution." A third category, "administrative dissolution" is a specie of involuntary dissolution worked by the state as a consequence of corporate failure to comply with applicable law. The ACC classifies such administrative procedures as a specie of involuntary dissolution. Aside from this basic similarity, there are distinctions between the two codes which will be detailed in the following section by section analysis.

RMBCA Section 14.02 differs significantly from the ACC Section .605/California philosophy on voluntary dissolution. Under the RMBCA the shareholders have the power to initiate and effectuate the decision to voluntarily dissolve only if they can act unanimously under Section 7.04. In all other instances they must depend upon the board of directors to initiate a proposal to voluntarily dissolve the entity. In the absence of a provision in the articles requiring a greater vote, the board's proposal is approved if ratified by a majority of the shares.

RMBCA Section 14.01 makes the initial board or incorporators competent to dissolve a corporation which is still born having neither issued shares nor transacted business.

Section .608 CERTIFICATE OF ELECTION: CONTENTS, SIGNING, VERIFICATION AND FILING

ORIGIN: ACC Section .608 derives from GCL Section 1901, and consolidates AS 10.05.468, .474, .480, and .483 (MBCA Sections 82(b), 83(b), 84(b), and 85).

SUMMARY OF COVERAGE: ACC Section .608 imposes upon the corporation the requirement that it file with the commissioner a certificate of election to dissolve, the content of which is specified. This section works only minor changes in the signing ,verifying, and filing procedures as found in current Alaska law.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.03 is substantially in accord with ACC Section .608 substituting the term "articles of dissolution" for the "certificate of dissolution."

Section .610 CERTIFICATE OF REVOCATION OF ELECTION: CONTENTS, SIGNING, VERIFICATION, AND FILING

Section .613 EFFECT OF CERTIFICATE OF REVOCATION OF ELECTION

ORIGIN: ACC Section .610 is an adapted version of GCL 1902, which consolicates MBCA Sections 88,89, and 90, and AS 10.05.492 through .504.

ACC Section .613 is substantially a reenactment of AS 10.05.507, based upon MBCA Section 91.

SUMMARY OF COVERAGE: ACC Section .610 permits a corporation to revoke an election to wind up and dissolve prior to the distribution of any assets, and upon approval of the same power as made the initial decision to voluntarily dissolve. The provision that no assets be distributed prior to revocation of election to dissolve is the most important change wrought by Section .610, and is crucial in protecting the interests of creditors and senior shares as provided in ACC Sections .358 through .365. The contents and procedure for filing a certificate of revocation of election are specified.

Effectiveness of the certificate of revocation of election is contingent upon inspection, filing, and return of a duplicate original by the commissioner. Until that time, the corporation is deemed to be in the process of dissolution.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.04 also permits a corporation to revoke the decision to dissolve by the same authority who made the initial decision to dissolve. The California and ACC condition that there have been no distribution of corporate assets under the aborted plan to dissolve is, unfortunately, not reflected in Section 14.04. Instead, it merely requires that the election to revoke the dissolution occur within 120 days of the date on which articles had been delivered to the secretary of state. The consequence of an effective revocation of the dissolution election under RMBCA Section 14.04(d) and (e) is identical to ACC Section .613.

Section .615 COMMENCEMENT AND CONDUCT OF VOLUNTARY PROCEEDINGS FOR WINDING UP; CESSATION OF BUSINESS; NOTICE

ORIGIN: ACC Section .615 is adapted from GCL Section 1903, and replaces AS 10.05.486 and .489(1) (MBCA Sections 86 and 87). The express provisions for board powers during winding up and the limited circumstances in which the corporation may continue normal business activities during winding up are new to Alaska law.

SUMMARY OF COVERAGE: Under ACC Section .615, "dissolution" is the decision to terminate the corporate existence. The actual steps which effectuate that decision are termed "winding up". Those steps begin and become obligatory upon electing to dissolve. In an important break with older statutes, winding up (the marshalling of all corporate assets, payment of all creditors and distribution of any net assets to shareholders) is not vested in court appointed receivers, but is

the responsibility of the board of directors.

A decision to dissolve the entity dramatically affects the real authority of the board. No longer may it continue pursuit of the original corporate business or purpose(s). Instead, it is to wind up the corporate affairs, file the articles of dissolution (ACC Section .620) and in so doing terminate the corporate existence (ACC Section .625). It is the goal of the statute that voluntary dissolution can, and typically will, be accomplished without the expense and inconvenience of judicial intervention by the elected representatives of the shares.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: 14.05 is functionally identical to ACC Section .615.

Section .618 JUDICIAL SUPERVISION OF WINDING UP; PETITION AND NOTICE; ORDER PROTECTING SHAREHOLDERS AND CREDITORS

ORIGIN: ACC Section .618 is an adapted version of GCL Section 1904, broadening the coverage of AS 10.05.489(3) (which was based upon MBCA Section 87).

SUMMARY OF COVERAGE: ACC Section .618 creates standing in the corporation, a five percent shareholder(s), or three or more creditors to petition the superior court to assume jurisdiction over the winding up of the corporation which has elected to voluntarily dissolve. The assumption of jurisdiction is discretionary with the court. The standing in the shareholders and creditors is new to Alaska law.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.30(4) attains only one of the prudential safeguards achieved by ACC Section .618. Under Section 14.30(4) the corporation is given standing to have its voluntary dissolution continued under court supervision. The official comment (14-38) explains that such a step may be "appropriate to permit the orderly liquidation of the corporate assets and to protect the corporation from a multitude of creditors' suits or suits by dissatisfied shareholders. Unfortunately, those creditors and shareholders are given no standing to invoke suck a petition, a standing which is recognized under ACC Section .618.

Section .620 ARTICLES OF DISSOLUTION: CONTENT

Section. 623 FILING OF ARTICLES OF DISSOLUTION

Section .625 EFFECT OF CERTIFICATE OF DISSOLUTION

ORIGIN: ACC Section .620 is taken from GCL Section 1905, and replaces AS 10.05.510, which was modeled after MBCA Section 92.

ACC Sections .623 and .625 are reenactments of AS

10.05.513 and .516, based upon MBCA Section .93.

SUMMARY OF COVERAGE: Upon completion of the winding up process, a corporation is to file articles of dissolution, whose content and filing procedure are specified.

ACC Sections .623 and .625 establish a procedure whereby the articles are filed, processed by the commissioner, and a certificate of dissolution is issued. The issuance of the certificate terminates the existence of the corporation except for certain purposes.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains no comparable coverage. The official comment to RMBCA Section 14.03 (14-9) makes it clear that the "articles of dissolution" are comparable to the ACC's certificate of dissolution and merely stipulate the procedure whereby the decision to voluntarily dissolve was achieved. The continuation of the corporate existence after dissolution is thought by the framers of the tentative draft a sufficient protection for corporate creditors and holders of shares with a liquidation preference. Such a notion was rejected in California and it is with the California precedent that the ACC is aligned.

Section .628 *INVOLUNTARY DISSOLUTION BY VERIFIED COMPLAINT; FILING; INTERVENTION BY SHAREHOLDER OR CREDITOR*

ORIGIN: ACC Section .628 is predicated upon GCL Section 1800, with the deletion of 1800(d). It replaces AS 10.05.540 through .543, which was based upon MBCA Section 97. Section .628(b)(1), (2), (3), and (4) reenact comparable provisions of AS 10.05.540(1), (2), and (3). Section .628(b)(5) is new and designed to provide relief in what are, fundamentally, incorporated partnerships. Section .628(b)(6) is also new and in combination with subsection (a)(3), permits any shareholder to dissolve a corporation whose terms has expired. Section .628(c) replaces AS 10.05.552. Prior law specified that the joinder of shareholders was not necessary; this principle is implicit in subsection (c) which grants to any shareholder a right of intervention.

SUMMARY OF COVERAGE: ACC Section .628 envisions involuntary dissolution as an adversarial process conducted before a trial court. Section .628(a) provides that a verified complaint may be filed in the superior court by one-half or more of the directors then in office, a shareholder(s) holding shares representing not less than one-third of the common shares, any shareholder if the ground for dissolution is expiration of the period of time for which the corporation was formed, or any person expressly authorized to do so in the articles.

The grounds for involuntary dissolution are specified in Section .628(b). The use of involuntary dissolution to resolve deadlocks at either the director or shareholder level

is evident in Section .628(b)(2) and (3). However, in addition to deadlock, there must be a serious threat to the business or property of the corporate entity. With respect to shareholder deadlock, there must be the further element of a history of futile effort to resolve the impasse.

Section .628(b)(4) sets a specific standard for involuntary dissolution predicated upon the conduct of those in control of the entity. In essence, their pattern of behavior must have risen to such a damaging level as to make their continued exercise of the prerogatives of corporate existence obnoxious to both the minority shareholders and the state. If the corporation is held beneficially by 35 or fewer persons of record, Section .628(b)(5) sets a protection of the rights of the complaining shareholder(s) as a further ground for involuntary dissolution. Finally, under Section .628(d) the definition of shareholder is expanded to include those who hold beneficial interests in shares committed to a voting trust under ACC Section .425.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.30(b) is similar to ACC Section .628(b) in enumerating grounds for involuntary dissolution. However, the standing is limited to a shareholder. By contrast, ACC Section .628(a) would grant standing to one half or more of the directors then in office, a shareholder(s) holding one-third or more of the voting power, and any other person authorized in the articles. The grounds include deadlock at either the shareholder or director level and, like ACC Section .628, require an allegation of a threat to the corporate business and affairs. Oppression, fraud, or illegal conduct by those in control of the corporation is also recognized as a ground for seeking involuntary dissolution. Unfairness toward shareholders is not an enumerated ground and, in another difference from ACC Section .628, there is no ground for utilizing involuntary dissolution proceedings to protect the interests of complaining shareholders in a closely held entity.

RMBCA Section 14.30(3) grants to a creditor standing to seek involuntary dissolution if her claim has been reduced to judgment and the corporation is insolvent. ACC Section .628 does not permit creditors to commence the involuntary dissolution proceeding but would permit a creditor or shareholder to intervene for reasons deemed satisfactory by the trial court.

Section .630 AVOIDING DISSOLUTION BY VERIFIED COMPLAINT; PURCHASE OF PLAINTIFF'S SHARES; DETERMINATION OF FAIR VALUE; STAY; APPRAISAL; AWARD; APPEAL;

ORIGIN: ACC Section .630 is a modified version of GCL Section 2000, and is unprecedented in Alaska law.

SUMMARY OF COVERAGE: The proposed code recognizes that the involuntary dissolution of a corporation is a step attended by serious immediate and general social consequences. In

addition to terminating the corporation as an investment vehicle for its beneficial owners, it is eliminated as an employer, competitor and vehicle for distributing goods or services in the market place. Each of these employee and consumer interests make alternatives to dissolution desirable. To accommodate these interests ACC Section .630 establishes two circumstances in which the continued corporate existence may be preserved while at the same time relieving the plight of the plaintiffs who sought involuntary dissolution. First, the corporation may avoid the dissolution by purchasing for cash at fair value the shares owned by the plaintiffs (subject to any contrary provision in the articles). If the corporation elects not to purchase plaintiffs' shares, holders of 50 percent or more of the voting power may do so. Fair valuation is determined on the basis of the liquidation value.

Section .630(b) provides for situations when agreement as to fair value cannot be reached between the purchasing party and the selling party. Upon application to the court and the posting of security for expenses, the court will stay the dissolution proceedings and ascertain the fair value of the shares. Section .630(c) states the procedures which the court and court appointed appraisers shall follow in ascertaining the fair value of the shares. The court is directed to include in its order an alternative decree for the winding up and dissolution of the corporation should the purchasing party fail to pay the amount determined by the appraisers. If the purchasing party wishes to appeal the appraisal, Section .630(d) requires that the purchasing party first pay the appraised value to the moving (selling) party.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: Unfortunately for the public interest, the RMBCA contains no contingencies for saving the corporate existence once proceedings for judicial dissolution have been commenced.

Section .633 INVOLUNTARY DISSOLUTION BY THE COMMISSIONER: GROUNDS, PROCEDURE, REINSTATEMENT

ORIGIN: ACC Section .633 is a reenactment of AS 10.05.519 with substantial amendments. It continues the provisions of AS 10.05.519 which modified MBCA Section 94 to substitute involuntary dissolution by administrative process for judicial proceedings inaugurated by the Attorney General. However, the provisions respecting due process rights of the corporation (administrative hearing and trial de novo) are new to Alaska law. AS 10.05.519(h) has been severed from this section and is treated in ACC Section .635.

SUMMARY OF COVERAGE: ACC Section .633 creates discretion in the commissioner to effect an involuntary dissolution by administrative action for specified grounds, subject to an appeal to the superior court. This section provides for notice to be sent to the corporation, and affords the corporation an

oppcrtunity to correct the neglect, omission, delinquency, or noncompliance, or, to request an administrative hearing. The ACC attempts to give the targeted corporation liberal due process in these administrative proceedings. Thus before the decision to administratively dissolve can be carried into effect, the corporation must be accorded a prior hearing to ascertain the presence or absence of the noticed grounds. If the commissioner continues to abide by the original decision to involuntarily dissolve, Section .633(c) grants the corporation an opportunity to appeal to a superior court where the matter will be tried de novo. Section .633(e) establishes a two year period in which a corporation dissolved by the commissioner may be reinstated. Finally, Section .633(g) provides for the non-gratuitous assignment of contract rights by the dissolved corporation, and for counterclaim and setoff to diminish liability to the assignee.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.20 establishes the grounds for administrative dissolution. The list is shorter than that advanced under ACC Section .633 and ignores such Alaska interests as the failure of a control person to comply with the requirement of appointing a registered agent; the protracted failure to fill a vacancy on the board; and, the failure to complete dissolution within two years after filing a certificate of election to voluntarily dissolve. Under the RMBCA administrative dissolution is effected by the secretary of state.

RMBCA Section 14.21 details procedures for administrative dissolution which correspond to ACC Section .633(b). The prior hearing and court appeal rights guaranteed in the ACC are absent from the RMBCA provisions on administrative dissolution. There is no right to a prior hearing before the administrative official in RMBCA Section 14.21. The official comment (14-29) asserts the remarkable premise that grounds will rarely be controverted. Instead of a prior hearing, the corporation must either comply with the administrative demand for correction of the alleged ground or suffer administrative dissolution! The immediate consequence is that it is forbidden to conduct business. In this state of business paralysis, it may now invoke RMBCA Section 14.23 and petition the secretary of state for reinstatement. Only if that is denied can an appeal be taken, under RMBCA Section 14.23(b) to a trial court. Whether a trial de novo can be claimed in that court is left unspecified.

Section .635 COMMISSIONER'S AUTHORITY TO BRING ACTION FOR INVOLUNTARY DISSOLUTION; GROUNDS; RELIEF

ORIGIN: ACC Section .635 paragraphs (a)(1) and (a)(2) are taken from AS 10.05.519, which is based upon Oregon Revised Statutes Section 57.585 and MBCA Section 94. Paragraphs .635(a)(3) and (a)(4) and subsection (b) are taken from GCL Section 1801(a)(1),(3), and (c).

SUMMARY OF COVERAGE: The classical "quo warranto proceeding" where the corporate charter is revoked for serious legal offense is reflected in ACC Section .635. Following a long-standing legislative decision, the state's interest is guarded by the Commissioner of Commerce and Economic Development rather than the Department of Law. ACC Section .635 establishes the commissioner's authority to bring an action for involuntary dissolution in the superior court upon specified grounds. The court may order dissolution or other relief as it considers just and proper, and may appoint a receiver for the winding up or order the board to wind up the corporation under the court's supervision.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.30(a) defines the quo warranto powers recommended in the tentative draft. They do not include the ground that the corporation has seriously violated a statute regulating corporations (ACC Section .635(a)(3)). The power of a court which has assumed jurisdiction over such a proceeding is confirmed in RMBCA Section 14.31(b) in a manner functionally equivalent to ACC Section .635(b).

Section .638 VENUE AND PROCESS FOR COMMISSIONER'S ACTION

ORIGIN: ACC Section .638 is a reenactment of AS 10.05.534, which is modeled after MBCA Section 96.

SUMMARY OF COVERAGE: This section establishes the venue and service of process rules governing suits for involuntary dissolution.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.31(a) covers the venue for such a proceeding which is entrusted to prosecution by the attorney general. The statute does not specify the notice requirements mandated by ACC Section .638.

Section .640 APPOINTMENT OF PROVISIONAL DIRECTOR: DEADLOCK

ORIGIN: ACC Section .640 is predicated upon GCL Sections 308 and 1802.

SUMMARY OF COVERAGE: Where the ground for a complaint for involuntary dissolution is a deadlock in the board (ACC Section .628(b)(2)), Section .640 affords yet another opportunity to save the corporate existence. As an alternative to dissolving the corporation, the court may appoint a provisional director who is neither a shareholder nor a creditor of the corporation. The provisional director has all the rights and powers of a director until the deadlock is broken, or until the director is removed by order of the court or by approval of the outstanding shares. The provisional director is exempted from secondary liability of directors under ACC

Section .488(a).

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.31(c) details the ancillary jurisdiction of a court before which a complaint for involuntary dissolution is pending. Such a court has the power to issue injunctions, appoint a receiver or custodian pendente lite, take actions to preserve the corporate assets and carry on the business of the entity until a full hearing can be held. Unfortunately, none of these powers directly or by fair inference, includes the authority to resolve the deadlock at the board level by appointment of a provisional director.

Section .643 APPOINTMENT OF RECEIVER: APPLICATION, HEARING AND NOTICE, SECURITY, QUALIFICATIONS, POWERS, COMPENSATION

ORIGIN: ACC section .643(a) is taken from GCL Section 1803, and is new to Alaska law. Subsection (b) is taken from MBCA Section 99 and reflects the content of AS 10.05.576. Subsection (c) is taken from MBCA Section 98 and AS 10.05.567, with the modification of omitting attorneys fees.

SUMMARY OF COVERAGE: ACC section .643 grants broad powers to a court which has assumed jurisdiction over a complaint seeking involuntary dissolution, to act upon plaintiff's motion for the appointment of a receiver. Unlike AS 10.05.555 through .573, and MBCA Section 98, which uses a "liquidation receiver", the receiver under the ACC serves to preserve the corporation and its business pending a hearing on the complaint for involuntary dissolution. The directors, under court supervision, are used to handle the affairs which the Model Act vests in the liquidating receiver.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.32 is similar to ACC Section .643. Since the RMBCA is rather vague on the major premise that the winding up of a corporation is normally committed to the directors, Section 14.32(a) is less clear than ACC Section .643 that the appointment of a custodian should be upon the motion of some shareholder or creditor able to convince the court that the directors cannot be entrusted to marshall and properly apply the corporate assets. A "receiver" under the RMBCA terminology does not act to manage the business and affairs of the corporation but rather acts to liquidate its assets. Under the ACC the term "receiver" embraces both functions for one acting under the authority of ACC Section .643.

Section .645 DECREE FOR WINDING UP AND DISSOLUTION: FURTHER JUDICIAL RELIEF

ORIGIN: ACC Section .645 is new, and based upon GCL Section 1804. This section replaces AS 10.05.537, .546, and .549,

which were modeled upon MBCA Section 97.

SUMMARY OF COVERAGE: ACC Section .645 empowers the court hearing a suit for involuntary dissolution under either ACC Section .628 or .633 to decree a winding up and dissolution, or, in a final effort to preserve the social interests advanced by preservation of the corporate existence, issue such less drastic orders, decrees, and injunctions as justice and equity may require.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.33 covers the entry of a decree of dissolution. Unfortunately, it contains no reference to the authority of that court to order alternative relief aimed at the simultaneous resolution of the alleged ground for dissolution while preserving the corporate existence.

Section .648 COMMENCEMENT AND CONDUCT OF INVOLUNTARY PROCEEDINGS FOR WINDING UP; CESSATION OF BUSINESS; NOTICE

ORIGIN: ACC Section .648 is taken from GCL 1805, and replaces AS 10.05.555 and .558, which were based on MBCA Section 98.

SUMMARY OF COVERAGE: This section provides that upon entry of a decree under Section .645, the board is to commence winding up subject to court supervision. Regular business operations are to cease, except where the continuation of business activities is necessary to preserve goodwill or the going-concern value of assets which are to be sold. In the absence of a perfected appeal or stay order, notice is to be given to all shareholders and known creditors and claimants.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.06(b) accords with ACC Section .648 that in the wake of a decree of dissolution the process of winding up and liquidation is to commence. The official comment (14-48) references Sections 14.05, 14.06, and 14.07 which import the provisions on the process of winding up, liquidation and distribution.

Section .650 JURISDICTION OF COURT

ORIGIN: ACC Section .650 is adapted from GCL Section 1806, and replaces AS 10.05.573, .579, .582, and .585, which reflected the content of MBCA Sections 98, 100, 101, and 102.

SUMMARY OF COVERAGE: This section sets forth an extensive list of the ancillary powers and jurisdiction that may be exercised by the superior court. Of particular interest is the power conferred by Section .650(6) for the court to fill any vacancy on the board which the directors or shareholders prove unable to fill. Also of interest is Section .650(7), which grants extraordinary powers of removal and prohibition

from further office holding of any director guilty of dishonesty, misconduct, neglect or abuse of trust in conducting the winding up of the corporation.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: 1..31(c) contains a less explicit and expansive list of ancillary powers.

Section .653 CLAIMS AGAINST CORPORATION; COURT AND NON-COURT DIRECTED WINDING UP; PRESENTATION; NOTICE; PAYMENT; SECURED CLAIMS; REJECTED CLAIMS

ORIGIN: ACC Section .653 is predicated upon GCL Sections 1807 and 2008, and replaces AS 10.05.579, which was based upon MBCA Section 100.

SUMMARY OF COVERAGE: ACC Section .653 details procedures for settling all claims against the corporation. All claims must be presented within a specified time after which they are barred. This section makes separate provisions for the fate of contingent, unmatured, or disputed claims, or where there is uncertainty or dispute concerning the identity or capacity of the claimant, depending upon whether the winding up is with or without judicial supervision. When assets are reduced to cash, the Commissioner of Revenue is established as a stakeholder, under a provision which ensures that disputes do not leave the commissioner with custody of the assets for an indefinite period of time.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.06 deals with known claims against the dissolved corporation. Like ACC Section .653, it provides for notice to creditors and the establishing of deadlines which, if not met, bar claims. RMBCA Section 14.07 covers unknown claims against the entity. Like ACC Section .653(d) and (f), there is provision for notice by publication. Assets covering the claims of creditors or claimants who cannot be found or who are not competent to receive them are to be deposited, under RMBCA Section 14.40 with the state treasurer.

The above provisions of the RMBCA on voluntary dissolution are made applicable in the case of judicial dissolution by Section 14.33.

Section .655 ORDER DECLARING CORPORATION WOUND UP AND DISSOLVED; DECLARATIONS; EFFECT; ADDITIONAL ORDERS; DISCHARGE OF DIRECTORS

ORIGIN: ACC Section .655 is derived from GCL Section 1808, and replaces AS 10.05.585, which was based upon MBCA Section 102.

SUMMARY OF COVERAGE: Upon final settlement of accounts and a determination that the corporation's affairs are in a condition for it to be dissolved, ACC Section .655 directs the

court to make an order declaring the corporation duly wound up and dissolved. This order must specify information regarding provisions for taxes and penalties, known debts and liabilities, and distribution of assets to shareholders. The order must also declare that those conducting the winding up have settled their accounts and that their duties and liabilities are discharged. Upon the issuance of this order, corporate existence ceases.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA does not contain an explicit provision covering what, under ACC Section .655, is the last step in the orderly winding up and distribution of corporate assets.

Section .658 FILING OF DECREE OF DISSOLUTION

ORIGIN: ACC Section .658 is a reenactment without change of AS 10.05.588, which was based upon MBCA Section 103.

SUMMARY OF COVERAGE: This section provides the procedure for filing of the decree of dissolution.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: Section 14.22(a) of the RMBCA directs that the "clerk of the court shall deliver a certified copy of the decree [of dissolution] to the secretary of state, who shall file it."

Section .660 POWERS AND DUTIES OF DIRECTORS IN DISSOLUTION PROCEEDINGS

ORIGIN: ACC Section .660 is derived from GCL Section 2001, and is new to Alaska law. It replaces AS 10.05.489(2), .564, and .570, which were based respectively on MBCA Sections 87 and 98.

SUMMARY OF COVERAGE: ACC Section .660 is the heart of the reformed framework for utilizing the incumbent directors and officers to conduct both voluntary and involuntary dissolution, a significant change from existing law, which utilizes a "liquidating receiver" appointed by the court. This section enumerates powers and duties of the board. In the event the superior court does not repose confidence in the abilities or fidelity of the incumbent management, it has power under ACC Section .648 to appoint other persons to conduct the winding up.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: As previously noted, it seems implicit under the terms of RMBCA Section 14.05 that the reform of utilizing incumbent directors in preference to court ordered authorities to conduct the winding up has been accepted by the framers of the tentative draft.

Section .663 PROCEEDING TO DETERMINE IDENTITY OF DIRECTORS OR TO APPOINT DIRECTORS

ORIGIN: ACC Section .663 is taken from GCL Section 1003. There is no comparable provision in Alaska law or the MBCA.

SUMMARY OF COVERAGE: This section creates a procedure for establishing the identity of those who are to wind up and dissolve the corporation, and to replace those who are unwilling or unable to perform their duties.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: This power is not expressly provided in the RMBCA.

Section .665 DISTRIBUTION OF CORPORATE ASSETS AMONG SHAREHOLDERS; WHEN TO BE MADE

ORIGIN: ACC Section .665 is based upon GCL Section 2004. It replaces AS 10.05.489 and .561, which were based upon MBCA Sections 87 and 98.

SUMMARY OF COVERAGE: This section provides for the distribution of remaining assets to shareholders according to their respective rights and preferences once the interests of creditors and other claimants against the corporation have been settled.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.05(a)(4) appears to be the only coverage of this point. It does not settle the issue of the timing of such distributions, an ambiguity which may work to the disservice of creditors.

Section .668 PROVISION FOR PAYMENT OF DEBT OR LIABILITY

ORIGIN: ACC Section .668 is taken from Section 2005 of the GCL. It is without precedent in Alaska law.

SUMMARY OF COVERAGE: ACC Section .668 provides a definition of the concept "adequate provision" for a debt or liability, a concept used extensively throughout Article 9 as a precondition for distributing assets to shareholders when all claims by creditors have not yet been settled.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.05(a)(3) makes a reference to the power to ". . . mak[e] provision for discharging its liabilities." Section 14.40 utilizes the state treasurer as a repository for funds set aside to pay unknown or ineligible creditors or claimants.

Section .670 DISTRIBUTION IN MONEY OR IN KIND; INSTALLMENTS

ORIGIN: ACC Section .670 is taken from GCL Section 2006, and is without precedent in either Alaska law or the MBCA.

SUMMARY OF COVERAGE: ACC Section .670 gives express sanction to distribution schemes which gives shareholders property as opposed to cash. Installment plans are also sanctioned.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains no coverage other than the general provisions of Section 14.05(a).

Section .673 PLAN OF DISTRIBUTION; ADOPTION; BINDING EFFECT; NOTICE; PAYMENT TO DISSENTING SHAREHOLDERS; ABANDONMENT

ORIGIN: ACC Section .673 is predicated upon GCL Section 2007, and is without precedent in Alaska law.

SUMMARY OF COVERAGE: ACC Section .673 permits the liquidation rights of outstanding shares to be altered to accommodate a plan of distribution of assets other than money upon the approval by the outstanding shares. Class voting is expressly provided. Preferred shares dissenting from the plan may require the corporation to make payment according to their unaltered liquidation preferences. If such dissent and demand prejudices the plan, the board is authorized to abandon the plan without further recourse to shareholders.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA does not contain provisions incorporating these powers.

Section .675 RECOVERY OF AMOUNTS IMPROPERLY DISTRIBUTED

ORIGIN: ACC Section .678 is taken from GCL Section 2009, and is new to Alaska law.

SUMMARY OF COVERAGE: Any amount improperly distributed to shareholders may be recovered under Section .675. There is no requirement that shareholders have knowledge of the impropriety of such a distribution. Any recovery from shareholders may not function to alter their rights to share pro rata in the residual assets of the corporation.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.07(d)(2) provides for the liability of shareholders who have received distributed corporate assets to the claims of creditors.

Section .678 CONTINUED EXISTENCE OF DISSOLVED CORPORATIONS; PURPOSES; ABATEMENT OF ACTIONS; DISTRIBUTION OF OMITTED ASSETS

ORIGIN: ACC Section 678(a) is taken from AS 10.05.594, and is based upon MBCA Section 105. Subsections (b), (c), and (d) are taken from the 1980 amendment to AS 10.05.594 (SB 112).

SUMMARY OF COVERAGE: This section provides that a corporation that has been dissolved may continue to exist for an indefinite period of time for the purpose of winding up its affairs, prosecuting and defending actions by or against it, collecting and discharging obligations, disposing of and conveying its property, and collecting and dividing its assets.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.05(b) contains similar provisions continuing the corporate existence.

ARTICLE 10. FOREIGN CORPORATIONS

Section .705 ADMISSION OF FOREIGN CORPORATION

ORIGIN: ACC Section .705 is a reenactment of AS 10.05.597, which is based upon Section 106 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .705 conditions entry of a foreign corporation for the purpose of transacting business within Alaska. It is intended to exercise to the fullest the police power of the state while respecting the equal protection guarantees made obligatory by the Fourteenth Amendment to the Constitution of the United States.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.01(a) parallels ACC Section .705 in requiring a certificate of authority as a precondition to a foreign corporations ability to transact business within a host state.

Section .708 APPLICATION TO CORPORATIONS NOW AUTHORIZED TO TRANSACT BUSINESS IN THE STATE

ORIGIN: ACC Section .708 is a reenactment without change of AS 10.05.687 and is based upon Section 123 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .708 reflects the determination of the legislature to grant to foreign corporations, irrespective of their date of entry, the equal protections of the laws of Alaska including the imposition of all limitations, restrictions, liabilities, and duties prescribed in the ACC.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 17.02 parallels ACC Section .708 in extending the provisions of a new corporations code to foreign corporations currently qualified to transact business in the host state.

Section .710 LIABILITY FOR TRANSACTING BUSINESS WITHOUT CERTIFICATE OF AUTHORITY

ORIGIN: ACC Section .710 is a reenactment of AS 10.05.696 and is based upon Section 124 of the MBCA.

SUMMARY OF COVERAGE: In order to enforce the requirement that a foreign corporation obtain a certificate of authority prior to transacting business within Alaska, ACC Section .710

imposes a penalty of up to $10,000 per year or portion thereof during which such intrastate business was transacted without compliance with ACC Section .705. In addition, such a foreign corporation is made liable for all fees and taxes which would have been paid if there had been full compliance with the ACC.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.02(d) authorizes the imposition of a penalty for transacting business without a certificate of authority.

Section .713 TRANSACTING BUSINESS WITHOUT CERTIFICATE OF AUTHORITY AS BAR TO RIGHT TO SUE

ORIGIN: ACC Section .713 reenacts AS 10.05.690 and is based upon Section 124 of the MBCA.

SUMMARY OF COVERAGE: Among the disciplinary consequences of a foreign corporation's transaction of business within Alaska without compliance with ACC Section .705 is the denial of its right to maintain any action, suit, or proceeding in Alaska state courts.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.04(a), (b), and (c) creates identical consequences to those set forth in ACC Section .713.

Section .715 TRANSACTING BUSINESS WITHOUT CERTIFICATE OF AUTHORITY NOT AFFECTING CONTRACTS AND RIGHT TO DEFEND ACTION

ORIGIN: ACC Section .715 is a reenactment without change of AS 10.05..693.

SUMMARY OF COVERAGE: ACC Section .715 confines the disciplinary consequences of the transaction by a foreign corporation of intrastate business within Alaska without a certificate of authority to those imposed by the ACC. It does not generate grounds for a contracting party to assail the validity of a contract or transaction with a noncomplying foreign corporation. Finally, although precluded by ACC Section .713 from initiating any action, suit, or other proceeding, a noncomplying foreign corporation is not precluded from defending itself in proceedings commenced by others in Alaska courts.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.02(e) accords with the provisions of ACC Section .715.

Section .718 ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS IN THIS STATE

ORIGIN: ACC Section .718 is a reenactment of AS 10.05.600, and is based upon Section 106 of the MBCA.

SUMMARY OF COVERAGE: Under the interstate commerce clause and common law comity principles, a foreign corporation may engage in certain activities within a state without being required to first obtain a certificate of authority. In an effort to reduce litigation and clarify a murky body of decisional law precedent, ACC Section .718 enumerates activities which a foreign corporation may pursue without the necessity of obtaining a certificate of authority under ACC Section .705.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.01(b) is substantively identical to ACC Section .718.

Section .720 CORPORATE NAME OF FOREIGN CORPORATION

Section .723 ASSUMED CORPORATE NAME

Section .725 CHANGE OF NAME BY FOREIGN CORPORATION

ORIGIN: ACC Section .720 represents a modified content of AS 10.05.606 and is based upon Section 108 of the MBCA.

ACC Section .723(a) is based upon AS 10.05.607 and predicated upon Section 108(c)(12) of the MBCA. Wording changes have been made in order to avoid any confusion in coordinating this section with ACC Section .720. Section .723(b) is new and replaces the requirement that a corporation using an assumed name identify its true corporate name in all advertising, contracts, and other legal documents with a scheme whereby any interested party may resort to records maintained by the commissioner which references the actual and assumed names of foreign corporations.

ACC Section .725 reenacts AS 10.05.609, and is based upon Sections 109 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .720 imposes upon foreign corporations seeking a certificate of authority the same limitations with respect to a corporate name which are imposed upon domestic corporations by ACC Section .105.

In order to accommodate a foreign corporation while at the same time vindicating the policies of Alaska law, ACC Section .723 permits a corporation disabled from using its actual name to adopt an assumed name which, if it is permissible under ACC Section .720, is the name under which it elects to do business in Alaska.

ACC Section .725 furthers the policy with respect to permissible and impermissible content of corporate names by providing that a foreign corporation will have its right to transact business suspended were it to adopt an impermissible name.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.06 is functionally equivalent to ACC Sections .720, .723, and .725.

Section .728 APPLICATION FOR CERTIFICATE OF AUTHORITY

Section .730 CONTENTS OF APPLICATION

Section .733 FILING OF APPLICATION FOR CERTIFICATE OF AUTHORITY

ORIGIN: ACC Section .728 is a straight reenactment of AS 10.05.612.

ACC Section .730 is a reenactment of AS 10.05.615 as amended. It is predicated upon Section 110 of the MBCA.

ACC Section .733 is identical to AS 10.05.618 and .621 and is premised upon Section 111 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .728 provides that the foreign corporation's application to do business in Alaska shall be filed with the commissioner.

ACC Section .730 specifies the subject matter and information which must be included in an application for a certificate of authority. Three of the required items are non-uniform: Section .730(5) goes beyond the statement of purpose to require selection from the identification code established under ACC Section .950; Section .730(12) mandates disclosure of the names and address of each alien affiliate; and, Section .730(13) requires that the application state the name and address of any person(s) owning at least 5% of the shares or any class of shares and then disclose the percentage owned by such individuals.

ACC Section .733 specifies that the application shall be on forms furnished by the commissioner.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.01(a) is identical to ACC Section .728. RMBCA Section 15.01(b) is similar to ACC Section .730 with the exception of the three items added by the Alaska legislature and information regarding the capitalization of the applicant.

Section .735 EFFECT OF CERTIFICATE OF AUTHORITY

ORIGIN: ACC Section .735 is a reenactment of AS 10.05.624 and based upon Section 112 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .735 parallels ACC Section .218 by establishing a "bright line" event upon which the authority to transact intrastate business is granted by the State of Alaska.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.05(a) is the functional equivalent of ACC Section .735.

The balance of the RMBCA section contains recitations that in granting a certificate of authority the host state does not intend to meddle in the internal affairs of the foreign corporation.

Section .738 AMENDED CERTIFICATE OF AUTHORITY

ORIGIN: ACC Section .738(a) is a reenactment of AS 10.05.657. Section .738(b) is new and conforms the entire section to MBCA Section 118.

SUMMARY OF COVERAGE: ACC Section .738 obliges a foreign corporation which changes its corporate name or desires to pursue an intrastate purpose in Alaska other than the one(s) set forth in its application for a certificate of authority to obtain an amended certificate as a precondition to effecting such change.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.04 is similar to ACC Section .738 except that there is no interest in the purpose(s) which the applicant corporation proposes to pursue in the host state.

Section .740 POWERS OF FOREIGN CORPORATION

ORIGIN: ACC Section .740 reenacts AS 10.05.603 and is premised upon Section 107 of the MBCA.

SUMMARY OF COVERAGE: Consonant with Alaska's obligation to extend the equal protection of her laws, ACC Section .740 establishes than an authorized foreign corporation shall have the same powers as would a domestic corporation organized for the purposes stated in the application for or amendment to the certificate of authority.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBC Section 15.05(b) is functionally identical to ACC Section .740.

Section .743 REVOCATION OF CERTIFICATE OF AUTHORITY

Section .745 LIMITATIONS ON REVOCATION OF CERTIFICATE OF AUTHORITY

Section .748 ISSUANCE OF CERTIFICATE OF REVOCATION

Section .750 EFFECT OF CERTIFICATE OF REVOCATION

ORIGIN: ACC Sections .743, .745, .748, and 750 are reenactments without change of AS 10.05.675, .678, .681, and .684. They are based upon Sections 121 and 122 of the MBCA.

SUMMARY OF COVERAGE: ACC Sections .743, .745, .748, and .750 authorize, regulate, and determine the effect of a certificate of revocation issued by the commissioner. The power of revocation under Section .743 is similar to the commissioner's power to involuntarily dissolve a domestic corporation under ACC Section .630. The sixty day notice and grace period established by ACC Section .745 is also similar to the procedures limiting the commissioner's power to effect involuntary dissolution. If the certificate of authority is revoked pursuant to ACC Section .748, Section .750 declares that the foreign corporation is no longer authorized to transact intrastate business in Alaska.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.30 stipulates the grounds for revocation. They are similar to those set forth in ACC Section .743, except that the RMBCA lists as a ground for revocation that the foreign corporation has ceased to exist or been involved in an organic change. The ACC adds involvement in an illegal combination in restraint of trade as a ground for revocation. RMBCA Section 15.31(a) and (b) are similar to ACC Section .745 creating a grace period in which the foreign corporation can correct what would otherwise serve as a ground for revocation. This section also comports with ACC Section .748 on the issuance of a certificate of revocation and the effective date at which the authority of the foreign corporation to transact intrastate business ceases.

Section .753 REGISTERED OFFICE AND REGISTERED AGENT OF FOREIGN CORPORATION

Section .758 CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT OF FOREIGN CORPORATION

Section .760 FILING OF STATEMENT OF CHANGE

ORIGIN: ACC Sections .753, .758, and .760 are reenactments without change of AS 10.05.627, .633, and .635. They reflect the content of Sections 113 and 114 of the MBCA.

SUMMARY OF COVERAGE: ACC Sections .753, .758, and .760 parallel Sections .150., 165., and .170 respecting domestic corporations. They oblige authorized foreign corporations to designate both a registered office and a registered agent, govern the change of such office or agent, and establish procedures for notification of the commissioner.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.07 is identical to ACC Section .753 creating the obligation on the part of a foreign corporation to maintain a registered office and agent in the host state. RMBCA Section 15.08 is functionally identical to ACC Sections .758 and .760 respecting the procedures for changing either the agent or office and providing notification to the state.

