

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECTS 86/2

910 SCOM32: AK GENERAL STOCK OWNERSHIP CORP. 1979-80 910

p11546

2.11 c first sent. disclosure
needs clarification

117

3.05 X 10,05,183 Conflict

3.07

5 days mail notice + possible
quorum problem

3.08

X 10,05,912

4.03

stock option is ridiculous

4.06

no enforceable right of attendance

3-28

Get Memo from
Asst. Att. Gen.

10.05.240 rights of shareholder to view records

10.05.243 obstruction of right by officer
liability penalty

may need more penalty

low quorum & short notice/ptgs.

p. 50

10.05.198

Sec 13. d. of Chabling Act

suggested use of teleconference as in Calif Law

Get

? Willmont, Cutler + Pickering report re: SEC

1933 SEC act ^{also 34 act} purchase or sale of securities ^{perspective}

intra state exemption: if lost, ^{stock out of state} then in "put" or forced buy back
from rest of stockholder position

office 916-752-2896 or Joe Home 756.0605
Dr. Fessler } to work up suggested changes
Ken Rosenstern } to problem areas ~~in~~ identified
Gerry Baucke } in enabling leg.
Milt Barker }

3-29 Derivative Actions (requires $\frac{2}{3}$ vote ^{of legislature} change rule of court)
are share holder ^{required} Bonding or representatives of say 100 shares
1. contemporaneous stock ownership 2. exhaustion of remedies
live with this
or go
for a new statute

rule 23.1 not tight enough
Judge to determine if Bond for amount and time allotted for posting

NY rule on non court settlements or 23.1

BCV 626D ^{NY} notice of filing of suite to share holders

626E accountability for amount of settlement

? 10.50 GSO C Model Act then enabling
sec. to conclude that

$\frac{1}{6}$ or $\frac{2}{3}$ of a quorum to remove ^{original} director or board member
individual removal with same # votes as elected by
full board removal by majority of shares voting
at mtg where quorum is present

Sec 302 Calif. inc no to

Calif 831, ~~is~~ is out should be in California co
1511, Dividends ^{Sec.} 2253

13,19,3019 Sec. 2254

30.20 Sec. 2255

4-5-79 ^{5:30} St. Affairs NBSC

Sat mtg 9:00 AM Out of session 1:30 with
Marten wants response from Chamber of Commerce
Metcalf wants SBA + PIC response

Questions from Admin Hammond

1. How can NBSC be structured to prevent
conflict with other private organizations

2. limit Corps. political activities

4. leave it as it is ... tax on personal level

5. State financing assistance

? 5 yrs to trade residency + retention of stock transfers

Directors number + residency

? regional memberships representation on Board

? any Bd. mem. as full time employee of corp.

? right of eminent domain

? loan guarantee fund Note: start up only

Max 5%, 1st to start up only

? investments p. 6 line 9-17 remove (Gardner)

on file in
St. Affairs Committee
Tentative Decisions
4-5-79

4-7-79

Stockholder may amend Bylaws
restrict lobbying + campaigning
limit stock to AK residents
Chairman must be Alaskan

4-7-79

Proposals / Fessler
minors voting & dividends

Board elections every 2 yrs with 2 yr terms
L Hy Break

Milt to prepare study of resolutions to problems
of existing AK Corps, re: proxies problems i.e.
native corps etc.

SEC '33 Act

34 Act Fraud

Muller requested CS less voting sec.

Fessler to respond to proxies & elections

4-17-79
~~4-12-79~~

Lobbying restrictions

cannot restrict and individual

Ch 24 Lobby definition with exception

Kearwill draft 1. corp cannot make any contribution

2. related not spend to lobby leg.

3. related " " " " Admin.

ALASKA
GENERAL STOCK OWNERSHIP
CORPORATION

HOUSE STATE AFFAIRS COMMITTEE
Committee Action to April 27, 1979

BILL SUMMARY

ALASKA GENERAL STOCK OWNERSHIP CORPORATION

The general stock ownership corporation (GSOC) bill provides for the creation of a GSOC in Alaska and a new chapter of Alaska Statutes to regulate it. The AGSOC, taking advantage of new federal law, will be exempt from corporate income taxes. Income will be distributed to the shareholders and they will pay tax at their personal rates. The shareholders will be all the residents of Alaska as of the bill's effective date and stock will be distributed to them free of charge. The AGSOC will borrow funds to finance investments.

FORMATION OF THE AGSOC

The Alaska General Stock Ownership Corporation is formed by three incorporators appointed one each by the Speaker, Senate President and Governor. The incorporators will select nine people to serve as the initial board of directors subject to disapproval within 15 days by two of the three state officials mentioned. The incorporators will prepare and file the articles of incorporation to begin the AGSOC. The articles will include technical requirements of federal law restricting transfer of shares for five years and mandating issue of stock to all Alaska residents.

The directors, appointed by the incorporators, adopt bylaws, hire officers and begin the process of shareholder identification. The initial board serves only until the first shareholder meeting when the appointed directors must stand for election. The initial articles and bylaws of the corporation must be submitted to the legislature within 30 days of adoption and the legislature has 60 legislative days within which to disapprove of any provision by concurrent resolution.

AGSOC SHARES

One share of stock will be distributed free of charge to each Alaskan resident who was a resident on the effective date of the bill. Resident means a person who lives in Alaska and intends to remain here permanently. Only individuals may own AGSOC shares and no one may own more than ten. Each week for three months before issuance of stock the AGSOC must by newspaper, radio and television notify residents of their eligibility to receive stock. A resident who does not wish to receive stock may decline. For one year after the initial stock issue a qualified resident may receive his share of stock without charge and for an additional year may purchase his share for book value.

Federal law requires GSOCs to have a charter providing for the issuance of "at least one share (of stock) to each eligible individual." To fulfill this requirement the first share of GSOC stock must be issued without charge to the shareholders. However, there is no restriction upon subsequent sales of GSOC stock. Thus, provision is made for the subsequent sale of AGSOC stock if the shareholders approve.

SHAREHOLDER POWERS

Each share of stock may be voted at shareholder meetings with 1/3 of the shares required for a quorum. Proxies are prohibited and in their place a corporate ballot and shareholder's pamphlet will be prepared, under regulations insuring fairness, and mailed to each shareholder. Shareholders vote their ballot by mail and cumulative voting is prohibited. The shareholders may nominate directors and place issues on the corporate ballot by petition of 1,000 shareholders. Notice of the right to nominate directors and place issues on the corporation ballot must be made by publication at least 150 days before the shareholder meeting and the meeting notice and ballot must be mailed at least 60 days before the meeting.

AGSOC is required to keep complete books and records available for shareholder inspection and any corporate agent wrongfully refusing shareholder access may be fined \$1,000 per day. Shareholders have the right to remove the entire board by a majority vote or any single director by a vote at least as large as that which elected him. The attorney general or 100 shareholders may file suit to remove a director for fraudulent or dishonest acts or gross abuse of authority. Any shareholder may file a derivative suit on behalf of the corporation if those responsible inside the AGSOC fail to do so. The shareholders have the right to amend the bylaws and with a 2/3 vote the articles of incorporation.

DIRECTORS AND OFFICERS

The board of directors has management responsibility for AGSOC. The chairman and at least 3/4 of the board must be Alaskans. Board meetings must be held in the state, but members may participate by conference telephone. Outside directors can never constitute a quorum except when meeting to fill vacancies in the board. AGSOC will have nine directors although the number may be changed in the bylaws. The entire appointed initial board will stand for election at the first annual meeting. Thereafter, members serve for two years with half the board elected each year. Criminal misdemeanor penalties are provided for directors making distributions designed to deceive creditors or shareholders of AGSOC and any agent of AGSOC who makes fraudulent statements regarding the value of shares.

Officers of the AGSOC are appointed by the board of directors and serve at their pleasure. The board establishes the duties of the officers and may replace them at any time.

OTHER PROVISIONS

AGSOC is prevented from making endorsements of political candidates or ballot issues and may not spend money for lobbying of the legislature. Many of the other provisions of the Committee bill have been carried over substantially from existing Alaska corporate law. The provisions regarding sales of assets outside the ordinary course of business, dissolution of the corporation, restatement of the articles of incorporation, requirements for annual reports to the Dept. of Commerce, filing fees and charges, procedural provisions and forms, and power of the Commissioner of Commerce are all basically the same provisions which apply to existing Alaska corporations. The bill does retain the right in the legislature to change the law with respect to AGSOC at any time so long as the creditors of the corporation are protected.

SECTION BY SECTION ANALYSIS

This analysis of Committee action on the Alaska General Stock Ownership Corporation legislation describes the provisions of Section 1 of the Committee bill as of April 27, 1979. Since many of the provisions of the Committee Substitute are carried over wholly or in part from the Alaska Business Corporations Act (ABCA) there is included at the end of each section description a reference to the corresponding section of the ABCA, if any.

ARTICLE 1. SUBSTANTIVE PROVISIONS.

- .005. PURPOSES. This section makes it clear that, unless the enabling legislation for a GSOC provides otherwise, the corporation may engage in any legal business. (ABCA 10.05.003).
- .010. GENERAL STOCK OWNERSHIP CORPORATIONS. This section makes it clear that corporation organized under chapter 50, Title 10, are general stock ownership corporations subject to Internal Revenue Code Subchapter "U" and are not agencies of the state for any purpose.
- .015. GENERAL POWER. This section grants to GSOCs the powers of normal corporations to conduct business. Two changes have been made in adapting the ABCA provisions to GSOCs.
 - 1) There is a limitations in (4) preventing a GSOC from investing in property "acquired by it, or for its benefit, through the right of eminent domain" This limitation prevents GSOCs from acting in collusion with an agency or local government to acquire a going business from an unwilling seller. GSOCs are not prevented from investing in projects where some minor portion of the project is acquired through condemnation if the local government determines that the exercise of its condemnation power is appropriate.
 - 2) The power to establish stock bonus plans is deleted from subsection (15) because of the special nature of GSOCs and the limitations on share ownership would make it difficult for a GSOC to adopt a qualified stock bonus plan for its employees. If the GSOC desires to have its employees benefit from growth in the value of GSOC stock the corporation could adopt a funded "phantom stock" program. (ABCA 10.05.009).