Section .763 SERVICE OF PROCESS ON FOREIGN CORPORATION

Section .765 SERVICE ON COMMISSIONER

Section .768 RECORDS KEPT BY COMMISSIONER

Section .770 PROCEDURE NOT EXCLUSIVE

ORIGIN: ACC Sections .763, .765, .768, and .770 reiterate the content of AS 10.05.639, .642, and .648. They are based upon Section 115 of the MBCA. They have been modified to accord with the holding of the Supreme Court of Alaska in Northern Supply, Inc. v. Curtiss-Wright Corporation, 397 P.2d 1013 (1965), that the long-arm jurisdiction of the state courts is not dependent upon the statutory criteria requiring a certificate of authority.

SUMMARY OF COVERAGE: ACC Sections .763, .765, .768, and .770 balance the needs of a party desiring to initiate litigation against an authorized foreign corporation in Alaska with the need of that entity to maximize the circumstances in which notice and service of process will be actual as opposed to constructive.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.10 accords with ACC Section .763 in making the registered agent the proper party upon whom service of process may be served in the host state. If a foreign corporation does not designate or maintain a registered agent, Section 15.10(b) differs from the prior provisions of the Model Act and the historic and recommended content of Alaska law. Rather than utilizing the commissioner as an agent of last resort for the service of process, Section 15.10(b) directs the plaintiff to effectuate service by registered or certified mail sent to the address of the foreign corporation at its principal office as shown on the certificate of authority or most recent annual report.

Section .773 AMENDMENT TO ARTICLES OF INCORPORATION OF FOREIGN CORPORATION

ORIGIN: ACC Section .773 is a reenactment of AS 10.05.651. It is predicated upon Section 116 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .773 requires that the commission be noticed of amendments to the articles of foreign corporations which have sought and are enjoying a certificate of authority.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains no coverage on this point.

Section .775 ORGANIC CHANGE OF FOREIGN CORPORATION

ORIGIN: ACC Section .775 recapitulates the content of AS 10. 05.654 an reflects the content of Section 117 of the MBCA with terminology changes to clarify the scope of the section and conform to the style of the ACC.

SUMMARY OF COVERAGE: Whenever an authorized foreign corporation is involved in an organic change (defined in ACC Section .990(26)), notification of the commissioner is to be made by filing a copy of the articles of merger, consolidation, exchange, or reorganization authenticated by the proper authority in the jurisdiction in which it is domesticated.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The only related coverage in the RMBCA is Section 11.07 which requires a foreign corporation to file articles of merger with the secretary if the foreign corporation has merged with a domestic corporation with the foreign corporation as the surviving entity.

Section .778 WITHDRAWAL OF FOREIGN CORPORATION

Section .780 CONTENTS OF APPLICATION FOR WITHDRAWAL

Section .783 FORM OF APPLICATION FOR WITHDRAWAL

Section .785 FILING OF APPLICATION FOR WITHDRAWAL

Section .788 EFFECT OF CERTIFICATE OF WITHDRAWAL

ORIGIN: ACC Sections .778, .780, . 783, .785, and .788 reenact AS 10.05.660, .663, .666, .669, and .672. They are based upon Sections 119 and 120 of the MBCA. ACC Section .785 has been restated to observe the consolidation of procedures effected by ACC Section .910.

SUMMARY OF COVERAGE: ACC Sections .778, .780, .783, .785, and .788 provide for the orderly and official withdrawal of a foreign corporation from Alaska. If these procedures are not followed, and the bright line events of ACC Sections . 785 and .788 are not observed, the corporation would have a continued liability for taxes and fees.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.20 is identical to ACC Section .778 on the procedure for withdrawal. It differs from ACC Section .780 specification of the contents of the application reflecting the RMBCA's indifference to disclosure of the financial structure of a foreign corporation. The RMBCA does not require the state to prepare a form for the application to withdraw as does ACC Section .783. The other distinctions between 15.20 and ACC Sections .785 and .788 reflect the distinction between uti-

lizing the secretary of state and the commissioner to interact with domestic and foreign corporations.

ARTICLE 11. REPORTS, FEES, AND PENALTIES

Section .805 BIENNIAL REPORT OF DOMESTIC AND FOREIGN CORPORATIONS

Section .808 CONTENTS OF BIENNIAL REPORT

Section .811 FILING OF BIENNIAL REPORT

ORIGIN: ACC Sections .805, .808, and .811 are predicated upon AS 10.05.699, .702, and .705 as amended in 1980. These provisions of the Alaska Statutes were based upon MBCA Sections 125 and 126. ACC Section 811(d) is new, and was suggested by the Department of Commerce and Economic Development.

SUMMARY OF COVERAGE: ACC Sections .805, .808, and .811 establish an obligation on the part of each domestic and authorized foreign corporation to file a biennial report with the Department of Commerce and Economic Development, thus continuing the policy set by the 1980 legislature.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 16.22 differs from ACC Section .808 in three particulars. It would require an annual as opposed to biannual report. That report would not include identification of alien affiliates or of control persons. The requirements for timely filing are similar in both provisions as is the opportunity for correction with incursion of penalties for tardy filing.

Section .813 FILING NOTICE OF CHANGE OF OFFICERS, DIRECTORS, FIVE PERCENT SHAREHOLDERS, AND ALIEN AFFILIATES

ORIGIN: ACC Section .813 is predicated upon AS 10.05.706 as enacted in 1980.

SUMMARY OF COVERAGE: This section reflects the intense concern of the state that it be informed as to the identity of current officers, directors, five percent shareholders, and alien affiliates.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains no provision on this important issue.

Section .815 PENALTY FOR FAILURE TO FILE BIENNIAL REPORT

ORIGIN: ACC Section .815 is predicated upon AS 10.05.771 as amended in 1980, which was based upon MBCA Section 135.

SUMMARY OF COVERAGE: ACC Section .815 imposes a sanction applicable to any failure or refusal to file a biennial report required by this chapter, employing a strict liability standard.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA does not appear to contain a provision dealing with the consequences of late filings. The official comment (16-30) observes ". . .failure to file the annual report. . .is a ground for administrative dissolution or revocation of the certificate of authority to transact business."

Section .818 INTERROGATORIES BY COMMISSIONER; JUDICIAL PROCEEDING TO CONTEST

ORIGIN: ACC Section .818(a), (b), and (c) is predicated upon AS 10.05.777 and Section 137 of the MBCA. Subsection (d) is modeled after AS 45.52.210(f).

SUMMARY OF COVERAGE: ACC Section .818 grants broad powers to the commissioner to utilize interrogatories reasonably necessary to ascertain compliance with or violations of this Chapter. Subsection (d) permits either a corporation or an individual to challenge judicially the method, scope, or confidentiality of the interrogatory.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: For unexplained reasons, the RMBCA has abandoned this useful practice.

Section .820 CONFIDENTIALITY OF INFORMATION DISCLOSED BY INTERROGATORIES

ORIGIN: ACC Section .820 is a reenactment of AS 10.05.780, and is based upon MBCA 138.

SUMMARY OF COVERAGE: This section exempts the answers to interrogatories from the disclosure requirements of AS 09.25.110 and .120, which provide that state agency records are public records unless specifically provided otherwise by state law. ACC Section .820 specifically provides otherwise.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: Since, in contravention of former Model Act policy, the RMBCA does not provide for administrative interrogatories, it contains no provision making answers confidential.

Section .823 FAILURE TO ANSWER INTERROGATORIES

ORIGIN: ACC Section .823 combines provisions of AS 10.05.783, .786, and .777, which were predicated upon Sec-

tions 135, 136, and 137 of the MBCA. No substantive change is worked in existing Alaska law.

SUMMARY OF COVERAGE: ACC Section .823 provides that any corporate or natural person who fails or refuses to make a timely, full, and truthful answer to interrogatories shall be guilty of a misdemeanor. Further, the commissioner does not have to file any document to which the interrogatories relate until they have been properly answered.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains no coverage on this point.

Section .825 PENALTIES IMPOSED UPON OFFICERS AND DIRECTORS

ORIGIN: ACC Section .825 represents a modification of AS 10.05.786 as amended in 1980. AS 10.05.786 was predicated upon MBCA Section 136.

SUMMARY OF COVERAGE: ACC Section .825 goes beyond Section .823, to impose further misdemeanor consequences upon any officer or director who signs any articles, statement, report, application, or other document filed with the commissioner, the content of which is known to be false.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.29 contains a generic provision on the consequences a knowingly signing a false statement which is to be filed with the state. It must be customized by the adopting jurisdiction.

Section .828 INCORPORATION OR FILING FEES

ORIGIN ACC Section .828 is a modified version of AS 10.05.708 (Section 130 of the MBCA) as amended in 1980. The provision fixing a filing fee for non-stock corporations organized under AS 21.69 is new, and designed to coordinate the specific provisions of Chapter 21 with the general cross reference to Chapter 10.05.

SUMMARY OF COVERAGE: ACC Section .828 establishes a filing fee for both domestic and foreign corporations doing business in Alaska, and fixes in the Department of Commerce and Economic Development the power to set the amount by regulation, with the mandate that the fee be fixed with reference to the amount of authorized capital stock of the corporation. The authority of the department is further subject to the provision of Section .860, which limits increases in fees to an amount that does not exceed the rise in the consumer price index for Anchorage.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.22(a) recommends that the legislature set filing, service and copying fees. ACC Section .828 grants authority to the

commissioner to set the fees within legislatively prescribed limits tied to the cost of living index. Under the RMBCA, adjustment for inflation or deflation would have to be accomplished by way of legislative amendment.

Section .830 FEES ON APPOINTMENT OR REVOCATION OF APPOINTMENT

ORIGIN: ACC Section .830 is a redrafting without substantive change of AS 10.05.714, which was based upon MBCA Section 128.

SUMMARY OF COVERAGE: ACC Section .830 provides that when a foreign corporation files with the department a certificate of appointment of a process agent, or the change of address of a process agent, it shall pay a fee established by regulation.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: See comparison of features noted under ACC Section .828.

Section .833 FEES AND PENALTIES PAYABLE ON WITHDRAWAL OF FOREIGN CORPORATION

Section .835 FEES ON DISSOLUTION OF DOMESTIC CORPORATION

Section .838 TAXES, PENALTIES, AND FEES ON FILING CERTIFICATE OF DISSOLUTION OF FOREIGN CORPORATION

Section .840 FEES FOR CERTIFIED COPIES OF DOCUMENT

Section .843 OTHER FILING FEES

ORIGIN: ACC Sections .833, .835, .838, .840, and .843 reenact without substantive change AS 10.05.750, .753, .756 (which were based upon MBCA Section 128), .762 (which was based upon MBCA Section 129), and .747, all as amended in 1980.

SUMMARY OF COVERAGE: ACC Sections .833 through .843 establish the indicated occasions for the imposition of fees, which are to be determined by the department of Commerce and Economic Development, subject to Section .860's cost of living ceiling.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: See comparison of features noted under ACC Section .828.

Section .845 BIENNIAL CORPORATION TAX; PENALTY FOR NONPAYMENT

Section .848 FAILURE TO PAY TAX OR MAKE REPORT AS PRECLUDING SUIT BY CORPORATION

Section .850 COMMISSIONER TO INSTITUTE SUITS TO COMPEL PAYMENT

Section .853 FAILURE TO PAY TAX AS EVIDENCE OF INSOLVENCY

Section .855 PAYMENTS TO BE MADE IN ADVANCE

Section .858 ACCOUNTING FOR AND DISPOSITION OF TAXES AND FEES

ORIGIN: ACC Sections .845 through .858 represent modifications and reenactments of AS 10.05.717, .720, .723, .726, 765, and .768. In turn, these provisions were predicated upon MBCA Sections 132, 133, and 134. ACC Section .850 substitutes the Commissioner of the Department of Commerce and Economic Development for the Attorney General as the official to commence suit to compel the payment of the biennial corporation tax.

SUMMARY OF COVERAGE: ACC Sections .845 through .858 impose on both domestic and foreign corporations doing business in Alaska a biennial corporation tax, and fix the consequences for failure to make payment of such tax.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: As noted, the RMBCA does not address the issue of penalty consequences for failure to observe reporting requirements. The recommended fee structure is very rigid with adjustments necessitating legislative amendment.

Section .860 INCREASE IN FEES

ORIGIN: ACC Section .860 is a reenactment of AS 10.05.773, as enacted in 1980.

SUMMARY OF COVERAGE: ACC Section .860 explicitly limits increases in fees authorized throughout this Chapter to a ceiling reflecting changes in the consumer price index for Anchorage as determined by the Bureau of Labor Statistics of the United States Department of Labor.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: There is no RMBCA provision on this point.

Section .863 APPEAL FROM REVOCATION OF CERTIFICATE OF AUTHORITY

ORIGIN: ACC Section .863 is a reenactment without change of AS 10.05.792, which was based upon MBCA Section 140.

SUMMARY OF COVERAGE: ACC Section .863 authorizes recourse to the superior court to contest any disapproval of any document or revocation of any certificate of authority. Upon compliance with the procedures set out in this section, the applicant is entitled to a trial de novo, and the court is em-

powered to take such action as is proper.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.26 provides for judicial review of an administrative refusal to file a document. The official comment (1-27) makes it clear that the RMBCA does not take a position on either the burden of proof, scope or nature of the review. ACC Section .863 resolves these issues.

Section .865 CANCELLATION OF CERTIFICATES ISSUED AND FILINGS ACCEPTED

ORIGIN: ACC Section .865 is a reenactment with one change of AS 10.05.794 as enacted in 1980. The change makes clear that the ground for cancellation must be one that existed at the time of the original filing or issuance of the certificate.

SUMMARY OF COVERAGE: ACC Section .865 gives the commissioner a period of one year from the time which a document is filed to discover defects and act upon them. If the defect is a ground for refusal to issue the certificate or refusal to accept a filing and the discovery is made within one year, the commissioner is empowered upon proper notice and procedure to cancel the certificate issued or filing accepted.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA does not contain an explicit provision on this important question. It is possible that the general powers provision (RMBCA Section 1.30) might be aggressively interpreted to invoke this power.

Section .868 FORMS TO BE FURNISHED BY THE COMMISSIONER

ORIGIN: ACC Section .868 is a reenactment without change of AS 10.05.798, and is based upon MBCA Section 142.

SUMMARY OF COVERAGE: This section grants the commissioner the right to prescribe the content of forms for any report required by this Chapter. It also obligates the commissioner to furnish appropriate forms for required reports and other documents. This provision is sought to serve both the convenience of persons attempting to comply with the act as well as facilitating the record keeping efforts of the state.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.21 grants administrative authority to prescribe and furnish forms but, unlike ACC Section .868, does not oblige the state to create such forms.

Section .870 IDENTIFICATION CODE

ORIGIN: ACC Section .870 is a reenactment without change of

AS 10.05.799, which was enacted in 1980.

SUMMARY OF COVERAGE: This section requires the commissioners of the Departments of Revenue and of Commerce and Economic Development to establish a coded list of business activities and make such list available to the public.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: Reflecting its character as a statute designed for the needs and interests of no particular jurisdiction, the RMBCA contains no provision on this important Alaska effort.

ARTICLE 12. MISCELLANEOUS PROVISIONS

Section .905 VOTING OF SHARES; QUORUM; STATUS OF DISQUALIFIED SHARES

ORIGIN: ACC Section .905 is taken from GCL Section 112, and is without precedent in Alaska law.

SUMMARY OF COVERAGE: This section defines the references to a "majority of shares" found throughout the ACC to mean a majority of shares entitled to vote under the articles of incorporation. Votes disqualified from voting are not to be considered "outstanding" for determining a "quorum" or a "majority."

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains no explicit provision defining the terms "majority" or "majority of shares."

Section .910 PROCESSING OF WRITINGS FILED WITH THE COMMISSIONER

ORIGIN: ACC Section .910 consolidates without substantive change in one provision matters covered in AS 10.05.081, .258, .288, .303, .321, .339, .357, .402, .468, .483, .504, 513, .621, and .669.

SUMMARY OF COVERAGE: ACC Section .910 establishes a uniform procedure whereby the commissioner reviews and processes reports and documents which have been filed with the department.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.25(a) and (b) seeks to accomplish the same uniform treatment of reports and documents submitted for filing.

Section .915 DISAPPROVAL OF WRITING BY COMMISSIONER: APPEAL

ORIGIN: ACC Section .915 is a reenactment without change of AS 10.05.792, and is based upon MBCA Section 140.

SUMMARY OF COVERAGE: ACC Section .915, like Section .863, authorizes a trial de novo in the superior court for purposes of contesting the disapproval of any document or the revocation of any certificate of authority.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.25(c) requires that a refused document be returned with a

written explanation. RMBCA Section 1.26 establishes a right to seek judicial review although, as noted, it does not specify the standard of review or burden of proof.

Section .920 WRITINGS; CORRECTIONS

ORIGIN: ACC Section .920 is derived from NBCL Section 105.

SUMMARY OF COVERAGE: ACC Section .920 provides procedures for correcting minor mistakes without affecting the effective date in writings which have been filed. Major omissions and misinformation may not be corrected by this procedure.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.24 is functionally identical to ACC Section .920.

Section .925 WRITINGS AS EVIDENCE

ORIGIN: ACC Section .925 is adapted from NBCL Section 106. The language in .925(a) regarding the absence of a filing is new. The remainder of subsection (a) is similar to AS 10.05.795, which was based upon MBCA Section 141.

SUMMARY OF COVERAGE: ACC Section .925 specifies that certain writings and certifications by the commissioner of the absence of a writing are to be regarded as prima facie evidence of the facts stated in the writings and the execution or nonexecution thereof.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.27 creates a far more limited evidentiary value for writing filed with the state. The certificate of filing merely creates a conclusive evidentiary presumption that the original of the document has been filed. Nothing is created by way of evidentiary presumptions concerning the content of such writings.

Section .930 CORPORATE SEAL AS EVIDENCE

ORIGIN: ACC Section .930 is predicated upon NBCL Section 107, and is without precedent in Alaska law.

SUMMARY OF COVERAGE: ACC Section .930 treats the presence of a corporate seal on a writing as prima facie evidence that the writing was executed by authority of the corporation.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.27 fails to establish this evidentiary quality respecting the use of the corporate seal.

Section .935 WAIVER OF NOTICE

ORIGIN: ACC Section .935 is a reenactment of AS 10.05.804, which was based upon MBCA Section 144.

SUMMARY OF COVERAGE: This section provides that a written waiver of notice, whether executed before or after the time stated for notice, is to be accepted as the equivalent of giving notice in any situation where notice to a director or shareholder is required.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 7.05(a) is functionally identical to ACC Section .935.

ARTICLE 13. GENERAL PROVISIONS

Section .950 POWERS OF COMMISSIONER

ORIGIN: ACC Section .950 is a reenactment without change of AS 10.05.813, and is based upon MBCA Section 139.

SUMMARY OF COVERAGE: ACC Section .950 grants broad though nonsubstantive administrative authority to the Commissioner of the Department of Commerce and Economic Development. The limited authority of the Commissioner to adopt regulations is set forth in ACC Section .953.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.30 is identical to ACC Section 950 except that it refers to the secretary of state.

Section .953 REGULATIONS

ORIGIN: ACC Section .953 is a redrafting of AS 10.05.823, which was enacted in 1980.

SUMMARY OF COVERAGE: ACC Section .953 is a restrictive grant of rulemaking authority to the commissioner and Department of Commerce and Economic Development. This rulemaking authority must be exercised in conformity with the Administrative Procedure Act (AS 44.62), and may be invoked only as specifically provided in this Chapter.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains no comparable provision restricting either the substance or limiting the procedures to be employed in administrative rule making.

Section .955 APPLICATION

ORIGIN: ACC Section .955 subsection (a) is a modified version of NBCL Section 103, and replaces AS 10.05.816, which was based upon MBCA Section 147. Subsection (b) is a modified version of GCL Section 102(b), and replaces AS 10.05.816, which was based upon MBCA Section 147. This section supplements AS 01.10.100.

SUMMARY OF COVERAGE: ACC Section .955 makes the ACC applicable to domestic corporations formed under AS 10.05, and to foreign corporations to the extent provided generally in Article 10 and expressly elsewhere. Subsection .955(b) pro-

vides that the existence of corporations formed under existing law is not affected. Subsection .955(c) provides that enactment of the ACC does not affect pre-enactment legal disputes.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 17.01 extends the application to domestic corporations while RMBCA Section 17.02 accomplishes the extension to foreign corporations authorized to transact business in the host state.

Section .958 PROVISIONS CONSTRUED AS RESTATEMENTS AND CONTINUATION

ORIGIN: ACC Section .958 is taken from GCL Section 2.

SUMMARY OF COVERAGE: Much of the ACC represents a reenactment of existing Alaska law, either verbatim or with minor changes to conform with ACC usage and style. ACC Section .958 construes these reenactments as restatements and continuations of existing law.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA does not contain this useful transaction and application section.

Section .960 CORPORATIONS ORGANIZED UNDER P. L. 92-203

ORIGIN: ACC Section .960 is a reenactment of AS 10.05.005, with the addition of subsection (d) which exempts Native corporations from the provisions of ACC Section .488 on the liability of directors and officers. AS 10.05.005 was enacted in 1972 and amended in 1975 and 1981.

SUMMARY OF COVERAGE: Under the Alaska Native Claims Settlement Act, P.L. 92-203, either the general business corporations code or the nonprofit corporations code of the State of Alaska is to be used to organize the entities which are to hold the assets distributed through ANCSA. Due to the special nature of these corporations and the federal requirement that the corporate form be used, the ACC contains a variety of special provisions tailored to Native corporations. ACC Section .960 provides for the capitalization of Native corporations, distributions to shareholders, approval of plans of merger or consolidation, and the liability of directors and officers to contract claimants.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains no provisions accomplishing discrete treatment of corporations formed under the Alaska Native Claims Settlement Act.

Section .963 SEVERABILITY

ORIGIN: ACC Section .963 is taken from NBCL Section 111. It supplements the provisions of AS 01.10.030.

SUMMARY OF COVERAGE: ACC Section .963 provides that the ACC will not be struck down as a whole on account of the invalidity of any provision in it.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 17.04 contains a severability provision similar to ACC Section 963.

Section .965 RESERVATION OF POWER

ORIGIN: ACC Section .965 is based upon AS 10.05.822, MBCA Section 149, and NBCL Section 110.

SUMMARY OF COVERAGE: This section reserves unto the legislature the plenary right to alter, amend, suspend, or repeal in whole or in part the provisions of the ACC.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1 02 contains a reservation of power clause similar to ACC Section 965.

Section .968 SIGNATURE

ORIGIN: ACC Section .968 is derived from GCL Section 17, and is new to Alaska law.

SUMMARY OF COVERAGE: This section specifies that a mark is a signature when the signer cannot write and the signer's name is written out by a witness who signs his own name.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA does not contain a provision anticipating the needs of citizens who cannot write.

Section .970 RULES OF CONSTRUCTION AND INTERPRETATION

ORIGIN: ACC Section .970 is derived from GCL Sections 5, 6, 7, 8, 113, 114, 118, 10, 11, 12, 13, 15, and 16 respectively, and are all new to Alaska law.

SUMMARY OF COVERAGE: ACC Section .970 sets out basic rules of construction to be applied to the ACC, to obviate the possibility of litigation on a variety of topics susceptible of differing interpretations and to specify the handling of financial accounting procedure. Of particular interest is subsection (5) on financial accounting. The ACC has abandoned the traditional corporate accounting concepts of "par

value", "stated capital", "capital surplus", and "earned surplus." These concepts have been replaced by the "retained earnings" and "ratio assets surplus" tests found in ACC Sections .358 through 365. This new approach relies upon generally accepted accounting principles in use at the time of performance of a financial accounting task.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains no comparable specification of rules of construction and interpretation.

Section .990 DEFINITIONS

ORIGIN: ACC Section .990 is derived from existing Alaska law, typically based upon a definition from the MBCA Section 2, or the GCL. The following chart indicates specific sources:

1. *NEW*
2. *AS 10.05.825(18) enacted 1976*
3. *AS 10.05.825(22) enacted 1980*
4. *GCL Section 151*
5. *GCL Section 152*
6. *GCL Section 153*
7. *AS 10.05.825(5)*
8. *AS 10.05.825(9)*
9. *GCL Section 155*
10. *AS 10.05.825(1)*
11. *GCL section 159*
12. *AS 10.05.825(19) enacted 1976*
13. *AS 10.05.825(2)*
14. *AS 10.05.825(17)*
15. *AS 10.05.825(3)*
16. *GCL Section 164*
17. *GCL Section 166*
18. *GCL Section 169*
19. *AS 10.05.825(24) enacted 1980*
20. *AS 10.05.825(4)*
21. *GCL Section 115*
22. *GCL Section 172*
23. *AS 10.05.825(11)*
24. *GCL Section 173*
25. *GCL Section 174*
26. *NEW*
27. *GCL Section 175*
28. *NEW*
29. *AS 10.05.825(20) enacted 1976*
30. *GCL Section 176*
31. *GCL Section 178*
32. *GCL Section 179*
33. *GCL Section 180*
34. *NEW replacing AS 10.05.825(14)*
35. *GCL Section 183*
36. *AS 10.05.825(8)*

37. AS 10.05.825(6)
38. NEW
39. AS 10.05.825(7)
40. GCL Section 189
41. GCL Section 190
42. GCL Section 192
43. AS 09.63.040
44. GCL Section 194
45. GCL Section 195
46. NEW

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.40 contains a twenty-four item list of definitions.

Section .995 SHORT TITLE

ORIGIN: ACC Section .995 replaces AS 10.05.828.

SUMMARY OF COVERAGE: The title of the chapter regulating the organization and operation of business corporations will be changed from "Alaska Business Corporations Act" to "Alaska Corporations Code", which will facilitate distinctions between the old and the new law.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.01 designates a generic short title.

PART THREE

MODIFICATIONS

of the

ALASKA CORPORATIONS ACT

Here is a non-exhaustive list of provisions of the ACC draft which might be modified to reflect the content of the Revised Model Business Corporations Act. In each instance I will identify the provision of the ACC and indicate the page in Part Two of this memorandum where that provision is discussed in greater detail as well as the page of S.B. 246 where the text of the existing draft is set forth.

ARTICLE 4: Corporate Finance

There are two areas in which the ACC and RMBCA differ which were noted by Professor Hamilton. While both draft statutes would eliminate the current reliance upon notions of legal "surplus", they differ in the formulation of a substitute standard for determining the financial circumstance in which a distribution of corporate assets to shareholders is licit. The two statutes also part company with respect to accounting procedures.

1. The restraint upon distributions: See discussion pages 29-34 of this memorandum.

The ACC: has followed California's "ratio/assets surplus" test. Simply stated a corporation may make a distribution at any time out of current earnings or, if there are no net current earnings, so long as the assets of the entity exceed its liabilities by a ratio of 1.25 to 1. The ACC provisions are found at pages 28-31 of S.B. 246.

The RMBCA: simply uses the equitable insolvency test. So long as the corporation can continue to meet its current liabilities it may licitly declare and make a distribution. See Section 6.40 in your copy of the Final Draft along with the official comment which begins at page 6-73.

Views of the Consultant: the California standard mandates greater protection of corporate creditors. It also has the advantage of being tested in a major jurisdiction for the past eight years. Reliance upon the equitable insolvency test is, to my knowledge, untested in any jurisdiction. However, should the RMBCA gain a following, an alignment of Alaska with this future band of states may put it in more numerous company. Professor Hamilton notes that both Oregon and Arizona are currently looking at their existing statutes with a view toward revision. In an interesting historical aboutface, if the Commission determines that it prefers to retain the ratio/assets test it might make available to these western states a copy of its bill and comments.

2. Accounting Standards: See discussion pages 29-34 of this memorandum. The ACC provisions are found at pages 28-31 of S.B. 246.

The ACC: Section 970(5) [p 150 of S.B. 246] requires the use of generally accepted accounting principles in preparing financial statements, balance sheets, income statements and statements of changes in financial position.

The RMBCA: The final draft [p. 6-78] notes that directors will normally be entitled to use generally accepted accounting principles. However there is no mandate that such principles be followed. "[S]ection 6.40 only requires the use of accounting practices and principles that are reasonable in the circumstances, and does not constitute a statutory enactment of generally accepted accounting principles."

Views of the Consultant: Professor Hamilton's talk justified the RMBCA provision on several grounds. First he questioned the degree to which there is uniformity among those who purport to follow generally accepted accounting principles. More importantly, he opined that mandating their observance might be a hardship on smaller entities for it would force recourse to accountants.

In favor of the ACC position I note that California has followed it for nearly a decade without any appellate litigation as to its meaning or application. The entire goal of the revision is to preclude the use of "creative accounting". The RMBCA comment that "accounting practices and principles. . .reasonable in the circumstances. . ." would appear an invitation to litigation.

ARTICLE 5. Meetings of Shareholders

3. Notice Requirements *See page 39 of this memorandum.*

The ACC: Section 410 [pp. 36-37 of S.B. 246], establishes a minimum of twenty and a maximum of fifty days for giving notice of shareholder meetings. The twenty day minimum involved a conscious deviation from the shorter recommendation of the original Model Act and was thought necessary to accommodate the physical conditions in Alaska.

The RMBCA: Section 7.05 [p 7-19] adopts a formula of a ten day minimum and a sixty day maximum.

Views of the Consultant: I am neutral on this issue. If the Commissioners believe that ten days is an insufficient minimum notice provision we could consider adopting the RMBCA's recommended sixty day maximum.

4. Civil Liability Consequences for Failure or Refusal to Accord Inspection Rights *See pages 39-40 of this memorandum.*

The ACC: Section 413 [pp. 37-38 of S.B. 246] imposes personal civil liability on an officer or agent of the corporation

who fails or refuses to compile, maintain and make available for shareholder inspection a voting list. The liability is to be measured by the extent of the demanding shareholder's damage.

The RMBCA: Section 7.20 [p. 7-32] sanctions the use of a summary court order to support a shareholder's right to inspect the voting list but does not impose any civil liability upon a corporate officer or agent who is obstructing this inspection. In his remarks to the Alaska Bar Association, Professor Hamilton indicated philosophical opposition to such tactics and also the belief that when prescribed by statute they are rarely imposed by courts.

Views of the Consultant: Whether one agrees with Professor Hamilton, ACC Section 413 is in need of attention. At an early stage in the evolution of the statute the Commission made a determination that it did not want to recommend any mandatory course of conduct and then be silent on the consequences of an individual's non-observance of that commandment. Accordingly, it determined to create sanctions within the statute in support of its mandatory provisions. Section 413's liability differs from that found elsewhere in the ACC in that it sets no minimum civil liability consequence but merely measures the recovery according to the shareholder's damages. If those damages are nominal or not susceptible of easy proof, there will be little incentive to undertake the burdens and costs of litigation in support of the statute. Contrast this with the provision in ACC Sections 430(c) [p. 45 of S.B. 246] and 433(f) [p. 48 of S.B. 246].

Section 430 mandates the keeping of minimum books and records as well as creating a right of inspection in shareholders. An officer or agent who refuses to permit inspection is liable for a penalty in the amount of 10% of the value of the shares owned by the demanding shareholder or $5,000 whichever is greater in addition to any provable damages.

Section 433 deals with the preparation and distribution of an annual report to shareholders. Under subsection (f) a corporation that neglects, fails, or refuses to prepare the required financial statements is subject to a penalty of $25 per day up to maximum of $1,500. This liability runs to the shareholder or shareholders making the request for performance by the duty or duties imposed by the section.

Should some similar minimum consequence be fixed for violation of Section 413 or should all of these minimum liability consequences be abolished in conformity with Professor Hamilton's views?

ARTICLE 6. Directors and Officers

5. Delegation of Board Functions: see page 48 of this memorandum.

The ACC: Section 450(a) [p. 53 of S.B. 246] requires that

corporations have a board of directors. However, it also stipulates that if there is affirmative provision in the articles the powers, duties, privileges, and liabilities conferred or imposed upon the board shall be exercised, performed, extended and assumed by an identified individual or individuals.

The RMBCA: Section 8.01(c) [p. 8-2] limits the ability to use the articles to dispense with or limit the authority of the board to corporations with 50 or fewer shareholders. If the number of shareholders exceeds 50 the corporation is required to have a traditional board although it may "delegate" certain functions to agents.

Views of the Consultant: The distinctions between the statutes suggest two problems. You must decide whether to clearly permit substitution as opposed to delegation, and, if so, whether you want to adopt a limitation predicated upon the number of shareholders. As I review ACC Section 450 and the official comment (p. 119-120 of the House and Senate Joint Journal for April 8, 1983), I am struck that we fudged a very important conceptual distinction. The RMBCA does a better job.

A well drafted statute would distinguish between the circumstances in which the statute would tolerate substitution of some individual or individuals for the board as opposed to conditions under which it is licit for a board to delegate its powers to such person or persons. The issue is one of agency law. Are the individuals identified in the articles merely the agents of the board as principal or are they a substitute source of authority?

In the RMBCA it is clear that if the corporation has 50 or fewer shareholders they may be substitutes. Unfortunately, the RMBCA does not confront the question of whether such substitutes are then limited by the term and other requirements laid down in Section 8.03.

ACC Section 450 could be construed as allowing either delegates or substitutes. The apparent mandatory presence of a board of directors would, however, cause me to interpret it as limited to agency delegation. Why leave the matter in doubt. The Commissioner's should decide whether they wish to permit substitution and, if so, whether they want to adopt the limitation suggested in RMBCA Section 8.01(c).

6. Minimum size of board committees: see pages 52-53 of this memorandum.

The ACC: Section 468 [pp. 59-60 of S.B. 246] permits the articles or bylaws to empower the board to set up executive and other committees and to delegate to such committees the powers otherwise vested in the board. Certain powers are excepted.

The RMBCA: Section 8.25(a) [p. 8-43] requires that any such committees have a minimum of two members.

View of the Consultant: I would advocate following the RMBCA position on the minimum composition of board committees.

7. Indemnification---advances to defendants: *see pages 58-60 of this memorandum.*

The ACC: Section 490(e) [pp. 70-71 of S.B. 246] gives the corporation discretion to advance expenses anticipated by a defendant in any civil or criminal action prior to the final disposition of the action or proceeding. This advance is conditioned upon an undertaking by the defendant to repay the funds if it should ultimately be determined that there was no entitlement to indemnification.

The RMBCA: Section 8.53(a) [p. 8-109] is far more conservative. Before an advance may be authorized there must be a determination of the defendant's good faith, the furnishing of a written personal undertaking to repay the funds, and a finding that the facts as then known would not preclude indemnification.

Views of the Consultant: I would personally favor substitution of the concepts in RMBCA Section 8.53(a) for the less restrictive provisions of ACC Section 490(e).

ARTICLE 7: Amendments and Changes

8. Procedure to Amend Articles of Incorporation: *see pages 61-62 of this memorandum.*

The ACC: Section 504 [pp. 73-74 of S.B. 246] defines the procedures which must be followed to amend the articles of incorporation. Assuming that shares are outstanding, Section 504 vests the power to initiate amendments in both the board and the shareholders. To be adopted, the amendment must be approved by both groups.

The RMBCA: Section 10.03 [pp. 10-10, 10-15] differs from the ACC in restricting the power to initiate amendments to the articles to the board. Under normal circumstances, the amendment is not adopted until approved by the shareholders. However, Section 10.02 [pp 10-7, 10-10] lists six changes in the articles which, unless the articles provide otherwise, are within the power of the board to effect without shareholder approval. The official comment terms them "housekeeping amendments."

Views of the Consultant: I can see little harm in adoption of the RMBCA position on this point. Expense would be saved in corporate entities in which there is a large body of shareholders by exempting the need to poll them in the stated circumstances. Few Alaska corporations would presently fall into this category but this would seem an insufficient reason to reject this innovation.

ARTICLE 8. Organic Change

9. Right of shareholders to dissent: see pages 73-74 of this memorandum.

The ACC: Section 574 [pp. 90-91 of S.B. 246] recognizes the right of shareholders to dissent in the case of an organic change, including the sale of all or substantially all of the corporate assets other than in the usual and regular course of business.

The RMBCA: Section 13.02 [pp. 13-8, 13-16] accords these same rights but goes further. It would grant shareholders the right to force the corporation to purchase their shares in the event of an amendment to the articles which would impair existing preemptive, redemption or voting rights. In its final draft, this has been expanded further to accord the right to dissent in the event an amendment is adopted reducing the outstanding shares. Any shareholder who would, in consequence of such reduction, be left with a fraction of a share which is then subject to acquisition for cash at the option of the corporation is to be accorded dissenter's rights.

Views of the Consultant: I think that the provisions of Section 13.02 are desirable and commend them as additions to the present content of ACC Section 574.

10. Payment to dissenting shareholder: see pages 75-76 of this memorandum.

The ACC: ACC Sections 580 and 582 [pp 93-94 of S.B. 246] create an obligation in the corporation to pay the dissenter who has perfected her rights the fair value of the shares. The scheme is to first give the shareholder and the corporation the opportunity to agree on this figure. If they cannot, Section 582 imposes the burden upon the corporation to commence litigation seeking a judicial determination of fair value.

The RMBCA: Section 13.25 [p. 13-31] contains a valuable innovation. It requires that the corporation pay to the dissenting shareholder the amount deemed by the corporation to represent the fair value of the shares. If there is a dispute and, ultimately, litigation at least the shareholder has these funds with which to finance the fight.

Views of the Consultant: Professor Hamilton made a convincing presentation on this point in his address to the Alaska Bar Association and I would favor its inclusion in the ACC.

Limit 2 pages

John Sund wants:

1) Letter on policy reasons for new bill
   a) Old model act.
   b) Poorly organized
   c) Work done by Comm w/ Prof Jessler
   d) Pulled out 488 99% of controversy
   e) Discript of agm ~~xxs~~. S/H powers
   f) Loose book approach
   g) Have to read whole code to discover provisions - new bill all in one place
   Minimize X-refs.
   h) Most criticism's are really of existing law - not new provisions
   i) Exp of windown vs. filing TP actions.

Senate - do in 2 cases

J) Takeovers a new issues - has to be subj of new bill - not addressed in current bill.

THE ALASKA CODE REVISION COMMISSION

April 1985

A COMPARATIVE STUDY

OF THE PROPOSED ALASKA CORPORATIONS CODE (ACC) WITH THE FINAL 1984 DRAFT OF THE REVISED MODEL BUSINESS CORPORATION ACT (RMBCA)

INCLUDING THE ORIGIN AND SUMMARY OF EACH SECTION OF THE ACC

Prepared by

The Code Revision Project

Professor Daniel Wm. Fessler

Craig F. Stowers

231 G. Street # 26

Davis, California 95616

ABBREVIATIONS USED

In this publication the following abbreviations are used:

ACC--Alaska Corporations Code (the short title of the comprehensive revision of corporation law to be made by House Bill 246 and Senate Bill 199, identical bills introduced in the Fourteenth Alaska Legislature).

ABCA--The present Alaska Business Corporation Act (chapter 126, Session Laws of Alaska 1957, now Alaska Statutes Sections 10.05.003-10.05.828).

MBCA or "the Model Act"--Model Business Corporation Act as revised through July 1, 1969 (a product of a committee of the American Bar Association first published in 1950 and carried forward with changes until generally revised in 1984. The 1953 version became the basis of the existing Alaska Business Corporation Act).