- .020. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS; INSURANCE. This section is carried over unchanged from the ABCA and allows the corporation to indemnify its directors or employees for expenses and fines incurred as a result of their actions on behalf of the corporation if they acted in good faith. Indemnification is disallowed in derivative suits where the defendant is guilty of negligence or misconduct in his duties unless the court determines the indemnification is proper. The corporation may purchase insurance on behalf of its directors and employees for claims against them arising out of their corporate positions. (ABCA 10.05.010).
- .030. DEFENSE OF ULTRA VIRES. Meaning "beyond the power" an ultra vires act is one which the corporation did not have authority to perform. This section, carried over from the ABCA, provides that this lack of corporate power can be asserted by a shareholder, the corporation, or the attorney general. It may not, however, be asserted by another party to a transaction with the corporation as grounds for failing to perform. (ABCA 10.05.018).
- .035. CORPORATE NAME. This section requires that a GSOC include in its corporate name the words "general stock ownership corporation" or an abbreviation thereof. In addition, the name may not be misleading or deceptively similar to the name of another corporation doing business in Alaska. (ABCA 10.05.021).
- .040. RESERVATION OF CORPORATE NAME. This section allows a person or corporation to reserve a specific name for a general stock ownership corporation for a period of two years with a renewal period of one year. Reservation of a name might be used where an individual seeks to establish a GSOCs by initiative petition or where an existing GSOC seeks to change its name upon the approval of its shareholders. The name may be reserved by this section during the period in which the necessary activities are undertaken to make the name effective. (ABCA 10.05.024, .027, and .033).
- .045. FOREIGN GENERAL STOCK OWNERSHIP CORPORATIONS. General stock ownership corporations chartered in another state and doing business in Alaska are subject to the rules of the Alaska Business Corporations Act (AS 10.05).
- .050. REGISTERED OFFICE AND REGISTERED AGENT. The registered agent is the agent for the corporation upon whom legal papers may be served. This provision requires that the corporation maintain a registered office and agent within the state. (AS 10.05.045)

.055. FILING LIST OF REGISTERED CORPORATIONS WITH SUPERIOR COURT.

.060. CHANGE OF REGISTERED OFFICE OR AGENT.

.065. REGISTRATION OF REGISTERED AGENT.

These three sections set out the rules for registration of the registered agent with the Commissioner of Commerce, the listing of registered agents and offices with the superior courts throughout the state, and the method by which a registered agent may change the registered office or resign his position. These provisions are carried over intact from AS 10.05.048, .051, and .054 respectively.

.070. SERVICE OF PROCESS ON CORPORATION. In addition to designating the registered agent as agent for service of legal papers on the corporation this section allows the Commissioner of Commerce to be served on behalf of the corporation when the registered agent cannot be found. (AS 10.05.057).

.075. CREATION AND ISSUANCE OF SHARES. This section allows the corporation to create and issue shares of no par value stock. The total number of shares available for issue must be stated in the articles of incorporation. GSOCs are prohibited from issuing "par value" stock since that concept, developed for the protection of shareholders, has no application in a corporation such as the GSOC where shares are to be distributed initially without payment by the shareholders.

.080. CONSIDERATION FOR SHARES. The federal GSOC legislation requires that a GSOC have a charter providing for the issuance of "at least one share (of stock) to each eligible individual." In order to fulfill this requirement it appears that the first share of GSOC stock must be issued without charge to the shareholders. However, there does not appear to be any restriction in the federal legislation upon subsequent sales of stock by GSOCs except for the general limitations upon share ownership. In keeping with the Committee's desire for a generally applicable GSOC chapter provision is made for the subsequent sale of stock by GSOCs. Thus, this section allows the GSOC to issue shares without consideration or for a payment fixed in advance by a vote of the shareholders.

Sales of corporation stock by the corporation may not be made at a price in excess of book value if the shares sold are treasury shares, that is shares which have been issued and repurchased by the corporation. (AS 10.05.096).

.085. PAYMENT FOR SHARES. Payment for shares may be made in cash, other property or services, but not in notes or future services. (AS 10.05.099).

.090. JUDGMENT OF BOARD OR SHAREHOLDER AS TO VALUE OF CONSIDERATION CONCLUSIVE. This section allows the directors or the shareholders to conclusively determine the value of payment for shares in the absence of fraud. (AS 10.05.102).

- .095. EXPENSES OF ORGANIZATION, REORGANIZATION AND FINANCING. In sales of stock by a corporation shares entitled to the full protections of limited liability must be fully paid and nonassessable. This means that the full sales price for the stock has been received by the corporation. However, if the stock is sold through an underwriter the fees will come out of the sales proceeds before they are paid to the corporation. Likewise, the organizational expenses of the corporation may be paid out of stock sales before the proceeds are remitted to the corporation. This section clarifies that in such cases the shares are deemed to be fully paid. (AS 10.05.111).
- .100. CERTIFICATES REPRESENTING SHARES. This provisions sets out the requirements as to form of stock certificates which must be signed by the corporate officers. (AS 10.05.114)
- .105. INFORMATION REQUIRED TO BE STATED ON CERTIFICATE. The stock certificates or other evidences of ownership must include information regarding the person to whom they are issued, that they are no par value shares, and that the corporation is organized in Alaska. (AS 10.05.117).
- .110. FULL PAYMENT REQUIRED FOR CERTIFICATE. If payment is required for shares they may not be issued until full payment is received. (AS 10.05.120).
- .115. ISSUANCE OF FRACTIONAL SHARES. GSOCs may issue fractional shares of stock and these fractional shares hold dividend, voting and distribution rights equal to their fractional interest. It may be necessary for a GSOC to issue fractional shares in the situation where a shareholder leaves his stock to his heirs and there is more than one child beneficiary. (AS 10.05.123).
- Helso →* .120. LIABILITY OF SUBSCRIBERS AND SHAREHOLDERS. This section, adopted directly from ABCA, limits the liability of shareholders and those who have agreed to purchase share to the amount which they agreed to pay to the corporation for the shares. Subsequent holders of the stock are protected if they received the stock in good faith. (AS 10.05.126).
*not paid for shares
Value paid now
Does not have to have*
- .125. BYLAWS. The board of directors adopts the initial bylaws of a GSOC subject to review and rejection by the legislature under section 335 of the bill. Subsequent bylaws may be adopted, amended or repealed by a vote of either the shareholders or directors.
- .130. MEETINGS OF SHAREHOLDERS. The time and location of the annual shareholders meeting is established in the bylaws. The specific place is set by the board. Special shareholder meetings may be called by the president of the GSOC, the board or the holders of at least 1,000 shares. Shareholder meetings may be teleconferenced. (AS 10.05.138).

- .135. NOTICE OF SHAREHOLDER'S MEETINGS. This section requires written notice of shareholder's meetings mailed to shareholders not less than 60 days before the meeting. In addition, notice of shareholders' rights to add ballot issues or nominate directors must be made by publication at least once a week for four weeks beginning at least 150 days before the meeting. (AS 10.05.141).
- .140. CLOSING OF TRANSFER BOOKS AND FIXING RECORD DATE. To determine the shareholders of the corporation for purposes of a dividend distribution or voting rights the transfer books of the corporation may be closed prior to the date of the proposed activity or a "record date" may be established and the shareholders determined as of that date. Time limits are provided beyond which the transfer books may not be closed in order to protect shareholder voting rights and to allow interested parties to inspect the share records of the corporation prior to shareholders' meetings. (AS 10.05.144).
- .145. VOTING LIST. The responsible officer of the corporation must make available at the registered office of the corporation beginning at least 60 days before any shareholders' meeting a list of the shareholders eligible to vote at the meeting and access to this list must be provided to all shareholders. (AS 10.05.147).
- .150. QUORUM OF SHAREHOLDERS. 1/3 of the shares constitute a quorum for action by the shareholders and a majority vote of a quorum is sufficient to bind the shareholders in most cases. (AS 10.05.153).
- .155. PROXY VOTING PROHIBITED. Because of the ballot mechanism whereby each shareholder is allowed to vote in person through his ballot proxies are unnecessary in general stock ownership corporations and are therefore prohibited.
- .160. VOTING FOR DIRECTORS. Each shareholder may vote his shares for directors but cumulative voting is prohibited. This means that each share can cast only one vote for director in any contested election for a directorship position.
- .165. VOTING OF SHARES IN THE NAME OF ANOTHER.
- .170. VOTING OF PLEDGED SHARES.
These sections allow shares held by an administrator, executor or guardian to be voted by him without a transfer of the shares into his name. Shares held by a pledgee may be voted by the pledgor until transferred into the pledgee's name. (AS 10.05.165 and . 168).

.175. CORPORATION BALLOT. Voting at meetings of shareholders will be by ballot rather than through the normal corporate vehicle of proxies. The ballot will be prepared by the corporation subject to review for fairness by the Commissioner of Commerce. It will be mailed to each shareholder with the notice of the shareholders' meeting and voted by mailing it back to the corporation before the date of the meeting.

Shareholders may, by petition of 1,000 or more, nominate directors and place issues on the corporate ballot. In addition, the directors may place issues and candidates on the ballot by a majority vote. Information on board candidates and ballot issues is to be provided to the shareholders by the corporation and these materials will be filed with the Commissioner of Commerce and subject to the regulations and criminal penalties applicable thereto.

.180. BOARD OF DIRECTORS. The board of directors is charged with management responsibility for the corporation and their compensation is to be fixed in the bylaws. The chairman and at least 3/4 of the board must be residents of Alaska insuring that outside directors may never constitute a quorum of directors except when meeting to fill vacancies in directors seats until the next shareholder meeting. Officers or employees of the corporation may not serve on the board of directors. (AS 10.05.174).

.185. NUMBER OF DIRECTORS. The minimum number of directors is three and the number is to be fixed in the bylaws except that the original number is fixed by the enabling legislation. If the bylaws are silent the number fixed in the enabling legislation is the proper number. The number of directors can be changed through a bylaw amendment.

The board members serve for two year terms and they are to be divided into classes with only half the board standing for election at any one annual meeting. This staggering of the board members' terms provides for some continuity of management on the board of directors. (AS 10.05.177).

.190. ELECTION OF DIRECTORS. Directors are to be elected at the annual meetings and each director hold office until his successor is elected and qualified. This prevents gaps in board membership except upon death or incompetence of a board member. (AS 10.05.183).

.195. VACANCIES. Vacancies in the board caused by death, resignation or incompetence may be filled by a majority vote of the remaining directors. Directors elected by the board to fill a vacancy must stand for election by the shareholders at the next shareholders' meeting and are elected to fill the remaining portion of the directors position originally filled by vote of the board. No vacancy may continue for more than 6 months or until the next shareholders' meeting. (AS 10.05.189).

- .200. QUORUM OF DIRECTORS. A majority of the total number of directors fixed in the bylaws, articles or enabling legislation constitutes a quorum and action may be taken by a majority vote of a quorum. By allowing only $\frac{1}{4}$ of the board to be outsiders Alaskan control of the board is assured. One-quarter of the board can never constitute a majority of a quorum except in the event of a vacancy in which case the board must act to fill the vacancy. (AS 10.05.192).
- .205. PLACE AND NOTICE OF DIRECTORS' MEETINGS. Directors meetings may be held only in Alaska and regular meetings of the board may be held without notice. Special board meetings require notice specifying the purpose of the meeting. (AS 10.05.198).
- .210. PARTICIPATION BY TELEPHONE. Directors may participate in directors meetings by telephone if all the participants may hear and be heard by each other. (AS 10.05.199).
- .215. DISTRIBUTIONS. Some restrictions on corporate distributions are necessary because the limited liability feature of corporations prohibits creditors from levying against shareholders if the corporation distributes its way to insolvency. The traditional restraints which have been used to protect creditors of corporations are the devices of stated capital, capital surplus, earned surplus and retained earnings. Through these devices corporations are required to keep at least something in the till for creditors.

However, the traditional restraints never ensured that cash would be on hand for creditors and they have been eroded by numerous exceptions allowing the corporation to designate capital surplus and create surplus by reduction of capital. As a result corporations have been able to make distributions beyond the point where liabilities to third parties were protected.

Under the ABCA dividends may generally be declared only out of earned surplus. (AS 10.05.204). There are several exceptions to this rule. Dividends may be paid in cash out of depletion reserves by natural resource companies and in stock out of capital surplus. (AS 10.05.204). However, a dividend may not be declared if the corporation would thereby be rendered insolvent. (AS 10.05.201). These restrictions provide some protection to creditors in that at least 75% of the amount received for shares must be allocated to stated capital, but the remaining 25% may be allocated to capital surplus available for distribution under certain circumstances.

Similarly, the ABCA provides that a corporation may acquire shares issued by it only from earned surplus except in special situations. (AS 10.05.012). This distinction between the sources from which shares may be purchased and those from which dividends may be paid does not make much sense since a purchase of shares on a prorata basis has the same effect as a dividend with regard to the protection of creditors.

To protect the creditors and shareholders of general stock ownership corporations and to rationalize restrictions upon the payment of dividends and repurchase of shares, this section provides restrictions on shareholder distributions based upon the current financial condition of the corporation. This section, adapted from a 1977 California amendment to the California Corporations Code, eliminates the concepts of stated capital and capital surplus in favor of a simple balance sheet test.

Under this section the corporation may always make the distribution required by subchapter "U" of the Internal Revenue Code. Thus, the corporation may always distribute to its shareholders an amount equal to 90% of its taxable income.

For distributions in excess of 90% of taxable income the corporation must fulfill either of two tests:

- 1) The corporation may make a distribution out of retained earnings.
- 2) If there are no retained earnings the corporation may make a distribution only if it meets a two pronged test:
 - a) The assets of the corporation, after the distribution are at least equal to $1\frac{1}{4}$ times its liabilities, AND
 - b) The current assets, after the distribution, are at least equal to the current liabilities (a "liquidity test").

If the average pretax income plus interest expense for the two preceeding fiscal years is not at least equal to the average interest expense for those years the current assets must be at least $1\frac{1}{4}$ times current liabilities.

If the corporation does not classify its assets into current and fixed in accordance with generally accepted accounting principles the current assets or liquidity test does not apply.

- .220. DISTRIBUTIONS IN PARTIAL LIQUIDATION. Distributions in partial liquidation are special distributions which reduce the capital value of the corporation. They are distributions out of capital rather than earnings. These distributions may be made only upon a $2/3$ vote of the shareholders and must be identified as distributions in partial liquidation. (AS 10.05.207).
- .225. CERTAIN LOANS PROHIBITED. Loans by the corporation to its officers or directors are prohibited. (AS 10.05.213).

- .230. LIABILITY OF DIRECTORS IN CERTAIN CASES. This section carried over from ABCA makes directors personally liable for distributions and stock purchases by the corporation in violation of the distribution limitations. (AS 10.05.216).
- .235. EFFECT OF GOOD FAITH RELIANCE ON FINANCIAL STATEMENTS OR BOOK VALUE. Directors are not liable under the preceeding section if they relied upon financial statements of the corporation represented to him to be correct. (AS 10.05.219).
- .240. PRESUMPTION OF CONSENT OF DIRECTOR AND FILING OF DISSENT. A director present at a meeting is presumed to consent to the action taken by the board at such a meeting unless he files a dissent in accordance with this section. (AS 10.05.222).
- .245. DIRECTOR'S RIGHT TO CONTRIBUTION. A director sued for violation of the distribution rules is entitled to contribution (a sharing of the damages) from all directors assenting to or voting for the action. (AS 10.05.225).
- .250. OFFICERS. Officers of the corporation are elected by the board of directors and serve at their pleasure. (AS 10.05.228).
- .255. DUTIES OF OFFICERS. The board and the bylaws establish the duties of the corporate officers. (AS 10.05.231).
- .260. REMOVAL OF OFFICERS. Officers may be removed by the board but removal does not prejudice contract rights. (AS 10.05.234).
- .265. BOOKS AND RECORDS. GSOCs are required to keep complete books and records and make them available for inspection by shareholders and the Dept. of Commerce at the principal place of corporate business or the registered office. (AS 10.05.237).
- .270. SHAREHOLDER'S RIGHT TO EXAMINE BOOKS AND RECORDS. Shareholders have the right to examine books of the corporation at a reasonable time upon written demand. Access to the books of the corporation can be denied if sought for an "improper" purpose. The proper purpose restriction is a carryover from common law where the restriction insured that the examination was for an honest purpose and not to gratify curiosity or for speculative or vexatious purposes. It was designed to make certain that the purpose of the shareholder desiring to make examinations must be germane to his interests as a shareholder, that it was proper and lawful in character, and that it was not inimical to the interests of the corporation.

To clarify the applicability of this common law doctrine a number of states, including Alaska, have adopted into their corporation codes an inspection of records provision requiring the proper purpose. Under these provisions the shareholder is presumed to have the right of inspection and the lack of a proper purpose can only be asserted as a defense to a claim of wrongful denial of inspection. There is no comprehensive definition of what constitutes a proper purpose since there are innumerable valid reasons for a shareholder to inspect the books of his corporation. However, case law has indicated many such purposes a partial list of which would include:

- 1) To ascertain the value of a shareholder's stock.
- 2) To acquire knowledge to enable him to vote understandingly at a shareholder's meeting.
- 3) To investigate into consideration actually paid for stock and the failure to distribute dividends.
- 4) To investigate irregularities resulting in secret profits to officers of the corporation.
- 5) To determine correctness of financial statements and the existence of collateral for notes.
- 6) To determine whether a shareholder is being discriminated against in relation to his shares. (AS 10.05.237).

.275. LIABILITY FOR REFUSAL OF EXAMINATION. Any agent of the corporation wrongfully refusing shareholder access to the books and records of the corporation is subject to a fine of \$1,000 per day for each day of wrongful refusal. (AS 10.05.243).

.280. COURT MAY COMPEL INSPECTION. Courts have the power to compel inspection of the corporations books. (AS 10.05.249).

.285. SHAREHOLDERS' RIGHT TO FINANCIAL STATEMENT. The corporation must provide the shareholders with a financial statement upon request. (AS 10.05.249).

.290. REMOVAL OF DIRECTORS BY SUPERIOR COURT. This new provision allows a court, upon the suit of the attorney general or 100 shareholders 18 or older, to remove a director for fraudulent or dishonest acts or gross abuse of authority and bar such director from reelection.

This provision is not a simple removal clause, but gives standing to the shareholders and the attorney general to ask a court to remove a director for specific reasons. In order to have the court remove the director the shareholders or the attorney general bringing suit must still prove the director guilty of the offenses charged.

.295. SHAREHOLDER REMOVAL OF DIRECTORS. This section allows the shareholders to remove the entire board by a majority vote or any single director by a vote at least as large as that which elected him at his last election.

- .300. SHAREHOLDERS' DERIVATIVE ACTION. Shareholders may file suit on behalf of the corporation if those responsible inside the corporation fail to do so. Alaska Supreme Court Rule 23.1 provides for such an action, but does not specify treatment of security for expenses and other details. This section allows the court discretion to require security for expenses incurred in the prosecution of the suit. The court must approve of any settlement to insure that those prosecuting the suit are not simply bought off. The proceeds of any successful action or settlement must be accounted for to the court which may authorize reasonable expenses to the parties.
- .305. FRAUDULENT TRANSFERS OF SHARES. Transferring or obtaining shares of the corporation by fraud is a felony.
- .310. POLITICAL ACTIVITIES. GSOCs may not endorse candidates or ballot issues nor spend money in support or opposition of either. They are also prohibited from spending any monies to lobby the legislature. Violations are a misdemeanor punishable by a jail term and a \$10,000 fine.

ARTICLE 2. FORMATION OF CORPORATIONS.

- .315. INCORPORATORS. Incorporators are those persons who file the articles of incorporation to begin the corporation's existence. This must be done by at least three people over the age of 18. (AS 10.05.252).
- .320. ARTICLES OF INCORPORATION. This section sets out the minimum requirements of the articles of a GSOC including the provisions required by subchapter "U" of the Internal Revenue Code that the corporation have only one class of stock, issued only to individuals, with the right to elect not to receive a share, and subject to transfer restrictions for five years. Other provisions are carried over from the ABCA. (AS 10.05.255).
- .325. FILING OF ARTICLES OF INCORPORATION. Articles of incorporation are to be filed with the Commissioner of Commerce who shall certify the filing and return one original of the articles to the corporation. (AS 10.05.258).
- .330. EFFECT OF ISSUANCE OF CERTIFICATE OF INCORPORATION. Upon issuing the certificate corporate life begins. (AS 10.05.261).
- .335. ARTICLES OF INCORPORATION AND INITIAL BYLAWS. The articles and initial bylaws must be submitted to the legislature within 30 days of issuing the certificate of incorporation and, if not disapproved within 60 legislative days by concurrent resolution, they are approved. Legislative disapproval may not abrogate any contract obligations of the corporation and may be overridden by a shareholder vote.

- .340. ORGANIZATION MEETING OF DIRECTORS. The incorporators shall call an organizational meeting of directors in the state for the purpose of adopting bylaws, electing officers and conducting other business necessary to the organization of the corporation. (AS 10.05.267).

ARTICLE 3. APPLICATION FOR SHARES.

- .345. NOTIFICATION OF ELIGIBLE SHAREHOLDERS. Since stock is to be distributed free of charge initially all Alaska residents must be notified of its availability. This section sets out the minimum notice requirements of weekly broadcast and publication for at least three month before stock distribution and monthly broadcast and publication for eleven months after distribution. These are minimum requirements only and the board of directors may determine that the corporation should take other steps to identify and notify potential shareholders.
- .350. CORPORATION NOT LIABLE TO SHAREHOLDERS. Although GSOCs are required to take reasonable steps to notify potential shareholders of their right to stock the burden of applying for stock lies with the resident and the corporation is not liable for failure to notify or issue stock to a potential shareholder. If a resident makes application for stock after the distribution of one or more dividends he loses his right to those dividends and is entitled to receive only those dividends declared and paid after the date upon which his stock was issued to him.
- .355. LATE APPLICATION FOR SHARES. Any individual who is eligible to receive an initial distribution of shares but who fails to apply for issuance of stock may be issued a share without charge at any time within one year of the original issue. The one year period coincides with the period during which a shareholder may elect not to receive his stock and have his share cancelled. For one additional year a person who would have been eligible to receive an initial share but did not get one may purchase his share at book value. Original issue is cut off completely after the two year period.
- .360. PENALTIES FOR MISREPRESENTATION OF ELIGIBILITY AS SHAREHOLDER. The superior court is given jurisdiction to void stock issued to an ineligible individual who obtained his shares by fraud and allows the corporation to recover any distributions paid to such a shareholder.