RMBCA or Revised Model Act--Revised Model Business Corporation Act (1984) (the 1984 comprehensive revision by a committee of the American Bar Association of its earlier Model Business Corporation Act).

CGCL or GCL--California General Corporation Law (the 1977 omnibus revision of California's for profit corporations code, one of the two principal sources for the ACC).

NBCL or BCL--New York Business Corporation Law (the second of the two principal sources for the ACC).

ANCSA--Alaska Native Claims Settlement Act (Public Law 92-203, as amended, 43 U.S.C. sec. 1601, et seq., the federal Act of December 18, 1971, and its amendments settling land claims and providing for the formation of regional and village corporations. The Act and its amendments are reprinted in Volume 1 of Alaska Statutes).

TABLE OF CONTENTS

PREFACE

This study paper consists of three parts, each designed to familiarize the reader with the contents and origin of the proposed Alaska Corporations Code (ACC) and its relationship to the 1984 Revised Model Business Corporation Act (RMBCA).

Part I follows the organizational structure of the ACC and gives a brief description of the origin of each section, its content, and a specific comparison to provisions of the RMBCA. This work was originally produced by the Alaska Code Revision Commission in March, 1984, to provide a comparative study of the ACC and the tentative exposure draft of the RMBCA, for use by the Alaska Legislature, the Alaska Bar Association, and others interested in the content of the ACC. The study paper demonstrates the substantial similarity between the draft RMBCA and the proposed provisions of the ACC. In June, 1984, the final draft of the RMBCA was produced by the Committee on Corporate Laws Section of Corporation, Banking , and Business Law of the American Bar Association. The Alaska Code Revision Commission again considered the content of the RMBCA, and adopted additional RMBCA provisions into the content of the ACC. Part I's comparative study has been updated to reflect these recent revisions to the ACC.

Part II consists of three comparison charts which provide a section-by-section cross-reference of the ACC to the existing Alaska Business Corporations Act- AS 10.05 (ABCA) and the RMBCA. These charts have also been updated to reflect revisions made to the ACC following the release of the 1984 RMBCA.

Part III is a source chart showing the origin of each provision of the ACC and its comparable coverage in existing Alaska law (ABCA), the former Model Business Corporation Act (MBCA), the California General Corporation Law (GCL), the New York Business Corporation Law (NBCL), other sources (e.g. Delaware or Oregon business corporation law), and the RMBCA.

The Alaska Code Revision Commission's goal in drafting the ACC was to provide Alaska with a modern, balanced corporations statute crafted to the special needs of Alaska. An examination of these study materials, especially the source chart in Part III, shows that the ACC has drawn its content from the very best statutory provisions found in the United States and in the Revised Model Business Corporation Act.

For the most comprehensive study of the ACC, readers are encouraged to use this study paper in conjunction with the Official Commentary to the ACC, found in the House and Senate Joint Journal Supplement to HB 246/ SB 199, dated February 7, 1985.

PART I.

A SECTION-BY-SECTION COMPARATIVE STUDY
OF THE PROPOSED ALASKA CORPORATIONS CODE (ACC)
AND THE
1984 REVISED MODEL BUSINESS CORPORATION ACT (RMBCA)

ARTICLE 1. CORPORATE PURPOSES AND POWERS

Section .005 PURPOSES

ORIGIN: ACC Section .005 alters the content of AS 10.05.003 to conform to the content of Section 3 of the Model Business Corporation Act (MBCA).

SUMMARY OF COVERAGE: ACC Section .005 permits an Alaska corporation to be formed for any lawful purpose(s) other than insurance and banking. Stock and mutual insurance companies are formed under AS 21.69; the companies are of a corporate nature and are governed by the ACC to the extent provided in AS 21.69.020. Reciprocal insurance companies, noncorporate in nature, are formed under AS 21.75.

COMPARED WITH THE FINAL DRAFT OF THE RMBCA: ACC Section .005 is functionally identical to RMBCA Section 3.01(a). The limitations spelled out in RMBCA Section 3.01(b) are found in ACC Section .010.

Section .010 GENERAL POWERS

ORIGIN: ACC Section .010 is predicated upon AS 10.05.009 which was, in turn, predicated upon Section 4 of the Model Business Corporation Act.

SUMMARY OF COVERAGE: The introductory phrase was adopted from Section 207 of the California General Corporation Law (hereafter the "GCL") and makes explicit that while the general grant of powers are co-extensive with that of a natural person, this grant is subject to limitation by provisions in the articles of incorporation or other law. Subsection (6) makes direct reference to the new provisions on loans to officers and directors (Section . 485). Subsection (15) adds "stock option plans" to the list of incentive plans which a corporation may establish for its directors, officers and employees.

COMPARED WITH THE FINAL DRAFT OF THE RMBCA: Section 3.02 also contains a general grant and specific enumeration of corporate powers. It is functionally identical to ACC Section .009, except that it does not contain express authority to make loans to corporate officers and directors. Within the RMBCA loans to directors are governed by Section 8.32. They are licit if approved by a majority of the outstanding voting shares. The loan may also be authorized by the direc-

tors if the board, in its collective judgment, determines that the loan is in the best interest of the corporation.

Section 3.02 follows ACC Section .009 in specifically listing "share option plans" among the incentive plans which a corporation may establish. The idea that a corporation has powers which are presumptively coextensive with those of a natural person is explicit in ACC Section .009. It is left to implication in the comment to RMBCA 3.02.

Section .015 DEFENSE OF ULTRA VIRES

ORIGIN: ACC Section .015(a) is predicated upon Section 203 of the New York Business Corporation Law (hereafter the "NBCL"). It is a modified version of former AS 10.05.018 and Section 7 of the MBCA. Section .015(b) is new and is taken from Section 208 of the GCL.

SUMMARY OF COVERAGE: ACC Section .015 governs the limited circumstances in which a claim of "ultra vires" may affect the rights of third parties who have dealt with a corporate entity and the impact of such behavior in creating liability on the part of the corporate officers and directors of the corporation. While the concept of "ultra vires" is frequently included in the discussion of agency problems within the corporate framework, properly understood it is not a traditional doctrine of agency law. A transaction is ultra vires when it is beyond the powers of the corporation as those powers are conferred by law and the terms of the articles of incorporation.

COMPARED WITH THE FINAL DRAFT OF THE RMBCA: The provisions of ACC Section .015 and those of RMBCA 3.04 are functionally identical.

Section .020 LIMITATIONS ON AUTHORITY OF CORPORATE AGENTS

ORIGIN: ACC Section .020 is predicated upon GCL Section 208.

SUMMARY OF CONTENT: Unlike conduct assailed as beyond the powers of the corporation, a subject covered by ACC Section .015, Section .020 deals with the consequences of an abuse of authority which was within the power of the corporate principal to confer. The provisions of Section .020 confront the common law of agency as it has been applied to the unique problems generated by an artificial corporate person as principal. The thrust of Section .020 is to shift the risk of transactions which exceed the authority of corporate agents to the corporation thus relieving the interests of innocent third persons. Subsection (3) makes it clear that either the corporation or a shareholder suing in a derivative capacity may assert lack of authority in any action against the faithless agent.

COMPARED WITH THE FINAL DRAFT OF THE RMBCA: The official comment to RMBCA Section 3.04 makes it clear that the Model Act has no coverage of this important question at all. See pp. 3-17, 18.

Section .025 CONTRACTS OR CONVEYANCES BINDING DOMESTIC AND FOREIGN CORPORATIONS

ORIGIN: ACC Section .025 is predicated upon GCL Section 208.

SCOPE OF COVERAGE: ACC Section .025 settles two important questions associated with contracts or conveyances entered by corporate agents who have exceeded their actual authority. If the transaction is within the scope of the agent's "apparent authority", it is binding upon the corporate principal and upon the third party. Thus, the defect in the authority of the agent does not defeat the corporation's liability on the transaction, nor does it prevent it from acquiring rights against the third party measured by the terms of the transaction.

COMPARED WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA has no statutory provision covering this important question.

ARTICLE 2. NAME AND SERVICE OF PROCESS

Section .105 CORPORATE NAME

ORIGIN: ACC Section .105 is a reenactment of AS 10.05.021 as amended.

SUMMARY OF COVERAGE: ACC .105 requires that a corporation adopt as part of its name one of the listed alternatives designed to warn third parties that they are dealing with a corporate entity. ACC .105 also prohibits a person from adopting a name that contains words suggesting a corporation unless that person has either been issued a certificate of incorporation in Alaska or has obtained a certificate of authority for a foreign corporation.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: ACC Section .105 is functionally identical to RMBCA Section 4.01(a) and (b). There are, however, differences in content.

RMBCA Section 4.01(a)(1) requires that a corporation include as part of its name one of the traditional words or abbreviation designed to indicate corporate status. In a break with the prior Model Act and exposure draft, the final version would allow this requirement to be satisfied by the inclusion of "words or abbreviations of like import in another language. . . ." The official comment merely indicates that the change has been made. It offers no justification. At least two reasons to oppose such permission come to mind. First, I doubt that many persons would appreciate the import of initials such as "GmbH" as a signal that this was a limited liability entity. Further, even if one knew that this was a German designation for a corporation she might be fooled into belief that the entity was <u>in fact</u> a German entity.

RMBCA Section 4.01(c) contains provisions whereby a corporation may give written consent to the use by another entity of a name which would otherwise be deceptively similar.

The final draft of Section 4.01(b)(4) requires that a corporate name be distinct from the name of a registered nonprofit corporation. This provision is not contained in the ACC.

ACC Section .105(b) continues a 1976 amendment by the terms of which the Legislature forbade a corporation from adopting a name which contained the word "city", "borough", or "village" or otherwise implying that the corporation is a municipality. Reflecting its detachment from Alaskan concerns, RMBCA Section 4.01 contains no similar prohibition.

Section .110 RESERVATION OF CORPORATE NAME

Section .115 APPLICATION TO RESERVE CORPORATE NAME

Section .120 TRANSFER OF RESERVED NAME

ORIGIN: ACC Sections .110, .115, and .120 are reenactments without change of former AS 10.05.024, .027, and .030 which were, in turn, predicated upon Section 9 of the MBCA.

SUMMARY OF COVERAGE: ACC Sections .110, .115, and .120 set forth the natural or corporate persons who may reserve a corporate name.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 4.02 is functionally identical to these provisions of the ACC except for their substitution of the commissioner for the "secretary of state."

Section .125 REGISTRATION OF CORPORATE NAME

Section .130 USE OF SAME OR DECEPTIVELY SIMILAR NAME

Section .135 PROCEDURE FOR REGISTRATION OF CORPORATE NAME

Section .140 FEE FOR AND DURATION OF REGISTERED NAME

Section .145 RENEWAL OF REGISTERED NAME

ORIGIN: ACC Sections .125, .130, .135, .140, and .145 are reenactments of AS 10.05.033, 034, .036, .039, and .042, and are based on Sections 10 and 11 of the MBCA. Section .034 was added by the Legislature in 1966. Minor language changes have been incorporated to recognize the recently enacted scheme to allow the Department of Commerce and Economic Development to determine various fees by administrative regulation.

SUMMARY OF COVERAGE: ACC Sections .125, .130, .135, .140, and .145 provide for the registration, protection, duration, and renewal of a corporate name. Under ACC Section .130, registration of a corporate name gives the registered holder the right to seek an injunction against the use of that name or a deceptively similar name by another. The registered name must be renewed each year under ACC Section .145.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 4.03 combines the coverage of former Model Act Sections 10 and 11. Unlike ACC Section .130, RMBCA Section 4.03 does not explicitly confer exclusive right to the use of a registered corporate name, nor does it declare that a person who has registered the corporate name may enjoin the use of the same or a deceptively similar name. Section .130 clearly provides that the remedy available for abuse of a registered corporate

name is not limited to injunctive relief, but may be a cause of action for damages. RMBCA Section 4.03 contains no such provision.

Section .150 REGISTERED OFFICE AND REGISTERED AGENT

ORIGIN: ACC Section .150 is a reenactment without change of AS 10.05.045 which was based on Section 12 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .150 establishes the requirement that a corporation maintain both a registered office and a registered agent in the State of Alaska. The agent is necessary for service of process; and, the office is required to serve as the depository for various books and records as provided or required by the the ACC.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 5.03 is functionally identical to ACC Section .150.

Section .155 REGISTRATION OF AGENT BY NONRESIDENT WITH CONTROLLING INTEREST

ORIGIN: ACC Section .155 is a reenactment without substantive change of AS 10.05.791 as amended in 1980. A rewording has been undertaken to make explicit that the designated agent must be within the State of Alaska.

SUMMARY OF COVERAGE: In order that the commissioner may readily establish official contact with a nonresident possessed of a controlling interest (ACC Section .955(12)), ACC Section .155 requires such a person to designate an agent within Alaska upon whom notice and process may be served.

Service on the Section .155 agent is equivalent to personal service on the controlling nonresident. Section .155(b) enforces this requirement by forbidding, in the event of noncompliance, either the controlling person or the controlled corporation use of the courts of the State of Alaska.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: Again, reflective of its concern with the problems of no particular jurisdiction, the content of the Revised Model Act contains no provision requiring designation of agents by nonresidents with a controlling interest.

Section .160 FILING LIST OF REGISTERED CORPORATIONS WITH SUPERIOR COURT; UPDATING AND PUBLISHING

ORIGIN: ACC Section .160 is a reenactment of AS 10.05.048 which, has been changed to require yearly compilation and weekly updating of the stipulated information.

SUMMARY OF COVERAGE: ACC Section .160 reflects the view that

it is vital that the practicing attorney be able to quickly ascertain information concerning the corporate name, address of the registered office, and the name and address of the registered agent of both domestic and authorized foreign corporations. Both geographical and communications considerations have dictated that such information be available locally and updated frequently.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.20 contains absolutely no provision requiring that this vital information be maintained or made available.

Section .165 CHANGE OF REGISTERED OFFICE OR AGENT

ORIGIN: ACC Section .165 is a reenactment of AS 10.05.051 which was, in turn, predicated upon Section 13 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .165 establishes the procedure whereby a domestic or foreign corporation may change its registered office or agent.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 5.02(a) is identical to ACC Section .165. Subsection (b) differs only in that the ACC has a uniform provision on filing with the commissioner which is not reflected in the RMBCA.

Section .170 CHANGE OR RESIGNATION OF REGISTERED AGENT

ORIGIN: ACC Section .170 is a reenactment of AS 10.05.054, which was based on Section 13 of the MBCA. The final sentence has been changed to permit a resignation of the registered agent, to become effective sooner than 30 days after the filing of written notice with the commissioner if the corporation appoints a successor within this shortened period. This change is based upon Section 57.070(3) of the Oregon Revised Statutes.

SUMMARY OF COVERAGE: ACC Section .170 establishes the procedure by which a registered agent may change address or resign. Unless and until the registered agent follows these statutory procedures, the commissioner may continue to regard the last address of record as effective for all notice provisions under the ACC.

Subsection (b) sets forth the procedures which must be observed for a registered agent to effectively resign. Unless and until such procedures are followed, the commissioner may continue to deal with the agent and effectively notice or bind the corporate principal. In the event that such an agent ceases to function without observing these statutory provision, there would be a breach of the contract of agency with the corporation but such a breach would not serve as a defense to the corporate principal in dealing with or ac-

counting to the commissioner.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 5.03 does not provide for a shortened effective date if the corporation appoints a successor registered agent. The minimum information to be contained in the written resignation is governed by Section 5.02. The "circularity problems" noted in the official comment to RMBCA Section 5.03 have been directly solved by ACC Section .170(b). The commissioner is directed to mail a copy of the written notice of resignation to "the corporation at its principal office."

Section .175 SERVICE OF PROCESS ON CORPORATION

ORIGIN: ACC Section .175(a), (c), and (d) are a reenactment of AS 10.05.057, and are based on Section 14 of the MBCA. ACC Section .175(b) is new to the law of Alaska. It is taken from Section 57.075(3) and (4) of the Oregon Revised Statutes and eliminates the commissioner's burden under prior law to transmit process served on the commissioner given the default of a registered agent. Under ACC Section .175(b), that burden is placed upon the party seeking to initiate litigation against the corporation.

SUMMARY OF COVERAGE: To assure that notice sent to a corporation without a registered agent is the best available under the circumstances, ACC Section .175(b)(2)(B) requires that the moving party send notice to such address as it knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice. Under ACC Section .175(b)(3), the moving party is obliged to file proof of the attempted service in the appropriate superior court or other tribunal.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 5.04 admits that there were substantial problems with the provisions of former MBCA Section 14. It, too, eliminates the burden formerly placed upon a state official to serve the substitute process. Unlike the Oregon law and the ACC, RMBCA Section 5.04(b) does not require that a best effort be made to find the actual address of the corporation. It is content if the notice is mailed to the principal office. Given the official comment's express solicitude that actual notice be communicated to the foreign corporation, it would appear that the Oregon/ACC approach is superior.

ARTICLE 3. FORMATION OF CORPORATIONS

Section .205 INCORPORATORS

ORIGIN: ACC Section .205 is a reenactment with one change of AS 10.05.252 as amended in 1976 by the Legislature.

SUMMARY OF COVERAGE: The minimum age for an incorporator has been reduced from 19 to 18 to bring Section .205 into conformity with Alaska's general policy on legal majority. ACC Section .205 varies from Section 53 of the MBCA in the requirement that incorporators be natural persons. This is a continuation of prior Alaska law.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 2.01 differs from ACC Section .205 and existing Alaska law by permitting artificial persons (including unincorporated associations, partnerships, trusts, estates, and governments) to act as incorporators. There is no minimum age for natural persons to so function. Further, the requirement that the incorporators sign a verified copy of the articles has been eliminated.

Section .208 ARTICLES OF INCORPORATION

Section .210 ARTICLES OF INCORPORATION; OPTIONAL PROVISIONS

ORIGIN: ACC Section .208 subsections (1),(2), and (3) are predicated upon AS 10.05.255(1), (3), and (10), which were derived from Section 54 of the MBCA. Subsections (4) and (5) are taken from Section 202 of the GCL. Subsection (6) reenacts AS 10.05.255(13) as amended. The provision of the ACC governing the content of the articles is modeled upon Sections 202 and 204 of the GCL. ACC Section .210 is based upon GCL Section 204, Delaware Section 102(b)(4) and (5), and AS 10.05.255.

SUMMARY OF COVERAGE: In addition to the specific changes noted, Sections .208 and .210 make vital a drafting decision which was unimportant under prior Alaska law. The goal of the ACC is to follow California's example requiring that the articles of incorporation function as the fundamental agreement which structures the basic purpose of the corporation, the prerogatives of management, and the rights of shareholders. Section .208 requires that several fundamental decisions be addressed in the articles. While the provisions may be amended by following the procedures outlined in the ACC, at all times the subject matter content of Section .208 must

be defined in the current corporate articles. Section .210 enumerates provisions which are optional as contents of the articles. The critical point is that if the subject matters enumerated in Section .210(1) are not settled by the initial or amended provisions of the articles, they may not be resolved or governed by the bylaws, shareholder agreements, or any other form of treaty.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: An initial comparison between RMBCA Section 2.02 and ACC Sections .208 and .210 would suggest significant differences. It would be misleading. It is true that RMBCA Section 2.02(a) has a rather short list of mandatory provisions when contrasted with ACC Section .208. In part this is because ACC Section .208(4) reflects Alaska's concern for identification of alien affiliates, a concept unknown to the Model Act. Further, there is no single provision in the RMBCA which is comparable to ACC Section .210 in gathering into one convenient place all of the optional decisions which cannot be made effective unless they are reflected in the articles. The MBCA does have such requirements, only they are scattered throughout the act. See the official comment to RMBCA Section 2.02 at page 2-9,10.

The topics which are conveniently gathered in ACC Section .210(1) and scattered throughout the lengthy text of the RMBCA are not identical. In general, it may be said that the ACC is more protective of the interests of shareholders (both actual and potential) and their interest in locating in one document a definitive statement of these basic decisions. Under the RMBCA, such decisions could be found in extrinsic resolutions or agreements which might be known and available to some but not to others.

Section .213 FILING OF ARTICLES OF INCORPORATION

ORIGIN: ACC Section .213 continues the policy of AS 10.05.258, which had been predicated upon Section 55 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .213 also reflects the general scheme of the ACC to standardize the procedures for filing with the commissioner as set forth in ACC Section .910.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 2.03 suggests to the legislatures of the several states that they abolish the concept and practice of a "certificate of incorporation." Instead, filing is completed upon delivering a copy of the articles to the secretary of state and having it "stamped and filed." There is to be no certificate of incorporation. Elimination of the certificate of incorporation would destroy the "bright line" event selected by the Commission for fixing the de jure commencement of corporate existence.

Section .215 DISCLOSURE OF CORPORATE PURPOSES

ORIGIN: ACC Section .215 is a reenactment without change of AS 10.05.259, as amended in 1980.

SUMMARY OF COVERAGE: ACC Section .215 perpetuates a decision of the Legislature made in 1980 which requires that a corporation disclose to the Department of Commerce and Economic Development the activities in which it will initially engage. This is not done for the purpose of limiting corporate activity. Under the ACC, incorporation can still be as general as the pursuit of "any lawful purpose." The information is elicited so that the state may obtain a clearer idea of the dimension of economic activity.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: Again, reflecting its lack of familiarity with the aspirations of the Alaska Legislature, the standard recommended text of the RMBCA contains no provision requiring disclosure of corporate purposes.

Section .218 EFFECT OF ISSUANCE OF CERTIFICATE OF INCORPORATION

ORIGIN: ACC Section .218 is derived from AS 10.05.810.

SUMMARY OF COVERAGE: ACC Section .218 fixes the issuance of the certificate of incorporation as the point in time when the de jure existence of a corporation commences. In adopting this "bright line" rule, the ACC goes beyond Section 56 of the MBCA and AS 10.05.810 to expressly abolish the common law doctrines of de jure compliance, de facto incorporation, and corporation by estoppel.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 2.03 would also create a "bright line" event fixing the initial existence of a corporation. Under RMBCA Section 2.03, that event is "the secretary of state's filing of the articles of incorporation. . . ."

RMBCA Section 2.04 leaves the current body of conflicting and confusing common law on de facto incorporation and corporation by estoppel unreformed. This notwithstanding the official comment that: "Incorporation under modern statutes is so simple and inexpensive that a strong argument may be made that nothing short of filing articles of incorporation should create the privilege of limited liability." ACC Section .218 adopts that "strong argument".

Section .220 ASSUMPTION OF PURPORTED POWERS OF NONEXISTENT CORPORATION: LIABILITY

ORIGIN: ACC Section .220 is a modification of former AS 10.05.810, which had been predicated upon Section 146 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .220 determines the liability consequences of persons who assume to act as a corporation for which there has been no issuance of a certificate of incorporation (Section 218). Unless there is a written agreement, wherein a third party agrees to deal on a limited liability basis with individuals purporting to act for a corporation for which no certificate has been issued, those persons are jointly and severally liable.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 2.04 imposes joint and several liability on all persons purporting to act as or on behalf of a corporation who knew that there was no incorporation [effective filing with the secretary of state]. It does nothing to relieve the conflicting interpretations given to prior Model Act provisions dealing with the consequences of defective incorporation. See, e.g., Sherwood & Roberts-Oregon, Inc. v. Alexander, 269 Or. 389, 525 P.2d 135 (1974), which is in direct conflict with Heintze Corp. v. Northwest Tech-Manuals, Inc., 7 Wash. App. 759, 502 P.2d 486 (Div.One. 1972).

Section .223 ORGANIZATION MEETING

ORIGIN: ACC Section .223 is a reenactment of AS 10.05.267 and is based upon Section 57 of the MBCA. Language modifications have been made to coordinate with Section .210(3), which makes optional the naming of initial directors in the articles. Another modification is the phrase in the first sentence which is intended to preclude a construction of Section .223 as a precondition to the attainment of corporate existence.

SUMMARY OF COVERAGE: ACC Section .223 defines the transition by which the entity being formed passes from the control of incorporators to that of the initial board of directors. In a reform designed to facilitate corporate formation, the articles are competent to name initial directors in which case they, and not incorporators, hold the initial meeting.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 2.05 parallels the ACC and permits the articles to name the initial directors.

Section .225 POWERS OF INCORPORATORS BEFORE DIRECTORS' ELECTION

ORIGIN: ACC Section .225 is new to Alaska law being predicated upon Section 210 of the GCL and Section 107 of the

General Corporation Law of the State of Delaware.

SUMMARY OF COVERAGE: Since the naming of initial directors in the articles is optional, Section .255 defines the powers which incorporators shall have in the event that they, and not the initial directors, shall hold the organizational meeting.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 2.05(2) is in substantial accord with the California, Delaware, and ACC innovations.

Section .228 BYLAWS: ADOPTION, AMENDMENT OR REPEAL

ORIGIN: ACC Section .228 is taken from Section 211 of the GCL and works a major change in AS 10.05.135.

SUMMARY OF COVERAGE: Under current Alaska law the power to adopt, amend, and repeal provisions of the bylaws is vested exclusively in the board unless reserved to the shareholders in the articles of incorporation.

Absent provisions in the articles, ACC Section .228 vests equal powers in the board and the shareholders with respect to determining the content of the bylaws. However, the articles are competent to restrict or eliminate the power of either the board or the outstanding shares. There are thus three possibilities: (1) concurrent, independent power in the board and the outstanding shares (the default rule); (2) an article provision restricting or eliminating the power of the board; or, (3) an article provision restricting or eliminating the power of the outstanding shares.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 10.20 provides a default rule identical to ACC Section .228. In the absence of a provision in the articles, the power to adopt, amend, or repeal bylaws is shared by the directors and shareholders. The RMBCA does not use the term "adopt", but the official comment makes explicit that it is to be included within the meaning of "amend." Under RMBCA Section 10.20(a)(1), the articles are competent to extinguish the power of the board. Apparently they cannot extinguish the power of the shareholders who, under RMBCA Section 10.20(b), are guaranteed power over the content of the bylaws. Thus the flexibility available under California, Delaware, and ACC provisions is not attainable under the RMBCA.

The ACC's concern that shareholders ultimately control the corporation is manifested in Section 460 wherein they are given the right to remove any or all of the directors at any time for any reason.

Section .230 BYLAWS: NUMBER OF DIRECTORS AND OTHER CONTENT

ORIGIN: ACC Section .230 is predicated upon Section 212 of

the GCL, and substantially enlarges the coverage of AS 10.05135, which had been based on Section 27 of the MBCA.

SUMMARY OF COVERAGE: Under ACC Section .230, the bylaws have a mandatory content only if the articles have not fixed the number of directors or established a formula from which that number may be derived. The ACC's provisions on the number of directors establish three as the default minimum unless the corporation has fewer than three shareholders. In that instance, the number of directors need not exceed the number of shareholders. This will provide significant flexibility in the formation and operation of closely held corporations. Any bylaw which would change the number of directors must obtain approval of the outstanding shares. Further, if the effort is to reduce the number of positions on the board to fewer than five, subsection 230(d) protects the interests of minority shareholders by invalidating the attempt if sixteen and two-thirds percent of the outstanding shares vote against it.

Under subsection (e), the optional content of the bylaws is partially enumerated. These provisions need not be adopted but are intended to suggest to those forming corporations some of the important matters governing procedures, e.g. for shareholder and director meetings, the qualifications, duties, authority and compensation of directors and officers, and such other matters relating to the day to day management of the corporation as are usefully stabilized in a formal agreement.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 2.06(b) simply states that the bylaws may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles. This is in accord with ACC Section .230(e). The absence of the enumerated list of optional provisions should not be taken to suggest that the RMBCA is less exacting than the ACC. The cross-references to RMBCA Section 2.06 indicate twenty-two matters which should be considered for regulation in the bylaws. Rather than the convenience of ACC Section .230(e), one has to page through the provisions of the RMBCA.

Section .233 BYLAWS TO BE KEPT AT OFFICE; INSPECTION BY SHAREHOLDERS

ORIGIN: ACC Section .233 is taken from Section 213 of the GCL.

SUMMARY OF COVERAGE: The corporation is obligated to keep at its principal business office in Alaska a copy of its bylaws reflecting all current provisions including amendments. The shareholders are to have a right to inspect the bylaws at all reasonable times. A foreign corporation which does not have a principal business office in Alaska is obligated to furnish a copy of its current bylaws to any Alaska shareholder who

makes a written request.

AS 10.05.237 through .249 cover the content of ACC Section .233, but do not clearly obligate a foreign corporation to make a copy of its bylaws available to requesting shareholders who are citizens of Alaska.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains a similar requirement although it is somewhat difficult to locate. Section 16.02 directs that a corporation keep copies of the records required in Section 16.01(c). One of the items set forth in in Section 16.01(c) is a copy of the corporate bylaws.

ARTICLE 4. CORPORATE FINANCE

Section .305 CREATION, CLASSES, AND ISSUANCE OF SHARES

ORIGIN: ACC Section .305 is premised upon GCL Section 40f, with modifications to accommodate MBCA Sections 15 and 16, which were the basis of AS 10.05.060 and .069. Section .305(a) replaces AS 10.05.060 without substantive change, and Section .305(b) replaces AS 10.05.069 without substantive change.

SUMMARY OF COVERAGE: ACC Section .305 permits great flexibility to the corporation in creating distinctions as among various classes or series of shares with respect to voting rights, as well as preferences or privileges regarding distributions during the life or at the dissolution of the entity.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.01 is functionally identical to ACC Section .305. ACC Section 210(6)'s warning that the rights, privileges, and limitations on classes of stock must be contained in the articles is reflected in RMBCA Section 6.01(b).

Section .308 ISSUANCE OF PREFERRED OR SPECIAL CLASSES OF SHARES

ORIGIN: ACC Section .308 is largely a reenactment of AS 10.05.063, which was predicated upon Section 15 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .305 allows the establishment of classes and series with varying rights and liabilities. ACC Section .308 specifies a number of particulars which may be the subject of variation between different classes. This list should aid the practitioner in discussing with clients the variations possible in such areas as redemption, dividend preferences, liquidation preferences and conversion options.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.02 is functionally identical to ACC Section .308.

Section .310 ISSUANCE OF SHARES IN SERIES

Section .313 VARIATION IN RIGHTS AND PREFERENCES OF SHARES

Section .315 SERIES RIGHTS AND PREFERENCES ESTABLISHED BY BOARD

Section .318 MANNER OF ESTABLISHING SERIES

Section .320 FILING OF STATEMENT BEFORE ISSUANCE OF SERIES

ORIGIN: ACC Section .310 is based upon AS 10.05.066 and MBCA Section 16 without substantive change.

MBCA Section 16 and AS 10.05.069 form the basis for ACC Section 313. Subsection (7), which permits a variation in voting rights in preferred or special classes, is new to Alaska law. The provision was added to MBCA Section 16 in 1966, after enactment of AS 10.05.069. This section thus represents an updating of Alaska law to conform to the Model Act.

ACC Section .315 is predicated upon MBCA Section 16 and reenacts AS 10.05.072 without substantive change.

ACC Section .318 is a reenactment without substantive change of AS 10.05.075 and MBCA Section 16.

ACC Section .320 is essentially a reenactment of AS 10.05.078, which was predicated upon MBCA Section 16. A modification has been made to the language of Section .320(a) to accord with the broader power of delegation to the board to fix by resolution an unissued class.

ACC Section .323 is a reenactment of AS 10.05.084, which was modeled upon Section 16 of the MBCA. A wording change has been made to reflect the broader power of a board to fix by resolution the rights and privileges of an authorized but wholly unissued class.

SUMMARY OF COVERAGE: ACC Section .310 makes clear that preferred and special classes of shares may be divided into series.

ACC Section .313 enumerates the rights and preferences which may vary between series of the same preferred or special class of shares.

ACC Section .315 specifies that the board may be granted the power by the articles to divide a class into series and fix the relative rights and preferences of the shares of a series. This power is subject to any limitation placed upon it by the articles or by ACC Sections 305-323.

ACC Section .318 specifies the procedure for establishing a series.

ACC Section .320 vindicates the interest of the state in securing information as to the equity interests outstanding for Alaska corporations. This information is supplied by the articles or any amendment thereto in cases not involving board power to fix the relative rights and preferences. However, when the power has been delegated to the board (ACC Section .208(5)(B)(C)), Section 320 requires that this information be filed with the commissioner.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.03 establishes with fewer guidelines to the practicing lawyer, the authority, scope, manner, and steps which must be

taken to create series within a class of preferred shares and to report the same to the secretary of state.

RMBCA Section 6.03 departs from prior provisions of the Model Act and the statutory law of all states, including Alaska, by permitting creation of a repurchase obligation in the corporation with respect to all or a part of a series. This precedent breaking suggestion would create a "put" in the hands of the holders of such shares to force the corporate issuer to reacquire the stock.

Secti. .325 REDEMPTION OF SHARES; CREATION OF SINKING FUND; REPURCHASE AGREEMENTS

ORIGIN: ACC Section .325 is new and has no precedent in Alaska law. It is taken from GCL Section 402(a), (b), and (d).

SUMMARY OF COVERAGE: ACC Section 325 covers three crucial questions: (1) it establishes the right of the corporation to create classes or series of shares which are redeemable at the option of the corporate issuer; (2) it forbids (subject to an exception for an open-end investment company) the creation of shares which vest a right to demand redemption in the shareholders; and, (3) it permits the creation a sinking fund or similar provision, or an agreement outside of the articles which covers the subject of redemption.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.01(d) covers the topics addressed in ACC Section .325. Under the RMBCA, the extent of redemption rights, if any, must be authorized in the articles. It would thus appear that the flexibility attainable under ACC Section .325(c) is not possible under the RMBCA.

Section .328 IRREVOCABILITY OF SUBSCRIPTIONS FOR SHARES

ORIGIN: This section is a verbatim reenactment of AS 10.05.087, modeled after MBCA Section 17.

SUMMARY OF COVERAGE: A subscription for shares of a corporation to be organized is basically a promise to buy shares under specified terms. Many common law cases have held that a subscription is deemed an offer and as such inherently revocable at any time prior to acceptance. These holdings cast doubt upon the ability of promoters to insure an adequate financial start for a fledgling corporate entity. In order to settle the issue of the nature of a subscription, provide a fair result to those who act in reliance on subscriptions, and put an end to any litigation over the question of revocability, ACC Section .328 makes a subscription irrevocable for a period of six months.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section

6.20(a) is identical to ACC Section .328.

Section. 330 PAYMENT OF SUBSCRIPTION FOR SHARES

ORIGIN: ACC Section .330 is in substance a reenactment of AS 10.05.090. Minor changes in language have been made to conform Alaska law to MBCA Section 17.

SUMMARY OF COVERAGE: ACC Section .330 places the power to determine the time of payment for subscriptions with the board. A call for payment by the board must be uniform as to all shares of the same class or series.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.20(b) and (c) is identical to ACC Section .330. Section 6.20 controls share subscriptions issued before incorporation. The initial board is given complete control over their disposition. Section 6.20(f) states that subscriptions entered into after incorporation are treated as a contract between the corporation and the subscriber and governed by Section 6.21. Unless the shareholders reserve powers granted under Section 6.21, the board has the power to control the disposition of post incorporation subscriptions.

Section .333 FORFEITURE OF SHARES FOR DEFAULT IN PAYMENT

ORIGIN: ACC Section .333 reenacts AS 10.05.093, which was based upon MBCA Section 17. The terms "penalties" and "penalty" have been changed to "remedies" and "remedy" to reflect the approved case law construction.

SUMMARY OF COVERAGE: ACC Section .333 establishes the general rights of the corporate issuer in the event of default in the payment obligation for shares.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.20(d) and (e) are identical to ACC Section .333.

Section .335 CONSIDERATION FOR SHARES

Section .338 PAYMENT FOR SHARES

Section .340 JUDGMENT OF BOARD OR SHAREHOLDERS AS TO VALUE OF CONSIDERATION CONCLUSIVE

ORIGIN: ACC Section .335 retains the essence of AS 10.05.096, which was derived from MBCA Section 18. Much of the former section has been deleted in the wake of the new financials (ACC Sections .358 to .370), which eliminate the concepts of par value, treasury shares, stated capital, and surplus accounts.

ACC Section .338 is a verbatim reenactment of AS 10.05.099, which was derived from Section 19 of the MBCA.

ACC Section .340 is a reenactment of AS 10.05. 102, which was modeled upon Section 19 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .335 recognizes two modes for fixing the amount of consideration (expressed in dollars) for the issuance of shares. Unless the power has been reserved to the shareholders in the articles (ACC Section .210(1)(H)), it is vested in the board. The exercise of this power is subject to the fraud standard articulated in ACC Section .340.

ACC Section .338 specifies what may and may not be received as consideration for shares. Common law authorities which have attempted to prevent "watered shares" by requiring that consideration be limited to cash are rejected in favor of a more realistic recognition that the corporation may be advantaged by the receipt of other valuable property (tangible and intangible) as well as services.

ACC Section .340 sets proof of fraud as the standard necessary to overturn a determination of the value of consideration received by the corporate issuer. The most common victim of an improper consideration exchanged for shares is the corporate creditor whose claims against the entity go unsatisfied in the wake of corporate bankruptcy, dissolution, or simple door-closing. The ACC provides considerable protection to creditors in its provision on financials and in ACC Section .488 on secondary liability of officers and directors. These provisions substantially mitigate the harshness to creditors of the fraud standard provided in ACC Section .340.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.21 is functionally identical to ACC Sections .335, .338, and .340.

Section .343 STOCK RIGHTS AND OPTIONS

ORIGIN: ACC Section .343 is new to Alaska law and is predicated upon Section 20 of the MBCA with one modification. This section eliminates the final sentence of the Model Act provision to conform to the financial provisions of the ACC. This section was adopted to clarify and regulate the exercise of the the corporation's right to issue stock rights and options under the general power to contract.

SUMMARY OF COVERAGE: Unless otherwise defined or restricted in the article, ACC Section .343 gives the corporation acting through its board broad powers to create and issue rights or options covering authorized but unissued shares of any class or classes. The only substantive command of ACC Section .343 is that if such rights or options are to be made available to directors, officers, or employees of the corporation, or to any subsidiary but not to the shareholders generally, is-

suance shall not be licit until the plan is approved by the outstanding shares.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.24 is identical to ACC Section .343, except that it does not protect shareholders by requiring their prior approval for a plan which would grant share rights and options to directors, officers, or employees only. The omission of this protection from the RMBCA is unprecedented in existing law and at variance with the Model Act. It may also contravene the rules of the New York Stock Exchange. See, Section A-25 of the Company Manual. The official comment state that shareholder approval of such a plan may be required in order to comply with SEC regulations.

Section .345 EXPENSES OF ORGANIZATION, REORGANIZATION, AND FINANCING

ORIGIN: ACC Section .345 is a reenactment of AS 10.05.111 with a minor language modification in order to parallel MBCA Section 22.

SUMMARY OF COVERAGE: ACC Section .345 recognizes that there are costs incurred in the issuance and marketing of shares, and protects the purchasers from further liability on the theory that since it received only the "net amount" from the gross price paid, the shares are not "fully paid" and thus "assessable."

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.28 is identical to ACC Section .345 except that it does not contain the express protection for purchasers precluding a claim that their shares are assessable. The framers of the tentative draft recognize that this language is standard in nearly all state codes, but feel that the problem has rarely arisen and the language is thus surplusage.