ARTICLE 4. AMENDMENT.

- .365. RIGHT TO AMEND ARTICLES OF INCORPORATION. The articles of the corporation may be amended to include any legal provision. (AS 10.05.270).

- .370. PURPOSES FOR WHICH ARTICLES MAY BE AMENDED. This section lists some, but not all, of the legal purposes for which the articles may be amended. (AS 10.05.273).
- .375. PROCEDURE TO AMEND ARTICLES OF INCORPORATION. The board of directors or the shareholders can propose amendments to the articles of incorporation, but the articles may only be amended upon a 2/3 majority vote of a quorum of shareholders.
- .380. ARTICLES OF AMENDMENT.
- .385. FILING OF ARTICLES OF AMENDMENT.
- .390. EFFECT OF CERTIFICATE OF AMENDMENT.
These three sections provide that an amendment approved by the shareholders to the articles of incorporation must be filed with the Commissioner of Commerce in the same manner as the original articles of incorporation and once certified by the Commissioner the amendment becomes effective. These sections are adopted directly from AS 10.05.285, .288, and .291 respectively.
- .395. RESTATED ARTICLES OF INCORPORATION.
- .400. EXECUTION OF RESTATED ARTICLES OF INCORPORATION.
- .405. CONTENTS OF RESTATED ARTICLES OF INCORPORATION.
- .410. FILING OF RESTATED ARTICLES OF INCORPORATION.
- .415. EFFECT OF ISSUANCE OF RESTATED CERTIFICATE OF INCORPORATION.
These five sections deal with restated articles of incorporation. Restated articles of incorporation for purposes of GSOCs are simply a consolidation and updating of the articles of incorporation with current amendments. This allows the corporation to have on file with the Commissioner a current copy of the articles of incorporation incorporating all amendments. The provisions are adopted essentially from ABCA except that GSOCs are not allowed to amend the articles of incorporation through filing restated articles and for that reason are allowed to file restated articles upon motion of the board of directors. (AS 10.05.294, .297, .300, .303, and .306 respectively).

ARTICLE 5. SALE OF ASSETS.

- .420. SALE OR MORTGAGE OF ASSETS IN REGULAR COURSE OF BUSINESS.
The board of directors may sell or dispose of all the assets of the corporation if it is in the ordinary course of the corporation's business. (AS 10.05.435).
- .425. SALE OR MORTGAGE OF ASSETS OTHER THAN IN REGULAR COURSE OF BUSINESS. Sale of all the assets of the corporation other than in the ordinary course of business requires a vote of the shareholders. (AS 10.05.438).

- .430. APPROVAL OF PLAN BY SHAREHOLDERS. A 2/3 vote of the shareholders is required to approve a sale of all the assets of the corporation outside the ordinary course of business. (AS 10.05. 441).
- .435. ABANDONMENT OF PLAN BY BOARD OF DIRECTORS. Even though a vote of the shareholders is required to approve a sale of all the assets the sale may be abandon by the board since such sales are unusual and may require quick decisions which cannot be effectively put to the shareholders. If the shareholders are unhappy about the abandonment they have the power to remove the board and it is to be expected that the board would not abandon such a sale without good cause. (AS 10.05.444).
- .440. RIGHTS OF DISSENTING SHAREHOLDERS UPON SALE OR EXCHANGE OF ASSETS.
- .445. NOTICE TO DISSENTING SHAREHOLDER.
- .450. PAYMENT TO DISSENTING SHAREHOLDER AFTER AGREEMENT ON VALUE OF SHARES.
- .455. ACTION BY DISSENTING SHAREHOLDER TO COMPEL PAYMENT UPON FAILURE TO AGREE ON VALUE.
- .460. EFFECT OF ABANDONMENT OR REVOCATION OF SALE OR EXCHANGE ON SHAREHOLDER'S RIGHTS.
- .465. STATUS OF SHARES ACQUIRED FROM DISSENTING SHAREHOLDER. These section deal with the shareholder who does not wish to be a part of the sale of substantially all the assets of the corporation in spite of the 2/3 majority vote of the shareholders. Such a shareholder can dissent from the sale and have the corporation purchase his shares. There are notice provisions and opportunity for the shareholder and the corporation to agree upon a purchase price for the shares. If the shareholder and the corporation cannot agree upon a price the matter can be decided by a court. If the sale is abandoned the dissenting shareholder loses his right to receive payment from the corporation for his share and he remains a shareholder. Shares acquired from a dissenting shareholder become treasury shares.

ARTICLE 6. DISSOLUTION.

GSOCs may be dissolved voluntarily by a 2/3 vote of a quorum of shareholders (.475) or by the Commissioner of Commerce (.530). In a voluntary dissolution the question may be put to the shareholders upon action of the board or a petition of 1,000 shareholders (.475). On affirmative vote of the shareholders a statement of intent to dissolve signed by corporate officers (.480) is filed with the commissioner of Commerce (.485). When the statement is officially filed by the Commissioner the corporation must cease doing business and wind up its operations (.470). However, the corporate existence continues while the corporation notifies creditors,

collects and liquidates assets and pays off its obligations (.490)(.495). When the business of the corporation has been wound up articles of dissolution (.515) are filed with the Commissioner (.520) and when certified the corporate existence ceases (.525). Voluntary dissolutions may be revoked at any time by a 2/3 vote of the shareholders (.500) in which case the corporation files a statement of revocation (.505) and the dissolution process is terminated (.510).

A GSOC may be dissolved involuntarily by the Commissioner of Commerce with 60 days notice for failure to file reports or pay fees, failure to maintain a registered agent or office or change either without notice, and unfilled board vacancies continuing beyond the allowable time (.530). A corporation can be reinstated within two years upon remedy of the violation.

The superior court may dissolve a GSOC (.530) and has jurisdiction to liquidate the corporation's assets (.540). The Attorney General may bring suit to dissolve the corporation where there was fraudulent incorporation or continual abuse of corporate authority (.530).

In addition a suit for liquidation of the corporations assets may be brought by:

- 1) A shareholder where the board is deadlocked; the board is action in an illegal, oppressive, or fraudulent manner; the shareholders are deadlocked for two annual meetings; or, the corporation's assets are being misapplied (.545).
- 2) A creditor when the creditor's claim is unsatisfied and the corporation is insolvent (.550).
- 3) The corporation upon request to have a voluntary dissolution continued under court supervision(.555).
- 4) The Attorney General in conjunction with a suit for dissolution (.560).

The shareholders need not be a party to the action for liquidation (.565). The court has authority to appoint a qualified receiver (.605) for the corporation with power defined by the court (.585) to collect and sell its assets (.570)(.575). Proceeds are to be used to pay expenses allowed by the court (.590) and debts of the corporation with the remainder distributed to the shareholders (.580).

The receiver may sue and be sued (.595) and all claims against the corporation must be filed in a timely manner with the court or the receiver (.610). Liquidation may be terminated by the court (.615) but upon completion the court must enter a decree of dissolution (.620).

The article on dissolution is carried over substantially intact from ABCA (AS 10.05.465 - .594).

ARTICLE 7. GENERAL PROVISIONS.

- .625. AS 10.05 INCORPORATED BY REFERENCE. In order to reduce duplication this section incorporates by reference Sections .699 through .819 of ABCA (AS 10.05.699 - .819). These sections deal with requirements for annual reports to be filed with the Commissioner of Commerce, filing fees and charges, procedural provisions and forms, and powers of the Commissioner of Commerce.
- .630. FALSE STATEMENTS AFFECTING VALUE OF SHARES. An agent of a corporation who makes fraudulent statements regarding the value of shares is guilty of a misdemeanor.
- .635. DIRECTOR MAKING UNLAWFUL DIVIDEND OR DISTRIBUTION OF ASSETS. A director who concurs in a distribution designed to deceive creditors or shareholders is guilty of a misdemeanor.
- .640. RESERVATION OF POWER. Amendments to this chapter apply to all existing and future corporations organized under it, but an amendment may not abrogate the contractual obligations of any corporation.
- .645. DEFINITIONS. Many of the definitions in this section are carried over from ABCA and may also be found in AS 10.05.825. However, there are two significant new definitions:
- Certificate as used in the context of "stock certificate" may mean something other than the actual certificate such as a receipt evidencing ownership. This definition has been broadened in order to allow for the possibility that the stock certificates themselves may never be issued, but that the stock records may be kept by the corporation itself as the evidence of ownership in a particular shareholder which ownership would be represented in the hands of the shareholder by a receipt. Such a receipt would be required to carry all the same information as is required on the certificate itself.
- Resident is defined as a person who lives in Alaska and intends to remain here permanently. The definition allows for temporary travel or employment outside without loss of residency. If a dispute arises over residency all of the facts and circumstances indicative of permanent residency must be considered.

Jim Palmer

2 media spots mid July then Aug. to be filmed in Nov.
need 3-4 sponsors for initiative to canvass for
signature

Beverly Long

Put George together with Mike Miller to attend
St. Aff's Con. hearings

MIKE GRAVEL
ALASKA

United States Senate

WASHINGTON, D.C. 20510

May 25, 1979

Dale Staley
Office of Rep. Jim Duncan
Pouch V
Juneau, Alaska 99811

Dear Dale:

Thanks for all your help and counsel during my work in Juneau with the State Legislature. I certainly enjoyed the opportunity to make your acquaintance and to work with you and look forward to our working together in the future. I hope you have a very pleasant and relaxing summer and ask that you feel free to call upon me if there is anything I can do for you or Jim's office down here in Washington.

With best regards,

Sincerely,


Jerry Gauche

JG/rl

SCOMM

#32:12

Outline of Testimony of
Samuel A. Stern
of
Wilmer & Pickering
Washington, D.C.

FOR HOUSE FINANCE COMMITTEE, April 7, 1980

1. Status of Federal Tax and Regulatory Applications

- a) IRS - Staff unwilling to rule because Alaska has not yet adopted enabling legislation.
- b) SEC -
 - i) Informal 1933 & 1934 Act clearances.
 - ii) Requests for further definition of AGSOC's expected investment and operating policies; reluctance to entertain formal application under Investment Company Act until AGSOC is formed.

2. Conflicting Financial Advice on Viability of AGSOC

3. Possible Staged Approach

- a) Create AGSOC now.
- b) Appoint Three Incorporators and perhaps defer appointment of Board of Directors.
- c) State Grants Funds for Initial Operations.
- d) IRS and SEC applications are perfected in name of AGSOC.
- e) Incorporators and their advisors:
 - i) Explore possible investments,
 - ii) Explore possible corporate funding,
 - iii) Develop detailed plan for distribution of AGSOC shares,
 - iv) Examine administrative and shareholder relations implications and costs.
- f) Incorporators determine:
 - i) AGSOC can realistically proceed without further State assistance; they appoint Board of Directors and AGSOC proceeds with distribution of shares;

- ii) AGSOC requires further State assistance; they report to legislature with recommendations; nothing proceeds without further State action; or
- iii) AGSOC is not a viable concept; they report to legislature with recommendation to wind up.

g) Advantages:

- i) AGSOC will have sufficient presence to have more realistic negotiations with sources of investment opportunities and of debt capital.
- ii) AGSOC's effectiveness will not be delayed if it can commence without State support.
- iii) State can decide whether to support AGSOC or wind it up in light of Incorporators' test of marketplace.
- iv) Public will have greater assurance of feasibility of plan if AGSOC goes forward.
- v) Public will not be disappointed as holders of valueless shares if AGSOC does not go forward.
- vi) Significant costs of share distribution are deferred until viability is determined.
- vii) Federal regulatory rulings and exemptions can be more easily obtained by AGSOC itself.

f) P Jan 20 1980

Outline of Testimony of Samuel A. Stern

of
Wilmer & Pickering
Washington DC

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4-7-80

THE RELATIONSHIP
BETWEEN
CASH FLOW AND TAXABLE INCOME
IN
GENERAL STOCK OWNERSHIP CORPORATIONS

Senator Mike Gravel

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EXECUTIVE SUMMARY

The Potential Problem

The law governing GSOCs attributes GSOC taxable income to GSOC shareholders raising the possibility of shareholder tax liability on attributed GSOC income in excess of GSOC cash distributions. This could present hardships for the shareholders who might not have sufficient funds to pay the taxes due.

When Can It Occur

Shareholder tax liability in excess of cash available for distribution can occur when the corporation has (1) cash flow expenditures which are non-deductible for tax purposes or (2) items included in taxable income which do not represent cash flow income.

Examples of non-deductible cash flow expenditures include principal amortization on installment debt, some political and charitable contributions, the excess portion of unreasonably high salaries, illegal payments and contributions to non-qualified or disqualified retirement plans. Examples of items included in taxable income which do not represent cash flow income include depreciation and investment tax credit recapture income and income from installment sales with excessive down payments.

Shareholder Protection

The special tax treatment for GSOCs must be elected. If no election is filed the GSOC is taxed as a regular business corporation. To qualify for the election the corporation must meet the requirements of a GSOC which include limitations desirable in any state chartered broadly owned corporation.

GSOC management is the shareholders' first line of defense. Potential problems can be avoided with careful planning. However, since corporate management may err the law provides for termination of the special tax treatment voluntarily upon request of the corporation or involuntarily by operation of law. Termination closes off the attribution of corporate taxable income to the shareholders and the corporation is taxed as a normal business corporation. As a last resort the state legislature can revoke the GSOC corporate charter terminating its existence.

Conclusion

GSOC management has the tools to prevent shareholder tax liability in excess of GSOC distributions. Failing this the law allows the termination of special tax status in a number of ways closing off the attribution of income to the shareholders and protecting them regardless of management decisions.

The General Stock Ownership Corporation (GSOC) provisions of the Internal Revenue Code (Subchapter U, Sections 1391-1397) present an interesting question regarding the relationship between taxable income and cash flow of the corporation and distributions to its shareholders. Several witnesses before the State Affairs Committee have commented upon this issue during consideration of HB 240. This paper analyses the potential problem and the protections for the shareholders built into the statutes.

THE POTENTIAL PROBLEM

Subchapter U of the Internal Revenue Code (Code) provides that the taxable income of a GSOC is attributed annually to its shareholders. With minor exceptions taxable income of a GSOC is computed in a manner similar to other corporations. Shareholders must include in income for tax purposes their share of GSOC income for the year. The tax liability of a GSOC shareholder arising because of his share ownership is determined by multiplying the income attributed to him from the GSOC by his marginal tax rate. This tax is increased by the shareholder's portion of any net investment recapture tax and reduced by his share of any net investment credit.

To provide shareholders cash sufficient to meet the tax liability created by the attribution of GSOC income the Code requires a GSOC to distribute annually to its shareholders an amount equal to at least 90 percent of its taxable income. This distribution requirement applies irrespective of corporate

cash flow. However, if the GSOC fails to make the required distribution the only penalty is a 20 percent deficiency tax assessed against the corporation. Application of this tax does not absolve GSOC shareholders from the obligation to pay tax on the income attributed to them from the corporation.

Taxable income does not necessarily reflect cash flow available for distribution to shareholders. It is an artificial number arrived at in an effort to determine on an annual basis the average earnings of a company or individual over a lifetime. Some items such as depreciation on capital assets reduce taxable income without affecting cash flow while other items which are actual cash flow expenses, such as the repayment of debt principal, do not reduce taxable income. Thus, cash flow after expenses may be either more or less than taxable income.

Concerns have been expressed that GSOC cash flow could be insufficient to meet the distribution requirements and perhaps so low that no distributions occur at all. In such a case GSOC shareholders might have income tax liability as a result of income attributed to them from the GSOC and yet have no cash distributions from the corporation with which to pay the taxes. We shall attempt to analyse the risks presented by this scenario and the protections afforded the shareholders.

WHEN CAN THE PROBLEM OCCUR

Two general types of situations can cause taxable income to exceed cash flow. Taxable income can exceed cash flow where (1) cash flow expenditures are non-deductible for tax purposes

and (2) items of taxable income do not represent cash flow income. The first category of transactions includes the amortization of debt principal, illegal payments and unreasonably high salaries. The second category includes recapture of depreciation and investment tax credits and installment sales with excessive down payments.

Non-deductible Expenditures

Non-deductible expenditures reduce GSOC cash flow available for distribution to the shareholders without reducing taxable income attributed to shareholders for income tax purposes. Carried to an extreme these expenditures could eliminate all the cash in a corporation, but still not reduce the taxable income. The taxable income would be attributed to the shareholders who would incur tax liability based on the attributed income, but the corporation would have no cash to distribute and the shareholders would be required to finance the additional tax liability out of other income. This could work considerable hardship upon many shareholders.

There are many expenses which do not reduce taxable income. The more common of these include contributions to disqualified retirement plans, some charitable and political contributions and the excess portion of unreasonably high salaries. Amortization of debt principal is also a very common non-deductible cash flow expense. Although interest payments on a loan are deductible for Federal income tax purposes payments which reduce the principal amount due on the loan are not. In many cases the non-deductible principal portion of a loan payment may

represent the lion's share of the annual loan amortization cash flow. Since this principal amortization component of debt service requires cash payments from the corporation it is the type of non-deductible expenditure which could cause problems for the shareholders of a GSOC.

Other non-deductible corporate expenses can result in GSOC expenditures which do not reduce taxable income. Generally all ordinary and necessary business expenses are deductible in computing taxable income. However, some political and charitable contributions, the excess portion of unreasonably high salaries, illegal payments and contributions to non-qualified or disqualified retirement plans are not deductible. While this list of items is not exclusive these are the more common non-deductible corporate expenses. The common thread through all of these transactions is that they are avoidable with careful planning by management. There is no event which could involuntarily trigger large increases in taxable income without a corresponding increase in cash flow. The problem presented by loan amortization principal can be avoided through the installment purchase solely of depreciable assets with depreciation schedules carefully arranged to provide tax protection for principal amortization cash flow. This solution is workable because, over the life of an asset, depreciation and principal amortization will be the same. Thus, if a problem should occur in this area it will almost certainly be the result of bad management.

Taxable Income Without Cash Flow

The other situation in which cash flow available for distribution may not be adequate to cover the additional shareholder tax liability occurs where items which are included in taxable income do not represent cash flow income to the corporation. Generally, this occurs where a taxpayer has received cash flow income in the past which was non-taxable at the time of receipt. The inclusion of this cash flow in taxable income occurs at a later date when recognition for tax purposes is triggered by some event. The most common of this income type is recapture income. The law "recaptures" the tax on income which avoided tax at the time it was earned. This prevents the permanent deferral of tax on certain types of income. There are two major kinds of recapture income, depreciation recapture and recapture of investment credits.

Depreciation Recapture

Tax law allows the owner of a capital asset used in a trade or business to recover his initial investment tax free over the life of the asset. The mechanism used to provide this recovery of investment is depreciation. The depreciation deduction reduces taxable income sheltering income from tax. If a taxpayer holds a capital asset for its full useful life he is allowed depreciation deductions equal to its initial cost and can shelter that amount of income from tax.

Depreciation recapture may occur where a taxpayer elects to use accelerated depreciation. Accelerated depreciation

allows additional depreciation deductions protecting from tax income which would otherwise be taxed currently. Accelerated depreciation provides deductions larger in the early years than straight line depreciation. It allows rapid capital cost recovery on depreciable assets in an effort to encourage modernization of capital stocks.

To prevent additional income sheltered by accelerated depreciation from permanently escaping taxation when the asset is disposed of taxable income is increased by the amount by which accelerated depreciation on the asset exceeded straight line depreciation. When this occurs taxpayers may have taxable income without cash flow and other income will be required to pay off the tax liability. Planning can save taxpayers in these situations. Accelerated depreciation shelters cash flow from tax which would otherwise be taxable at the time of receipt. If the taxpayer sets aside this income or a portion of it into a fund for depreciation recapture taxes at the time the asset is disposed of he will have sufficient funds available to pay the tax generated by the recapture income. An example might help to clarify the operation of the depreciation recapture provisions.

John owns a rental apartment for which he paid \$100,000. The unit will last for 20 years. John takes a depreciation deduction each year equal to one-twentieth of his investment or \$5,000. This uniform annual depreciation deduction is known as straight line depreciation. After 20 years John will have taken depreciation deductions equal to the \$100,000 he paid for the apartment. He will have recovered his investment through income on which he paid no tax.

To encourage investment in rental housing the law allows John to recover his investment in a shorter period of time through accelerated depreciation. In some cases John can elect to take twice the normal depreciation deduction. If he takes a \$10,000 depreciation deduction in the first year he will shelter \$10,000 from tax. If he then sells the property

for \$100,000 he will have a capital gain of \$10,000 because he has been allowed to recover \$10,000 of his investment tax free. The \$10,000 depreciation deduction reduces his basis in the property for capital gains purposes resulting in a basis of \$90,000 at the time of the sale.

If John had taken straight line depreciation on the apartment he would have had a capital gain of only \$5,000 upon the sale because his basis would have been \$95,000 at the end of the first year due to depreciation deductions of \$5,000. The additional \$5,000 deduction in year one has sheltered from tax \$5,000 of additional income for John. However, as we have seen, this \$5,000 which is sheltered by accelerated depreciation appears upon the sale of the property as a capital gain receiving special favorable tax treatment.

Through accelerated depreciation John has converted ordinary income into capital gain income taxed at 40% of ordinary income rates. To prevent this conversion of ordinary income into capital gains, or the permanent sheltering of ordinary income, the depreciation recapture provisions step in and require that \$5,000 of John's \$10,000 gain on the sale be taxed as ordinary income.

This description of one transaction subject to the depreciation recapture rules is for illustration purposes only. These rules are complex and many of the ramifications of these provisions have been excluded from the example in the interests of simplicity.

Investment Tax Credit Recapture

The Code allows an investment tax credit equal to ten percent of the purchase price of certain types of new and used property. This ten percent credit reduces taxes rather than reducing gross income as does a deduction. The property eligible for the investment tax credit is generally depreciable tangible personal property, excluding buildings and structural components, used by an individual or corporation engaged in a trade or business and having a useful life of at least three years.