Section .348 CERTIFICATES REPRESENTING SHARES

Section .350 INFORMATION REQUIRED TO BE STATED ON CERTIFICATE

ORIGIN: ACC Section .348 is a verbatim reenactment of AS 10.05.114, and is modeled upon MBCA Section 23.

ACC Section .350 is a verbatim reenactment of AS 10.05.117 with the deletion of paragraph (4) regarding par value, which is no longer a matter of consequence under the ACC. With this modification Section .350 is predicated upon MBCA Section 23.

SUMMARY OF COVERAGE: ACC Section 348 is designed to facilitate the trend toward electronic substitutes for the traditional share certificate by permitting the seal of the corporate issuer to be affixed in a facsimile form, and to permit

the signatures of the corporate officers to be facsimiles so long as the "certificate" is countersigned by a transfer agent or a registrar who is not an employee of the corporation.

ACC Section .350 recognizes that information regarding the rights, preferences, and limitations of the shares is of importance to shareholders. If the corporation is authorized to issue only one class of stock, such shares enjoy all attributes of participation, control, and ownership defined by the ACC. However, if the corporate articles authorize the issuance of more than one class, it is both possible and likely that the relative rights, privileges, preferences, and limitations of the classes will differ. In this instance, ACC Section .350(a) requires that the corporation furnish to each shareholder either a statement or summary of the designations, preferences, limitations, and relative rights of shares of the class she has purchased, and similar basic information regarding the shares of any other authorized class. This information may be printed on the certificate, or the certificate may be imprinted with a legend that the corporation will furnish the information without charge.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: In yet another break with the prior act and the statutory content of Alaska and other states, the framers of the tentative draft recommend that the issuance of share certificates be optional with the board. This suggestion allows the corporation the ability to decide that it will issue shares which have no tangible expression at all. If the corporation does opt for share certificates, RMBCA Section 6.25(b) sets forth a minimum content which is identical to that of ACC Section .350(b). RMBCA Section 6.25(c) is functionally identical to ACC Section .350(a).

If the corporation opts to issue shares without certificates, RMBCA Section 6.26(b) requires that it send the "shareholder a complete written statement of the information required on certificates by Section 6.25(b) and (c)." As a result of this last provision, the only accomplishment of the suggested innovation would be to place the owners of "uncertificated shares" in grave danger that they would have no tangible evidence of their interest in the corporation. Should such an individual die, the burden of one charged with marshalling the assets of the estate would be obvious.

Section .353 FULL PAYM NT REQUIRED FOR CERTIFICATE

ORIGIN: ACC Section .353 is a reenactment of AS 10.05.120, which is predicated upon Section 23 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .353 continues the Alaska policy of insisting that a share certificate may not be issued until the agreed consideration has been fully paid.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: This classical

restriction from Section 23 of the original Model Act is repeated in a rather obscure manner in the RMBCA. In Section 6.21(c) and (d) shares are deemed non assessable when fully paid. Further, the corporation is empowered to escrow shares for which the full consideration has yet to be received.

Section .355 ISSUANCE OF FRACTIONAL SHARES OR SCRIPT

ORIGIN: ACC Section .355 is a verbatim reenactment of AS 10.05.123, and as such is a modification of Section 24 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .355 provides two basic options to the board under which it may deal with claims to fractional share ownership. The board may issue a certificate for a fractional share in which case the holder is entitled to the privileges conferred by shares of that class; or, the board may issue scrip entitling the holder to receive a certificate for a full share upon surrender of scrip aggregating a full share. If the second alternative is selected, the holder of the scrip is not entitled to the privileges of share ownership until the exchange of scrip aggregating a full share. Under subsection (c), the board may establish machinery to eliminate the outstanding scrip so long as it is noticed on the scrip at the time of issuance.

ACC Section .355 continues the Legislature's prior determination that it would not follow the Model Act which gives the board a third option, under which it could eliminate fractional shares by simply paying their fair market value. Given the difficulties experienced with that Model Act provision (see, e.g., Teschner v. Chicago Title & Trust Co., 59 Ill.2d 452, 322 N.E.2d 54 (1974)), that decision seems wise. A further reason for opting to continue prior Alaska policy is to prevent the use of this "cash out" option to facilitate management strategies to eliminate outside shareholders in a move to "go private". The technique is a board ordered reverse stock split that is calculated to reduce outsider shareholdings to fractions which can then be cashed out irrespective the wishes of those shareholders.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.04 is functionally similar to ACC Section .355, except that it grants the third, or "cash out", option previously rejected by the Alaska Legislature.

Section .358 DISTRIBUTIONS; CONDITIONS

Section .360 PROHIBITED DISTRIBUTION; INABILITY TO MEET MATURING DEBTS AND LIABILITIES

Section .363 PROHIBITED DISTRIBUTION OF JUNIOR SHARES; LIQUIDATION PREFERENCE

Section .365 PROHIBITED DISTRIBUTION TO JUNIOR SHARES; RATIO OF RETAINED EARNINGS

ORIGIN: ACC Section .358 supplants the earned surplus test of AS 10.05.204(1) (payments of dividends) and .012 (repurchase of shares). With the additions and deletions noted in the Official Comment, it is premised upon the amended version of Section 500 of the GCL.

ACC Section .360 replaces AS 10.05.201 and is based on GCL Section 501.

ACC Section .363 is taken from GCL Section 502, and replaces AS 10.05.207(4).

ACC Section .365 adopts the language of GCL Section 503, and supplants AS 10.05.207(3).

SUMMARY OF COVERAGE: In general: ACC Sections .358 through .368 contain the essence of a major reform, in which antiquated and unworkable concepts of "balance sheet" and "earned surplus" (with the myriad of exceptions) are replaced by a simple ratio of assets to liabilities in determining the circumstances in which the board of directors has discretion to declare and pay distributions of corporate assets to shareholders. With minor modifications they are predicated upon the 1977 California General Corporations Law.

Pending passage of CSSB 246/HB 343, Alaska continues to rely upon a mid-1950's version of the Model Act. To its credit, the Alaska Legislature did not authorize certain aspects of Section 45 of the Model Act, which would have further enhanced the circumstances in which the board could dissipate corporate assets to the prejudice of creditors and the holders of preferred and other senior shares. Alaska, for instance, did not adopt a "nimble dividends" provision such as that suggested by alternative Section 45(a) of the Model Act. Further, if the distribution had to be charged to "capital accounts", Alaska insisted upon a two-thirds authorization of the shareholders rather than the simple majority suggested by the Model Act.

Notwithstanding these prudential rejections of Model Act suggestions, Alaska was committed to a system predicated upon an equitable insolvency test supplemented by an exception ridden earned surplus test. Though not as weak as the system in some states, this scheme is still premised upon unsound norms of "legal accounting" and mired in statutory and common law exceptions which make it nearly impossible to draw sensible limits upon the power of the board. Such a status quo is objectionable not only because it fails to deter those bent upon abusing corporate creditors, but for the more important reason that it fails to guide the honest director who is seeking maximum, licit flexibility.

In the mid-1970's, the California Legislature joined the bar association of that state in the creation of a committee to study, with a view toward revision, the California Corporations Code. At that time, California law relied upon the earned surplus test burdened by the possibilities of

reduction surplus and nimble dividends. Two irrebuttable criticisms set the stage for reform: (1) the existing restraints upon dissipation of corporate assets afforded insufficient protection to corporate creditors; and, (2) the language of the law meant little to accountants who were relied upon to prepare and audit the books and records. After a substantial debate, the 1977 California Corporations Code was framed in a manner designed to meet both of these problem areas. The earned surplus test was junked. Also discarded were the concepts of par value, stated capital, and all manner of capital surplus. In their place the statute articulated a simple test of the ratio of assets to corporate liabilities. For the purpose of complying with this test, the corporate books were to be kept in accordance with Generally Accepted Accounting Principles (GAAP).

In 1980, the Alaska Code Revision Commission concluded that both the substantive scheme and deference to the accounting profession pioneered in California were worthy models for a new Alaska Corporations Code. Accordingly, with the modifications hereinafter noted, Alaska is presented with the opportunity to become the second state to adopt the ratio/assets surplus test.

Protection of Creditors: Protection for the legitimate interests of corporate creditors begins with ACC Section .360's injunction that no distribution (defined by ACC Section .990(17) as a transfer of cash or property by a corporation to its shareholders without consideration) may be undertaken when the result would produce equitable insolvency. The content of this equitable insolvency restraint has been altered in several particulars:

> Neither a corporation nor any of its subsidiaries shall make any distribution to the corporation's shareholders if the corporation or the subsidiary making the distribution is, or as a result thereof would be, likely to be unable to meet its liabilities as they mature.

Two significant changes are incorporated in this formulation of the equitable insolvency standard.

The "likelihood" element of the formula is intended to be more restrictive than the traditional inquiry. AS 10.05.201 asked whether the corporation is now, or, giving effect to the dividend, would be insolvent. ACC Section .360 is more cautious, prohibiting distributions if the corporation is, or giving effect to the distribution, would likely be unable to meet its liabilities as they mature.

The inclusion of subsidiaries is the second reform. A parent corporation and its subsidiaries are to be considered as a unit; the various corporate shells are disregarded in favor of viewing the financial position of the total operations of an affiliated group. For a definition of "subsidiary" see ACC Section .990(42).

Assuming that insolvency within the meaning of ACC Section .360 is not threatened, ACC Section .358 establishes

two circumstances under with the board enjoys discretion to declare and pay a distribution to shareholders.

Distributions in cash or other assets may be declared and paid against "retained earnings" (ACC Section .358(a)(1)). Like the earned surplus test, this requirement reflects a legislative judgment that routine distributions should only be made from operating profits. Unlike the Model Act, the ACC contains no provision for permitting net operating losses to be charged off by writing down capital surplus. There is no such concept. If the corporation cannot make the payment out of assets charged against retained earnings, the ACC deems it a distribution in partial liquidation.

Distributions in partial liquidation are within the discretion of the board if a two part test is met.

The first requirement is that the assets of the corporation which would remain after the distribution are at least equal to 1.25 time liabilities. Compliance with this ratio guarantees a minimum cushion to creditors in that the corporation must continue to hold five dollars of assets for every four dollars of liabilities.

The second requisite focuses upon current liquidity of the corporation. The general rule is that the corporation's current assets be at least equal to current liabilities. Both current assets and current liabilities are defined by Generally Accepted Accounting Principles. Special concern is manifest for corporations which have a recent history of paying more in interest on their debt than their earnings would reflect if interest and taxes were not deducted in computing net profits. Such corporations must comply with a further requirement that current assets be at least 1.25 times current liabilities.

Protecting the interests of senior shares: The basic thrust of both classical and the ratio/assets restraints upon distributions has been the protection of creditors. This emphasis is natural, for by definition the creditor is an "outsider" precluded from any direct voice in corporate management. The ACC also attempts to accommodate a second source of recurrent tension respecting distribution: the interests of quasi-outsiders who have purchased shares with either a dividend or liquidation preference.

"Senior shares" achieve this status by dent of a contract between the corporate issuer and the holder of the securities. The specific terms used to identify this arrangement is "the indenture." While the content of an indenture may reflect specific understandings between the potential investors and the corporation, most are comprised o either or both of the following elements: (1) a "dividen preference" (the holders of this class of stock are "guaranteed" a dividend preference over subordinated or "junior" classes of stock); and (2) a "liquidation preference" (in the event of dissolution, the holders are guaranteed a preferential claim to assets which exceed the claims of all creditors). Neither of these guarantees is chiseled in stone. Performance is permitted only if the corporation can other-

wise meet its legal obligations. Thus if the distribution would threaten the security of creditors mandated by ACC Section .358, it cannot be made to even senior shares.

Adding to the vulnerability of the holders of these securities is a third classical feature of their status: they normally do not enjoy a right to elect members to the board of directors. The directors are, instead, elected by the owners of the junior, or "common", shares. Unless restrained by easily understood guidelines, there is danger that the directors will advance the interests of their constituents at the expense of the non-voting senior shares.

AS 10.05.207 and .210 show that the Legislature has long been interested in affording protection to senior shares. ACC Section .365 continues this policy by restricting the board's authority so that there can be no distribution to junior shares unless the amount of retained earnings immediately prior thereto equal or exceeds the amount of the proposed distribution plus the aggregate amounts of cumulative dividends in arrears on all shares having a dividend preference. The net effect of ACC Section .365 is to foreclose the use of payments in partial liquidation to holders of junior shares so long as the indenture obligations to senior shares are unmet.

The liquidation preference of senior shares is guarded by ACC Section .363. By its terms neither a corporation nor any of its subsidiaries may make any distribution to junior shares if, after giving effect to the proposed distribution, the excess of corporate assets over liabilities would be less than the liquidation over the class or series to which the distribution is made.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: If supporters could be found for a continuation of the baroque concepts of "legal accounting" contained in current Alaska law, they will find no comfort in the RMBCA. The official comment to RMBCA Section 6.40 makes it clear that it is intended to "sweep away all the distinctions among the various types of surplus and impose realistic restrictions on distributions build around the equity insolvency test of earlier statutes." (p. 6-60). The RMBCA also follows the California/ACC approach and yields all notions of legal accounting. It stops short, however, of requiring that books and records according to generally accepted accounting principles. While it expects that ". . .their use will be the basic rule in most cases. . . ." the final judgment is left within the business judgment of the board. (6-78).

There are differences between the existing California and proposed Alaska statutes and RMBCA Section 6.40. While the former use the equity insolvency test as the first of a two prong concept, RMBCA Section 6.40 relies upon it almost exclusively. Put most simply, the cushion of $5 in assets to every $4 in liabilities is not mandatory under RMBCA Section 6.40. The standard is explicit under the proposed content of the ACC. It would present a moving target under the RMBCA. A miss would ensure harm to creditors and promote litigation

against the directors and shareholders of the defaulting entity. Neither seems a desirable outcome.

RMBCA Section 6.40(c)(2) does contain protection for the holder of senior securities which is similar in object to ACC Section .360.

Section .368 EXCEPTION FOR PURCHASE OR REDEMPTION OF SHARES OF DECEASED SHAREHOLDER

ORIGIN: ACC Section .368 is new to Alaska law; it is taken verbatim from GCL Section 503.1.

SUMMARY OF COVERAGE: It is often desirable in smaller corporation to provide for the death of a shareholder with a plan permitting the corporation to purchase or redeem the shares of the deceased. Such a plan prevents the potentially troublesome problems of having the deceased's heirs participating in the business. A common method used in effecting such plans is a corporate purchase of insurance on the shareholder's life. The insurance proceeds are to be used for the purchase or redemption. ACC Section .368 provides that, notwithstanding an inability to comply with Sections 358 through .365, the amount of the proceeds from the policy in excess of the total amount of premiums paid may be used to purchase or redeem the decedent's shares.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains no explicit provision enabling such limited repurchase plans.

Section .370 INAPPLICABILITY TO REGULATED INVESTMENT COMPANY

ORIGIN: ACC Section .370 is new to Alaska law, and is derived from GCL Section 504.

SUMMARY OF COVERAGE: In order to avoid any conflict with federal law, an exception to the provisions of ACC Section .358 is made for corporations defined as regulated investment companies under the United States Internal Revenue Code.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA appears to have no comparable exception, although the result would doubtless be reached through litigation.

Section .373 SHARE DIVIDENDS: RESTRICTIONS

ORIGIN: This section is a reenactment without change of AS 10.05.204(5), and is predicated upon Section 45(e) of the MBCA.

SUMMARY OF COVERAGE: Share dividends present no direct threat to creditors who are protected by the ratio/assets

surplus test of ACC Section .358. However, if the corporation has more than one class of shares, the power of the board to distribute shares of the "senior" or "preferred" class to the common shareholders as a dividend is a direct threat to their proportional interest in the corporation. ACC Section .373 continues Alaska law by prohibiting the board from taking such a step unless it is authorized in the articles or is the subject of a majority vote of the holders of the senior shares.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.23 is functionally identical to ACC Section .373.

Section .375 ADDITIONAL RESTRICTIONS IN ARTICLES, BYLAWS, INDENTURES OR AGREEMENTS

ORIGIN: This section does not change prior Alaska law; it merely makes the law explicit.

SUMMARY OF COVERAGE: ACC Section .375 makes it explicit that the provisions of the ACC on the declaration of dividends and purchase or redemption of shares do not "occupy the field" and thereby prevent further regulation by the articles, bylaws, indentures or agreements.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.40 contains a prefatory clause which accomplishes the same result as ACC Section .375.

Section .378 LIABILITY OF SHAREHOLDERS RECEIVING PROHIBITED DISTRIBUTIONS; SUIT AGAINST SHAREHOLDERS

ORIGIN: ACC Section .378 is new to Alaska law, and is derived from GCL Section 506. It supplements ACC Section .480(b), itself a reenactment of AS 10.05.225.

SUMMARY OF COVERAGE: ACC Section .378 provides a non-exclusive remedy against shareholders who have received any distribution with knowledge that it is illicit. The remedy runs to the corporation and may be asserted to the use of the corporation by any non-consenting creditor for violation of Sections .358 or .360, provided that the creditor's claim had arisen prior to the distribution. Under subsection (b), non-consenting holders of senior shares may commence the action for violation of Section .363 or .365 provided that the senior shares were held at the time of the distribution.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 8.33(b)(2) achieves the goal of ACC Section .378 by indirection. Shareholders are rendered liable for contribution to a director sued for an illicit distribution to the extent that they knew it to be in violation of the act or provisions of the articles.

Section .380 IDENTIFICATION OF DISTRIBUTION IN NOTICE TO SHAREHOLDERS

ORIGIN: ACC Section .380 is taken from GCL Section 507. It replaces AS 10.05.207(5).

SUMMARY OF COVERAGE: In order to set the stage for recovery of illicit distributions and to inform shareholders when a dividend represents a partial liquidation (as opposed to a distribution of profits), ACC Section .380 requires that management identify the source and accounting treatment of a dividend charged against any source other than the retained earnings account. Such a policy is consistent with current Alaska practice. AS 10.05. 207(5) requires identification of distributions in partial liquidation.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.40 does not require that shareholders be given this prudential information. Omitting such a step fails to alert Alaskans of potentially favorable tax treatment of the dividend on their federal returns.

Section .383 INAPPLICABILITY TO WINDING UP AND INVOLUNTARY OR VOLUNTARY DISSOLUTION

ORIGIN: ACC Section .383 is taken from GCL Section 508.

SUMMARY OF COVERAGE: The provisions of Article 9 for the winding up of corporate affairs and the involuntary or voluntary dissolution of the corporation are plenary in their coverage. No additional law is required to protect the interest of creditors and holders of senior shares. Thus, the provisions of Sections .358 through .365 are made inapplicable to such procedures by ACC Section .383.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: There is no comparable provision in the RMBCA.

Section .385. REDEMPTION OF SHARES AT THE OPTION OF CORPORATION; MANNER

ORIGIN: Current Alaska law provides no statutorily approved procedure for the redemption of shares. ACC Section .385 is derived from GCL Section 509, with the deletion of language in subsection (c) which would have, nonsensically, required a corporation to send a notice to itself if it did not have the shareholder's address.

SUMMARY OF COVERAGE: ACC Section .385 creates a statutory procedure for redemption. The notice provisions of subsection (b) are subject to modification by the articles of

incorporation.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.31 empowers a corporation to acquire its own shares. However, the RMBCA does not appear to contain any provision defining the manner of taking such a step.

Section .388 ACQUISITION OF CORPORATION'S OWN SHARES; REISSUANCE OR RETIREMENT

ORIGIN: ACC Section .388 is taken from GCL Section 510. It continues existing Alaska law (AS 10.05.312 to .345) in requiring a filing with the commissioner of an amendment to the articles. It departs from and simplifies existing law by the elimination of the concept of "treasury shares".

SUMMARY OF COVERAGE: ACC Section .388 specifies the treatment to be given redeemed or repurchased shares. They return to the status of authorized but unissued shares unless the articles prohibit reissuance. If reissuance is prohibited, the articles stating the number of authorized shares must be amended to reflect the lower number. Such an amendment must be filed with the commissioner. Shareholder approval of the required amendment is unnecessary.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.31 is functionally identical to ACC Section .388

Section .390 CAPITALIZATION OF RETAINED EARNINGS

ORIGIN: ACC Section .390 continues the policy of existing Alaska law, which permits directors to increase either the stated capital (AS 10.05.108) or the capital surplus (AS 10.05.366) accounts by charging the earned surplus account. There is no corresponding provision in the GCL financials.

The accounting provisions of existing law require that an amount equal to the total par value of shares distributed as dividends be transferred to the stated capital account from a surplus account (AS 10.05.204(4)(A)). No such accounting treatment is required under the ACC since the use of par value has been eliminated.

SUMMARY OF COVERAGE: ACC Section .388 permits the board to pass a resolution which transfers amounts properly allotted to the retained earnings account into the paid-in account. The effect of such a transfer would limit the ability of the board in future to make distributions under ACC Section .358(a).

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains no similar provision.

ARTICLE 5. MEETINGS OF SHAREHOLDERS

Section .405 MEETINGS OF SHAREHOLDERS

ORIGIN: ACC Section .405 is predicated upon Section 28 of the MBCA and Section 600(d) of the GCL. It replaces AS 10.05.138.

SUMMARY OF COVERAGE: ACC Section .405 requires that shareholders of any corporation organized under or subject to this Chapter meet at least once annually. For the first time in Alaska law, a shareholder is provided with standing to seek a summary court order to convene an annual meeting if such a meeting has not been held within the prior thirteen month period. ACC Section .405(c) differs from the Model Act in conferring the power to summon special meetings of the shareholders upon the chairman of the board and the president of the corporation. AS 10.05.138 confers such power upon the president, but does not reach the chairman of the board.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The content of ACC Section .405 is paralleled in RMBCA Sections 7.01, 7.02, and 7.03. RMBCA Section 7.01 requires an annual meeting of shareholders. RMBCA Section 7.03(a)(1) is similar to ACC Section .405(b) in authorizing aggrieved shareholders summary access to a court ordered meeting in the event the annual meeting is not held. Special meetings may be called by shareholders under both ACC Section .405(c) and RMBCA Section 7.02. The ACC continues current Alaska law and the original recommended content of the Model Act by requiring that 10% of the voting shares are needed to call a special meeting. In the exposure draft Section 7.02(a)(2) recommended that the minimum be lowered to 5%. In the final draft the figure was restored to the traditional 10%.

Section .408 CLOSING OF TRANSFER BOOKS AND FIXING RECORD DATE

ORIGIN: ACC Section .408 is predicated upon Section 30 of the MBCA with two modifications. In both subsections (a) and (b), the Model Act's ten day minimum period before the action is taken has been extended to twenty days, to further the use of the twenty day notice periods found throughout the ACC. AS 10.05.144 utilizes a ten day period. Also, sixty day limitations have replaced the fifty day formula now found in Alaska law respecting the closing of transfer books or fixing of a record date. Finally, the ACC follows the Model Act in making a shareholder list compiled from the closed transfer books or by virtue of the record date effective as to any

adjournment of the meeting.

SUMMARY OF COVERAGE: ACC Section .408 provides three alternatives for effecting a determination as to shares entitled to vote in an annual or special meeting, or to participate in a distribution. Under the first alternative, the board may simply close the stock transfer books. A second alternative is for the board to declare a "record date" for such determination. Finally, the default mode for determining the shareholders if the board has not exercised its options under the first or second alternative is to adopt the date on which the notice of the meeting is called, or the date that the resolution of the board declaring the distribution is adopted.

COMPARISON WITH THE FINAL DRAFT DRAFT OF THE RMBCA: RMBCA Sections 7.07 and 7.05(d) contain the three alternatives specified in ACC Section .408 with slightly differing minimum and maximum times.

Section .410 NOTICE OF SHAREHOLDERS' MEETING

ORIGIN: ACC Section .410 is predicated upon MBCA Section 29 and AS 10.05.141. The only change is to set a twenty day minimum for delivery of notice, a general policy running throughout the ACC.

SUMMARY OF COVERAGE: ACC Section .410 establishes the minimum content and the minimum and maximum time restraints on written or printed notice for annual or special meetings. The notice must be "delivered" not less than twenty nor more than fifty days before the date of an annual or special meeting, and in every instance, the notice must state the place, day, and hour of the meeting. For special meetings only, the notice must also declare the purpose(s) for which the meeting is being convened.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 7.05 is in substantive accord with ACC Section .410. The RMBCA does propose a minimum of 10 and a maximum of 60 days for notice. The ACC uses 20 and 50.

Section .413 VOTING LIST; LIABILITY

ORIGIN: ACC Section .413 is predicated upon AS 10.05.147, which was based upon the pre-1962 version of Section 31 of the MBCA. ACC Section .413(c) is based upon MBCA Section 31 and AS 10.05.150.

SUMMARY OF COVERAGE: ACC Section .413 mandates that at least twenty days prior to each meeting of shareholders, the officer or agent having charge of the stock transfer books make a list of all shareholders entitled to vote. This list must be kept open and subject to inspection by a shareholder at any

time during usual business hours for a period of twenty days prior to the meeting. This right of inspection prior to the meeting may be exercised by an agent or attorney of the shareholder.

ACC Section .413(c) imposes a civil liability penalty of $5000 upon an officer or agent having charge of the stock transfer books who fails or refuses to prepare or exhibit such a list as above provided. Such a liability runs to the shareholder or jointly among shareholders making written request for the performance of the duties imposed by this section.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 7.20 substantially mirrors the provisions of ACC Section .413. RMBCA Section 7.20(d) sanctions a summary court ordered inspection in the case that the access to the shareholder list mandated is denied. A similar provision is found in ACC Section .430(d). RMBCA Section 7.20 does not establish any potential civil liability in the event of a denial of inspection rights. In his address to the Alaska Bar Association Convention Professor Hamilton stated the view that personal liability sanctions are rarely imposed and thus do not serve as a pragmatic deterrent.

Section .415 QUORUM OF SHAREHOLDERS

ORIGIN: ACC Section .415(a) is predicated upon MBCA Section 32 and AS 10.05.153, and reflects no change in existing Alaska law. ACC Section .415(b) is predicated upon GCL Section 602(b), and is unprecedented in Alaska law.

SUMMARY OF COVERAGE: Absent a provision in the articles or bylaws, the default quorum requirement is the presence, in person or by proxy, of an absolute majority of the shares entitled to vote. The articles or the bylaws may establish a greater than majority quorum requirement. Only the articles are competent to establish a less than majority quorum requirement, which may not be less than one-third of the voting shares. The affirmative vote of the majority of the shares represented at which a quorum is present is the act of the shareholder. Once a quorum has been established, it is not possible for a disgruntled minority to defeat the capacity of the majority to transact business by simply "walking out" of the meeting.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 7.25 is functionally identical to ACC Section .415.

Section .418 PROXIES

ORIGIN: ACC Section .418 is taken from GCL Section 705, with a modification to eliminate Section 705(e)(3) (rights of creditors). Section .418 replaces AS 10.05.159 and .168,

which had been based on Section 33 of the MBCA. The explicit treatment of the question of "revocation" and the circumstances under which a proxy may be made "irrevocable" by agreement are unprecedented in Alaska law.

SUMMARY OF COVERAGE: ACC Section .418 permits a shareholder to create a legal power in a nominee to vote his or her shares, the life of which can not exceed eleven months. A revocable proxy is treated as destructible at the will of the proxy giver. This Section regulates the circumstances or acts which will "revoke" the proxy, thus disabling management from recognizing the power of the nominee to cast the votes represented by the shares. Finally, for the first time, Alaska law contains explicit provisions defining the circumstances under which a proxy may be made irrevocable.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 7.22 is identical to ACC Section .418.

Section .420 VOTING OF SHARES

ORIGIN: ACC Section .420 is predicated upon MBCA Section 33, with the exception of subsections (d) and (i). Section .420(d) is predicated upon GCL Section 708(a), and replaces AS 10.05.156 to .168. Section .420(i) is new and unprecedented in Alaska law. It is based upon GCL Section 509(d).

SUMMARY OF COVERAGE: ACC Section .420 establishes a cumulative voting scheme designed to enhance the opportunity for minority share interests to obtain representation on the board. Section .420(d) makes cumulative voting optional and presumptive unless eliminated by a provision of the articles. It goes beyond the Model Act to provide that if elimination of cumulative voting is sought via amendment to the articles, such an amendment shall not be effective if a sufficient number of votes are cast against it as would elect a single director if voted cumulatively in an election for the entire board. Shares held by the corporation or its controlled subsidiary may not be voted or counted towards the outstanding shares entitled to vote.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 7.21, 7.14, and 7.28 cover the subject matter addressed in ACC Section .420. There is substantial accord except with respect to the presumptive status of cumulative voting. Cumulative voting rights exist under ACC Section .420(d) unless extinguished in the articles. This is a continuation of historic Alaska practice and reflects a Legislative solicitude for representation of minority share interests on the board. Under RMBCA Section 7.28(a) such rights do not exist unless the articles make affirmative provision.

Section .423 ACTIONS TAKEN WITHOUT MEETING: WRITTEN CONSENT;

REVOCATION OF CONSENT

ORIGIN: ACC Section .423(a) is predicated upon Section 145 of the MBCA and AS 10.05.807, with language added to make it clear that the written consents are invalid unless of identical content as to all shareholders. Section .423(b) is adapted from GCL Section 603(c), and is unprecedented in Alaska law.

SUMMARY OF COVERAGE: ACC Section .423 provides for informal action by shareholders, as long as the action is taken by the unanimous, written consent of the shares. The Commission considered and rejected the California and Delaware positions which would tolerate informal action by less than unanimous consent, believing that the unanimous consent requirement was a valid trade-off for the abolition of a formal meeting. This presumption for informal action may be extinguished by the articles or the bylaws.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 7.04 is in substantial accord with ACC Section .423. The prudential requirement that the consents be identical in content is not contained in Section 7.04. The official comment (7-17, 18) makes it clear that, like the Code Revision Commission, the framers of the RMBCA do not advocate adopting a position wherein informal action may be taken by less than the unanimous consent of the voting shares.

Section .425 VOTING TRUSTS AND AGREEMENTS AMONG SHAREHOLDERS

ORIGIN: ACC Section .425(a) is taken from MBCA Section 34 and AS 10.05.171. Unlike existing Alaska law, Section .425(a) has adopted the Model Act's language designed to require disclosure of the terms and identity of voting trusts. Section .425(b) is taken from GCL Section 706(d), and is unprecedented in Alaska law.

SUMMARY OF COVERAGE: ACC Section .425 permits a voting trust, regulates its duration, and mandates disclosure of its terms and members. Shares committed to a voting trust must be surrendered to the trustee in exchange for trust certificates, while all incidents of share ownership other than voting rights remain with the shareholder/participant. The Model Act language on the extension of voting trusts has not been adopted, in the belief that at the end of the ten year maximum life, the parties are capable of forming a new trust. Section 425(b) tolerates other agreements such as pooling agreements and share classification, leaving to common law any limitations upon their use.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Sections 7.30 and 7.31 cover the subject of voting trusts and voting agreements among shareholders. Their content is in substantial accord with ACC Section .425, except for the provision

on extending the period of time for a voting trust.

Section .428 SHAREHOLDERS' PREEMPTIVE RIGHTS

ORIGIN: ACC Section .428 is predicated upon MBCA Section 26A and replaces AS 10.05.129. Existing Alaska law contains no provision comparable to Section .428's presumptions as to shares or offerings to which preemptive rights are not extended.

SUMMARY OF COVERAGE: Unless limited or denied by provisions of the articles, ACC Section .428 establishes preemptive rights in certain shareholders to acquire under fair and reasonable terms unissued shares or convertible securities. Preemptive rights do not exist in holders of any class of preferred shares, nor do common shareholders have preemptive rights to the issuance of nonconvertible preferred shares. If a majority of the shares approve, preemptive rights do not exist as to shares issued to directors, officers, or employees. This provision is intended to facilitate the implementation of qualified deferred compensation schemes under the Internal Revenue code. Section .428 expressly recognizes that the articles are competent to enlarge or diminish the scope of preemptive rights.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.30 reverses the statutory presumption on preemptive rights. Under ACC Section .428 such rights exist unless limited or extinguished in the articles. Under RMBCA Section 6.30(a), such rights do not exist unless affirmatively provided in the articles. Assuming the presence of such rights, the balance of RMBCA Section 6.30 is in accord with the provisions of ACC Section .428.

Section .430 BOOKS AND RECORDS

ORIGIN: ACC Section .430 is based upon Section 52 of the MBCA and AS 10.05.237 to .249.

Section .430(a) continues the content of AS 10.05.237 with added provisions for minutes of meetings of board committees and for electronic processing. Section .430(b) continues the policy of AS 10.05.237(b), but has eliminated the durational and numerical qualifications of AS 10.05.240. Section .430(c) continues the policies of AS 10.05.243, with the modification of imposing a minimum liability of $5000. Section .430(d) has modified AS 10.05.246 in view of the standing requirements eliminated under Section .430(b). Section .430(e) adopts without change the content of AS 10.05.249 regarding the right to demand a copy of the most recent financial statement.

SUMMARY OF COVERAGE: ACC Section .430(a) creates the obligation for any corporation organized under this Chapter to keep

specified books and records of account, minutes of proceedings, and a record containing the names and addresses of all shareholders and the number and class of shares held by each. This subsection facilitates the collection and keeping of such data by electronic processing so long as such data can be reduced to writing.

Subsection .430(b) creates the right of inspection and vests that right in any shareholder and the Department of Commerce and Economic Development. The shareholder must make written demand and state the purpose(s) for which inspection is demanded. The inspection may be made in person or by agent or attorney, and at a reasonable time and for a proper purpose.

Subsection .430(c) creates personal liability in any officer or agent who denies a right of inspection which the shareholder can establish was properly demanded, with certain affirmative defenses available to defeat this liability.

Subsection .430(d) affirms the power of a competent court to enforce a right of inspection properly demanded.

Subsection .430(e) gives the shareholder a right to receive, upon written request, a copy of the corporation's most recent financial statement.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 7.20 requires that the corporation maintain and make available for inspection a list of the names and addresses of its shareholders. RMBCA Section 16.01 requires the keeping of books, records of account and minutes of the proceedings of all shareholder, board and board committee meetings. RMBCA Section 16.02 creates a right of inspection in shareholders asserting a proper purpose to inspect reasonably related portions of the Section 16.01 materials. RMBCA Section 16.04 details the circumstances under which a court may order observance of the Section 16.03 inspection rights. In total, these provisions accord with those of ACC Section .430, except that they do not expressly allow for civil liability on the part of the officer or agent who wilfully frustrates what are later determined to have been valid assertions by shareholders of inspection rights.

Section .433 ANNUAL REPORT TO SHAREHOLDERS: CONTENT; FINANCIAL STATEMENT ON REQUEST

ORIGIN: ACC Section .433 is new and without precedent in Alaska law. It is adapted from Sections 1501 and 2000 of the GCL. GCL Section 1501(g) on attorney fees and costs was omitted from Section .433.

SUMMARY OF COVERAGE: ACC Section .433 establishes the obligation of the board to send an annual report to shareholders within 180 days after the close of the fiscal year. The report must contain a balance sheet and an income statement prepared according to generally accepted accounting principles. The report need not be prepared by independent ac-

countants, but if so prepared it must be certified by the independent accountant.

If the corporation has fewer than 100 shareholders the articles are competent to waive the obligation to provide an annual report.

If the corporation has more than 100 shareholders the content of the annual report is expanded to include a brief description of all "insider transactions" (transactions, other than compensation, in which the corporation has engaged with one of its officers, directors, or a controlling shareholder) involving an amount in excess of $40,000. Corporations reporting under Section 12 of the Federal Securities and Exchange Act, and those reporting under Sections 7(c), 8(c), and 28 of the Alaska Native Claims Settlement Act are exempted from ACC Section .433(b) on the grounds that their federal reporting obligations cover these important items.

Section .433(c) permits shareholders holding at least 5% of the outstanding shares of any class to make written requests for periodic income statements.

Section .433(f) establishes the penal consequences of any failure, refusal, or neglect to make or disseminate the reports and statements required by this section, and also provides that a competent court may specifically enforce these rights.

Section .433(g) makes this section applicable to foreign corporations with principal executive offices in or meetings held in Alaska.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 16.20 follows the California/ACC example and imposes an annual reporting obligation upon corporations. It does not contain any exemption for small corporations and the comment (16-20) makes it clear that it will have ". . .its principal impact on small, closely held corporations. . . ." Corporations which report under federal law would not be exempt from the RMBCA Section 16.20 obligation. Thus Native Corporations would face the duplicative burden of reporting.

RMBCA Section 16.21 requires that some of the "insider transactions" addressed in ACC Section .433(b) be reported to shareholders. In general, it does not require disclosure of major transactions with directors, officers or controlling shareholders. Yet it would require special reports of every instance of advances or indemnification. ACC Section .433(b)(2) reouires this only if the instances aggregate more than $10,000 to an individual officer or director during the fiscal year.

The RMBCA does not guarantee access on the part of shareholders holding at least 5% of the outstanding shares to quarterly financial statements. Nor does it contain any express sanction for defiance of the reporting obligations it does impose. This last point reveals a distinction between the attitudes of the framers of the two statutes. The Alaska Code Revision Commission felt that it is unwise for a statute to create any positive obligation and then fail to spell out the consequences of a refusal on the part of affected persons

to comply with its terms.

Section .435 SHAREHOLDERS' DERIVATIVE ACTION

ORIGIN: ACC Section .435 is new and without statutory precedent in Alaska. Shareholders' derivative actions are presently regulated by the Alaska Supreme Court's adoption of Federal Rule of Civil Procedure 23.1.

Subsection .435(a) is taken in modified form from Section 626(a) of the NBCL. Subsection .435(b) is taken from GCL Section 800(b)(1). Subsections .435(c) through (i) represent original work by the Code Revision Commission. Subsection (h), security for expenses, is taken from MBCA Section 49. Subsections (j) and (i) are predicated upon NBCL Section 626(d) and (e).

SUMMARY OF COVERAGE: ACC Section .435(a) subjects shareholders' derivative actions to statutory regulation for the first time. Section .435(b) establishes a limited departure from what is otherwise a contemporaneous share ownership requirement. If a noncontemporaneous shareholder can establish to the satisfaction of the court that the criteria enumerated in Sections .435(b)(1)-(5) are satisfied, the statute empowers the court to grant standing to such a plaintiff.

Section .435(c) requires that a qualified shareholder make a demand upon the board to secure such action as the plaintiff desires, unless the shareholder can show that such demand would be futile. Under Section .435(d), the burden to establish excuse is upon the plaintiff-shareholder. If a demand on the board is not excused, Section .435(e) provides that a decision by the board, consonant with its duties of care and loyalty, that in its business judgment such litigation would not be in the best interest of the corporation, terminates the right created by Section .435(a). A shareholder is not thereafter precluded from offering evidence that any or all of the directors who have decided that the litigation not go forward are implicated in the wrong complained of.

If an initial demand on the board has been excused, or if the shareholder is able to prove that the recommendation by a board upon which demand has been made should be ignored as tainted, Section .435(f) provides for the subsequent intervention by allegedly disinterested directors asserting that, in their good faith, independent, and informed business judgment, the action should be dismissed as inimical to the best interests of the corporation. Assuming that these disinterested directors are able to meet their burden of establishing good faith, independence, and informed business judgment, the trial court is directed to make an independent assessment in exercising its own judgment as to whether the action should be maintained.

Section .435(g) aligns Alaska with California and New York in omitting the requirement that a shareholder make a

demand upon the outstanding shares.