The investment tax credit may be taken for the year in which the taxpayer places the asset into use in his trade or business.

To prevent the sheltering of income through the investment tax credit Congress provided recapture provisions similar to the depreciation recapture rules. If a taxpayer disposes prematurely of an asset on which he has received an investment tax credit the disposition triggers the recognition of investment tax credit recapture income to the taxpayer in an amount designed to generate tax liability equal to the credit which he earlier received. This investment tax credit recapture income is included in income for the year of disposition and may increase the taxpayer's liability. The recapture income is income only in the tax sense and may or may not represent cash flow. It is an effort to recover tax on income which was earlier sheltered by the investment tax credit. Planning for investment tax credit recapture income involves steps similar to those followed in planning for depreciation recapture income. It can be avoided entirely by not disposing of the asset or it can be funded through a reserve set aside from the income sheltered by the credit.

The law sets up special rules for the treatment of investment tax credits and investment credit recapture in GSOCs. The investment tax credit is not allowed to GSOCs. The investment tax credit to which a GSOC would be entitled if it were taxable flows through to the shareholders in much the same manner as income. The credit and any recapture of investment credit are netted at the corporate level. Thus, if a GSOC has both

investment credits and investment credit recapture income in the same year these items will be set off against each other and only the net credit or recapture will flow out to the shareholders. If there is a net investment tax credit, that amount will be prorated to the shareholders in the same manner as income. The credit will reduce the shareholders' tax liability. Net investment credit recapture is prorated to the shareholders and characterized as additional tax liability. Net investment credit recapture is not treated by the shareholders as additional taxable income, but as a direct addition to tax liability. It is different than depreciation recapture income which is treated as an addition to shareholder income. Investment credit recapture presents a more serious problem for the corporation and its shareholders because it increases tax liability rather than income. However, in nearly every case the generation of net investment credit recapture is avoidable or can be anticipated at the time the asset is acquired.

Installment Sales

The installment sale of an asset can generate taxable income without cash flow. The law allows a taxpayer to defer reporting income on an installment sale until the time payments are made. This allows the income from such a sale to be spread out over the life of the sales contract. However, if the seller receives more than 30 percent of the total contract price in the year of sale the entire gain is taxed as income in the year of sale ins spite of the fact that the seller did not receive

the full sales price at that time and may not do so for several years. this can mean that a seller has tax liability on gains from the sale in excess of the cash he received in the year of sale from the buyer. GSOCs, like other sellers, must operate within these rules.

PROTECTION FOR SHAREHOLDERS

GSOCs must elect to be subject to the flow through character and distribution requirements of subchapter U. Although the GSOC charter must provide "that such corporation shall qualify as a GSOC under the Internal Revenue Code," election of special tax treatment is not mandatory. If no election is filed a GSOC is taxed as a regular business corporation. GSOCs can qualify as such without making the election, however, in such a situation the primary advantage of GSOC status would be foregone.

The Election

There may be good reasons why a corporation might want to qualify as a GSOC and forego the election. If a corporation expected cash flow problems in the early years of operation or invested in projects with high reinvestment requirements it might desire to delay making the election until a more appropriate time. Comparable situations occur in closely held corporations where the owners may elect during loss years to be taxed under subchapter S, a provision allowing flow through of corporate losses and income to the shareholders of small corporations. But, when the corporation begins to turn a profit the election may be revoked and the income taxed to the corporation

rather than the shareholders. This is standard tax planning for high income shareholders of closely held corporations whose personal income tax rates may reach 70 percent. Since the maximum Federal corporate income tax rate is 46 percent, these individuals want losses to flow through to their personal returns and income to be taxed to the corporation. The subchapter S election allows such an outcome in certain cases.

Just as the subchapter S election provides flexibility in tax planning for high income shareholders of closely held corporations the subchapter U election provides flexibility for GSOC tax planning. The special tax treatment provided by subchapter U is not automatic. Election must be made by the GSOC or it will be treated as an ordinary business corporation subject to tax under the provisions of subchapter C, the general corporate tax provisions. The determination of whether or not to elect subchapter U treatment is one of the most important decisions to be made by the board of directors of a GSOC. The election need not be filed immediately upon formation of the corporation.

If the GSOC upon creation does not file an election one might ask why create a GSOC at all. Why not simply create a broadly owned conventional corporation not subject to the strictures of subchapter U? To answer this question we must separate those aspects of subchapter U required to qualify as a GSOC and those which flow from making the election. In so doing we find that the elements necessary to qualify as a GSOC are relatively innocuous. They include:

1. Chartered after 12/31/78 and before 1/1/84,

2. Chartered by legislation or initiative,
3. Charter providing-
 - Only one class of stock
 - Issuance of at least one share to each resident
 - Issuance of shares only to "eligible individuals"
 - Election to reject shares
 - Transfer restrictions
 - Intent to qualify as a GSOC
4. Limitations on use of state's condemnation powers, and
5. Affiliated group limitations.

Most of these limitations might be appropriate to any broadly owned corporation initiated by a state. The affiliated group limitation is applicable only at the time an election is filed and a defect here could be cured by a reduction in GSOC subsidiary share ownership below the 20 percent limit prior to filing.

The special tax and distribution provisions of subchapter U apply only to those corporations making the election. In some cases inadequate drafting left ambiguities in this regard which are being clarified by a bill, S.2275, currently pending in the United States Senate. Thus, a corporation can qualify as a GSOC and be taxed as a normal business corporation leaving open the option to be taxed under subchapter U if it becomes appropriate at a later date. However, if a corporation does not meet the requirements of a GSOC upon creation it will be difficult to cure the defect if, at some point, the special tax treatment becomes attractive. In fact, if the defect were not cured prior to January 1, 1984, it is likely that attempts to cure the defect and elect subchapter U status for tax purposes would fail. However, if the corporation qualifies as a GSOC prior to January 1, 1984, the statute does not preclude election of

the special tax status subsequent to that date.

Management

The first and most important protection for GSOC shareholders is good management. GSOCs are not foolproof. Like any corporation they can be successful only if carefully managed. This is true with respect to investment decisions and day to day operations as well as tax planning. Timing by GSOCs of an election for special tax status is an important management responsibility, but in order to analyse the protections for shareholders from tax liability in excess of cash distributions, we shall assume that the decision to be taxed under subchapter U has been made and a timely election filed.

GSOC management has a responsibility to protect the shareholders from tax liability on GSOC income in excess of distributions from the corporation. It would appear to be a violation of the shareholders' trust to allow any substantial amount of tax liability to befall them without providing distributions adequate, at least, to cover the liability for tax. If the management of a GSOC allowed such an event to occur without a vote of the shareholders it would seem appropriate for the shareholders to replace that management at the next opportunity.

Most of the events which could generate tax liability in excess of cash distributions involve discretionary acts by the corporation. Careful planning and attention to detail can avoid this undesirable result. In some cases the planning must occur at the time an asset is acquired to assure that principal amortization is accompanied by depreciation deductions to preclude

mandatory distributions and taxable income in excess of cash flow. So long as management carefully plans its acquisitions and views each transaction with an eye toward its tax consequences problems can be avoided.

It is difficult to visualize an instance where tax liability in excess of cash flow for distribution cannot be avoided by responsible management. Every situation in which such an event could occur would require either an intentional decisions or gross negligence by corporate management. There does not appear to be any involuntary event which could result in this undesirable outcome. Thus, the GSOC management is the shareholders' best protection. However, since negligent management does occur at times in corporations additional protections for the shareholders are built into subchapter U.

Termination of Election

If GSOC management should fail to protect the shareholders from tax liability in excess of cash distributions termination of the subchapter U election may be undertaken either voluntarily or involuntarily. Termination of the election should be used as a last resort since once terminated the special tax status may not be regained by subsequent election. Upon termination of the election the GSOC is treated as an ordinary business corporation for tax purposes. The flow through of taxable income to the shareholders is eliminated and the corporation becomes subject to the corporate income tax.

Voluntary termination may be undertaken with the consent of the Secretary of Treasury. This safety valve was designed to

be available in the very situations which are contemplated in this paper. The provision was included with the concurrence of the Department of Treasury which has no interest in audits involving all the shareholders of a GSOC and preferred a statutory escape clause in the situation where shareholders might be faced with large tax liability and insufficient cash flow. The voluntary termination is effective for the first year to which the Secretary consents. It is effective for the entire year and, if significant tax liability in excess of cash available for distribution is anticipated, the Secretary can be expected to make his consent effective for the year in which the problems arose, thereby protecting the shareholders. Even if management is so negligent that the problem is not discovered until after the close of the taxable year for which it exists the Secretary has authority to grant the revocation of election for any taxable year, even those which have gone by. Thus, the shareholders are protected even if the problem is not discovered until after the close of the corporation's taxable year.

Subchapter U elections may also be terminated without the consent of the Secretary of Treasury in a manner which we shall refer to here as an involuntary termination. The Secretary has no control over whether an involuntary termination occurs. Once certain events occur the corporation ceases to be a GSOC and is removed from the provisions of subchapter U by operation of law.

Involuntary terminations can occur by accident and management must plan carefully to assure that involuntary termination does not occur unintentionally. An involuntary termination occurs whenever an electing corporation fails to meet the

definition of a GSOC under subchapter U. Events which would trigger an involuntary termination of subchapter U status include revocation of the corporation's charter by the sponsoring state, acquisition of more than 20 percent of the stock of another corporation, and amendment of the corporation's charter permitting the issue of a second class of stock.

An involuntary termination of subchapter U status is retroactive to the beginning of the year during which it occurs. Thus, subchapter U status could be terminated involuntarily on the last day of the corporation's taxable year and the flow through of corporate taxable income to the shareholders would be terminated retroactively to the beginning of the corporation's taxable year, 364 days earlier. For the entire year the corporation would be taxed as an ordinary business corporation and the shareholders would have no liability beyond tax on dividends actually distributed by the corporation.

Revocation of Charter

If all of the protections which have been examined should fail the ultimate power over the corporation continues to lie with the legislature of the authorizing state. The corporate charter granted by the state can be revoked by the state. This revocation might be made retroactive to the date on which the legislation was introduced or earlier, perhaps as early as the date on which the GSOC was created. The revocation of the charter terminates the subchapter U status effective the first day of the year for which the revocation is effective. In a charter

revocation all existing contracts of the GSOC would have to be honored, but a receiver could be appointed to handle this task along with liquidation of the corporation. The important aspect of the revocation is that it cuts off the flow through of corporate income tax consequences to the shareholders. Revocation of the corporate charter and liquidation of the corporation is a drastic measure and, with careful management and the other protections afforded under subchapter U, should never be required to protect shareholders from tax liability due to GSOC taxable income in excess of cash distributed to the shareholders by the GSOC.