Section .435(h) enables a corporation or the actual defendants to move the court at any time before final judgment to require the plaintiffs to give security for the reasonable expenses, including attorney fees, that may be incurred by the petitioners. The amount of security shall be determined by the court in its discretion, except that if the plaintiff shareholder(s) hold 5% or more of any class of outstanding shares or voting trust certificates representing shares, there shall be no security for expenses requirement.

Section .435(i) forbids any form of "out of court settlement" of a derivative action without court approval.

Section .435(j) provides that any recovery should be accounted for to the corporation, however, the court may award the prevailing party reasonable expenses, including attorney fees.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 7.40 accords with the Commission's recommendation that demands upon shareholders be eliminated. However, RMBCA Section 7.40 also would eliminate the security for expenses provided by ACC Section .435(h). Finally, the official comment to RMBCA Section 7.40 (7-85) make it clear that it takes no position on the question of the power of independent directors to seek dismissal of the derivative action on the ground that, in their collective business judgment, it is not in the best interests of the corporation. Such matters are resolved by ACC Section .435.

Section .438 LIABILITY OF SHAREHOLDERS AND SUBSCRIBERS

ORIGIN: ACC Section .438 is predicated upon MBCA Section 25 and AS 10.05.125.

SUMMARY OF COVERAGE: ACC Section .438 establishes the basic proposition of limited liability of shareholders, except for their liability to pay the full consideration for the shares which runs to designated classes of successors in interest.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 6.22 is functionally identical to ACC Section .438 except that it does not clarify the non-liability of executors, administrators, conservators, guardians, trustees, assignees for the benefit of creditors, receivers or pledgees.

Section .450 BOARD OF DIRECTORS; DUTY OF CARE; RIGHT OF INSPECTION; FAILURE TO DISSENT

ORIGIN: ACC Section .450(a) is premised upon the 1977 revision of the MBCA Section 35. The rights, privileges, and duties which are fixed upon the board devolve upon delegates. ACC Section .450 differs from the Model Act language to make it clear that with this delegation flows the liabilities which the Chapter otherwise imposes upon the directors. This modification follows GCL Section 300(d).

Subsection (b) is also premised upon the revised content of MBCA Section 35. Presently, there is no statutorily defined duty of care to be observed by a corporate director. One deviation from the MBCA is the provision in ACC Section .450(b) in which the duty of care includes the duty of reasonable inquiry. This is taken from GCL Section 300(d).

This section replaces AS 10.05.174, .222, and .219.

SUMMARY OF COVERAGE: Under Section .450 there must be a board of directors. ACC Section .450 provides for the exercise and delegation of board functions; the duty of care which must be observed by the directors and their right to rely upon certain information, opinions, reports, or statements from officers, experts, and committees of the board; the grant of an absolute right of inspection to every director as to all corporate books, records, and documents, together with the right to use an agent or attorney and the right to make copies or extracts; and, the consequences of a director's failure to dissent as to any action taken by the board at a meeting at which she is present.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 8.01 parallels ACC Section .450(a) in requiring a board of directors. The authority to delegate board functions is more limited under RMBCA Section 8.01 in that the corporations with more than 50 shareholders may not delegate board functions.

RMBCA Section 8.30 establishes the standards of care which must be observed for directors. Like ACC Section .450(b) it imposes a standard of honesty in fact augmented by the requirement that the conduct meet the level which an "ordinarily prudent person in a like position would exercise under similar circumstances. . . ." Unlike the California and ACC standard, the one articulated in the RMBCA does not reference a duty of reasonable inquiry. RMBCA Section 8.30(b) and (c) are similar to ACC Section .450(b) in enabling a director to rely upon information, opinions, reports

and statements from officers, experts, or committees of the board. This right of reliance is qualified and inapplicable if the director knows, or as a reasonable person ought to know, that, as to the mater in question, reliance is unwarranted.

Section .453 NUMBER AND ELECTION OF DIRECTORS

ORIGIN: ACC Section .453(a) and (b) are premised upon a modification of New York Business Corporation Law Section 702(a) and (b), and were adopted in lieu of comparable provisions of Section 36 of the MBCA. Section .453(c), (d), and (e) are taken from MBCA Section 36. This section replaces AS 10.05.177, .180, and .183.

SUMMARY OF COVERAGE: Section .453(a) continues the policy of AS 10.05.177, which sets the minimum number of directors at three, save for a corporation with less than three shareholders. In a corporation with less than three shareholders, the number of directors need not exceed the number of shareholders. The Model language which would permit a corporation to function with a board of one regardless of the number of shareholders was rejected. Further, Section .453(a) makes it impossible for a board to adopt bylaws changing the number of directors without participation of the shares (as now provided in AS 10.05.177), unless the board acts under a provision of the articles or bylaws adopted by approval of the outstanding shares.

This section also directs that there shall be an election of directors at each annual meeting except in the case of a classified board, and defines the tenure in office of incumbent directors. Subsection (c) sanctions a provision in the articles which would secure the election of one or more directors to the holders of the shares of a class or series voting as a class or series. Subsection (e) makes clear that a director serves until the expiration of the term for which he is elected and until a successor has been elected and qualified.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 8.03 governs the number and election of directors. It perpetuates the concept previously not adopted by the Legislature which would permit a board of a single director regardless of the number of persons who own shares. RMBCA Section 8.03 tracks ACC Section .453(b) in permitting the articles or bylaws to establish a formula permitting either the shareholders or the board to increase or decrease the number of positions on the board. The RMBCA limits the power of the board under such a provision to an increase or decrease of no more than 30 percent from the number last approved by the shareholders. It, too, establishes the norm of one year terms unless the board is classified with staggered terms.

RMBCA Section 8.04 parallels ACC Section .453(c) in permitting the articles to permit classes to elect certain

positions on the board. Unlike the ACC, it would not permit series of shares to have discrete voting rights.

RMBCA Section 8.05 is functionally identical to ACC Section .453(e) respecting terms of directors and the continuation of a director's liability until a successor shall have been elected and qualified.

Section .455 CLASSIFICATION OF DIRECTORS

ORIGIN: ACC Section .455 is an enactment of MBCA Section 37, and works an important change from AS 10.05.186. Under existing Alaska law, the decision to classify the board could be taken by a bylaw adopted by the board without shareholder participation. Subsection (b), continuing the concern for minority shareholder representation on the board, is new. Section .455 replaces AS 10.05.186.

SUMMARY OF COVERAGE: ACC Section .455 provides for optional classification of the board if there are nine or more board members, as long as the option is specified in the articles. However, if the corporation has not eliminated cumulative voting, an amendment to the articles attempting to provide for board classification is ineffective if the number of shares voting against classification is sufficient to elect one director under a cumulative voting scheme.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: 8.06 is functionally identical to ACC Section .455(a). Classification cannot be made unless there are nine or more directors and there may not be more than three classes serving staggered one year terms. Unfortunately, the RMBCA does not contain any protective mechanism for those corporations which have elected cumulative voting rights.

Section .458 VACANCIES ON THE BOARD

ORIGIN: ACC Section .458 is adapted from GCL Section 302. It has no direct parallel in Alaska law.

SUMMARY OF COVERAGE: ACC Section .458 provides that the board may declare vacant the office of a director who has been declared of unsound mind by a court order, or who has had civil rights suspended due to imprisonment as provided in AS 33.30.310.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains no comparable provision.

Section .460 REMOVAL OF DIRECTOR WITHOUT CAUSE

ORIGIN: ACC Section .460 is premised upon Section 303 of the GCL, and has no parallel in Alaska law. This section pro-

vides an important shareholder check upon the incumbent directors innovated in California (as mandatory), and now found in Delaware (optional), New York (optional), and in the MBCA (optional). Section .460 follows the California version, and is mandatory. The special provisions regarding notice are original, having no parallel in statutory precedent, and apply only to those corporations with 500 or more record shareholders.

SUMMARY OF COVERAGE: ACC Section .460 provides for removal of incumbent directors at any time without any reason by a vote of the outstanding shares, subject to specific notice provisions. If the attempted removal is to be made at a special meeting, or at a regular meeting of a corporation with more than 500 record shareholders, notice of the removal action must be given. Provisions are also made for the protection of representatives of a minority of the shares, or the directors elected by a class or series of shares.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 8.08 continues the Model Act tradition of suggesting that this provision be made optional according to provisions of the articles. It contains no notice provisions respecting corporations with a relatively large number of shareholders. Like ACC Section .460, RMBCA Section 8.08 contains provisions to protect directors seated through cumulative voting or as the representatives of a particular class of shares.

Section .463 REMOVAL OF DIRECTOR BY SUPERIOR COURT

ORIGIN: ACC Section .463 is taken from GCL Section 304, and is without parallel in Alaska law. This section modifies the GCL by adding "gross neglect of duties" as a ground for judicial removal, and in granting standing to the board to seek removal.

SUMMARY OF COVERAGE: The primary recourse for shareholders dissatisfied with the performance of a director is to seek removal under ACC Section .460. However, if there are insufficient votes, ACC Section .463 specifies the serious grounds under which the holders of at least ten percent of the shares of any class or a majority of the board of directors have standing to seek removal in the superior court.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: 8.09 is functionally identical to ACC Section .463.

Section .465 VACANCIES AND RESIGNATION; SPECIAL MEETING OF SHAREHOLDERS

ORIGIN: ACC Section .465 is modeled upon GCL Section 305 with certain modifications. Section .465(a) continues the policy of AS 10.05.189 in vesting broad authority to fill

vacancies with the remaining member(s) of the board, yet unlike AS 10.05.189, this presumption may be modified by provisions in the articles or bylaws. The 1976 amendment to AS 10.05.189, requiring expansion vacancies to be filled by shareholders, has been dropped, given shareholders' expanded mandatory role in ACC .453. Section .465(b) has no parallel in Alaska law. Section .465(d) is a substantial modification of GCL Section 305(c), omitting Section 305(c)(2) (eliminating the role of the superior court).

SUMMARY OF COVERAGE: This section and Section .458 define when a vacancy exists upon the board. ACC Section .465 provides that in the absence of contrary provisions in the articles or bylaws, and unless the vacancy has occurred by removal by shareholders (Section .460), the vacant position(s) may be filled by the director(s) remaining in office, even though there may be less than a quorum of the entire board. This section also provides for resignation by a director and his status until the election and qualification of a successor.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 8.10 differs from ACC Section .465 in two particulars. It fails to make clear that, unless otherwise provided in the articles or bylaws, a sole remaining director may act to fill vacancies on the board. This provision may be especially important in the event of a disaster in which nearly all of the directors may have perished. To some extent this omission is remedied by Section 3.03(b)(2) under which one or more officers of the corporation may be deemed directors for a meeting during a defined period of emergency. RMBCA Section 8.10 does not contain a comparable provision to ACC Section .465(c) whereby if the directors elected by the shareholders constitute less than a majority of the board, shareholders holding as few as 10% of the outstanding shares may call a special meeting to elect the entire board.

Section .468 EXECUTIVE AND OTHER BOARD COMMITTEES

ORIGIN: ACC Section .468 is a modified version of the new Section 42 of the MBCA, and clarifies AS 10.05.195.

SUMMARY OF COVERAGE: ACC Section .468 permits the articles or bylaws to empower the board to set up executive and other committees, and to delegate to such committees the powers otherwise vested in the board, with certain exceptions. The duty of care of directors not members of such committees is provided for in Section .468(b).

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 8.25 is functionally identical to ACC Section .468 with two exceptions. RMBCA Section 8.25(a) requires that each committee have two or more director-members. This limitation is not found in ACC Section .468. RMBCA Section 8.25 does not

explicitly cover the creation of committees and the delegation of board functions to the duty of care owed by non-member directors.

Section .470 MEETINGS: CALL, PLACE, NOTICE, AND WAIVER

ORIGIN: ACC Section .470 is a modified version of GCL Section 307, which replaces AS 10.05.198 (which was predicated upon MBCA Section 43).

SUMMARY OF COVERAGE: ACC Section .470 defines the officers or directors who have authority to call regular or special meetings of the board or board committee, the notice requirements that must be observed, and the waiver of such notice requirements by unnoticed directors.

ACC Section .470(a) is unprecedented in Alaska law and for the first time defines the corporate officers or directors who have authority to call regular or special or special meetings of the board or board committee.

ACC Section .470(b) follows the Alaska's existing no notice policy for regular meetings. With respect to special meetings there is a standardization of a twenty day written notice requirement with broad authority to use the instrumentalities of electronic telecommunications in which case the time provision is the 72 hour requirement observed for personal communication. Section .470(b) goes beyond either the GCL or the Model Act in requiring that notice of special meetings disclose the purpose or business to be transacted. Section .470(c) defines the circumstances under which an unnoticed director can or will be taken to have waived the notice requirements.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Sections 8.22 and 8.23 contain coverage comparable ACC Section .470(b) and (c). RMBCA Section 8.22 does not specify who may call meetings of the board or board committees, nor does it, in the absence of a requirement in the article or bylaw, necessitate that notice of special meetings disclose the purpose and business to be transacted. This omission may prove troublesome in the context of a closely held corporation in which the minority's only pragmatic protection may be to refrain from attending a special meeting thus blocking the formation of a quorum.

RMBCA Section 8.23 on waiver of notice is substantively identical to ACC Section .470(c).

Section .473 QUORUM OF DIRECTORS

ORIGIN: ACC Section .473 continues the policy and language of AS 10.05.192 and MBCA Section 40.

SUMMARY OF COVERAGE: ACC Section .473 fixes the quorum of the board or any board committee at an absolute majority of

the positions of such body. The articles or bylaws are competent to set a higher quorum requirement, but may not go below the majority requirement. This position reflects a continuation of prior Model Act policy which opposed less than majority quorum requirements. ACC Section .473 also establishes the norm that the act of the majority of the directors at a meeting at which a quorum is present is the act of the board unless the articles require a greater number.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 8.24(a) and (c) are functionally identical to ACC Section .473. RMBCA Section 8.24(b) deviates from prior Model Act policy and would permit the articles or bylaws to fix the quorum requirement as low as one-third of the number of members of the board or committee.

Section .475 INFORMAL ACTION BY DIRECTORS

ORIGIN: ACC Section .475(a) is a straight enactment of the last paragraph of MBCA Section 43. Section .475(b) is a modified version of AS 10.05.199 and MBCA Section 44.

SUMMARY OF COVERAGE: ACC Section .475 provides for board meetings to be conducted via telecommunications equipment allowing simultaneous contact of all participants. It also provides for business to be transacted without any form of meeting via the use of written consents identical in content obtained from all directors.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 8.20(b) is functionally identical to ACC Section .475(a) in permitting board meetings to be conducted via communications equipment. RMBCA Section 8.21 is functionally identical to ACC Section .475(b) in permitting the board to act without a meeting utilizing written consents signed by all of the members. The prudential requirement that those consents be identical in content is omitted from the RMBCA.

Section .478 DIRECTOR CONFLICTS OF INTEREST

ORIGIN: Existing Alaska law has no statutory law on director conflicts of interest. ACC Section .478 is modeled upon GCL Section 310, with modifications designed to produce a more stringent standard regarding director conflict of interest. One departure from the GCL was the omission of its provision permitting a committee of the board to validate certain interested transactions. Also omitted was California's third alternative for validation, which would be a showing by the proponent of a contract or transaction that such transaction was just and reasonable. Instead of being an independent vehicle for validation, such a requirement is imposed as an additional ground for validation under Section .478(a)(2).

SUMMARY OF COVERAGE: ACC Section .478 addresses conflict of interests in two distinct and classical instances: (1) where the contract or other transaction is between the corporation and one or more of its directors; and (2) where the contract or transaction is between two corporations sharing a common director or directors.

ACC Section .478(a) provides that transactions between the corporation and a director or a business entity in which the director has a material financial interest must be approved either by validation via the informed approval of the shareholders, or by the approval of a disinterested and fully informed majority of a quorum of the full board. The director's shares are not to be computed either for purposes of determining a quorum of the shares or a quorum of the board. The proponent of the contract has the additional burden to show that the contract or transaction is just and reasonable.

In the case of a common director(s) on the boards of each of the corporate parties to a transaction, there is no objection as long as the other directors are fully apprised of all facts, including the common directorship. Nothing in ACC Section .478(c) is intended to influence Alaska's antitrust laws, nor does this section intend to operate in derogation of a director's common law duty of loyalty in the context of the corporate opportunity doctrine.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 8.31 parallels ACC Section .478 is primarily concerned with conflicts of interest in which the director has a direct or indirect adverse financial interest. Its coverage is very similar to ACC Section .478(a). There is no explicit RMBCA coverage of the secondary conflict of interest situation in which a common director or directors serve on the boards of both corporate parties to a contract or transaction.

Section .480 LIABILITY OF DIRECTORS

ORIGIN: ACC Section .480 is an augmented version of new Model Act Section 48, and replaces AS 10.05.216 and .225. Section .480(a) continues the policy of AS 10.05.216 imposing joint and several liability upon directors. Section .480(a)(3) continues an imposition of liability for illicit loans to officers or employees contained in AS 10.05.216(d), which is not found in MBCA Section 48. The affirmative defense by a director that she observed the duty of care defined in ACC Section 450(b) is new to Alaska law.

SUMMARY OF COVERAGE: ACC Section .480 imposes joint and several liability upon directors who vote for or assent to three types of illicit transactions: distributions to shareholders contrary to provisions of Article 4 of this Chapter; distributions to shareholders which are prejudicial to the rights of creditors during the liquidation of the corporation; and loans or extensions of corporate credit to any officer or employee contrary to the restrictions of ACC

Section .485 and any provisions of the articles of incorporation. A defense to liability is proof by the defendant(s) of an observance of the duty of care articulated in Section .450(b).

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 8.33(a) is functionally identical to ACC Section .480(a)(1) in dealing with the consequences of a director's personal liability for voting for or assenting to illicit distributions. The rights of contribution recognized in ACC Section .480(b) are mirrored in RMBCA Section 8.33(b). The ACC's coverage of distributions which are illicit during the course of liquidation are not contained in the RMBCA. Illicit loans to officers or directors, covered by ACC Section .480(a)(3), are the subject of RMBCA Section 8.32. The circumstances under which such loans may be licitly extended are covered by ACC Section .485. They are more stringent than the circumstances recognized under RMBCA Section 8.33(a)(1) and (2).

Section .483 OFFICERS: TENURE, RESIGNATION, AGENCY, DUTY OF CARE

ORIGIN: ACC Subsection .483(a) is adapted from GCL Section 312(a), former GCL Section 821, and NBCL Section 715(e). Unlike AS 10.05.228, Section 483(a) eliminates the necessity of a vice president.

Subsection .483(b) is taken from GCL Section 312(b), and differs from AS 10.05.228 by providing that officers must be selected by the board.

Subsection .483(c) is taken from NBCL Section 715(g), and replaces AS 10.05.231; it reflects no substantive change in definir , the source of real authority of officers.

Subsection .483(d) is taken from GCL Section 313, which in turn, is adapted from Pennsylvania BCL Section 305.

Subsection .483(e) is premised upon NBCL 715(h), without inclusion of the specific "right of reliance" provision of the New York act. For the first time, the ACC defines the duty of care for officers, however, unlike NBCL Section 715, ACC Section 483(e) makes it clear that the duty of care includes a duty of reasonable inquiry.

SUMMARY OF COVERAGE: Five major topics are addressed by ACC Section .483: (1) the minimum number of offices which a corporation must have; (2) the manner of selection and the right of resignation of officers; (3) the source of real authority of corporate officers; (4) a strategy by which a third party can preclude a corporate principal's denial of the authority of an officer as agent; and, (5) a definition of the standard of care according to which officers are to discharge their responsibilities to the corporation.

COMPARISON OF THE FINAL DRAFT OF THE RMBCA: The five topics covered by ACC Section .483 are treated in five separate sections of the RMBCA.

RMBCA Section 8.40 deals with the required officers. It differs from ACC Section .483(a) in several particulars. Section 8.40 merely requires that the corporation have "the officers described in its bylaws or appointed by the board of directors. . . ." Thus it would appear that under the RMBCA a corporation could be headed by the "Great PooBah", an individual assisted by the "Supreme Tweeb." Notwithstanding, there must be at least one officer who has the functions of the corporate secretary and who assumes all statutorily imposed duties of that office.

RMBCA Section 8.41 is in accord with ACC Section .483(a) in describing the duties of officers. They are fixed by the terms of the bylaws or, the the extend permitted, by the board. The RMBCA misses the accomplishment of ACC Section .483(c) in making explicit the grant of real agency authority to corporate officers.

RMBCA Section 8.42 joins ACC Section .483(e) in defining a duty of care for corporate officers. Unlike the ACC, the RMBCA does not make an express reference to a duty to make reasonably inquiry as part of the "reasonable person in like circumstances" standard. RMBCA Section 8.42 parallels its treatment of the duty of care for corporate directors by articulating "safe harbor" provisions wherein an officer may rely upon reports and representations of others. The ACC does not spell out this concept.

RMBCA Section 8.43 parallels ACC Section .483(b) in providing that officers serve at the pleasure of the board. It also recognizes circumstance under which an officer may resign her position.

RMBCA Section 8.44 is functionally identical to ACC Section .483(b) in providing that the removal of an officer does not prejudice any contract rights which the officer might have in the event that removal was in breach of a contract of employment. Both the ACC and RMBCA language aim to forestall circumstances in which a corporation could be ordered to specifically perform a contract with an officer in whom the board no longer reposed confidence. Such a corporation may, however, be liable in damages.

Section .485 LOANS TO DIRECTORS, OFFICERS, AND EMPLOYEES

ORIGIN: ACC Section .485 is unique, borrowing from MBCA Section 47 and GCL Section 315, but reflecting policies which are more protective of the corporate fisc than either of those provisions. It replaces AS 10.05.213.

SUMMARY OF COVERAGE: ACC Section .485 repudiates AS 10.05.213's flat prohibition against loans to corporate directors or officers. However, loans may not be made to directors without the approval of two-thirds of the voting shares. The board is competent to extend loans to officers and employees. A "loan" is defined broadly, to include securities or real or personal property, as well as cash. Directors, officers, and employees of parent, subsidiary, and sibling corporate af-

filiates are restrained under this section for purposes of obtaining a corporate loan

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: 8.32 also prohibits a corporation from extending loans or guarantees to corporate directors. It does not cover loans to officers or employees. Further, the power to loan or guarantee the loans of directors is easier to achieve under RMBCA Section 8.32. Either a simple majority of the voting shares may approve or the board may determine that the loan or guarantee benefits the corporation and, having so determined, approves it.

Section .488 SECONDARY LIABILITY OF DIRECTORS AND OFFICERS

ORIGIN: ACC Section .488 is new and without direct precedent in corporate law. This section was adapted from NBCL Section 630, which imposes personal joint and several liability upon the ten largest shareholders of a non-publicly traded corporation for all debts, wages, or salaries due and owing to any of the corporation's laborers and employees.

SUMMARY OF COVERAGE: The social problem targeted for redress by ACC Section .488 is the abuse of unsecured creditors, including employees, who are precluded by the relatively small dimension of their demands, contrasted with the high costs of litigation, from asserting the more traditional common law efforts to "pierce the corporate veil".

Section .488 creates a "secondary liability" on the part of incorporators, directors (other than a provisional director appointed under Section 640), and the president, secretary, and treasurer in the event that corporate assets prove insufficient to meet corporate obligations for contract indebtedness, materials, supplies, inventory, or services furnished in the state during their period of service. This secondary liability is joint and several, and may amount to a maximum of $25,000 for each creditor. The terms of a written contract between a corporation and a third party may modify or preclude the liability created by this section. The liability of this section also extends to directors, incorporators, and officers of every foreign corporation doing business within Alaska to the extent that materials, supplies, inventory, or services were furnished within the state.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The exposure draft of the RMBCA contained nothing comparable to the New York precedent or the ACC provision on secondary liability. However, the final draft states in Section 2.02 that the articles can impose personal liability on shareholders for specified amounts in specified conditions.

Section .490 INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS: INSURANCE

ORIGIN: ACC Section .490 is premised upon Section 5 of the Model Act and works few changes on the provisions of AS 10.05.010.

SUMMARY OF COVERAGE: Corporate director, officers, and employees are vulnerable to attack in their personal capacity for acts done in their corporate roles. There is an understandable demand for financial protection from potentially ruinous costs and liabilities. Standing in opposition to this demand are social policies implicit in the condemnation of activity or behavior as criminal, violative of administrative regulations, or harmful to the interests of the corporation. These competing interests must be confronted in any statutory provision covering indemnification.

ACC Section .490 distinguishes between those circumstances in which a claim for indemnification may be made as of "right" from those in which it is addressed to the discretion of the corporation. As a further limitation upon discretionary indemnification, ACC Section .490(a) and (b) specify standards which must have obtained as to both the conduct and state of mind of the defendant. Finally, the corporation is empowered to purchase and maintain insurance which would recompense a defendant for any costs or liabilities incurred irrespective of the power of the corporation to have effected indemnification for its own resources.

Indemnification as a matter of right under ACC Section .490(c) can be asserted by a defendant who has been exonerated on the merits. Discretionary indemnification is provided in two circumstances. ACC Section .490(a) deals with a defendant in direct civil, administrative or criminal proceedings. While the decision to indemnify is left to the judgment of the corporation under subsection (d), it is conditioned upon a finding that the defendant ". . .acted in good faith an in a manner reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to a criminal action pro proceeding, had no reasonable cause to believe the conduct unlawful. . ." ACC Section .490(b) deals with the even more troubling situation of discretionary indemnification where the defendant has been assailed in a derivative proceeding. If the defendant has been adjudged guilty of violating either the duty of care or loyalty, the power of the corporation to indemnify against the very harm which it has suffered, or the court incurred costs in resisting liability, can only be exercised pursuant to a specific finding by and order of the court in which the action was tried.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: Chapter 8, sub-chapter E of the RMBCA contain the coverage on indemnification. RMBCA Section 8.51(a), (b) and (c). deals with the authority of a corporation to indemnify. It is functionally equivalent to ACC Section .490(c). RMBCA Section 8.51(d) prohibits indemnification in the instance of a successful derivative suit or other proceeding charging personal

benefit to the defendant. However this ironclad prohibition is later qualified by RMBCA Section 8.54(2) where it is recognized that the court may order indemnification. The combination of these two provisions is a result not unlike ACC Section .490(b). RMBCA Section 8.52 on mandatory indemnification deals with the defendant who was wholly successful. It accords with ACC Section .490(c).

RMBCA Section 8.53 deploys a stricter attitude upon advances against the defendant's anticipated expenses. ACC Section .490(e) leaves the question within the discretion of the corporation conditioned only upon an undertaking by or on behalf of the defendant that the amount will be repaid if it is ultimately determined that there is no indemnification as a matter of right. The RMBCA would require a prior determination of the defendant's good faith, the furnishing of a written personal undertaking to repay the advance, and a determination that the facts then known would not preclude indemnification.

RMBCA Section 8.55 is in substantial accord with ACC Section .490(d)'s position on how and by whom the corporate decision to indemnify is to be made. The primary responsibility is that of disinterested and uninvolved directors so long as they constitute a majority of a quorum. If this quorum cannot be mustered the decision may be reached by independent legal counsel or approved by the outstanding shares.

RMBCA Section 8.56 extends the provisions on the indemnification of directors to employees and officers. This accords with the provisions of ACC Section .490.

RMBCA Section 8.57 accords with ACC Section .490(g) permitting a corporation to purchase and maintain a policy of insurance covering directors, officers and employees which would cover any liability arising out of that status whether or not the corporation would have the power to indemnify with its own funds.

Section .502 AUTHORIZATION: PERMITTED AND PROHIBITED AMENDMENTS

ORIGIN: ACC Section .502(a) is taken from GCL Section 900. It repeats the substance of AS 10.05.270, which it replaces. Section .502(b) is largely a reenactment of AS 10.05.273, with several deletions reflecting the elimination of the concept of par value. The language under Section .502(b)(2) is new, and reflects a major change in Alaska law, in order to carefully and unequivocally authorize only changes which extend limitations imposed upon a corporation's duration. Subsections .502(b)(5) and (6) follow MBCA Section 58, in order to conform Alaska law to the language of the Model Act.

SUMMARY OF COVERAGE: ACC Section .502 permits a corporation to amend its articles in "any and as many respects as may be desired." Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 10.01 confers a power to amend the corporate articles in the most general of terms. It does not differ substantively from ACC Section .502 but does not contain the non-exhaustive list of permitted amendments found in the ACC. This reflects a differing drafting style in which the Alaska statute would contain illustrations and examples to guide both lay persons and counsel.

Section .504 PROCEDURE TO AMEND ARTICLES OF INCORPORATION

ORIGIN: ACC Section .504's subsections (a)(1), (b), and (c) are taken from AS 10.05.276 and MBCA Section 59. Section .504(a)(2) is adapted from Section 902(a) of the GCL, and changes Alaska law by explicitly giving shareholders the power to initiate amendments to the articles.

SUMMARY OF COVERAGE: ACC Section .504 sets forth the mandatory procedures which must be followed to amend the articles. Under Section .504(a)(2), once shares have been issued, the power to initiate amendments resides concurrently in the board and with the voting shares. An amendment initiated by the shares does not become effective until approved by the board; likewise, an amendment initiated by the board requires shareholder approval to become effective. Alaska law presently requires a two-thirds majority of the shareholders to approve amendments; ACC Section .504(a)(2) opts for a majority of the outstanding shares entitled to vote, but makes the articles competent to establish a supermajority voting re-

quirement. This section also provides for notice as well as the power of the board alone to amend the articles if no shares have been issued.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: Several provisions of the RMBCA contain coverage of topics addressed in ACC Section .504. RMBCA Section 10.05 accords with ACC Section .506(a)(1) in providing that if no shares have been issued the power to amend the articles is with the board. Once shares have been issued ACC Section .504 requires the approval of both the directors and an absolute majority of the shares to amend the articles. RMBCA Section 10.02 creates a limited exception to this norm for what the official comment terms "housekeeping amendments" (10-9). These amendments can be affected by board approval only. Among them are two which Alaska law has always prohibited: deleting the names and address of the original registered agent and initial directors.

Once shares are outstanding RMBCA Section 10.03 severely restricts the power of shareholders. They cannot initiate amendments but can only approve those proposed by the board. Both statutes require that shareholders be given notice of the amendment whether it is to be considered at a regular or special meeting of the shares.

Section .506 CLASS VOTING ON AMENDMENTS

ORIGIN: ACC Section .506 is largely a reenactment of AS 10.05.282. Section .506(6) amends AS 10.05.282 to conform with Section 60 of the MBCA, and includes an increase in the authorized number of shares of a superior class as an amendment giving a right to class voting. This section also replaces AS 10.05.279.

SUMMARY OF COVERAGE: ACC Section .506 provides for "class voting", which obtains irrespective of any provisions in the articles, and may not be impaired or denied by any internal rule. Further, as to any amendment on which there is a right to vote by class, there is no "approval by the shareholders" unless the amendment receives the affirmative vote of a majority of the affected class as well as a majority of the other shares entitled to vote.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 10.04 accords with ACC Section .506(a) in mandating class voting rights under circumstances where an amendment would affect the rights, privileges, or restrictions imposed upon that class of shares. Unfortunately, there is nothing in the RMBCA or its official comments which parallels ACC Section .506(b)'s express statement that if the holders of shares of a class are entitled to vote as a class then the amendment is not approved unless it receives a majority vote of the outstanding shares of that class and also receives an absolute majority of the outstanding shares.

Section .508 GREATER VOTING REQUIREMENTS

ORIGIN: ACC Section .508 is taken from GCL Section 902(e), and is new to Alaska law.

SUMMARY OF COVERAGE: This section permits the articles to set up supermajority or even unanimous voting requirements. An amendment affecting such an article must be approved by the same supermajority vote.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 7.27 directly parallels the content of ACC Section .508. The official comment (7-65) makes it clear that the articles may establish unanimous voting requirements.

Section .510 ARTICLES OF AMENDMENT

Section .512 FILING OF ARTICLES OF AMENDMENT

ORIGIN: ACC Section .510 is a reenactment of AS 10.05.285, with the deletion of the provision regarding stated capital. Section .512 is a reenactment of AS 10.05.288.

SUMMARY OF COVERAGE: In order for an amendment to the articles to become effective, it is necessary to make a filing with the commissioner (ACC Section .512) and receive a certificate of amendment. Section .510 specifies what the articles of amendment are to include.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 10.06 is functionally identical to ACC Section .512 except that it would require filing with the secretary of state and it omits the requirement that the articles of amendment be signed by designated corporate officers.

Section .514 EFFECT OF CERTIFICATE OF AMENDMENT

ORIGIN: ACC Section .514 is essentially a reenactment of AS 10.05.291, with language added from MBCA Section 63 permitting up to a 30-day delay in effectiveness.

SUMMARY OF COVERAGE: An amendment to the articles is not effective until the commissioner has reviewed the amendment to ascertain its conformity with law, and has issued a certificate of amendment. Section .514(b) specifies that an amendment does not have a retroactive effect so as to compromise any pending litigation.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 10.09 provides that, unless a delayed effective date is specified, the amendment or restatement becomes effective

when the articles of amendment or restatement are filed.

Section .516 RESTATED ARTICLES OF INCORPORATION

Section .518 FILING OF RESTATED ARTICLES OF INCORPORATION

Section .520 EFFECT OF ISSUANCE OF RESTATED CERTIFICATE OF INCORPORATION

ORIGIN: ACC Section .516 is a reenactment of AS 10.05.294. ACC Section .518 is a reenactment of AS 10.05.303; Section .520 is a verbatim reenactment of AS 10.05.306.

SUMMARY OF COVERAGE: This section authorizes a corporation to restate its articles as they may have been amended as a matter of form by resolution of the board. The substantive provisions cannot be so amended, and in fact, Section .516 requires that a statement be filed with the restated articles averring that the restated articles correctly set out without change the corresponding provisions of the articles.

ACC Section .518 specifies the procedure to be followed by the corporation and the commissioner in the filing and administrative handling of the restated articles. Section .520 provides that the restated articles become effective and supersede the original articles and all amendments to them upon the issuance of the restated certificate of incorporation.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 10.07(e) and (f) follow the provisions of ACC Section .516 except that the restated articles may contain an amendment not previously reported to the state. Under this section the filing is again with the Secretary of State, not the commissioner as provided in ACC Section .518.

Section .522 AMENDMENT OF ARTICLES OF INCORPORATION IN REORGANIZATION PROCEEDINGS

Section .524 FILING OF AMENDMENT OF ARTICLES IN REORGANIZATION PROCEEDINGS

Section .526 EFFECT OF ISSUANCE OF CERTIFICATE OF AMENDMENT IN REORGANIZATION PROCEEDINGS

ORIGIN: ACC Section .522 is taken from MBCA Section 65, and is new to Alaska law.

ACC Sections .524 and .526 are derived from MBCA Section 65, and are new to Alaska law, being added in the wake of Section .522. Section .526 varies from the MBCA by omitting the 30-day effectiveness delay provision found in the Model Act.

SUMMARY OF COVERAGE: ACC Section .522 is designed to coordinate Alaska law with the Federal Bankruptcy Act. It permits

amendment of the articles as part of the reorganization proceedings, which amendment might otherwise not obtain the affirmative vote of the shares. Without this provision, an involuntary dissolution and reincorporation may be necessary to achieve the desired result of the bankruptcy reorganization, with a possible increase in federal income tax liability.

ACC section .524 specifies the filing procedure for any amendments to the articles accomplished by bankruptcy reorganization under ACC Section .522. Section .526 provides for the effectiveness of the amendments upon the issuance of a certificate of amendment by the commissioner.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 10.08 is functionally identical to ACC Section .522 -- .526.

ARTICLE 8. ORGANIC CHANGE

Section .530 MERGER

Section .532 PROCEDURE FOR MERGER

Section .534 CONSOLIDATION

Section .536 PROCEDURE FOR CONSOLIDATION

Section .538 SHARE EXCHANGE

Section .540 PROCEDURE FOR SHARE EXCHANGE

ORIGIN: ACC Sections .530 and .532 (pertaining to the definition of and procedure for merger) are taken from MBCA Section 71, and reflect without change AS 10.05.375 and .378. ACC Sections .534 and .536 (pertaining to the definition and consolidation) are taken from MBCA Section 72, and reflect without change AS 10.05.381 and .384. ACC Sections .538 and .540 (define and determine the procedure for a share exchange). They are taken from MBCA Section 72A, and are without precedent in Alaska law.

SUMMARY OF COVERAGE: These sections define and set create uniform procedures for the proposal of the three classic forms of organic change. In the event of either a merger or consolidation, one or both of the participating corporations formally ceases to exist. In the case of a share exchange there is no formal suppression of a constituent corporation but it becomes a wholly owned subsidiary of the acquiring corporate entity. In each instance, the ACC places the responsibility for the framing of the proposal within the discretion of the boards of the participating corporations. The ACC provides for a share exchange for the first time in Alaska law.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Sections 11.01 and 11.02 cover the subjects addressed in ACC Sections .530 -- .540. The RMBCA provisions on merger and share exchange parallel those of the ACC. There is no separate treatment of consolidation in the RMBCA. This departure from the prior provisions of the Model Act and the statutory laws of all jurisdictions currently following it is explained by the drafters of the RMBCA as reflecting sentiment that consolidations are currently out of fashion. If the plan is that both participating corporations are to cease existence and emerge and a new, third corporation, the RMBCA would require the extra steps of prior formation of that third corporation and then merging the two constituent corporations into it. Under ACC Section .534 this result can be effected

in a single, and far simpler step.

Section .542 DISPARATE TREATMENT OF SHARES OF THE SAME CLASS OR SERIES PROHIBITED: EXCEPTIONS

ORIGIN: ACC Section .542 is predicated upon, but not adapted from GCL Section 1101, and is unprecedented in Alaska law.

SUMMARY OF COVERAGE: ACC Section .542 establishes a legal presumption against treating the holders of shares of the same class or series in any plan for an organic change in a different manner. A major question much litigated in the last decade is whether organic changes may be used to eliminate certain shareholders by forcing them to accept cash or non voting stock for their shares while other holders of identical stock receive voting shares in the surviving corporation. ACC Section .542 resolves this issue for Alaska in a manner that comports with Delaware and California decisional law. The fiduciary duties of majority or controlling shareholders are recognized in Section .542(a). Section 542(b) recognizes that disparate treatment may be necessary to preserve a Subchapter S election under the Internal Revenue Code. Disparate treatment may also be necessary for other sound business reasons, but the proponents of the plan have the burden to prove it is consistent with fiduciary duties owed to all the shareholders.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The official comment to the RMBCA (11-4, 5) makes it clear that the framers of that statute did not resolve this basic question. Any state which chooses to follow this recommendation will condemn to totally unstructured litigation all participants in any organic change which is challenged for its discriminatory treatment of shareholders. Under ACC Section .542 the presumption is against discriminatory treatment unless it can be justified on the predicate of some corporate business reason, as opposed to the personal goals of dominant shareholders.

Section .544 NOTICE TO AND APPROVAL BY SHAREHOLDERS

ORIGIN: ACC Section .544 is a modified version of new Section 73 of the MBCA, and has been extended to treat share exchange in a manner identical to merger or consolidation.

SUMMARY OF COVERAGE: This section mandates the steps necessary to seek the approval of shareholders of each corporation participating in a merger, consolidation, or share exchange. Written notice stating that one of the purposes of the meeting is to consider the proposed organic change, a copy of the plan for such change, and the text of the ACC provisions on the rights of dissenting shareholders must be given to each shareholder irrespective of voting rights.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 11.03 follows ACC Section .544 in requiring notice to shareholders which specifies that an organic change is to be proposed by the board and accompanied by a summary of the plan. This notice is statutorily deficient unless it also includes notice of dissenter's rights. However, unlike ACC Section .544 which express this important obligation in the provision entitled "notice to and approval by shareholders", the RMBCA command that there be notice of dissenter's rights is found in Section 13.20(a).

Section .546 MANNER OF APPROVAL BY SHAREHOLDERS

ORIGIN: ACC Section .546 is premised upon new Section 73 of the MBCA, with a modification to retain the two-thirds voting requirement found in AS 10.05.390. The only change worked by Section .546 pertains to the inclusion of share exchanges.

SUMMARY OF COVERAGE: ACC Section .546 enfranchises all shares of every class or series of each constituent corporation to an organic change. The plan prepared by the board and noticed to the shareholders is "approved" upon receiving the affirmative vote of an absolute two-thirds majority of all outstanding shares. If the articles of any of the participating corporations provide for class voting on plans for organic change, then in addition to the two-thirds voting requirement for approval by the outstanding shares, there is also a two-thirds affirmative vote requirement for that class. If the articles do not provide for class voting, but the plan for organic change contains provisions which, had they been proposed as amendments to the articles, would have required the affirmative vote of a class, then class voting is required under Section .546.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 11.03 differs radically from both existing and proposed Alaska law. Unless a greater number is required by the articles, a plan of merger or share exchange is approved by the holders of a simple majority of the shares. RMBCA Section 11.03 does not enfranchise all shares regardless of the presence or absence of voting rights under the articles. It does recognize class voting in a manner not unlike ACC Section .576. In a departure from the 1977 position of the Model Act (Section 73) and the laws of those states which currently accord with that section, the recommended content of RMBCA Section 11.03(g) would create certain circumstances in which mergers and share exchanges can be effected without shareholder approval. As explained in the official comment (11-15), "shareholders' votes should be required only if the transaction fundamentally alters the character of the enterprise or substantially reduces the shareholders' participation in voting or profit distribution." Unfortunately, RMBCA Section 11.03(g) pays no attention at all to the basic economic pursuit of the corporate entity before and after the

organic change. So long as the number of outstanding shares is not changed plus or minus 20%, shareholders who had invested in a corporation historically tied to the fishing industry could find themselves tied to the fate and fortune of a hulla hoop concern. They would never have been consulted, their approval would not have been required, and they would have no dissenter's rights!

Section .548 ABANDONMENT OF PLAN OF MERGER, CONSOLIDATION, OR EXCHANGE

ORIGIN: ACC Section .548 is taken from MBCA Section 73, and reflects without change the content of AS 10.05.393, save for the inclusion of share exchange.

SUMMARY OF COVERAGE: This section provides that, notwithstanding approval by the shareholders, the plan may fail without further action if any condition precedent or concurrent is not satisfied, or if any condition subsequent is triggered.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 11.03(i) accords with ACC Section .548.

Section .550 ARTICLES OF MERGER, CONSOLIDATION, OR EXCHANGE

Section .552 FILING OF ARTICLES OF MERGER, CONSOLIDATION, OR EXCHANGE

ORIGIN: ACC Sections .550 and .552 are predicated upon new Section 74 of the MBCA. Section .550 changes AS 10.05.396 by the inclusion of share exchanges. Section .552 technically restates AS 10.05.402 to reflect the uniform processing procedures found in ACC Section 910.

SUMMARY OF COVERAGE: These sections establish the formal requirements necessary to reflect the combination. Section .550 provides that each constituent corporation must execute a set of recombination articles, including the mechanics of the shareholder vote. Section .552 directs that a duplicate copy of the recombinate articles be delivered to the commissioner.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 11.05 is functionally identical identical to ACC Section .552

Section .554 MERGER OF SUBSIDIARY CORPORATION

Section .556 PROCEDURE FOR MERGER OF SUBSIDIARY CORPORATION

Section .558 FILING OF ARTICLES OF MERGER OF SUBSIDIARY CORPORATION

ORIGIN: ACC Section .554 is taken from MBCA Section 75, and has no precedent in Alaska law.

ACC Section .556 is taken from MBCA Section 75, with a modification to create a presumption against disparate treatment of the shares.

ACC Section .558 is taken from MBCA Section 75.

SUMMARY OF COVERAGE: This section authorizes a merger between a parent and a subsidiary whenever at least 90 percent of all outstanding shares of each and every class are owned by the parent corporation.

ACC Section .556 places the power to propose and implement a merger of the subsidiary in the board of the parent. No shareholder approval is required. Disparate treatment of shares must pass muster under ACC Section .542.

ACC Section .558 continues the uniform filing procedures established in ACC Section .910.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 11.04 is functionally identical to ACC Sections .554, 556 and .558 in the treatment of "short form mergers" between a parent and a 90% owned subsidiary. It does not, however, contain the ACC Section .556(a)(2)'s language creating the presumption of non-discriminatory treatment of all shares of the subsidiary.

Section .560 EFFECT OF MERGER, CONSOLIDATION, OR EXCHANGE

ORIGIN: ACC Section .560 is predicated upon revised MBCA Section 76. The provision for an optional delayed effective date, the inclusion of share exchanges, and the elimination of net surplus reflect the changes made to AS 10.05.405.

SUMMARY OF COVERAGE: ACC Section .560 governs the date, circumstances when an organic change becomes effective. It is a sufficient authority for the succession by the surviving or resulting corporation to all of the rights and liabilities of the constituent corporations. To the extent that the recombination articles purport to amend the articles of incorporation, such change is given effect. Finally, ACC Section .560(c) determines the fate of all shares of the constituent corporations which are to be converted or exchanged. The ownership claims and interests of shareholders in the constituent corporations are defined subject to any rights which may be asserted by a dissenting shareholder under ACC Section .574.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 11.06 is functionally identical to ACC Section .560 except for its failure to spell out the consequences of a consolidation in which constituent corporations A and B emerge as resulting corporation C.

Section .562 MERGER, CONSOLIDATION, OR EXCHANGE OF SHARES BETWEEN DOMESTIC AND FOREIGN CORPORATIONS

ORIGIN: ACC Section .562 is predicated upon new Section 77 of the MBCA, and replaces AS 10.05.408, .411, and .414. The inclusion of share exchange is unprecedented.

SUMMARY OF COVERAGE: ACC Section .562 removes potential conflicts of laws when domestic and foreign corporations undergo organic change. This section provides that if the surviving or resulting corporation is foreign, it must as a condition of merging with a domestic corporation agree to service of process in Alaska, and to pay promptly all dissenting shareholders.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 11.07 is functionally identical to ACC Section .562 except that the substantive law referenced and made applicable to the surviving foreign corporation differs as noted above.

Section .564 REORGANIZATION: DISCLOSURE OF ALIEN AFFILIATES

ORIGIN: ACC Section .564 reflects the content of AS 10.05.250, as amended in 1980.

SUMMARY OF COVERAGE: This section requires the disclosure of alien affiliates and the percentage of their outstanding shares in any corporation organized under this Chapter.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA is indifferent to the status of alien affiliates.

Section .566 SALE OF ASSETS IN REGULAR COURSE OF BUSINESS; MORTGAGE OR PLEDGE OF ASSETS

ORIGIN: ACC Section .566 is predicated on the 1962 version of Section 78 of the MBCA, and modifies the content of AS 10.05.435.

SUMMARY OF COVERAGE: The proposed Alaska Corporations Code distinguishes between a sale of assets in the normal course of business (such as a sale of all inventory) and a sale of all or substantially all assets not in the regular course of business. Shareholder approval is necessary for the latter on the theory that, like a merger or share exchange, it represents another fundamental change.

ACC Section .566 is concerned with the sale, lease, exchange, or other disposition of all or substantially all of the property and assets of the corporation in the usual and regular course of its business. The power to effectuate such a transaction resides with the board; it does not require shareholder approval. A mortgage or pledge of these assets

may be made under similar authority irrespective of whether or not it is in the regular course of business. This last provision would change existing Alaska law which required shareholder approval of such mortgages or pledges of corporate property.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 12.01 is functionally identical to ACC Section .556 and would also change existing Alaska law by not requiring shareholder approval for any pledge or mortgage of corporate assets.

Section .568 SALE OF ASSETS NOT IN REGULAR COURSE OF BUSINESS

Section .570 APPROVAL OF TRANSACTION BY SHAREHOLDERS

Section .572 ABANDONMENT OF TRANSACTION BY BOARD

ORIGIN: ACC Section .568 is predicated upon MBCA Section 79. AS 10.05.438 is modified to eliminate a mortgage or pledge of all or substantially all assets (now covered under Section .566). This section differs from the Model Act by requiring shareholder notice also to include a copy of the ACC Sections on the rights of dissenting shareholders.

ACC Section .570(a) is predicated upon MBCA Section 79(c), and preserves the two-thirds voting requirement of AS 10.05.441. Section .570(b) is new.

ACC Section .572 is predicated upon MBCA Section 79(d), and reflects without change AS 10.05.444.

SUMMARY OF COVERAGE: ACC Section .568 treats the sale, lease, exchange, or other disposition of all or substantially all of the assets of a corporation as the equivalent of an organic change if not made in the usual course of business. When not in the regular course of business, written notice of the proposed disposition of assets and a copy of the ACC provisions on dissenters' rights must be given to all shareholders regardless of voting rights

The proposal for the sale of all or substantially all of the assets is approved by the affirmative vote of two-thirds of all outstanding shares, with all shares being enfranchised regardless of restrictions or limitations in the articles. Class voting is recognized. Section .572(b) requires the extraordinary absolute 90 percent approval by outstanding shares (with all shares franchised) when the buyer is in control of or under the control of the seller.

This section permits the board, in its discretion, to abandon a section .568 transaction notwithstanding its approval by the shareholders.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 12.02 accords with ACC Sections .568 -- .572 in treating the sale, lease or exchange of all or substantially all corporate property other than in the usual and regular course of business as an organic change. The proposal must originate with

the board and cannot be effectuated without shareholder approval. Unlike existing and proposed Alaska law, the RMBCA requires only majority approval. The official comment makes it clear that class voting can be had in appropriate circumstances even though the section is silent on the question. The official comment also warns of the existence of dissenter's rights, a topic upon which RMBCA Section 12.02 is also silent. By contrast,the ACC gathers all of these important provisions into the three related sections rather than scattering them across a lengthy code.

Section .574 RIGHT OF SHAREHOLDERS TO DISSENT

ORIGIN: ACC Section .574 is predicated upon MBCA section 80, with alterations to allow dissenters' rights for shareholders in corporations party to a share exchange. This section consolidates AS 10.05.417 through .432 and AS 10.05.447. through .462.

SUMMARY OF COVERAGE: ACC Section .574 provides that a shareholder who has dissented from an organic change has a right to have the corporation purchase her shares at "fair valuation." Section .574(b) changes Alaska law by recognizing that a shareholder need not dissent with respect to all of her shares. Section .574(c) changes Alaska law by denying dissenters' rights in the case of a "short form" merger (Section .556). There is an additional change by the presumptive denial of dissenters' rights for holders of shares traded on a national securities exchange on the record date fixed for ascertaining the shares entitled to vote on the organic change.

ACC Sections .576 through .582 establish the criteria for perfecting dissenter's rights, withdrawal of a demand, notice, payment for shares, action to determine value of shares upon failure to agree, and status of shares reacquired by the corporation. Aside from the right to litigate the regularity of any organic change, or to challenge any disparate treatment of shares (Section .542), the right to claim the status of a dissenter is intended to be the exclusive remedy available to shareholders.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 13.02 parallels ACC Section .574 in recognizing the right of shareholders to dissent in the case of an organic change, including the sale of all or substantially all of the corporate property other than in the usual and regular course of business. However, RMBCA Section 13.02(a)(4) goes beyond existing or proposed Alaska law, or the prior content of MBCA Section 80, in creating dissenter's rights in the event the corporation amends its articles to impair the shareholder's preemptive, redemption, or voting rights. The final draft of the RMBCA has added yet another circumstance in which dissenter's rights are recognized. It would allow a shareholder to dissent to an amendment which would reduce her shares to a

fraction of a share if the fractional share could be acquired for cash under Section 6.04.

The Model Act exception, reflected in ACC Section .574(d), which denies preemptive rights if the securities were readily marketable on a national exchange is not carried over into RMBCA Section 13.02.

Section .576 RIGHTS OF DISSENTING SHAREHOLDERS: PROCEDURE TO ENFORCE SHAREHOLDER'S RIGHT TO RECEIVE PAYMENT FOR SHARES; WITHDRAWAL OF DEMAND

ORIGIN: ACC Section .576 is predicated upon Section 623(a), (b), (c), (e), and (f) of the NYBCL as amended in 1982. The provisions which explicitly determine the impact upon the status of the dissenting shareholder, the restoration of full shareholder status, and the obligation of the corporation to tender what it determines to be the fair value of the dissenter's shares are new to Alaska law.

SUMMARY OF COVERAGE: ACC sec. 576 creates the machinery for perfecting the rights of a dissenting shareholder as well as the circumstances in which that status may be terminated or withdrawn.

A plan to engage in an organic change must originate with the board of directors, which is obligated to give written notice of the plan to shareholders prior to the meeting at which shareholders are to vote upon the plan. A shareholder electing to exercise a right to dissent is obligated to file a written objection to the proposed action to which the shareholder dissents prior to the shareholder meeting at which the vote on the action is to be taken. The written notice is to include, in part, a demand for payment should the proposed action be approved by the shareholders. If the proposed organic change is approved, the corporation is required to give written notice of the approval to dissenting shareholders and to shareholders from whom written objection was not required. A shareholder who votes in favor of the proposed change loses the right to dissent notwithstanding any written objection.

Under the ACC, the corporation is obligated to tender what it deems to be the fair value of dissenters' shares upon consummation of the organic change. Upon such consummation, shareholders who have perfected their status as dissenting shareholders cease to have any rights in the corporation except to be paid the fair value of their shares. However, a shareholder may elect to withdraw the objection and be restored to full status as a shareholder, including any intervening preemptive rights, dividends, or distributions at any time prior to acceptance under sec. 578(f).

Sec. 576(f) requires the dissenting shareholder to submit the share certificates for which payment is claimed to the corporation, which must then impress the certificates with a legend to the effect that they are subject to

corporate purchase. A shareholder who fails to submit shares within the specified time limits creates an option in the corporation to defeat the dissenter's rights otherwise conferred by this chapter.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The ACC provisions on dissenters' rights are substantively similar with those of the RMBCA. Where the ACC differs from the RMBCA, it usually has followed the New York Act or former Alaska provisions (which were based on the MBCA). The RMBCA itself "basically adopts the New York formula as to exclusivity of the dissenters' remedy ..." See RMBCA Official Comment to sec. 13.02.

RMBCA sec. 13.21 contains the requirement that a shareholder objecting to the proposed organic change submit written notice of his objection prior to the meeting of shareholders at which the vote on the proposal is taken. Further, this section also requires that a dissenting shareholder must not vote in favor of the action. RMBCA sec. 13.22 requires the corporation to provide dissenters with a written notice explaining what the dissenters must do to perfect their status. Unlike the ACC, the RMBCA requires the corporation to issue a "dissenters' form" that each dissenter must complete and return under sec. 13.24 in order to perfect the demand for payment.

Section .578 OFFER AND PAYMENT TO DISSENTING SHAREHOLDERS; CIRCUMSTANCES WHERE PROHIBITED

ORIGIN: ACC Section .578 is drawn from Section 623(g) of the NYBCL and Section 13.25 of the RMBCA. Under the New York formulation, the corporation's initial obligation was to tender only 80% of what it deemed to be the fair valuation of the dissenters' shares. The ACC adopts the Revised Model Act's requirement for a tender of 100% of that amount, a requirement new to Alaska law.

SUMMARY OF COVERAGE: Under this section, the corporation is obligated to make a written offer to pay each dissenter what the corporation estimates to be the fair value of such shares. The ACC adopts the rationale of the Official Comment to RMBCA sec. 13.25: "This obligation to make immediate payment is based on the view that since the person's rights as a sharenolder are definitely terminated with the completion of the transaction, he should have immediate use of the money to which the corporation agrees it has no further claim. A difference of opinion over the total amount to be paid should not delay payment of the amount that is undisputed." The tender of advance payment of the corporation's estimate of fair value must be accompanied by advice that acceptance of the advance payment does not constitute a waiver of the shareholder's right to contest the fair value. However, a shareholder who fails to make a

written objection within a specified time limit is conclusively deemed to have agreed to the corporation's fair valuation.

Section 578(g) provides that if the corporation's total obligation to pay all dissenting shareholders would result in violation of statutory restraints upon distributions (ACC sections 358, 360, 363, 365, or 375), then the corporation is forbidden to make any payment. Thus, the ACC subordinates the rights of dissenting shareholders to creditors. This section proceeds to spell out what the corporation must do to notify shareholders of its inability to pay, explain to shareholders their options (either to withdraw their election to dissent or affirm their election and become creditors of the corporation, subordinated in interest to other corporate creditors), and make payment to dissenters at the point in time where payment can be made without violation of restraints upon distribution.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The ACC follows RMBCA sec. 13.25 in creating an obligation in the corporation to pay 100% of what the corporation estimates to be the fair valuation of dissenters' shares. The RMBCA, like existing Alaska law, is silent on the obligation of a corporation which could not make payments to dissenting shareholders without so debilitating its assets as to become irresponsible to its creditors. Thus, ACC sec. 578(g) follows the New York Act in clearly subordinating the rights of dissenting shareholders to corporate creditors.

Section .580 ACTION TO DETERMINE VALUE OF SHARES UPON FAILURE TO ACCEPT CORPORATE OFFER

ORIGIN: ACC sec. 580 is drawn from Section 623 of the NYBCL as amended, and replaces former AS 10.05.426 and 456. These former provisions of Alaska law did not contain the provisions designed to consolidate all dissenters and the corporation into one forum with a single litigation concerning "fair value." Former AS 10.05.456 also did not contain provision on costs and expenses, nor did it deal with the issue of payments to dissenters in violation of restraints upon distributions.

SUMMARY OF COVERAGE: If the corporation fails to make the offer required by sec. 578(a), or if the shareholder rejects it within the 30 day period specified in (f) of that section, sec. 580(a) sets the stage for a single judicial proceeding in which the fair value of the shares will be ascertained and all remaining dissenting shareholders will be bound. The initial obligation to commence this judicial proceeding is on the corporation; should it refuse or fail to initiate the proceeding, any dissenting shareholder may then proceed in the name of the corporation. All shareholders who have rejected the corporate offer are made parties to the

proceeding. The task of the court is defined in sec. 580(c). Under sec. 580(d), the judgment of the court shall include allowance for interest. Sec. 580(e) provides for the norm that each party shall bear its own expenses, but that tne court is empowered, under prescribed guidelines, to apportion and assess any or all of the costs, expenses, and fees against either the shareholders or the corporation.

Finally, sec. 580(g) provides that unless payment should violate the restraints upon distribution made applicable by sec. 578(g), the corporation must pay dissenting shareholders within 60 days the fair price as determined by the court.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 13.30 parallels ACC sec. 580(a)-(d). Under the RMBCA, if the corporation does not file for a judicial determination of fair value within the time proscribed, it is automatically obligated to pay the shareholder the amount demanded. The strategy of the ACC for coping with this eventuality is to grant to any dissenting shareholder the right to commence the judicial proceeding and then bind all shareholders to that single determination by assertion of quasi-in-rem jurisdiction of the superior court.

RMBCA Section 13.31 parallels ACC sec. 580(e) permitting the court to assess the costs associated with the determination of fair value.

Section .582 STATUS OF SHARES ACQUIRED FROM DISSENTING SHAREHOLDERS

ORIGIN: ACC Section .582 is predicated upon MBCA Section 81, and consolidates AS 10.05.429 and .462, with the substituted reference to "reacquired" for "treasury" shares.

SUMMARY OF COVERAGE: ACC Section .582 establishes that shares purchased from dissenters may be used by the surviving corporation as reacquired shares; except that in the case of merger or consolidation, they may be held and disposed of as the plan may otherwise provide.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: It would appear that the RMBCA has failed to include an express provision comparable to former MBCA Section 81. Under RMBCA sec. 6.31, a corporation is generally empowered to acquire its own shares, which shares become authorized but unissued shares.

ARTICLE 9. DISSOLUTION

Section .605 VOLUNTARY DISSOLUTION BY VOTE, WRITTEN CONSENT OF SHARES, OR ELECTION OF THE BOARD

ORIGIN: Dissolution is to a corporate entity what death is to a natural person. As with the provisions respecting the articles and bylaws, amendments and organic change, the protection of the interests of shareholders and creditors and the imposition of duties of care and loyalty upon directors and officers are addressed in the ACC provisions governing dissolution. Article 9 carefully distinguishes between two fact patterns which are united only in the conclusion that the corporation ceases to exist. The distinction is predicated upon whether the decision to dissolve is that of a majority of the shareholders, or whether that result is inflicted upon the corporation by judicial decree because of the valid contention of a minority of shareholders or the commissioner that the continued existence of the corporate entity is intolerable. If majority consent is the key, the dissolution is said to be "voluntary." If the life of the corporation is to be taken as a consequence of gross abuse of the minority or persistent and serious flaunting of the state's regulation, then corporate termination is "involuntary."

The ACC provisions on voluntary dissolution reflect substantial modification of prior Alaska law and follow the format and content of the California General Corporation Law. However, the California model proved unacceptable as a basis for most of the provisions respecting involuntary dissolution where the decision was made to pattern the proposed code after the Model Business Corporation Act and historic Alaska statutes. Notwithstanding, certain innovations from the GCL have been engrafted onto the involuntary provisions and are noted in the official comments to the specific sections.

ACC Section .605 is an adapted version of GCL Section 1900, and a consolidation of AS 10.05.465, .474, and .477. This section differs from Alaska law insofar as it curtails the role of the board in initiating and approving a plan of voluntary dissolution.

SUMMARY OF COVERAGE: ACC Section .605 places the decision to voluntarily dissolve a functioning corporation with the shareholders. Under the ACC, the board of directors is given no role in either proposing or passing upon the decision to voluntarily dissolve. Thus, the shareholders initiate the proposal, and must cast at least a two-thirds affirmative vote of the shares in order to approve the plan. Alternatively, unanimous written consent of the franchised shares

will eliminate the need for a noticed meeting. Three exceptions, where the board does possess the power to voluntarily dissolve, are: (1) where the corporation has been adjudged bankrupt, (2) the corporation has no assets and a history of having transacted no business for the preceding five years, or (3) where the corporation is still-born having issued no shares.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA also distinguishes between voluntary and what is termed "judicial dissolution." A third category, "administrative dissolution" is a specie of involuntary dissolution worked by the state as a consequence of corporate failure to comply with applicable law. The ACC classifies such administrative procedures as a specie of involuntary dissolution. Aside from this basic similarity, there are distinctions between the two codes which will be detailed in the following section by section analysis.

RMBCA Section 14.02 differs significantly from the ACC Section .605/California philosophy on voluntary dissolution. Under the RMBCA the shareholders have the power to initiate and effectuate the decision to voluntarily dissolve only if they can act unanimously under Section 7.04. In all other instances they must depend upon the board of directors to initiate a proposal to voluntarily dissolve the entity. In tne absence of a provision in the articles requiring a greater vote, the board's proposal is approved if ratified by a majority of the shares.

RMBCA Section 14.01 makes the initial board or incorporators competent to dissolve a corporation which is still born having neither issued shares nor transacted business.

Section .608 CERTIFICATE OF ELECTION: CONTENTS, SIGNING, VERIFICATION AND FILING

ORIGIN: ACC Section .608 derives from GCL Section 1901, and consolidates AS 10.05.468, .474, .480, and .483 (MBCA Sections 82(b), 83(b), 84(b), and 85).

SUMMARY OF COVERAGE: ACC Section .608 imposes upon the corporation the requirement that it file with the commissioner a certificate of election to dissolve, the content of which is specified. This section works only minor changes in the signing ,verifying, and filing procedures as found in current Alaska law.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.03 is substantially in accord with ACC Section .608 substituting the term "articles of dissolution" for the "certificate of dissolution."

Section .610 CERTIFICATE OF REVOCATION OF ELECTION: CONTENTS, SIGNING, VERIFICATION, AND FILING

Section .613 EFFECT OF CERTIFICATE OF REVOCATION OF ELECTION

ORIGIN: ACC Section .610 is an adapted version of GCL 1902, which consolidates MBCA Sections 88,89, and 90, and AS 10.05.492 through .504.

ACC Section .613 is substantially a reenactment of AS 10.05.507, based upon MBCA Section 91.

SUMMARY OF COVERAGE: ACC Section .610 permits a corporation to revoke an election to wind up and dissolve prior to the distribution of any assets, and upon approval of the same power as made the initial decision to voluntarily dissolve. The provision that no assets be distributed prior to revocation of election to dissolve is the most important change wrought by Section .610, and is crucial in protecting the interests of creditors and senior shares as provided in ACC Sections .358 through .365. The contents and procedure for filing a certificate of revocation of election are specified.

Effectiveness of the certificate of revocation of election is contingent upon inspection, filing, and return of a duplicate original by the commissioner. Until that time, the corporation is deemed to be in the process of dissolution.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.04 also permits a corporation to revoke the decision to dissolve by the same authority who made the initial decision to dissolve. The California and ACC condition that there have been no distribution of corporate assets under the aborted plan to dissolve is, unfortunately, not reflected in Section 14.04. Instead, it merely requires that the election to revoke the dissolution occur within 120 days of the date on which articles had been delivered to the secretary of state. The consequence of an effective revocation of the dissolution election under RMBCA Section 14.04(d) and (e) is identical to ACC Section .613.

Section .615 COMMENCEMENT AND CONDUCT OF VOLUNTARY PROCEEDINGS FOR WINDING UP; CESSATION OF BUSINESS; NOTICE

ORIGIN: ACC Section .615 is adapted from GCL Section 1903, and replaces AS 10.05.486 and .489(1) (MBCA Sections 86 and 87). The express provisions for board powers during winding up and the limited circumstances in which the corporation may continue normal business activities during winding up are new to Alaska law.

SUMMARY OF COVERAGE: Under ACC Section .615, "dissolution" is the decision to terminate the corporate existence. The actual steps which effectuate that decision are termed "winding up". Those steps begin and become obligatory upon electing to dissolve. In an important break with older statutes, winding up (the marshalling of all corporate assets, payment of all creditors and distribution of any net assets to share-

holders) is not vested in court appointed receivers, but is the responsibility of the board of directors.

A decision to dissolve the entity dramatically affects the real authority of the board. No longer may it continue pursuit of the original corporate business or purpose(s). Instead, it is to wind up the corporate affairs, file the articles of dissolution (ACC Section .620) and in so doing terminate the corporate existence (ACC Section .625). It is the goal of the statute that voluntary dissolution can, and typically will, be accomplished without the expense and inconvenience of judicial intervention by the elected representatives of the shares.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: 14.05 is functionally identical to ACC Section .615.

Section .618 JUDICIAL SUPERVISION OF WINDING UP; PETITION AND NOTICE; ORDER PROTECTING SHAREHOLDERS AND CREDITORS

ORIGIN: ACC Section .618 is an adapted version of GCL Section 1904, broadening the coverage of AS 10.05.489(3) (which was based upon MBCA Section 87).

SUMMARY OF COVERAGE: ACC Section .618 creates standing in the corporation, a five percent shareholder(s), or three or more creditors to petition the superior court to assume jurisdiction over the winding up of the corporation which has elected to voluntarily dissolve. The assumption of jurisdiction is discretionary with the court. The standing in the shareholders and creditors is new to Alaska law.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.30(4) attains only one of the prudential safeguards achieved by ACC Section .618. Under Section 14.30(4) the corporation is given standing to have its voluntary dissolution continued under court supervision. The official comment (14-38) explains that such a step may be "appropriate to permit the [illegible]ly liquidation of the corporate assets and to protect the corporation from a multitude of creditors' suits or suits by dissatisfied shareholders. Unfortunately, those creditors and shareholders are given no standing to invoke such a petition, a standing which is recognized under ACC Section .618.

Section .620 ARTICLES OF DISSOLUTION: CONTENT

Section. 623 FILING OF ARTICLES OF DISSOLUTION

Section .625 EFFECT OF CERTIFICATE OF DISSOLUTION

ORIGIN: ACC Section .620 is taken from GCL Section 1905, and replaces AS 10.05.510, which was modeled after MBCA Section 92.

ACC Sections .623 and .625 are reenactments of AS 10.05.513 and .516, based upon MBCA Section .93.

SUMMARY OF COVERAGE: Upon completion of the winding up process, a corporation is to file articles of dissolution, whose content and filing procedure are specified.

ACC Sections .623 and .625 establish a procedure whereby the articles are filed, processed by the commissioner, and a certificate of dissolution is issued. The issuance of the certificate terminates the existence of the corporation except for certain purposes.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains no comparable coverage. The official comment to RMBCA Section 14.03 (14-9) makes it clear that the "articles of dissolution" are comparable to the ACC's certificate of dissolution and merely stipulate the procedure whereby the decision to voluntarily dissolve was achieved. The continuation of the corporate existence after dissolution is thought by the framers of the tentative draft a sufficient protection for corporate creditors and holders of shares with a liquidation preference. Such a notion was rejected in California and it is with the California precedent that the ACC is aligned.

Section .628 INVOLUNTARY DISSOLUTION BY VERIFIED COMPLAINT; FILING; INTERVENTION BY SHAREHOLDER OR CREDITOR

ORIGIN: ACC Section .628 is predicated upon GCL Section 1800, with the deletion of 1800(d). It replaces AS 10.05.540 through .543, which was based upon MBCA Section 97. Section .628(b)(1), (2), (3), and (4) reenact comparable provisions of AS 10.05.540(1), (2), and (3). Section .628(b)(5) is new and designed to provide relief in what are, fundamentally, incorporated partnerships. Section .628(b)(6) is also new and in combination with subsection (a)(3), permits any shareholder to dissolve a corporation whose terms has expired. Section .628(c) replaces AS 10.05.552. Prior law specified that the joinder of shareholders was not necessary; this principle is implicit in subsection (c) which grants to any shareholder a right of intervention.

SUMMARY OF COVERAGE: ACC Section .628 envisions involuntary dissolution as an adversarial process conducted before a trial court. Section .628(a) provides that a verified complaint may be filed in the superior court by one-half or more of the directors then in office, a shareholder(s) holding shares representing not less than one-third of the common shares, any shareholder if the ground for dissolution is expiration of the period of time for which the corporation was formed, or any person expressly authorized to do so in the articles.

The grounds for involuntary dissolution are specified in Section .628(b). The use of involuntary dissolution to

resolve deadlocks at either the director or shareholder level is evident in Section .628(b)(2) and (3). However, in addition to deadlock, there must be a serious threat to the business or property of the corporate entity. With respect to shareholder deadlock, there must be tn further element of a history of futile effort to resolve the impasse.

Section .628(b)(4) sets a specific standard for involuntary dissolution predicated upon the conduct of those in control of the entity. In essence, their pattern of behavior must have risen to such a damaging level as to make their continued exercise of the prerogatives of corporate existence obnoxious to both the minority shareholders and the state. If the corporation is held beneficially by 35 or fewer persons of record, Section .628(b)(5) sets a protection of the rights of the complaining shareholder(s) as a further ground for involuntary dissolution. Finally, under Section .628(d) the definition of shareholder is expanded to include those who hold beneficial interests in shares committed to a voting trust under ACC Section .425.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.30(b) is similar to ACC Section .628(b) in enumerating grounds for involuntary dissolution. However, the standing is limited to a shareholder. By contrast, ACC Section .628(a) would grant standing to one half or more of the directors then in office, a shareholder(s) holding one-third or more of the voting power, and any other person authorized in the articles. The grounds include deadlock at either the shareholder or director level and, like ACC Section .628, require an allegation of a threat to the corporate business and affairs. Oppression, fraud, or illegal conduct by those in control of the corporation is also recognized as a ground for seeking involuntary dissolution. Unfairness toward shareholders is not an enumerated ground and, in another difference from ACC Section .628, there is no ground for utilizing involuntary dissolution proceedings to protect the interests of complaining shareholders in a closely held entity.

RMBCA Section 14.30(3) grants to a creditor standing to seek involuntary dissolution if her claim has been reduced to judgment and the corporation is insolvent. ACC Section .628 does not permit creditors to commence the involuntary dissolution proceeding but would permit a creditor or shareholder to intervene for reasons deemed satisfactory by the trial court.

Section .630 AVOIDING DISSOLUTION BY VERIFIED COMPLAINT; PURCHASE OF PLAINTIFF'S SHARES; DETERMINATION OF FAIR VALUE; STAY; APPRAISAL; AWARD; APPEAL;

ORIGIN: ACC Section .630 is a modified version of GCL Section 2000, and is unprecedented in Alaska law.

SUMMARY OF COVERAGE: The proposed code recognizes that tne involuntary dissolution of a corporation is a step attended

by serious immediate and general social consequences. In addition to terminating the corporation as an investment vehicle for its beneficial owners, it is eliminated as an employer, competitor and vehicle for distributing goods or services in the market place. Each of these employee and consumer interests make alternatives to dissolution desirable. To accommodate these interests ACC Section .630 establishes two circumstances in which the continued corporate existence may be preserved while at the same time relieving the plight of the plaintiffs who sought involuntary dissolution. First, the corporation may avoid the dissolution by purchasing for cash at fair value the shares owned by the plaintiffs (subject to any contrary provision in the articles). If the corporation elects not to purchase plaintiffs' shares, holders of 50 percent or more of the voting power may do so. Fair valuation is determined on the basis of the liquidation value.

Section .630(b) provides for situations when agreement as to fair value cannot be reached between the purchasing party and the selling party. Upon application to the court and the posting of security for expenses, the court will stay the dissolution proceedings and ascertain the fair value of the shares. Section .630(c) states the procedures which the court and court appointed appraisers shall follow in ascertaining the fair value of the shares. The court is directed to include in its order an alternative decree for the winding up and dissolution of the corporation should the purchasing party fail to pay the amount determined by the appraisers. If the purchasing party wishes to appeal the appraisal, Section .630(d) requires that the purchasing party first pay the appraised value to the moving (selling) party.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: Unfortunately for the public interest, the RMBCA contains no contingencies for saving the corporate existence once proceedings for judicial dissolution have been commenced.

Section .633 INVOLUNTARY DISSOLUTION BY THE COMMISSIONER: GROUNDS, PROCEDURE, REINSTATEMENT

ORIGIN: ACC Section .633 is a reenactment of AS 10.05.519 with substantial amendments. It continues the provisions of AS 10.05.519 which modified MBCA Section 94 to substitute involuntary dissolution by administrative process for judicial proceedings inaugurated by the Attorney General. However, the provisions respecting due process rights of the corporation (administrative hearing and trial de novo) are new to Alaska law. AS 10.05.519(h) has been severed from this section and is treated in ACC Section .635.

SUMMARY OF COVERAGE: ACC Section .633 creates discretion in the commissioner to effect an involuntary dissolution by administrative action for specified grounds, subject to an appeal to the superior court. This section provides for notice

to be sent to the corporation, and affords the corporation an opportunity to correct the neglect, omission, delinquency, or noncompliance, or, to request an administrative hearing. The ACC attempts to give the targeted corporation liberal due process in these administrative proceedings. Thus before the decision to administratively dissolve can be carried into effect, the corporation must be accorded a prior hearing to ascertain the presence or absence of the noticed grounds. If the commissioner continues to abide by the original decision to involuntarily dissolve, Section .633(c) grants the corporation an opportunity to appeal to a superior court where the matter will be tried de novo. Section .633(e) establishes a two year period in which a corporation dissolved by the commissioner may be reinstated. Finally, Section .633(g) provides for the non-gratuitous assignment of contract rights by the dissolved corporation, and for counterclaim and set-off to diminish liability to the assignee.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.20 establishes the grounds for administrative dissolution. The list is shorter than that advanced under ACC Section .633 and ignores such Alaska interests as the failure of a control person to comply with the requirement of appointing a registered agent; the protracted failure to fill a vacancy on the board; and, the failure to complete dissolution within two years after filing a certificate of election to voluntarily dissolve. Under the RMBCA administrative dissolution is effected by the secretary of state.

RMBCA Section 14.21 details procedures for administrative dissolution which correspond to ACC Section .633(b). The prior hearing and court appeal rights guaranteed in the ACC are absent from the RMBCA provisions on administrative dissolution. There is no right to a prior hearing before the administrative official in RMBCA Section 14.21. The official comment (14-29) asserts the remarkable premise that grounds will rarely be controverted. Instead of a prior hearing, the corporation must either comply with the administrative demand for correction of the alleged ground or suffer administrative dissolution! The immediate consequence is that it is forbidden to conduct business. In this state of business paralysis, it may now invoke RMBCA Section 14.23 and petition the secretary of state for reinstatement. Only if that is denied can an appeal be taken, under RMBCA Section 14.23(b) to a trial court. Whether a trial de novo can be claimed in that court is left unspecified.

Section .635 COMMISSIONER'S AUTHORITY TO BRING ACTION FOR INVOLUNTARY DISSOLUTION; GROUNDS; RELIEF

ORIGIN: ACC Section .635 paragraphs (a)(1) and (a)(2) are taken from AS 10.05.519, which is based upon Oregon Revised Statutes Section 57.585 and MBCA Section 94. Paragraphs .635(a)(3) and (a)(4) and subsection (b) are taken from GCL Section 1801(a)(1),(3), and (c).

SUMMARY OF COVERAGE: The classical "quo warranto proceeding" wnere the corporate charter is revoked for serious legal offense is reflected in ACC Section .635. Following a long-standing legislative decision, the state's interest is guarded by the Commissioner of Commerce and Economic Development rather than the Department of Law. ACC Section .635 establishes the commissioner's authority to bring an action for involuntary dissolution in the superior court upon specified grounds. The court may order dissolution or other relief as it considers just and proper, and may appoint a receiver for the winding up or order the board to wind up the corporation under the court's supervision.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.30(a) defines the quo warranto powers recommended in the tentative draft. They do not include the ground that the corporation has seriously violated a statute regulating corporations (ACC Section .635(a)(3)). The power of a court which has assumed jurisdiction over such a proceeding is confirmed in RMBCA Section 14.31(b) in a manner functionally equivalent to ACC Section .635(b).

Section .638 VENUE AND PROCESS FOR COMMISSIONER'S ACTION

ORIGIN: ACC Section .638 is a reenactment of AS 10.05.534, which is modeled after MBCA Section 96.

SUMMARY OF COVERAGE: This section establishes the venue and service of process rules governing suits for involuntary dissolution.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.31(a) covers the venue for such a proceeding wnich is entrusted to prosecution by the attorney general. The statute does not specify the notice requirements mandated by ACC Section .638.

Section .640 APPOINTMENT OF PROVISIONAL DIRECTOR: DEADLOCK

ORIGIN: ACC Section .640 is predicated upon GCL Sections 308 and 1802.

SUMMARY OF COVERAGE: Where the ground for a complaint for involuntary dissolution is a deadlock in the board (ACC Section .628(b)(2)), Section .640 affords yet another opportunity to save the corporate existence. As an alternative to dissolving the corporation, the court may appoint a provisional director who is neither a shareholder nor a creditor of tne corporation. The provisional director has all the rights and powers of a director until the deadlock is broken, or until the director is removed by order of the court or by approval of the outstanding shares. The provisional director

is exempted from secondary liability of directors under ACC Section .488(a).