CONCLUSION

The possibility of GSOC taxable income attributed to the shareholders resulting in shareholder tax liability in excess of cash distributions from the corporation warrants careful consideration by the management of any GSOC. Without careful planning it can occur and could have serious consequences for the shareholders. However, it is the responsibility of the GSOC management to assure that the decisions which are made with respect to the operations of the corporation do not result in shareholder tax liability in excess of cash distributions. However, if the management of a GSOC fails to adequately protect the shareholders the law allows the termination of the subchapter U election in a number of ways in order to close off the flow through of corporate tax consequences to the shareholders. This assures that are protected regardless of management decisions.

4-7-80

AGSOC

Sam Stern Wilmer Pickering Wash. D.C.
IRS. ruling reserved at this time because no
Corporation currently exist

S.F.C. Same problem as IRS with particular
concern for proposed corporation's potential
activities or related to the 40 Act

Same proposal

Bob Garrard Dillon Road N.Y.N.Y.

March 1178 reported on T up to Trust

Advice financing is as to T only

Garrard who about BP and suggested a turn

Take or pay contract between State &

AGSOC on States oil transported thru

AGSOC's portion of the line and using

the contract as security for BP bond

holders if AGSOC were to purchase

BP's portion of the line

March 12, 1980

IN THE _____

_____ BILL NO. _____

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to general stock ownership corporations and creating the Alaska General Stock Ownership Corporation; changing Rule 23.1, Rules of Civil Procedure; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 10 is amended by adding a new chapter to read:

CHAPTER 50. GENERAL STOCK OWNERSHIP
CORPORATIONS.

ARTICLE 1. SUBSTANTIVE PROVISIONS.

Sec. 10.50.005. PURPOSES. A general stock ownership corporation may be organized under this chapter for any lawful purpose unless limited by the chartering legislation of a corporation.

Sec. 10.50.010. GENERAL STOCK OWNERSHIP
CORPORATIONS. (a) A corporation organized under this chapter is a general stock ownership corporation and shall be formed in accordance with subchapter U, chapter 1 of the Internal Revenue Code of 1954, as amended (26 U.S.C. secs. 1391 - 1397), and with this chapter. A corporation is subject to the provisions of this chapter and subchapter U, chapter 1 of the Internal Revenue Code of 1954, as amended (26 U.S.C. secs. 1391-1397).

65 (b) A corporation is not an agency, instrumentality,
65 or political subdivision of the state for any purpose.
67

67
68 Sec. 10.50.015. GENERAL POWERS. A corporation may
69

69
70 (1) have perpetual succession in its corporate
70 name unless a limited period of duration is stated in its
71 articles of incorporation;
71

72
72
73 (2) sue and be sued in its corporate name;
74

74
75 (3) adopt a corporate seal and alter it, and
75 use it by having it or a facsimile of it impressed,
76 affixed or reproduced;
77

77
78 (4) buy, lease, or otherwise acquire, own,
78 hold, improve, use and otherwise deal in, real or personal
79 property or any interest in property, except that the
80 corporation may not invest in property acquired by it, or
80 for its benefit, through the right of eminent domain;
82

82
83 (5) sell or otherwise dispose of all or any
83 part of its property and assets;
85

85
86 (6) lend money to its employees other than its
86 officers and directors, and otherwise assist its
87 employees, officers and directors;
88

88
89 (7) buy or otherwise acquire, own, hold, vote,
89 use, sell, mortgage, lend, pledge, or otherwise dispose
90 of, and otherwise use and deal in shares or other
91 interests in, or obligations of, other corporations,
92 associations, partnerships or individuals, or in direct or
92 indirect obligations of the United States or of any other
93 government, state, territory, or municipality or of any
94 instrumentality of them;
95

96 (8) make contracts and incur liabilities,
96 borrow money at the rates of interest the corporation
97 determines, issue notes, bonds, and other obligations, and
98 secure its obligations by mortgage or pledge of all or any
99 of its property, franchise and income;

100
100 (9) lend money for its corporate purposes,
101 invest and reinvest its funds, and take and hold real and
101 personal property as security for the payment of funds
102 loaned or invested;

103
103 (10) conduct business, carry on operations, and
104 have offices and exercise the powers granted by this
104 chapter in a state, territory, district, or possession of
105 the United States, or in a foreign country;

106
106 (11) elect or appoint officers and agents of
107 the corporation, define their duties, and fix their
108 compensation;

108
108 (12) make and alter bylaws not inconsistent
109 with its articles of incorporation or with the laws of the
109 state, for the administration and regulation of the
110 affairs of the corporation;

111
111 (13) donate for the public welfare or for
112 charitable, scientific or educational purposes, and in
112 time of war donate in aid of war activities;

113
113 (14) transact lawful business in time of war in
114 aid of the United States in the prosecution of the war;

115
115 (15) pay pensions and establish pension plans,
116 pension trusts, profit-sharing plans, and other incentive
116 plans for its directors, officers, and employees, except

that such pensions or plans shall not include the issuance of stock options;

(16) cease its corporate activities and surrender its corporate franchise;

(17) have and exercise the powers of a limited or general partner or a joint adventurer in association with one or more persons, corporations, partnerships or associations;

(18) have and exercise lawful powers necessary to carry out the purposes for which the corporation is organized.

Sec. 10.50.018. PROHIBITION. A corporation may not own, control or hold with power to vote ten percent or more of the outstanding voting securities of a public utility company or a public utility holding company (as those terms are defined in the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79 et seq.), without first taking steps to come within the requirements of that Act, or seeking exemption from coverage of the Act from the Securities and Exchange Commission.

Sec. 10.50.020. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS; INSURANCE. (a) A corporation may indemnify a person who was or is a party or is threatened to be made a party to a threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative, other than an action by or in the right of the corporation, by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the

150 request of the corporation as a director, officer,
151 employee or agent of another corporation, partnership,
152 joint venture, trust or other enterprise. Indemnification
152 may be against expenses including attorney fees,
153 judgments, fines, and amounts paid in settlement actually
154 and reasonably incurred by him in connection with the
154 action or proceeding if he acted in good faith and in a
155 manner he reasonably believed to be in or not opposed to
155 the best interests of the corporation, and, with respect
156 to a criminal action or proceeding, had no reasonable
157 cause to believe his conduct was unlawful. The termination
157 of an action or proceeding by judgment, order, settlement,
158 conviction, or upon a plea of nolo contendere or its
159 equivalent, does not, of itself, create a presumption that
159 the person did not act in good faith and in a manner which
160 he reasonably believed to be in or not opposed to the best
160 interests of the corporation, and, with respect to a
161 criminal action or proceeding, had reasonable cause to
162 believe that his conduct was unlawful.

164
165 (b) A corporation may indemnify a person who was or
166 is a party or is threatened to be made a party to a
166 threatened, pending or completed action by or in the right
167 of the corporation to procure a judgment in its favor by
168 reason of the fact that he is or was a director, officer,
169 employee, or agent of the corporation, or is or was
170 serving at the request of the corporation as a director,
171 officer, employee, or agent of another corporation,
172 partnership, joint venture, trust or other enterprise.
173 Indemnification may be against expenses, including
174 attorney fees, actually and reasonably incurred by him in
175 connection with the defense or settlement of the action if

175 he acted in good faith and in a manner he reasonably
176 believed to be in or not opposed to the best interests of
177 the corporation. However, indemnification may not be made
178 for any claim, issue or matter as to which the person has
179 been adjudged to be liable for negligence or misconduct in
180 the performance of his duty to the corporation except to
180 the extent that the court in which the action was brought
181 determines upon application that, despite the adjudication
181 of liability, in view of all the circumstances of the case
182 the person is fairly and reasonably entitled to indemnity
183 for the expenses which the court considers proper.

185
186 (c) To the extent that a director, officer, employee
186 or agent of a corporation has been successful on the
187 merits or otherwise in defense of an action or proceeding
188 referred to in (a) or (b) of this section, or in defense
189 of any claim, issue or matter in the action or proceeding,
189 he shall be indemnified against expenses, including
190 attorney fees, actually and reasonably incurred by him in
191 connection with it.

192
193 (d) Indemnification under (a) or (b) of this
193 section, unless ordered by a court, shall be made by the
194 corporation only as authorized in the specific case upon a
195 determination that indemnification of the director,
196 officer, employee or agent is proper in the circumstances
197 because he has met the applicable standard of conduct set
197 out in (a) and (b) of this section. This determination
198 shall be made

199
200 (1) by the board of directors by a majority
200 vote of a quorum consisting of directors who were not
201 parties to the action or proceeding, or

203 (2) if such a quorum is not obtainable, or,
203 even if obtainable if a quorum of disinterested directors
204 so directs, by independent legal counsel in a written
205 opinion, or
206

206
207 (3) by the stockholders.
208

208
209 (e) Expenses incurred in defending a civil or
209 criminal action or proceeding may be paid by the
210 corporation in advance of the final disposition of the
210 action or proceeding as authorized by the board of
211 directors in the specific case upon receipt of an
212 undertaking by or on behalf of the director, officer,
213 employee or agent to repay the amount unless it is
213 ultimately determined that he is entitled to be
214 indemnified by the corporation as authorized in this
215 section.
216

216
217 (f) A corporation may purchase and maintain
217 insurance on behalf of a person who is or was a director,
218 officer, employee or agent of the corporation, or is or
219 was serving at the request of the corporation as a
220 director, officer, employee or agent of another
220 corporation, partnership, joint venture, trust or other
221 enterprise against any liability asserted against him and
222 incurred by him in such a capacity, or arising out of his.
223 status as such, whether or not the corporation would have
223 the power to indemnify him against the liability under the
224 provisions of this section.
226

226
227 Sec. 10.50.030. DEFENSE OF ULTRA VIRES. No act of a
227 corporation and no conveyance or transfer of real or
228 personal property to or by a corporation is invalid
229

229 because the corporation did not have capacity or power to
230 perform the act or to convey or receive the property.
230 However, lack of capacity or power may be asserted as
231 follows.
232

233 (1) The assertion may be made in a proceeding
233 by a shareholder against the corporation to enjoin the
234 performance of any act or the transfer of real or personal
234 property by or to the corporation. If the unauthorized
235 act or transfer sought to be enjoined is being or to be
236 performed or made under a contract to which the
237 corporation is a party, the court may, if the parties to
237 the contract are parties to the proceeding and if the
238 court considers it equitable, set aside and enjoin the
239 performance of the contract, and in so doing may allow
239 compensation to the corporation or to the other parties to
240 the contract for the loss or damage sustained by either of
241 them resulting from the action of the court in setting
242 aside and enjoining the performance of the contract. The
243 court may not award anticipated profits to be derived from
244 the performance of the contract as a loss or damage
245 sustained.
246

247 (2) The assertion may be made in a proceeding
247 by the corporation, whether acting directly or through a
248 receiver, trustee, or other legal representative, or
249 through shareholders in a representative suit, against the
250 incumbent or former officers or directors of the
251 corporation.
252

253 (3) The assertion may be made in a proceeding
253 by the attorney general to dissolve the corporation, or to
254 enjoin the corporation from the transaction of
255 unauthorized business.
256

257 Sec. 10.50.035. CORPORATE NAME. The corporate name
257 shall contain the words "general stock ownership
258 corporation" or an abbreviation of these words. It may
259 not contain a word or phrase which indicates or implies
260 that it is organized for a purpose other than the purpose
260 contained in the articles of incorporation. It may not be
261 the same as, or deceptively similar to, the name of a
262 domestic corporation existing under the laws of the state
263 or a foreign corporation authorized to transact business
263 in the state, or a name which has been reserved or
264 registered as provided in this chapter.