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.31(c) details the ancillary jurisdiction of a court before which a complaint for involuntary dissolution is pending. Such a court has the power to issue injunctions, appoint a receiver or custodian pendente lite, take actions to preserve the corporate assets and carry on the business of the entity until a full hearing can be held. Unfortunately, none of these powers directly or by fair inference, includes the authority to resolve the deadlock at the board level by appointment of a provisional director.

Section .643 APPOINTMENT OF RECEIVER: APPLICATION, HEARING AND NOTICE, SECURITY, QUALIFICATIONS, POWERS, COMPENSATION

ORIGIN: ACC section .643(a) is taken from GCL Section 1803, and is new to Alaska law. Subsection (b) is taken from MBCA Section 99 and reflects the content of AS 10.05.576. Subsection (c) is taken from MBCA Section 98 and AS 10.05.567, with the modification of omitting attorneys fees.

SUMMARY OF COVERAGE: ACC section .643 grants broad powers to a court which has assumed jurisdiction over a complaint seeking involuntary dissolution, to act upon plaintiff's motion for the appointment of a receiver. Unlike AS 10.05.555 through .573, and MBCA Section 98, which uses a "liquidation receiver", the receiver under the ACC serves to preserve the corporation and its business pending a hearing on the complaint for involuntary dissolution. The directors, under court supervision, are used to handle the affairs which the Model Act vests in the liquidating receiver.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.32 is similar to ACC Section .643. Since the RMBCA is rather vague on the major premise that the winding up of a corporation is normally committed to the directors, Section 14.32(a) is less clear than ACC Section .643 that the appointment of a custodian should be upon the motion of some shareholder or creditor able to convince the court that the directors cannot be entrusted to marshall and properly apply the corporate assets. A "receiver" under the RMBCA terminology does not act to manage the business and affairs of the corporation but rather acts to liquidate its assets. Under the ACC the term "receiver" embraces both functions for one acting under the authority of ACC Section .643.

Section .645 DECREE FOR WINDING UP AND DISSOLUTION: FURTHER JUDICIAL RELIEF

ORIGIN: ACC Section .645 is new, and based upon GCL Section

1804. This section replaces AS 10.05.537, .546, and .549, which were modeled upon MBCA Section 97.

SUMMARY OF COVERAGE: ACC Section .645 empowers the court hearing a suit for involuntary dissolution under either ACC Section .628 or .633 to decree a winding up and dissolution, or, in a final effort to preserve the social interests advanced by preservation of the corporate existence, issue such less drastic orders, decrees, and injunctions as justice and equity may require.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.33 covers the entry of a decree of dissolution. Unfortunately, it contains no reference to the authority of that court to order alternative relief aimed at the simultaneous resolution of the alleged ground for dissolution while preserving the corporate existence.

Section .648 COMMENCEMENT AND CONDUCT OF INVOLUNTARY PROCEEDINGS FOR WINDING UP; CESSATION OF BUSINESS; NOTICE

ORIGIN: ACC Section .648 is taken from GCL 1805, and replaces AS 10.05.555 and .558, which were based on MBCA Section 98.

SUMMARY OF COVERAGE: This section provides that upon entry of a decree under Section .645, the board is to commence winding up subject to court supervision. Regular business operations are to cease, except where the continuation of business activities is necessary to preserve goodwill or the going-concern value of assets which are to be sold. In the absence of a perfected appeal or stay order, notice is to be given to all shareholders and known creditors and claimants.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.06(b) accords with ACC Section .648 that in the wake of a decree of dissolution the process of winding up and liquidation is to commence. The official comment (14-48) references Sections 14.05, 14.06, and 14.07 which import the provisions on the process of winding up, liquidation and distribution.

Section .650 JURISDICTION OF COURT

ORIGIN: ACC Section .650 is adapted from GCL Section 1806, and replaces AS 10.05.573, .579, .582, and .585, which reflected the content of MBCA Sections 98, 100, 101, and 102.

SUMMARY OF COVERAGE: This section sets forth an extensive list of the ancillary powers and jurisdiction that may be exercised by the superior court. Of particular interest is the power conferred by Section .650(6) for the court to fill any vacancy on the board which the directors or shareholders prove unable to fill. Also of interest is Section .650(7),

which grants extraordinary powers of removal and prohibition from further office holding of any director guilty of dishonesty, misconduct, neglect or abuse of trust in conducting the winding up of the corporation.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: 14.31(c) contains a less explicit and expansive list of ancillary powers.

Section .653 CLAIMS AGAINST CORPORATION; COURT AND NON-COURT DIRECTED WINDING UP; PRESENTATION; NOTICE; PAYMENT; SECURED CLAIMS; REJECTED CLAIMS

ORIGIN: ACC Section .653 is predicated upon GCL Sections 1807 and 2008, and replaces AS 10.05.579, which was based upon MBCA Section 100.

SUMMARY OF COVERAGE: ACC Section .653 details procedures for settling all claims against the corporation. All claims must be presented within a specified time after which they are barred. This section makes separate provisions for the fate of contingent, unmatured, or disputed claims, or where there is uncertainty or dispute concerning the identity or capacity of the claimant, depending upon whether the winding up is with or without judicial supervision. When assets are reduced to cash, the Commissioner of Revenue is established as a stakeholder, under a provision which ensures that disputes do not leave the commissioner with custody of the assets for an indefinite period of time.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.06 deals with known claims against the dissolved corporation. Like ACC Section .653, it provides for notice to creditors and the establishing of deadlines which, if not met, bar claims. RMBCA Section 14.07 covers unknown claims against the entity. Like ACC Section .653(d) and (f), there is provision for notice by publication. Assets covering the claims of creditors or claimants who cannot be found or who are not competent to receive them are to be deposited, under RMBCA Section 14.40 with the state treasurer.

The above provisions of the RMBCA on voluntary dissolution are made applicable in the case of judicial dissolution by Section 14.33.

Section .655 ORDER DECLARING CORPORATION WOUND UP AND DISSOLVED; DECLARATIONS; EFFECT; ADDITIONAL ORDERS; DISCHARGE OF DIRECTORS

ORIGIN: ACC Section .655 is derived from GCL Section 1808, and replaces AS 10.05.585, which was based upon MBCA Section 102.

SUMMARY OF COVERAGE: Upon final settlement of accounts and a determination that the corporation's affairs are in a condi-

tion for it to be dissolved, ACC Section .655 directs the court to make an order declaring the corporation duly wound up and dissolved. This order must specify information regarding provisions for taxes and penalties, known debts and liabilities, and distribution of assets to shareholders. The order must also declare that those conducting the winding up have settled their accounts and that their duties and liabilities are discharged. Upon the issuance of this order, corporate existence ceases.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA does not contain an explicit provision covering what, under ACC Section .655, is the last step in the orderly winding up and distribution of corporate assets.

Section .658 FILING OF DECREE OF DISSOLUTION

ORIGIN: ACC Section .658 is a reenactment without change of AS 10.05.588, which was based upon MBCA Section 103.

SUMMARY OF COVERAGE: This section provides the procedure for filing of the decree of dissolution.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: Section 14.22(a) of the RMBCA directs that the "clerk of the court shall deliver a certified copy of the decree [of dissolution] to the secretary of state, who shall file it."

Section .660 POWERS AND DUTIES OF DIRECTORS IN DISSOLUTION PROCEEDINGS

ORIGIN: ACC Section .660 is derived from GCL Section 2001, and is new to Alaska law. It replaces AS 10.05.489(2), .564, and .570, which were based respectively on MBCA Sections 37 and 98.

SUMMARY OF COVERAGE: ACC Section .660 is the heart of the reformed framework for utilizing the incumbent directors and officers to conduct both voluntary and involuntary dissolution, a significant change from existing law, which utilizes a "liquidating receiver" appointed by the court. This section enumerates powers and duties of the board. In the event the superior court does not repose confidence in the abilities or fidelity of the incumbent management, it has power under ACC Section .648 to appoint other persons to conduct the winding up.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: As previously noted, it seems implicit under the terms of RMBCA Section 14.05 that the reform of utilizing incumbent directors in preference to court ordered authorities to conduct the winding up has been accepted by the framers of the tentative draft.

Section .663 PROCEEDING TO DETERMINE IDENTITY OF DIRECTORS OR TO APPOINT DIRECTORS

ORIGIN: ACC Section .663 is taken from GCL Section 1003. There is no comparable provision in Alaska law or the MBCA.

SUMMARY OF COVERAGE: This section creates a procedure for establishing the identity of those who are to wind up and dissolve the corporation, and to replace those who are unwilling or unable to perform their duties.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: This power is not expressly provided in the RMBCA.

Section .665 DISTRIBUTION OF CORPORATE ASSETS AMONG SHAREHOLDERS; WHEN TO BE MADE

ORIGIN: ACC Section .665 is based upon GCL Section 2004. It replaces AS 10.05.489 and .561, which were based upon MBCA Sections 87 and 98.

SUMMARY OF COVERAGE: This section provides for the distribution of remaining assets to shareholders according to their respective rights and preferences once the interests of creditors and other claimants against the corporation have been settled.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.05(a)(4) appears to be the only coverage of this point. It does not settle the issue of the timing of such distributions, an ambiguity which may work to the disservice of creditors.

Section .668 PROVISION FOR PAYMENT OF DEBT OR LIABILITY

ORIGIN: ACC Section .668 is taken from Section 2005 of the GCL. It is without precedent in Alaska law.

SUMMARY OF COVERAGE: ACC Section .668 provides a definition of the concept "adequate provision" for a debt or liability, a concept used extensively throughout Article 9 as a precondition for distributing assets to shareholders when all claims by creditors have not yet been settled.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.05(a)(3) makes a reference to the power to ". . . mak[e] provision for discharging its liabilities." Section 14.40 utilizes the state treasurer as a repository for funds set aside to pay unknown or ineligible creditors or claimants.

Section .670 DISTRIBUTION IN MONEY OR IN KIND; INSTALLMENTS

ORIGIN: ACC Section .670 is taken from GCL Section 2006, and is without precedent in either Alaska law or the MBCA.

SUMMARY OF COVERAGE: ACC Section .670 gives express sanction to distribution schemes which gives shareholders property as opposed to cash. Installment plans are also sanctioned.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains no coverage other than the general provisions of Section 14.05(a).

Section .673 PLAN OF DISTRIBUTION; ADOPTION; BINDING EFFECT; NOTICE; PAYMENT TO DISSENTING SHAREHOLDERS; ABANDONMENT

ORIGIN: ACC Section .673 is predicated upon GCL Section 2007, and is without precedent in Alaska law.

SUMMARY OF COVERAGE: ACC Section .673 permits the liquidation rights of outstanding shares to be altered to accommodate a plan of distribution of assets other than money upon the approval by the outstanding shares. Class voting is expressly provided. Preferred shares dissenting from the plan may require the corporation to make payment according to their unaltered liquidation preferences. If such dissent and demand prejudices the plan, the board is authorized to abandon the plan without further recourse to shareholders.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA does not contain provisions incorporating these powers.

Section .675 RECOVERY OF AMOUNTS IMPROPERLY DISTRIBUTED

ORIGIN: ACC Section .678 is taken from GCL Section 2009, and is new to Alaska law.

SUMMARY OF COVERAGE: Any amount improperly distributed to shareholders may be recovered under Section .675. There is no requirement that shareholders have knowledge of the impropriety of such a distribution. Any recovery from shareholders may not function to alter their rights to share pro rata in the residual assets of the corporation.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.07(d)(2) provides for the liability of shareholders who have received distributed corporate assets to the claims of creditors.

Section .678 CONTINUED EXISTENCE OF DISSOLVED CORPORATIONS; PURPOSES; ABATEMENT OF ACTIONS; DISTRIBUTION OF

OMITTED ASSETS

ORIGIN: ACC Section 678(a) is taken from AS 10.05.594, and is based upon MBCA Section 105. Subsections (b), (c), and (d) are taken from the 1980 amendment to AS 10.05.594 (SB 112).

SUMMARY OF COVERAGE: This section provides that a corporation that has been dissolved may continue to exist for an indefinite period of time for the purpose of winding up its affairs, prosecuting and defending actions by or against it, collecting and discharging obligations, disposing of and conveying its property, and collecting and dividing its assets.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 14.05(b) contains similar provisions continuing the corporate existence.

ARTICLE 10. FOREIGN CORPORATIONS

Section .705 ADMISSION OF FOREIGN CORPORATION

ORIGIN: ACC Section .705 is a reenactment of AS 10.05.597, which is based upon Section 106 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .705 conditions entry of a foreign corporation for the purpose of transacting business within Alaska. It is intended to exercise to the fullest the police power of the state while respecting the equal protection guarantees made obligatory by the Fourteenth Amendment to the Constitution of the United States.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.01(a) parallels ACC Section .705 in requiring a certificate of authority as a precondition to a foreign corporations ability to transact business within a host state.

Section .708 APPLICATION TO CORPORATIONS NOW AUTHORIZED TO TRANSACT BUSINESS IN THE STATE

ORIGIN: ACC Section .708 is a reenactment without change of AS 10.05.687 and is based upon Section 123 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .708 reflects the determination of the legislature to grant to foreign corporations, irrespective of their date of entry, the equal protections of the laws of Alaska including the imposition of all limitations, restrictions, liabilities, and duties prescribed in the ACC.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 17.02 parallels ACC Section .708 in extending the provisions of a new corporations code to foreign corporations currently qualified to transact business in the host state.

Section .710 LIABILITY FOR TRANSACTING BUSINESS WITHOUT CERTIFICATE OF AUTHORITY

ORIGIN: ACC Section .710 is a reenactment of AS 10.05.696 and is based upon Section 124 of the MBCA.

SUMMARY OF COVERAGE: In order to enforce the requirement that a foreign corporation obtain a certificate of authority prior to transacting business within Alaska, ACC Section .710

imposes a penalty of up to $10,000 per year or portion thereof during which such intrastate business was transacted without compliance with ACC Section .705. In addition, such a foreign corporation is made liable for all fees and taxes which would have been paid if there had been full compliance with the ACC.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.02(d) authorizes the imposition of a penalty for transacting business without a certificate of authority.

Section .713 TRANSACTING BUSINESS WITHOUT CERTIFICATE OF AUTHORITY AS BAR TO RIGHT TO SUE

ORIGIN: ACC Section .713 reenacts AS 10.05.690 and is based upon Section 124 of the MBCA.

SUMMARY OF COVERAGE: Among the disciplinary consequences of a foreign corporation's transaction of business within Alaska without compliance with ACC Section .705 is the denial of its right to maintain any action, suit, or proceeding in Alaska state courts.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.04(a), (b), and (c) creates identical consequences to those set forth in ACC Section .713.

Section .715 TRANSACTING BUSINESS WITHOUT CERTIFICATE OF AUTHORITY NOT AFFECTING CONTRACTS AND RIGHT TO DEFEND ACTION

ORIGIN: ACC Section .715 is a reenactment without change of AS 10.05..693.

SUMMARY OF COVERAGE: ACC Section .715 confines the disciplinary consequences of the transaction by a foreign corporation of intrastate business within Alaska without a certificate of authority to those imposed by the ACC. It does not generate grounds for a contracting party to assail the validity of a contract or transaction with a noncomplying foreign corporation. Finally, although precluded by ACC Section .713 from initiating any action, suit, or other proceeding, a noncomplying foreign corporation is not precluded from defending itself in proceedings commenced by others in Alaska courts.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.02(e) accords with the provisions of ACC Section .715.

Section .718 ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS IN THIS STATE

ORIGIN: ACC Section .718 is a reenactment of AS 10.05.600, and is based upon Section 106 of the MBCA.

SUMMARY OF COVERAGE: Under the interstate commerce clause and common law comity principles, a foreign corporation may engage in certain activities within a state without being required to first obtain a certificate of authority. In an effort to reduce litigation and clarify a murky body of decisional law precedent, ACC Section .718 enumerates activities which a foreign corporation may pursue without the necessity of obtaining a certificate of authority under ACC Section .705.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.01(b) is substantively identical to ACC Section .718.

Section .720 CORPORATE NAME OF FOREIGN CORPORATION

Section .723 ASSUMED CORPORATE NAME

Section .725 CHANGE OF NAME BY FOREIGN CORPORATION

ORIGIN: ACC Section .720 represents a modified content of AS 10.05.606 and is based upon Section 108 of the MBCA.

ACC Section .723(a) is based upon AS 10.05.607 and predicated upon Section 108(c)(12) of the MBCA. wording changes have been made in order to avoid any confusion in coordinating this section with ACC Section .720. Section .723(b) is new and replaces the requirement that a corporation using an assumed name identify its true corporate name in all advertising, contracts, and other legal documents with a scheme whereby any interested party may resort to records maintained by the commissioner which references the actual and assumed names of foreign corporations.

ACC Section .725 reenacts AS 10.05.609, and is based upon Sections 109 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .720 imposes upon foreign corporations seeking a certificate of authority the same limitations with respect to a corporate name which are imposed upon domestic corporations by ACC Section .105.

In order to accommodate a foreign corporation while at the same time vindicating the policies of Alaska law, ACC Section .723 permits a corporation disabled from using its actual name to adopt an assumed name which, if it is permissible under ACC Section .720, is the name under which it elects to do business in Alaska.

ACC Section .725 furthers the policy with respect to permissible and impermissible content of corporate names by providing that a foreign corporation will have its right to transact business suspended were it to adopt an impermissible name.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.06 is functionally equivalent to ACC Sections .720, .723, and .725.

Section .728 APPLICATION FOR CERTIFICATE OF AUTHORITY

Section .730 CONTENTS OF APPLICATION

Section .733 FILING OF APPLICATION FOR CERTIFICATE OF AUTHORITY

ORIGIN: ACC Section .728 is a straight reenactment of AS 10.05.612.

ACC Section .730 is a reenactment of AS 10.05.615 as amended. It is predicated upon Section 110 of the MBCA.

ACC Section .733 is identical to AS 10.05.618 and .621 and is premised upon Section 111 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .728 provides that the foreign corporation's application to do business in Alaska shall be filed with the commissioner.

ACC Section .730 specifies the subject matter and information which must be included in an application for a certificate of authority. Three of the required items are non-uniform: Section .730(5) goes beyond the statement of purpose to require selection from the identification code established under ACC Section .950; Section .730(12) mandates disclosure of the names and address of each alien affiliate; and, Section .730(13) requires that the application state the name and address of any person(s) owning at least 5% of the shares or any class of shares and then disclose the percentage owned by such individuals.

ACC Section .733 specifies that the application shall be on forms furnished by the commissioner.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.01(a) is identical to ACC Section .723. RMBCA Section 15.01(b) is similar to ACC Section .730 with the exception of the three items added by the Alaska legislature and information regarding the capitalization of the applicant.

Section .735 EFFECT OF CERTIFICATE OF AUTHORITY

ORIGIN: ACC Section .735 is a reenactment of AS 10.05.624 and based upon Section 112 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .735 parallels ACC Section .218 by establishing a "bright line" event upon which the authority to transact intrastate business is granted by the State of Alaska.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.05(a) is the functional equivalent of ACC Section .735.

The balance of the RMBCA section contains recitations that in granting a certificate of authority the host state does not intend to meddle in the internal affairs of the foreign corporation.

Section .738 AMENDED CERTIFICATE OF AUTHORITY

ORIGIN: ACC Section .738(a) is a reenactment of AS 10.05.657. Section .738(b) is new and conforms the entire section to MBCA Section 118.

SUMMARY OF COVERAGE: ACC Section .738 obliges a foreign corporation which changes its corporate name or desires to pursue an intrastate purpose in Alaska other than the one(s) set forth in its application for a certificate of authority to obtain an amended certificate as a precondition to effecting such change.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.04 is similar to ACC Section .738 except that there is no interest in the purpose(s) which the applicant corporation proposes to pursue in the host state.

Section .740 POWERS OF FOREIGN CORPORATION

ORIGIN: ACC Section .740 reenacts AS 10.05.603 and is premised upon Section 107 of the MBCA.

SUMMARY OF COVERAGE: Consonant with Alaska's obligation to extend the equal protection of her laws, ACC Section .740 establishes than an authorized foreign corporation shall have the same powers as would a domestic corporation organized for the purposes stated in the application for or amendment to the certificate of authority.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.05(b) is functionally identical to ACC Section .740.

Section .743 REVOCATION OF CERTIFICATE OF AUTHORITY

Section .745 LIMITATIONS ON REVOCATION OF CERTIFICATE OF AUTHORITY

Section .748 ISSUANCE OF CERTIFICATE OF REVOCATION

Section .750 EFFECT OF CERTIFICATE OF REVOCATION

ORIGIN: ACC Sections .743, .745, .748, and 750 are reenactments without change of AS 10.05.675, .673, .681, and .684. They are based upon Sections 121 and 122 of the MBCA.

SUMMARY OF COVERAGE: ACC Sections .743, .745, .748, and .750 authorize, regulate, and determine the effect of a certificate of revocation issued by the commissioner. The power of revocation under Section .743 is similar to the commissioner's power to involuntarily dissolve a domestic corporation under ACC Section .630. The sixty day notice and grace period established by ACC Section .745 is also similar to the procedures limiting the commissioner's power to effect involuntary dissolution. If the certificate of authority is revoked pursuant to ACC Section .748, Section .750 declares that the foreign corporation is no longer authorized to transact intrastate business in Alaska.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.30 stipulates the grounds for revocation. They are similar to those set forth in ACC Section .743, except that the RMBCA lists as a ground for revocation that the foreign corporation has ceased to exist or been involved in an organic change. The ACC adds involvement in an illegal combination in restraint of trade as a ground for revocation. RMBCA Section 15.31(a) and (b) are similar to ACC Section .745 creating a grace period in which the foreign corporation can correct what would otherwise serve as a ground for revocation. This section also comports with ACC Section .748 on the issuance of a certificate of revocation and the effective date at which the authority of the foreign corporation to transact intrastate business ceases.

Section .753 REGISTERED OFFICE AND REGISTERED AGENT OF FOREIGN CORPORATION

Section .758 CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT OF FOREIGN CORPORATION

Section .760 FILING OF STATEMENT OF CHANGE

ORIGIN: ACC Sections .753, .758, and .760 are reenactments without change of AS 10.05.627, .633, and .635. They reflect the content of Sections 113 and 114 of the MBCA.

SUMMARY OF COVERAGE: ACC Sections .753, .758, and .760 parallel Sections .150., 165., and .170 respecting domestic corporations. They oblige authorized foreign corporations to designate both a registered office and a registered agent, govern the change of such office or agent, and establish procedures for notification of the commissioner.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.07 is identical to ACC Section .753 creating the obligation on the part of a foreign corporation to maintain a registered office and agent in the host state. RMBCA Section 15.08 is functionally identical to ACC Sections .758 and .760 respecting the procedures for changing either the agent or office and providing notification to the state.

Section .763 SERVICE OF PROCESS ON FOREIGN CORPORATION

Section .765 SERVICE ON COMMISSIONER

Section .768 RECORDS KEPT BY COMMISSIONER

Section .770 PROCEDURE NOT EXCLUSIVE

ORIGIN: ACC Sections .763, .765, .768, and .770 reiterate the content of AS 10.05.639, .642, and .648. They are based upon Section 115 of the MBCA. They have been modified to accord with the holding of the Supreme Court of Alaska in Northern Supply, Inc. v. Curtiss-Wright Corporation, 397 P.2d 1013 (1965), that the long-arm jurisdiction of the state courts is not dependent upon the statutory criteria requiring a certificate of authority.

SUMMARY OF COVERAGE: ACC Sections .763, .765, .768, and .770 balance the needs of a party desiring to initiate litigation against an authorized foreign corporation in Alaska with the need of that entity to maximize the circumstances in which notice and service of process will be actual as opposed to constructive.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.10 accords with ACC Section .763 in making the registered agent the proper party upon whom service of process may be served in the host state. If a foreign corporation does not designate or maintain a registered agent, Section 15.10(b) differs from the prior provisions of the Model Act and the historic and recommended content of Alaska law. Rather than utilizing the commissioner as an agent of last resort for the service of process, Section 15.10(b) directs the plaintiff to effectuate service by registered or certified mail sent to the address of the foreign corporation at its principal office as shown on the certificate of authority or most recent annual report.

Section .773 AMENDMENT TO ARTICLES OF INCORPORATION OF FOREIGN CORPORATION

ORIGIN: ACC Section .773 is a reenactment of AS 10.05.651. It is predicated upon Section 116 of the MBCA.

SUMMARY OF COVERAGE: ACC Section .773 requires that the commission be noticed of amendments to the articles of foreign corporations which have sought and are enjoying a certificate of authority.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains no coverage on this point.

Section .775 ORGANIC CHANGE OF FOREIGN CORPORATION

ORIGIN: ACC Section .775 recapitulates the content of AS 10.05.654 and reflects the content of Section 117 of the MBCA with terminology changes to clarify the scope of the section and conform to the style of the ACC.

SUMMARY OF COVERAGE: Whenever an authorized foreign corporation is involved in an organic change (defined in ACC Section .990(26)), notification of the commissioner is to be made by filing a copy of the articles of merger, consolidation, exchange, or reorganization authenticated by the proper authority in the jurisdiction in which it is domesticated.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The only related coverage in the RMBCA is Section 11.07 which requires a foreign corporation to file articles of merger with the secretary if the foreign corporation has merged with a domestic corporation with the foreign corporation as the surviving entity.

Section .778 WITHDRAWAL OF FOREIGN CORPORATION

Section .780 CONTENTS OF APPLICATION FOR WITHDRAWAL

Section .783 FORM OF APPLICATION FOR WITHDRAWAL

Section .785 FILING OF APPLICATION FOR WITHDRAWAL

Section .788 EFFECT OF CERTIFICATE OF WITHDRAWAL

ORIGIN: ACC Sections .778, .780, . 783, .785, and .788 reenact AS 10.05.660, .663, .666, .669, and .672. They are based upon Sections 119 and 120 of the MBCA. ACC Section .785 has been restated to observe the consolidation of procedures effected by ACC Section .910.

SUMMARY OF COVERAGE: ACC Sections .778, .780, .783, .785, and .788 provide for the orderly and official withdrawal of a foreign corporation from Alaska. If these procedures are not followed, and the bright line events of ACC Sections . 735 and .788 are not observed, the corporation would have a continued liability for taxes and fees.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 15.20 is identical to ACC Section .778 on the procedure for withdrawal. It differs from ACC Section .780 specification of the contents of the application reflecting the RMBCA's indifference to disclosure of the financial structure of a foreign corporation. The RMBCA does not require the state to prepare a form for the application to withdraw as does ACC Section .783. The other distinctions between 15.20 and ACC Sections .785 and .788 reflect the distinction between uti-

lizing the secretary of state and the commissioner to interact with domestic and foreign corporations.

ARTICLE 11. REPORTS, FEES, AND PENALTIES

Section .805 BIENNIAL REPORT OF DOMESTIC AND FOREIGN CORPORATIONS

Section .808 CONTENTS OF BIENNIAL REPORT

Section .811 FILING OF BIENNIAL REPORT

ORIGIN: ACC Sections .805, .808, and .811 are predicated upon AS 10.05.699, .702, and .705 as amended in 1980. These provisions of the Alaska Statutes were based upon MBCA Sections 125 and 126. ACC Section 811(d) is new, and was suggested by the Department of Commerce and Economic Development.

SUMMARY OF COVERAGE: ACC Sections .805, .808, and .811 establish an obligation on the part of each domestic and authorized foreign corporation to file a biennial report with the Department of Commerce and Economic Development, thus continuing the policy set by the 1980 legislature.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 16.22 differs from ACC Section .808 in three particulars. It would require an annual as opposed to biannual report. That report would not include identification of alien affiliates or of control persons. The requirements for timely filing are similar in both provisions as is the opportunity for correction with incursion of penalties for tardy filing.

Section .813 FILING NOTICE OF CHANGE OF OFFICERS, DIRECTORS, FIVE PERCENT SHAREHOLDERS, AND ALIEN AFFILIATES

ORIGIN: ACC Section .813 is predicated upon AS 10.05.706 as enacted in 1980.

SUMMARY OF COVERAGE: This section reflects the intense concern of the state that it be informed as to the identity of current officers, directors, five percent shareholders, and alien affiliates.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains no provision on this important issue.

Section .815 PENALTY FOR FAILURE TO FILE BIENNIAL REPORT

ORIGIN: ACC Section .815 is predicated upon AS 10.05.771 as

amended in 1980, which was based upon MBCA Section 135.

SUMMARY OF COVERAGE: ACC Section .815 imposes a sanction applicable to any failure or refusal to file a biennial report required by this chapter, employing a strict liability standard.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA does not appear to contain a provision dealing with the consequences of late filings. The official comment (16-30) observes ". . .failure to file the annual report. . .is a ground for administrative dissolution or revocation of the certificate of authority to transact business."

Section .818 INTERROGATORIES BY COMMISSIONER; JUDICIAL PROCEEDING TO CONTEST

ORIGIN: ACC Section .818(a), (b), and (c) is predicated upon AS 10.05.777 and Section 137 of the MBCA. Subsection (d) is modeled after AS 45.52.210(f).

SUMMARY OF COVERAGE: ACC Section .818 grants broad powers to the commissioner to utilize interrogatories reasonably necessary to ascertain compliance with or violations of this Chapter. Subsection (d) permits either a corporation or an individual to challenge judicially the method, scope, or confidentiality of the interrogatory.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: For unexplained reasons, the RMBCA has abandoned this useful practice.

Section .820 CONFIDENTIALITY OF INFORMATION DISCLOSED BY INTERROGATORIES

ORIGIN: ACC Section .820 is a reenactment of AS 10.05.780, and is based upon MBCA 138.

SUMMARY OF COVERAGE: This section exempts the answers to interrogatories from the disclosure requirements of AS 09.25.110 and .120, which provide that state agency records are public records unless specifically provided otherwise by state law. ACC Section .820 specifically provides otherwise.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: Since, in contravention of former Model Act policy, the RMBCA does not provide for administrative interrogatories, it contains no provision making answers confidential.

Section .823 FAILURE TO ANSWER INTERROGATORIES

ORIGIN: ACC Section .823 combines provisions of AS

10.05.783, .786, and .777, which were predicated upon Sections 135, 136, and 137 of the MBCA. No substantive change is worked in existing Alaska law.

SUMMARY OF COVERAGE: ACC Section .823 provides that any corporate or natural person who fails or refuses to make a timely, full, and truthful answer to interrogatories shall be guilty of a misdemeanor. Further, the commissioner does not have to file any document to which the interrogatories relate until they have been properly answered.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains no coverage on this point.

Section .825 PENALTIES IMPOSED UPON OFFICERS AND DIRECTORS

ORIGIN: ACC Section .825 represents a modification of AS 10.05.786 as amended in 1980. AS 10.05.786 was predicated upon MBCA Section 136.

SUMMARY OF COVERAGE: ACC Section .825 goes beyond Section .823, to impose further misdemeanor consequences upon any officer or director who signs any articles, statement, report, application, or other document filed with the commissioner, the content of which is known to be false.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.29 contains a generic provision on the consequences a knowingly signing a false statement which is to be filed with the state. It must be customized by the adopting jurisdiction.

Section .828 INCORPORATION OR FILING FEES

ORIGIN: ACC Section .828 is a modified version of AS 10.05.708 (Section 130 of the MBCA) as amended in 1980. The provision fixing a filing fee for non-stock corporations organized under AS 21.69 is new, and designed to coordinate the specific provisions of Chapter 21 with the general cross reference to Chapter 10.05.

SUMMARY OF COVERAGE: ACC Section .828 establishes a filing fee for both domestic and foreign corporations doing business in Alaska, and fixes in the Department of Commerce and Economic Development the power to set the amount by regulation, with the mandate that the fee be fixed with reference to the amount of authorized capital stock of the corporation. The authority of the department is further subject to the provision of Section .860, which limits increases in fees to an amount that does not exceed the rise in the consumer price index for Anchorage.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.22(a) recommends that the legislature set filing, service

and copying fees. ACC Section .828 grants authority to the commissioner to set the fees within legislatively prescribed limits tied to the cost of living index. Under the RMBCA, adjustment for inflation or deflation would have to be accomplished by way of legislative amendment.

Section .830 FEES ON APPOINTMENT OR REVOCATION OF APPOINTMENT

ORIGIN: ACC Section .830 is a redrafting without substantive change of AS 10.05.714, which was based upon MBCA Section 128.

SUMMARY OF COVERAGE: ACC Section .830 provides that when a foreign corporation files with the department a certificate of appointment of a process agent, or the change of address of a process agent, it shall pay a fee established by regulation.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: See comparison of features noted under ACC Section .828.

Section .833 FEES AND PENALTIES PAYABLE ON WITHDRAWAL OF FOREIGN CORPORATION

Section .835 FEES ON DISSOLUTION OF DOMESTIC CORPORATION

Section .838 TAXES, PENALTIES, AND FEES ON FILING CERTIFICATE OF DISSOLUTION OF FOREIGN CORPORATION

Section .840 FEES FOR CERTIFIED COPIES OF DOCUMENT

Section .843 OTHER FILING FEES

ORIGIN: ACC Sections .833, .835, .838, .840, and .843 reenact without substantive change AS 10.05.750, .753, .756 (which were based upon MBCA Section 128), .762 (which was based upon MBCA Section 129), and .747, all as amended in 1980.

SUMMARY OF COVERAGE: ACC Sections .833 through .843 establish the indicated occasions for the imposition of fees, which are to be determined by the department of Commerce and Economic Development, subject to Section .860's cost of living ceiling.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: See comparison of features noted under ACC Section .828.

Section .845 BIENNIAL CORPORATION TAX; PENALTY FOR NONPAYMENT

Section .848 FAILURE TO PAY TAX OR MAKE REPORT AS PRECLUDING

SUIT BY CORPORATION

Section .850 COMMISSIONER TO INSTITUTE SUITS TO COMPEL PAYMENT

Section .853 FAILURE TO PAY TAX AS EVIDENCE OF INSOLVENCY

Section .855 PAYMENTS TO BE MADE IN ADVANCE

Section .858 ACCOUNTING FOR AND DISPOSITION OF TAXES AND FEES

ORIGIN: ACC Sections .845 through .858 represent modifications and reenactments of AS 10.05.717, .720, .723, .726, 765, and .768. In turn, these provisions were predicated upon MBCA Sections 132, 133, and 134. ACC Section .850 substitutes the Commissioner of the Department of Commerce and Economic Development for the Attorney General as the official to commence suit to compel the payment of the biennial corporation tax.

SUMMARY OF COVERAGE: ACC Sections .845 through .858 impose on both domestic and foreign corporations doing business in Alaska a biennial corporation tax, and fix the consequences for failure to make payment of such tax.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: As noted, the RMBCA does not address the issue of penalty consequences for failure to observe reporting requirements. The recommended fee structure is very rigid with adjustments necessitating legislative amendment.

Section .860 INCREASE IN FEES

ORIGIN: ACC Section .860 is a reenactment of AS 10.05.773, as enacted in 1980.

SUMMARY OF COVERAGE: ACC Section .860 explicitly limits increases in fees authorized throughout this Chapter to a ceiling reflecting changes in the consumer price index for Anchorage as determined by the Bureau of Labor Statistics of the United States Department of Labor.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: There is no RMBCA provision on this point.

Section .863 APPEAL FROM REVOCATION OF CERTIFICATE OF AUTHORITY

ORIGIN: ACC Section .863 is a reenactment without change of AS 10.05.792, which was based upon MBCA Section 140.

SUMMARY OF COVERAGE: ACC Section .863 authorizes recourse to the superior court to contest any disapproval of any document or revocation of any certificate of authority. Upon compliance with the procedures set out in this section, the ap-

plicant is entitled to a trial de novo, and the court is empowered to take such action as is proper.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.26 provides for judicial review of an administrative refusal to file a document. The official comment (1-27) makes it clear that the RMBCA does not take a position on either the burden of proof, scope or nature of the review. ACC Section .863 resolves these issues.

Section .865 CANCELLATION OF CERTIFICATES ISSUED AND FILINGS ACCEPTED

ORIGIN: ACC Section .865 is a reenactment with one change of AS 10.05.794 as enacted in 1980. The change makes clear that the ground for cancellation must be one that existed at the time of the original filing or issuance of the certificate.

SUMMARY OF COVERAGE: ACC Section .865 gives the commissioner a period of one year from the time which a document is filed to discover defects and act upon them. If the defect is a ground for refusal to issue the certificate or refusal to accept a filing and the discovery is made within one year, the commissioner is empowered upon proper notice and procedure to cancel the certificate issued or filing accepted.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA does not contain an explicit provision on this important question. It is possible that the general powers provision (RMBCA Section 1.30) might be aggressively interpreted to invoke this power.

Section .868 FORMS TO BE FURNISHED BY THE COMMISSIONER

ORIGIN: ACC Section .868 is a reenactment without change of AS 10.05.798, and is based upon MBCA Section 142.

SUMMARY OF COVERAGE: This section grants the commissioner the right to prescribe the content of forms for any report required by this Chapter. It also obligates the commissioner to furnish appropriate forms for required reports and other documents. This provision is sought to serve both the convenience of persons attempting to comply with the act as well as facilitating the record keeping efforts of the state.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.21 grants administrative authority to prescribe and furnish forms but, unlike ACC Section .868, does not oblige the state to create such forms.

Section .870 IDENTIFICATION CODE

ORIGIN: ACC Section .870 is a reenactment without change of AS 10.05.799, which was enacted in 1980.

SUMMARY OF COVERAGE: This section requires the commissioners of the Departments of Revenue and of Commerce and Economic Development to establish a coded list of business activities and make such list available to the public.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: Reflecting its character as a statute designed for the needs and interests of no particular jurisdiction, the RMBCA contains no provision on this important Alaska effort.

Section .905 VOTING OF SHARES; QUORUM; STATUS OF DISQUALIFIED SHARES

ORIGIN: ACC Section .905 is taken from GCL Section 112, and is without precedent in Alaska law.

SUMMARY OF COVERAGE: This section defines the references to a "majority of shares" found throughout the ACC to mean a majority of shares entitled to vote under the articles of incorporation. Votes disqualified from voting are not to be considered "outstanding" for determining a "quorum" or a "majority."

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains no explicit provision defining the terms "majority" or "majority of shares."

Section .910 PROCESSING OF WRITINGS FILED WITH THE COMMISSIONER

ORIGIN: ACC Section .910 consolidates without substantive change in one provision matters covered in AS 10.05.081, .258, .288, .303, .321, .339, .357, .402, .468, .483, .504, 513, .621, and .669.

SUMMARY OF COVERAGE: ACC Section .910 establishes a uniform procedure whereby the commissioner reviews and processes reports and documents which have been filed with the department.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.25(a) and (b) seeks to accomplish the same uniform treatment of reports and documents submitted for filing.

Section .915 DISAPPROVAL OF WRITING BY COMMISSIONER: APPEAL

ORIGIN: ACC Section .915 is a reenactment without change of AS 10.05.792, and is based upon MBCA Section 140.

SUMMARY OF COVERAGE: ACC Section .915, like Section .863, authorizes a trial de novo in the superior court for purposes of contesting the disapproval of any document or the revocation of any certificate of authority.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.25(c) requires that a refused document be returned with a

written explanation. RMBCA Section 1.26 establishes a right to seek judicial review although, as noted, it does not specify the standard of review or burden of proof.

Section .920 WRITINGS; CORRECTIONS

ORIGIN: ACC Section .920 is derived from NBCL Section 105.

SUMMARY OF COVERAGE: ACC Section .920 provides procedures for correcting minor mistakes without affecting the effective date in writings which have been filed. Major omissions and misinformation may not be corrected by this procedure.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.24 is functionally identical to ACC Section .920.

Section .925 WRITINGS AS EVIDENCE

ORIGIN: ACC Section .925 is adapted from NBCL Section 106. The language in .925(a) regarding the absence of a filing is new. The remainder of subsection (a) is similar to AS 10.05.795, which was based upon MBCA Section 141.

SUMMARY OF COVERAGE: ACC Section .925 specifies that certain writings and certifications by the commissioner of the absence of a writing are to be regarded as prima facie evidence of the facts stated in the writings and the execution or nonexecution thereof.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.27 creates a far more limited evidentiary value for writing filed with the state. The certificate of filing merely creates a conclusive evidentiary presumption that the original of the document has been filed. Nothing is created by way of evidentiary presumptions concerning tne content of such writings.

Section .930 CORPORATE SEAL AS EVIDENCE

ORIGIN: ACC Section .930 is predicated upon NBCL Section 107, and is without precedent in Alaska law.

SUMMARY OF COVERAGE: ACC Section .930 treats the presence of a corporate seal on a writing as prima facie evidence that tne writing was executed by authority of the corporation.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.27 fails to establish this evidentiary quality respecting the use of the corporate seal.

Section .935 WAIVER OF NOTICE

ORIGIN: ACC Section .935 is a reenactment of AS 10.05.804, which was based upon MBCA Section 144.

SUMMARY OF COVERAGE: This section provides that a written waiver of notice, whether executed before or after the time stated for notice, is to be accepted as the equivalent of giving notice in any situation where notice to a director or shareholder is required.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 7.05(a) is functionally identical to ACC Section .935.

ARTICLE 13. GENERAL PROVISIONS

Section .950 POWERS OF COMMISSIONER

ORIGIN: ACC Section .950 is a reenactment without change of AS 10.05.813, and is based upon MBCA Section 139.

SUMMARY OF COVERAGE: ACC Section .950 grants broad though nonsubstantive administrative authority to the Commissioner of the Department of Commerce and Economic Development. The limited authority of the Commissioner to adopt regulations is set forth in ACC Section .953.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.30 is identical to ACC Section 950 except that it refers to the secretary of state.

Section .953 REGULATIONS

ORIGIN: ACC Section .953 is a redrafting of AS 10.05.823, which was enacted in 1980.

SUMMARY OF COVERAGE: ACC Section .953 is a restrictive grant of rulemaking authority to the commissioner and Department of Commerce and Economic Development. This rulemaking authority must be exercised in conformity with the Administrative Procedure Act (AS 44.62), and may be invoked only as specifically provided in this Chapter.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains no comparable provision restricting either the substance or limiting the procedures to be employed in administrative rule making.

Section .955 APPLICATION

ORIGIN: ACC Section .955 subsection (a) is a modified version of NBCL Section 103, and replaces AS 10.05.816, which was based upon MBCA Section 147. Subsection (b) is a modified version of GCL Section 102(b), and replaces AS 10.05.816, which was based upon MBCA Section 147. This section supplements AS 01.10.100.

SUMMARY OF COVERAGE: ACC Section .955 makes the ACC applicable to domestic corporations formed under AS 10.05, and to foreign corporations to the extent provided generally in Article 10 and expressly elsewhere. Subsection .955(b) pro-

vides that the existence of corporations formed under existing law is not affected. Subsection .955(c) provides that enactment of the ACC does not affect pre-enactment legal disputes.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 17.01 extends the application to domestic corporations while RMBCA Section 17.02 accomplishes the extension to foreign corporations authorized to transact business in the host state.

Section .958 PROVISIONS CONSTRUED AS RESTATEMENTS AND CONTINUATION

ORIGIN: ACC Section .958 is taken from GCL Section 2.

SUMMARY OF COVERAGE: Much of the ACC represents a reenactment of existing Alaska law, either verbatim or with minor changes to conform with ACC usage and style. ACC Section .958 construes these reenactments as restatements and continuations of existing law.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA does not contain this useful transaction and application section.

Section .960 CORPORATIONS ORGANIZED UNDER P. L. 92-203

ORIGIN: ACC Section .960 is a reenactment of AS 10.05.005, with the addition of subsection (d) which exempts Native corporations from the provisions of ACC Section .488 on the liability of directors and officers. AS 10.05.005 was enacted in 1972 and amended in 1975 and 1981.

SUMMARY OF COVERAGE: Under the Alaska Native Claims Settlement Act, P.L. 92-203, either the general business corporations code or the nonprofit corporations code of the State of Alaska is to be used to organize the entities which are to hold the assets distributed through ANCSA. Due to the special nature of these corporations and the federal requirement that the corporate form be used, the ACC contains a variety of special provisions tailored to Native corporations. ACC Section .960 provides for the capitalization of Native corporations, distributions to shareholders, approval of plans of merger or consolidation, and the liability of directors and officers to contract claimants.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains no provisions accomplishing discrete treatment of corporations formed under the Alaska Native Claims Settlement Act.

Section .963 SEVERABILITY

ORIGIN: ACC Section .963 is taken from NBCL Section 111. It supplements the provisions of AS 01.10.030.

SUMMARY OF COVERAGE: ACC Section .963 provides that the ACC will not be struck down as a whole on account of the invalidity of any provision in it.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 17.04 contains a severability provision similar to ACC Section 963.

Section .965 RESERVATION OF POWER

ORIGIN: ACC Section .965 is based upon AS 10.05.822, MBCA Section 149, and NBCL Section 110.

SUMMARY OF COVERAGE: This section reserves unto the legislature the plenary right to alter, amend, suspend, or repeal in whole or in part the provisions of the ACC.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.02 contains a reservation of power clause similar to ACC Section 965.

Section .968 SIGNATURE

ORIGIN: ACC Section .968 is derived from GCL Section 17, and is new to Alaska law.

SUMMARY OF COVERAGE: This section specifies that a mark is a signature when the signer cannot write and the signer's name is written out by a witness who signs his own name.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA does not contain a provision anticipating the needs of citizens who cannot write.

Section .970 RULES OF CONSTRUCTION AND INTERPRETATION

ORIGIN: ACC Section .970 is derived from GCL Sections 5, 6, 7, 8, 113, 114, 118, 10, 11, 12, 13, 15, and 16 respectively, and are all new to Alaska law.

SUMMARY OF COVERAGE: ACC Section .970 sets out basic rules of construction to be applied to the ACC, to obviate the possibility of litigation on a variety of topics susceptible of differing interpretations and to specify the handling of financial accounting procedure. Of particular interest is subsection (5) on financial accounting. The ACC has abandoned the traditional corporate accounting concepts of "par

value", "stated capital", "capital surplus", and "earned surplus." These concepts have been replaced by the "retained earnings" and "ratio assets surplus" tests found in ACC Sections .358 through 365. This new approach relies upon generally accepted accounting principles in use at the time of performance of a financial accounting task.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: The RMBCA contains no comparable specification of rules of construction and interpretation.

Section .990 DEFINITIONS

ORIGIN: ACC Section .990 is derived from existing Alaska law, typically based upon a definition from the MBCA Section 2, or the GCL. The following chart indicates specific sources:

1. NEW
2. AS 10.05.825(18) enacted 1976
3. AS 10.05.825(22) enacted 1980
4. GCL Section 151
5. GCL Section 152
6. GCL Section 153
7. AS 10.05.825(5)
8. AS 10.05.825(9)
9. GCL Section 155
10. AS 10.05.825(1)
11. GCL section 159
12. AS 10.05.825(19) enacted 1976
13. AS 10.05.825(2)
14. AS 10.05.825(17)
15. AS 10.05.825(3)
16. GCL Section 164
17. GCL Section 166
18. GCL Section 169
19. AS 10.05.825(24) enacted 1980
20. AS 10.05.825(4)
21. GCL Section 115
22. GCL Section 172
23. AS 10.05.825(11)
24. GCL Section 173
25. GCL Section 174
26. NEW
27. GCL Section 175
28. NEW
29. AS 10.05.825(20) enacted 1976
30. GCL Section 176
31. GCL Section 178
32. GCL Section 179
33. GCL Section 180
34. NEW replacing AS 10.05.825(14)
35. GCL Section 183
36. AS 10.05.825(8)

37. AS 10.05.825(6)
38. NEW
39. AS 10.05.825(7)
40. GCL Section 189
41. GCL Section 190
42. GCL Section 192
43. AS 09.63.040
44. GCL Section 194
45. GCL Section 195
46. NEW

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.40 contains a twenty-four item list of definitions.

Section .995 SHORT TITLE

ORIGIN: ACC Section .995 replaces AS 10.05.828.

SUMMARY OF COVERAGE: The title of the chapter regulating the organization and operation of business corporations will be changed from "Alaska Business Corporations Act" to "Alaska Corporations Code", which will facilitate distinctions between the old and the new law.

COMPARISON WITH THE FINAL DRAFT OF THE RMBCA: RMBCA Section 1.01 designates a generic short title.

PART II.

COMPARISON CHARTS
CROSS REFERENCING THE ALASKA CORPORATIONS CODE, THE ALASKA BUSINESS CORPORATIONS ACT - AS 10.05, AND THE 1984 REVISED MODEL BUSINESS CORPORATION ACT

A section by section comparison of the proposed Alaska Corporations Code (ACC) with the Alaska Business Corporations Act ABCA), AS 10.05 and the 1984 Reviseu Model Business Corporation Act (RMBCA). N = No comparable provision.

ACC	ABCA	RMBCA
	ARTICLE 1.	
.005	.003	3.01(a)
.010	.009	3.01(b)
.015	.018	3.04
.020	N	N
.025	N	N
	ARTICLE 2.	
.105	.021	4.01
.110	.024	4.02
.115	.027	4.02
.120	.030	4.02
.125	.033	4.03
.130	.034	4.03
.135	.036	4.03
.140	.039	4.03
.145	.042	4.03
.150	.045	5.03
.155	.791	N
.160	.048	N
.165	.051	5.02
.170	.054	5.03
.175	.057	5.04
	ARTICLE 3.	
.205	.252	N
.208	.255	N
.210	.255	N
.213	.258	N
.215	.259	N
.218	.810	2.03
.220	.810	2.04
.223	.267	2.05
.225	N	2.05(2)
.228	.135	10.20
.230	.135	2.06
.233	.237 - .249	N

ACC	ABCA	RMBCA
	ARTICLE 4.	
.305	.060, .069	6.01
.308	.063	6.02
.310	.066	6.03
.313	.069	6.03
.315	.072	6.03
.318	.075	6.03
.320	.078	6.03
.323	.084	6.03
.325	N	6.01(d)
.328	.087	6.20(a)
.330	.090	6.20(c)
.333	.093	6.20(d),(e)
.335	.096	6.21
.338	.099	6.21
.340	.102	6.21
.343	N	6.24
.345	.111	6.28
.348	.114	6.25
.350	.117	6.25
.353	.120	N
.355	.123	6.04
.358	.204(1), .012	6.40
.360	.201	6.40
.363	.207(4)	6.40
.365	.207(3)	6.40
.368	N	N
.370	N	N
.373	.204(5)	6.23
.375	N	6.40
.378	N	8.33(b)(2)
.380	.207(5)	N
.383	N	N
.385	N	6.31
.388	.312 - .345	6.31
.390	.108, .366	N
	ARTICLE 5.	
.405	.138	7.01, 7.02, 7.03
.408	.144	7.07, 7.05(c)
.410	.141	7.05
.413	.147, .150	7.20
.415	.153	7.25
.418	.159, .168	7.22
.420	.156 - .168	7.21, 7.14, 7.28
.423	.807	7.04
.425	.171	7.30, 7.31

ACC	ABCA	RMBCA
.428	.129	6.30
.430	.237 - .249	7.20, 16.01, 16.02, 16.03
.433	N	16.20, 16.21
.435	N	7.40
.438	.125	6.22

ARTICLE 6.

.450	.174, .222, .219	8.01, 8.30
.453	.177, .180, .183	8.03, 8.04, 8.05
.455	.186	8.06
.458	N	N
.460	N	8.08
.463	N	8.08
.465	.189	8.10
.468	.195	8.25
.470	.198	8.22, 8.23
.473	.192	8.24
.475	.199	8.20, 8.21
.478	N	8.31
.480	.216, .225	8.33
.483	.228, .231	8.40, 8.41, 8.42, 8.43, 8.44
.485	.213	8.32
.488	N	N
.490	.010	8.51, 8.54, 8.52, 8.53, 8.55, 8.56, 8.57

ARTICLE 7.

.502	.270, .273	10.01
.504	.276	10.05, 10.02, 10.03
.506	.282, .279	10.04
.508	N	7.27
.510	.285	10.06
.512	.288	10.06
.514	.291	10.09
.516	.294	10.07
.518	.303	10.07
.520	.306	10.07
.522	N	10.08
.524	N	10.08
.526	N	10.08

ARTICLE 8.

.530	.375	11.01, 11.02

ACC	ABCA	RMBCA
.532	.378	11.01, 11.02
.534	.381	11.01, 11.02
.536	.384	11.01, 11.02
.538	N	11.01, 11.02
.540	N	11.01, 11.02
.542	N	N
.544	N	11.03, 13.20(a)
.546	.390	N
.548	.393	11.03(i)
.550	.396	11.05
.552	.402	11.05
.554	N	11.04
.556	N	11.04
.558	N	11.04
.560	.405	11.06
.562	.408, .411, .414	11.07
.564	.250	N
.566	.435	12.01
.568	.438	12.02
.570	.441	12.02
.572	.444	12.02
.574	.417 - .432 .447 - .462	13.02
.576	N	13.20 -- 13.24
.578	.423, .453	13.25, 13.28
.580	.426, .456	13.30, 13.31
.582	.429, .462	N

ARTICLE 9.

.605	.465, .474, .477	14.02, 14.01
.608	.468, .474, .480, .483	14.03
.610	.492 - .504	14.04
.613	.507	14.04
.615	.486, .489(1)	14.05
.618	.489(3)	14.03(4)
.620	.510	N
.623	.513	N
.625	.516	N
.628	.540 - .543, .552	14.30
.630	N	N
.633	.519	14.20, 14.21, 14.23
.635	.519	14.30, 14.31
.638	.534	14.31
.640	N	14.31(c)
.643	.576, .567	14.32
.645	.537, .546, .549	14.33
.648	.555, .558	14.05, 14.06, 14.07

ACC	ABCA	RMBCA
.650	.573, .579, .582 .585	14.31(c)
.653	.579	14.06, 14.07, 14.40, 14.33
.655	.585	N
.658	.588	N
.660	.489(2), .564, .570	14.05
.663	N	N
.665	.489, .561	14.05(a)(4)
.668	N	14.05(a)(3), 14.40
.670	N	14.05(a)
.673	N	N
.675	N	14.07(d)(2)
.678	.594	14.05(b)

ARTICLE 10.

.705	.597	15.01(a)
.708	.687	17.02
.710	.696	15.02(d)
.713	.690	15.04
.715	.693	15.02(e)
.718	.600	15.01(b)
.720	.606	15.06
.723	.607	15.06
.725	.609	15.06
.728	.612	15.01(a)
.730	.615	15.01(b)
.733	.618, .621	15.01
.735	.624	15.05(a)
.738	.657	15.04
.740	.603	15.05(b)
.743	.675	15.30
.745	.678	15.31
.748	.681	15.31
.750	.684	15.31
.753	.627	15.07
.758	.633	15.08
.760	.635	15.08
.763	.639	15.10
.765	.642	N
.768	.645	N
.770	.648	N
.773	.651	N
.775	.654	N
.778	.660	15.20
.780	.663	15.20
.783	.666	N
.785	.669	15.20
.788	.672	15.20

ACC	ABCA	RMBCA
	ARTICLE 11.	
.805	.699	16.22
.808	.702	16.22
.811	.705	16.22
.813	.706	N
.815	.771	N
.818	.777	N
.820	.780	N
.823	.783, .786, .777	N
.825	.786	1.29
.828	.708	1.22(a)
.830	.714	1.22(a)
.833	.750	1.22(a)
.835	.753	1.22(a)
.838	.756	1.22(a)
.840	.762	1.22(a)
.843	.747	1.22(a)
.845	.717	N
.848	.720	N
.850	.723	N
.853	.726	N
.855	.765	N
.858	.768	N
.860	.773	N
.863	.792	1.26
.865	.794	N
.868	.798	1.21
.870	.799	N
	ARTICLE 12.	
.905	N	N
.910	.081, .258, .288, .303, .321, .339, .357, .402, .468, .483, .504, .513, .621, .669	1.25
.915	.792	1.25, 1.26
.920	N	1.24
.925	.795	1.27
.930	N	1.27
.935	.804	7.05(a)
	ARTICLE 13.	
.950	.813	1.30

ACC	ABCA	RMBCA
.953	.823	N
.955	.816	17.01, 17.02
.958	N	N
.960	.005	N
.963	N	17.04
.965	.822	1.02
.968	N	N
.970	N	6.40
.990	.825	1.40
.995	.828	1.01

Sec. 3	N
Sec. 4	N
Sec. 5	N
Sec. 6	.276, .27°, .282
Sec. 7	N

Sec. 8	N
Sec. 9	N
Sec. 10	N
Sec. 11	N

A section by section comparison of the Alaska Business Corporation Act (ABCA), AS 10.05, with the proposed Alaska Corporations Code (ACC) and the 1984 Revised Model Business Corporation Act (RMBCA). N = No comparable provision.

ABCA	ACC	RMBCA
	ARTICLE 1.	
.005	.960	N
.003	.005	3.01(a)
.009	.010	3.01(b)
.010	.490	8.51, 8.54, 8.52, 8.53, 8.55, 8.56, 8.57
.012	.358	6.40
.018	.015	3.04
.021	.105	4.01
.024	.110	4.02
.027	.115	4.02
.030	.120	4.02
.033	.125	4.03
.034	.130	4.03
.036	.135	4.03
.039	.140	4.03
.042	.145	4.03
.045	.150	5.03
.048	.160	N
.051	.165	5.02
.054	.170	5.03
.057	.175	5.04
.060	.305	6.01
.063	.308	6.02
.066	.310	6.03
.069	.305, .313	6.01, 6.03
.072	.315	6.03
.075	.318	6.03
.078	.320	6.03
.081	.910	1.25
.084	.323	6.03
.087	.328	6.20(a)
.090	.330	6.20(c)
.093	.333	6.20(d),(e)
.096	.335	6.21
.099	.338	6.21
.102	.340	6.21
.108	.390	N
.111	.345	6.28
.114	.348	6.25
.117	.350	6.25
.120	.353	N
.123	.355	6.04

ABCA	ACC	RMBCA
.125	.438	6.22
.129	.428	6.30
.135	.228, .230	2.06, 10.20
.138	.405	7.01, 7.02, 7.03
.141	.410	7.05
.144	.408	7.07, 7.05(c)
.147	.413	7.20
.150	.413	7.20
.153	.415	7.25
.156	.420	7.21, 7.14, 7.28
.159	.418, .420	7.22, 7.21, 7.14, 7.28
.162	.420	7.21, 7.14, 7.28
.165	.420	7.21, 7.14, 7.28
.168	.420	7.21, 7.22, 7.14, 7.28
.171	.425	7.30, 7.31
.174	.450	8.01, 8.30
.177	.453	8.03, 8.04, 8.05
.180	.453	8.03, 8.04, 8.05
.183	.453	8.03, 8.04, 8.05
.186	.455	8.06
.189	.465	8.10
.192	.473	8.24
.195	.468	8.25
.198	.470	8.22, 8.23
.199	.475	8.20, 8.21
.201	.360	6.40
.204	.358, .373	6.23, 6.40
.207	.363, .365, .380	6.40
.213	.485	8.32
.216	.480	8.33
.219	.450	8.01, 8.30
.222	.450	8.01, 8.30
.225	.480	8.33
.228	.483	8.40, 8.41, 8.42, 8.43, 8.44
.231	.483	8.40, 8.41, 8.42, 8.43, 8.44
.237	.233, .430	7.20, 16.01, 16.02, 16.03
.240	.233, .430	7.20, 16.01, 16.02, 16.03
.243	.233, .430	7.20, 16.01, 16.02, 16.03
.246	.233, .430	7.20, 16.01, 16.02, 16.03
.249	.233, .430	7.20, 16.01, 16.02, 16.03
.250	.564	N

ARTICLE 2.

.252	.205	N
.255	.208, .210	N
.258	.213, .910	1.25

ABCA	ACC	RMBCA
.259	.215	N
.267	.223	2.05

ARTICLE 3.

.270	.502	10.01
.273	.502	10.01
.276	.504, Sec. 6	10.05, 10.02, 10.03
.279	.506, Sec. 6	10.04
.282	.506, Sec. 6	10.04
.285	.510	10.06
.288	.512, .910	10.06, 1.25
.291	.514	10.09
.294	.516	10.07
.303	.518, .910	10.07, 1.25
.306	.520	10.07
.312	.388	6.31
.315	.388	6.31
.318	.388	6.31
.321	.910, .388	1.25, 6.31
.324	.388	6.31
.327	.388	6.31
.330	.388	6.31
.333	.388	6.31
.336	.388	6.31
.339	.910, .388	1.25, 6.31
.342	.388	6.31
.345	.388	6.31
.357	.910	1.25
.366	.390	N

ARTICLE 4.

.375	.530	11.01, 11.02
.378	.532	11.01, 11.02
.381	.534	11.01, 11.02
.384	.536	11.01, 11.02
.390	.546	N
.393	.548	11.03(i)
.396	.550	11.05
.402	.552, .910	11.05, 1.25
.405	.560	11.06
.408	.562	11.07
.411	.562	11.07
.414	.562	11.07
.417	.574	13.02
.420	.574	13.02
.423	.574, .578	13.02, 13.25, 13.25

ABCA	ACC	RMBCA
.426	.574, .580	13.02, 13.30, 13.31
.429	.574, .582	13.02
.432	.574	13.02

ARTICLE 5.

.435	.566	12.01
.438	.568	12.02
.441	.570	12.02
.444	.572	12.02
.447	.574	13.02
.450	.574	13.02
.453	.574, .578	13.02, 13.25, 13.28
.456	.574, .580	13.02, 13.30, 13.31
.459	.574	13.02
.462	.574, .582	13.02

ARTICLE 6.

.465	.605	14.02, 14.01
.468	.608, .910	14.03, 1.25
.474	.605, .608	14.02, 14.01, 14.03
.477	.605	14.02, 14.01
.480	.608	14.03
.483	.608, .910	14.03, 1.25
.486	.615	14.05
.489	.615, .618, .660 .665	14.03, 14.05
.492	.610	14.04
.495	.610	14.04
.498	.610	14.04
.501	.610	14.04
.504	.610, .910	14.04, 1.25
.507	.613	14.04
.510	.620	N
.513	.623, .910	1.25
.516	.625	N
.519	.633, .635	14.20, 14.21, 14.23, 14.30, 14.31
.534	.638	14.31
.537	.645	14.33
.540	.628	14.30
.543	.628	14.30
.546	.645	14.33
.549	.645	14.33
.552	.628	14.30
.555	.648	14.05, 14.06, 14.07
.558	.648	14.05, 14.06, 14.07
.561	.665	14.05(a)(4)

ABCA	ACC	RMBCA
.564	.660	14.05
.567	.643	14.32
.570	.660	14.05
.573	.650	14.31(c)
.576	.643	14.32
.579	.650, .653	14.31(c), 14.06, 14.07, 14.40, 14.33
.582	.650	14.31(c)
.585	.650, .655	14.31(c)
.588	.658	N
.594	.678	14.05(b)

ARTICLE 7.

.597	.705	15.01(a)
.600	.718	15.01(b)
.603	.740	15.05(b)
.606	.720	15.06
.607	.723	15.06
.609	.725	15.06
.612	.728	15.01(a)
.615	.730	15.01(b)
.618	.733	15.01
.621	.733, .910	15.01, 1.25
.624	.735	15.05(a)
.627	.753	15.07
.633	.758	15.08
.635	.760	15.08
.639	.763	15.10
.642	.765	N
.645	.768	N
.648	.770	N
.651	.773	N
.654	.775	N
.657	.738	15.04
.660	.778	15.20
.663	.780	15.20
.666	.783	N
.669	.785, .910	15.20, 1.25
.672	.788	15.20
.675	.743	15.30
.678	.745	15.31
.681	.748	15.31
.684	.750	15.31
.687	.708	17.02
.690	.713	15.04
.693	.715	15.02(e)
.696	.710	15.02(d)

ABCA	ACC	RMBCA
	ARTICLE 8.	
.699	.805	16.22
.702	.808	16.22
.705	.811	16.22
.706	.813	N
	ARTICLE 9.	
.708	.828	1.22(a)
.714	.830	1.22(a)
.717	.845	N
.720	.848	N
.723	.850	N
.726	.853	N
.747	.843	1.22(a)
.750	.833	1.22(a)
.753	.835	1.22(a)
.756	.838	1.22(a)
.762	.840	1.22(a)
.765	.855	N
.768	.858	N
.771	.815	N
.773	.860	N
	ARTICLE 10.	
.777	.818, .823	N
.780	.820	N
.783	.823	N
.786	.823, .825	1.29
.791	.155	N
.792	.863, .915	1.25, 1.26
.794	.865	N
.795	.925	1.27
.798	.868	1.21
.799	.870	N
.804	.935	7.05(a)
.807	.423	7.04
.810	.218, .220	2.03, 2.04
	ARTICLE 11.	
.813	.950	1.30

ABCA	ACC	RMBCA
.816	.955	17.01, 17.02
.822	.965	1.02
.823	.953	N
.825	.990	1.40
.828	.995	1.01

A section by section comparison of the 1984 Revised Model Business Corporation Act (RMBCA) with the proposed Alaska Corporations Code (ACC) and the Alaska Business Corporation Act (ABCA), AS 10.05. N = No comparable provision.

RMBCA	ACC	ABCA
	CHAPTER 1.	
1.01	.995	.828
1.02	.965	.822
1.21	.868	.798
1.22	.828, .830, .833, .835, .838, .840, .843	.708, .714, .747, .750, .753, .756, .762,
1.24	.920	N
1.25	.910, .915	.081, .258, .288, .303, .321, .339, .357, .402, .468, .483, .504, .513, .621, .669, .792
1.26	.863, .915	.792
1.27	.925, .930	.795
1.29	.825	.786
1.30	.950	.813
1.40	.990	.825
	CHAPTER 2.	
2.03	.218	.810
2.04	.220	.810
2.05	.223, .225	.267
2.06	.230	.135
	CHAPTER 3.	
3.01	.005, .010	.003, .009
3.04	.015	.018
	CHAPTER 4.	
4.01	.105	.021
4.02	.110, .115, .120	.024, .027, .030
4.03	.125, .130, .135, .140, .145	033, .034, .036, .039, .042

RMBCA	ACC	ABCA
	CHAPTER 5.	
5.02	.165	.051
5.03	.150, .170	.045, .054
5.04	.175	.057
	CHAPTER 6.	
6.01	.305, .325	.060, .069
6.02	.308	.063
6.03	.310, .313, .315, .318, .320, .323	.066, .069, .072, .075, .078, .084
6.04	.355	.123
6.20	.328, .330, .333	.087, .090, .093
6.21	.335, .338, .340	.096, .099, .102
6.22	.438	.125
6.23	.373	.204(5)
6.24	.343	N
6.25	.348, .350	.114, .117
6.28	.345	.111
6.30	.428	.129
6.31	.385, .388	.312 - .345
6.40	.358, .360, .363, .365, .375, .970	.204(1), .012, .201 .207(3),(4)
	CHAPTER 7.	
7.01	.405	.138
7.02	.405	.138
7.03	.405	.138
7.04	.423	.807
7.05	.410, .408, .935	.141, .144, .804
7.07	.408	.144
7.14	.420	.156 - .168
7.20	.413, .430	.147, .150, .237 - .249
7.21	.420	.156 - .163
7.22	.418	.159, .168
7.25	.415	.153
7.27	.508	N
7.28	.420	.156 - .168
7.30	.425	.171
7.31	.425	.171
7.40	.435	N

RMBCA	ACC	ABCA
	CHAPTER 8.	
8.01	.450	.174, .222, .219
8.03	.453	.177, .180, .183
8.04	.453	.177, .180, .183
8.05	.453	.177, .180, .183
8.06	.455	.186
8.08	.460, .463	N
8.10	.465	.189
8.20	.475	.199
8.21	.475	.199
8.22	.470	.198
8.23	.470	.198
8.24	.473	.192
8.25	.468	.195
8.30	.450	.174, .222, .219
8.31	.478	N
8.32	.485	.213
8.33	.480	.216, .225
8.40	.483	.228, .231
8.41	.483	.228, .231
8.42	.483	.228, .231
8.43	.483	.228, .231
8.44	.483	.228, .231
8.51	.490	.010
8.52	.490	.010
8.53	.490	.010
8.54	.490	.010
8.55	.490	.010
8.56	.490	.010
8.57	.490	.010
	CHAPTER 10.	
10.01	.502	.270, .273
10.02	.504	.276
10.03	.504	.276
10.04	.506	.282, .279
10.05	.504	.276
10.06	.510, .512	.285, .288
10.07	.516, .518, .520	.294, .303, .306
10.08	.522, .524, .526	N
10.09	.514	.291
10.20	.228	.135

RMBCA	ACC	ABCA
	CHAPTER 11.	
11.01	.530, .532, .534, .536, .538, .540	.375, .378, .381, .384
11.02	.530, .532, .534, .536, .538, .540	.375, .378, .381, .384
11.03	.544, .548	.393
11.04	.554, .556, .558	N
11.05	.550, .552	.396, .402
11.06	.560	.405
11.07	.562	.408, .411, .414
	CHAPTER 12.	
12.01	.566	.435
12.02	.568, .570, .572	.438, .441, .444
	CHAPTER 13.	
13.02	.574	.417 - .432 .447 - .462
13.20	.544, .575	N
13.21	.576	N
13.22	.576, .578,	N
13.23	.576,	N
13.24	.576	N
13.25	.578	N
13.28	.578	.423, .453
13.30	.580	.426, .456
13.31	.580	.426, .456
	CHAPTER 14.	
14.01	.605	.465, .474, .477
14.02	.605	.465, .474, .477
14.03	.608, .618	.468, .474, .480 .483, .489(3)
14.04	.610, .613	.492 - .504, .507
14.05	.615, .648, .660, .665, .668, .670 .673	.486, .489, .555 .558, .561, .564, .570, .594
14.06	.648, .653	.555, .558, .579
14.07	.648, .653, .675	.555, .558, .579
14.20	.633	.519
14.21	.633	.519
14.23	.633	.519

RMBCA	ACC	ABCA
14.30	.628, .635	.540, .543, .552, .519
14.31	.635, .638, .640 .650	.519, .534, .573, .579, .582, .585
14.32	.643	.576, .567
14.33	.645, .653	.537, .546, .549 .579
14.40	.653, .668	.579

CHAPTER 15.

15.01	.705, .718, .728, .730, .733	.597, .600, .612, .615, .618, .621
15.02	.710, .715	.693, .696
15.04	.713, .738	.690, .657
15.05	.735, .740	.624, .603
15.06	.720, .723, .725	.606, .607, .609
15.07	.753	.627
15.08	.758, .760	.633, .635
15.10	.763	.639
15.20	.778, .780, .785, .788	.660, .663, .669, .672
15.30	.743	.675
15.31	.745, .748, .750	.678, .681, .684

CHAPTER 16.

16.01	.430	.237 - .249
16.02	.430	.237 - .249
16.03	.430	.237 - .249
16.20	.433	N
16.21	.433	N
16.22	.805, .808, .811	.699, .702, .705

CHAPTER 17.

17.01	.955	.816
17.02	.955, .708	.816, .687
17.04	.963	N

PART III.

SOURCE CHART:

ORIGINS AND CORRESPONDING STATUTORY COVERAGE OF EACH SECTION OF THE PROPOSED ALASKA CORPORATIONS CODE (ACC)

ACC	ABCA	MBCA	GCL	NBCL	OTHER	RMBCA
		ARTICLE 1. CORPORATE PURPOSES AND POWERS				
.005	P	X				X
.010	X	X				P
.015	P	P	P	P		X
.020			X			
.025			X			
		ARTICLE 2. NAME AND SERVICE OF PROCESS				
.105	X	X				X
.110	X	X				X
.115	X	X				X
.120	X	X				X
.125	X	X				X
.130	X	X				P
.135	X	X				X
.140	X	X				X
.145	X	X				X
.150	X	X				X
.155	X					
.160	X					
.165	X	X				X
.170	X	X				P
.175	X	X			ORE	P
		ARTICLE 3. FORMATION OF CORPORATIONS				
.205	X					
.208	X	X	X			
.210	X	X	X		DEL	
.213	X	X				
.215	X	X				
.218	X	X				P
.220	X	X				P
.223	X	X				X
.225			X		DEL	X
.228			X		DEL	P
.230			X			P
.233			X			
		ARTICLE 4. CORPORATE FINANCE				
.305	X	X	X			X
.308	X	X				X
.310	X	X				P
.313	X	X				P
.315	X	X				P
.318	X	X				P
.320	X	X				P
.323	X	X				P
.325			X			P

ACC	ABC A	MBCA	GCL	NBCL	OTHER	RMBCA
.328	X	X				X
.330	X	X				X
.333	X	X				X
.335	X	X				X
.338	X	X				X
.340	X	X				X
.343		X				P
.345	X	X				P
.348	X	X				P
.350	X	X				P
.353	X	X				
.355	X	X				X
.358			X			P
.360			X			P
.363			X			P
.365			X			P
.368			X			
.370			X			
.373	X	X				X
.375	X					X
.378			X			P
.380			X			
.383			X			
.385			X			P
.388			X			X
.390	X					

ARTICLE 5. MEETINGS OF SHAREHOLDERS

.405		X	P			P
.408		P				X
.410	X	X				X
.413	X	X				X
.415	X	X	P			X
.418			X			X
.420		X	P			P
.423	X	X	P			P
.425	X	X	P			P
.428		X				
.430	X	X				P
.433			X			P
.435		P		P		P
.438	X	X				X

ARTICLE 6. DIRECTORS AND OFFICERS

.450		X				P
.453				P		P
.455		X				P
.458			X			
.460			X			P
.463			X			X
.465			X			P

ACC	ABCA	MBCA	GCL	NBCL	OTHER	RMBCA
.468		X				X
.470			X			X
.473	X	X				X
.475	X	X				X
.478			X			X
.480	X	X				X
.483			X	X		X
.485		X	X			
.488				P		
.490	X	X				X

ARTICLE 7. AMENDMENTS AND CHANGES

.502	X	X	X			X
.504	X	X	X			X
.506	X	X				P
.508			X			X
.510	X					
.512	X					X
.514	X	X				P
.516	X					P
.518	X					P
.520	X					P
.522		X				X
.524		X				X
.526		X				X

ARTICLE 8. ORGANIC CHANGE

.530	X	X				X
.532	X	X				X
.534	X	X				
.536	X	X				X
.538	X	X				X
.540	X	X				X
.542			X			
.544		X				P
.546	X	X				
.548	X	X				X
.550		X				X
.552	X	X				X
.554		X				X
.556		X				X
.558		X				X
.560		X				P
.562		X				X
.564	X					
.566		X				X
.568		X				P
.570	X	X				P
.572	X	X				P
.574	X	X				P
.576				X		X

ACC	ABCA	MBCA	GCL	NBCL	OTHER	RMBCA
.578				X		X
.580	X			X		P
.582		X				

ARTICLE 9. DISSOLUTION

.605	X		X			P
.608	X	X	X			X
.610	X	X	X			P
.613	X	X				P
.615			X			X
.618	X	X	X			P
.620			X			
.623	X	X				
.625	X	X				
.628			X			P
.630			X			
.633	X	X				P
.635	X				ORE	X
.638	X	X				
.640			X			P
.643	X	X	X			
.645			X			
.648			X			X
.650			X			P
.653			X			X
.655			X			
.658	X	X				
.660			X			P
.663			X			
.665			X			
.668			X			
.670			X			
.673			X			
.675			X			X
.678	X	X				X

ARTICLE 10. FOREIGN CORPORATIONS

.705	X	X				X
.708	X	X				X
.710	X	X				X
.713	X	X				X
.715	X					X
.718	X	X				X
.720	X	X				X
.723	X	X				X
.725	X	X				X
.728	X	X				X
.730	X	X				X
.733	X	X				X

ACC	ABCA	MBCA	GCL	NBCL	OTHER	RMBCA
.735	X	X				X
.738	X	X				P
.740	X	X				X
.743	X	X				P
.745	X	X				X
.748	X	X				X
.750	X	X				X
.753	X	X				X
.758	X	X				X
.760	X	X				X
.763	X	X				P
.765	X	X				
.768	X	X				
.770	X	X				
.773	X	X				
.775	X	X				
.778	X	X				X
.780	X	X				P
.783	X	X				
.785	X	X				X
.788	X	X				X

ARTICLE 11. REPORTS, FEES, AND PENALTIES

.805	X	X				P
.808	X	X				P
.811	X	X				X
.813	X					
.815	X	X				
.818	X	X				
.820	X	X				
.823	X	X				
.825	X	X				P
.828	X	X				P
.830	X	X				P
.833	X	X				P
.835	X	X				P
.838	X	X				P
.840	X	X				P
.843	X	X				P
.850	X	X				
.853	X	X				
.855	X	X				
.858	X	X				
.860	X					
.863	X	X				X
.865	X					
.868	X	X				P
.870	X					

ARTICLE 12. MISCELLANEOUS PROVISIONS

ACC	ABCA	MBCA	GCL	NBCL	OTHER	RMBCA
.905			X			
.910	P					X
.915	X	X				P
.920				X		X
.925	P	P		P		P
.930				X		
.935	X	X				X
		ARTICLE 13. GENERAL PROVISIONS				
.950	X	X				X
.953	X					
.955			P	P		X
.958			X			
.960	X					
.963				X		X
.965	X	X		P		X
.968			X			
.970			X			P
.990	P	P	P			P
.995	P					P

"X" indicates the presence of identical or functionally identical statutory language.

"P" indicates the presence of partial congruence between the ACC and the source code or the RMBCA. The "origin" and "comparison" discussion for each section of the ACC should be consulted in order to determine the differences.

ACC: CSSB 246/HB 343, The Alaska Corporations Code

ABCA: AS 10.05, The Alaska Business Corporations Act

MBCA: Model Business Corporations Act

GCL: California General Corporations Law

NBCL: New York Business Corporations Law

RMBCA: ABA 1984 Final Draft of the Revised Model Business Corporation Act

THE FOLLOWING DOCUMENT HAS NOT BEEN FILMED BUT IS AVAILABLE IN THE ORIGINAL FILE

HOUSE AND SENATE JOINT
JOURNAL SUPPLEMENT

May 15, 1987 No. 9

April 10, 1987

Bill on the Alaska Corporations Code
HB 322/SB 306

"An Act revising the corporations code; amending Alaska Rules of Civil Procedure 4, 10, 11, 19, 20, 23.1, 24, 65, 73, and 82, Alaska Rules of Appellate Procedure 204 and 609, and Alaska Rule of Evidence 803(8); and providing for an effective date."

Identical text in both bills

*****