265 Sec. 10.50.040. RESERVATION OF CORPORATE NAME. (a)
266 The exclusive right to the use of a corporate name may be
267 reserved by

268 (1) a person intending to organize a
269 corporation under this chapter;

270 (2) a corporation intending to change its name.

271 (b) Reservation of a corporate name is made by
272 filing an application with the commissioner. If the
273 commissioner finds that the name is available for
274 corporate use, and not a reserved or registered business
275 name as set out in AS 10.35.010 - 10.35.090, he shall
276 reserve it for the exclusive use of the applicant for a
277 period of two years. A reservation of corporate name may
278 be renewed for one year.

279 (c) The holder of a reserved corporate name may
280 transfer the right to the exclusive use of the corporate
281 name to another person by filing a notice of transfer with
282 the commissioner, signed by the holder and specifying the
283 name and address of the transferee.

286 Sec. 10.50.045. FOREIGN GENERAL STOCK OWNERSHIP
286
286 CORPORATIONS. Corporations organized under the laws of
287
287 another state shall be governed according to AS 10.05.
289
289

290 Sec. 10.50.050. REGISTERED OFFICE AND REGISTERED
290
290 AGENT. A corporation ghall continuously maintain in the
291
291 state a registered office which may be, but need not be,
292
292 the same as its place of business, and a registered agent.
292
292 The registered agent may be either an individual resident
293
293 of the state whose business office is the same as the
294
294 registered office, or a corporation organized under AS
295
295 10.05 whose business office is the same as the registered
296
296 office.
297
297

298 Sec. 10.50.055. FILING LIST OF REGISTERED
298
298 CORPORATIONS WITH SUPERIOR CCURT. The commissioner shall
299
299 file a list of the name of each corporation, the address
300
300 of the registered office, and the name and address of the
300
300 registered agent with each clerk of the superior court.
301
301 The commissioner shall provide a periodic supplement to
302
302 the list indicating additions, deletions and changes at
302
302 least once every six months. The commissioner shall make
303
303 the list available to the public for a fee prescribed by
304
304 him.
305
305

306 Sec. 10.50.060. CHANGE OF REGISTERED OFFICE OR
306
306 AGENT. (a) A corporation may change its registered
307
307 office, agent, or both, by filing with the department a
308
308 verified statement signed by the president or
308
308 vice-president setting out
309
309

310 (1) the name of the corporation;
311
311
311
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11
12

312 (2) the address of its registered office;
313
313
314 (3) the address of its new registered office if
314 the registered office is to be changed;
316
316
317 (4) the name of its registered agent;
318
318
319 (5) the name of its new registered agent, if
319 its registered agent is to be changed;
321
321
322 (6) that the change is authorized by resolution
322 of its board of directors.
324
324
325 (b) If the commissioner finds that the verified
325 statement complies with this chapter, he shall file it in
326 his office. The change becomes effective when the
327 statement is filed.
327
328

328
329 Sec. 10.50.065. REGISTRATION OF REGISTERED AGENT.
329

329 (a) If the registered agent of a corporation changes the
330 location of his office from one address to another within
330 a city or town, or from one city or town in the state to
331 another, he may change the registered office for each
332 corporation for whom he is acting as registered agent by
333 filing in the office of the commissioner a statement
333 setting out
334
334
335

335 (1) the name of the agent;
336
337
337 (2) the address of his office before change;
338
339
339 (3) the address to which the office is changed;
340
341
341 and
342
342
343 (4) a list of corporations for whom he is
343
343 furnishing a registered office.
345

346 (b) The statement in (a) of this section must be
346 executed by the registered agent in his individual name
347 and, if the agent is a corporation, it must be executed by
348 its president or a vice-president and verified by him.
348 The statement must be delivered to the commissioner and if
349 he finds that the statement complies with this chapter, he
349 shall file it in his office. The change becomes effective
350 when the statement is filed.
350

352
352 (c) A registered agent may resign by filing a
353 written notice, executed in duplicate, with the
354 commissioner. The written notice of resignation shall get
355 out the latest address of the principal office of the
355 corporation and the names, addresses and titles of the
356 most recent officers of the corporation known by the
356 agent. The commissioner shall immediately mail a copy of
357 the notice to the corporation at its principal office.
357 The appointment of the agent terminates 30 days after
358 receipt of the notice by the commissioner.
360

361 Sec. 10.50.070. SERVICE OF PROCESS ON CORPORATION.

361 (a) The registered agent of a corporation is an agent
362 upon whom process, notice, or demand required or permitted
363 by law to be served upon the corporation may be served.
365

366 (b) When a corporation fails to appoint or maintain
366 a registered agent in the state, or when its registered
367 agent cannot, with reasonable diligence, be found at the
368 registered office, the commissioner is an agent of the
369 corporation upon whom the process, notice, or demand may
369 be served. Service is made upon the commissioner as agent
370 by leaving with him, or with a clerk having charge of the
371 corporation department of his office, duplicate copies of
372

the process, notice or demand. When process, notice or demand is served on the commissioner, he shall immediately forward a copy of it by registered mail to the corporation at its registered office. Service on the commissioner is returnable in not less than 30 days.

(c) The commissioner shall keep a record of processes, notices and demands served upon him showing the time of service and his action with reference to the service. This chapter does not limit or affect the right to serve process, notice or demand required or permitted by law to be served upon a corporation in any other manner permitted by law.

Sec. 10.50.075. CREATION AND ISSUANCE OF SHARES. A corporation may create and issue the number of shares stated in its articles of incorporation and as provided in AS 10.50.320(a)(5) - (7). The shares shall be without par value.

Sec. 10.50.080. CONSIDERATION FOR SHARES. (a) Shares may be issued without consideration or for consideration fixed by the shareholders before the issuance. The decision to issue shares without consideration or for consideration if that consideration is less than the current net asset value of such shares shall be made by the vote of a majority of the shareholders.

(c) Treasury shares may be disposed of by the corporation for consideration not more than the book value of the shares.

398 Sec. 10.50.085. PAYMENT FOR SHARES. (a)

398 Consideration for the issuance of shares if required shall
399 be paid in cash. When payment of the consideration for
400 shares is received by the corporation, the shares are
401 considered fully paid and nonassessable.
402

403 (b) A promissory note or future service does not
403 constitute payment or part payment for shares of a
404 corporation.
405

406 Sec. 10.50.090. JUDGMENT OF BOARD OR SHAREHOLDER AS
406 TO VALUE OF CONSIDERATION CONCLUSIVE. In the absence of
407 fraud in the transaction, the judgment of the board of
408 directors or the shareholders as to the value of the
408 consideration received for shares is conclusive.
410

410 Sec. 10.50.095. EXPENSES OF ORGANIZATION,
411 REORGANIZATION AND FINANCING. The reasonable charges and
411 expenses of organization or reorganization of a
412 corporation, and the reasonable expenses of and
413 compensation for the sale or underwriting of its shares,
414 may be paid or allowed by the corporation out of the
414 consideration received by it in payment for its shares
415 without rendering the shares not fully paid and
416 nonassessable.
417

418 Sec. 10.50.100. CERTIFICATES REPRESENTING SHARES.
419 The shares of a corporation shall be represented by
419 certificates signed by the president or vice-president and
420 the secretary or an assistance secretary of the
421 corporation, and may be sealed with the seal of the
421 corporation or a facsimile of the seal. The signatures of
422 the president or vice-president and the secretary or
423 the president or vice-president and the secretary or
423

423 assistance secretary on a certificate may be facsimiles if
424 the certificate is countersigned by a transfer agent, or
425 regi stered by a registrar, other than the corporation
425 itself or an employee of the corporation. If an officer
426 who has signed or whose facsimile signature has been
427 placed on a certificate ceases to be an officer before the
427 certificate is issued, it may be issued by the corporation
428 with the same effect as if he were an officer at the date
429 of its issue.

430
430 Sec. 10.50.105. INFORMATION REQUIRED TO BE STATED ON
432 CERTIFICATE. Each certificate representing shares shall
432 state on the face

433
433 (1) that the corporation is organized under the
434 laws of the state;

436
436 (2) the name of the person to whom issued;

438
438 (3) the number of shares which the certificate
439 represents;

440
441 (4) a statement that the shares are without par
442 value.

444
444 Sec. 10.50.110. FULL PAYMENT REQUIRED FOR
445 CERTIFICATE. A certificate may not be issued for a share
446 until the share is fully paid if consideration is
447 required.

448
448 Sec. 10.50.115. ISSUANCE OF FRACTIONAL SHARES. (a)
449 A corporation may issue a certificate for a fractional
450 share.

452 (b) A certificate for a fractional share entitles
452 the holder to exercise voting rights, to receive
453 dividends, and to participate in the assets of the
454 corporation in the event of liquidation.
455

456 Sec. 10.50.120. LIABILITY OF SUBSCRIBERS AND
456 SHAREHOLDERS. (a) A holder of or subscriber to shares of
457 a corporation is under no obligation to the corporation or
458 its creditors with respect to the shares other than the
459 obligation to pay to the corporation the full
459 consideration for which the shares were issued or to be
460 issued.
461

462 (b) An assignee or transferee of shares or of a
462 subscription for shares in good faith and without
463 knowledge or notice that the full consideration has not
464 been paid is not personally liable to the corporation or
464 its creditors for any unpaid portion of the consideration.
466

467 (c) An executor, administrator, conservator,
467 guardian, trustee, assignee for the benefit of creditors,
468 or receiver is not personally liable to the corporation as
469 a holder of or subscriber to shares of a corporation but
470 the estate and funds held by him are liable.
471

472 (d) A pledgee or other holder of shares as
472 collateral security is not personally liable as a
473 shareholder.
474

475 Sec. 10.50.125. BYLAWS. The board of directors
475 shall adopt the initial bylaws of a corporation in
476 accordance with AS 10.50.335. The power to alter, amend
477 or repeal the bylaws or to adopt new bylaws is vested in
478 the board of directors and the shareholders. The bylaws
479

479 may contain provisions for the regulation and management
479 of the affairs of the corporation consistent with law and
480 the articles of incorporation.
481

482 Sec. 10.50.130. MEETINGS OF SHAREHOLDERS. (a)
482

482 Meetings of shareholders shall be held in the state, as
483 may be provided in the bylaws. The board of directors
484 shall designate the place of the meeting.
485

486 (b) An annual meeting of the shareholders shall be
486 held at the time provided in the bylaws. Failure to hold
487 the annual meeting at the designated time does not work a
488 forfeiture or dissolution of the corporation.
490

491 (c) Special meetings of the shareholders may be
491 called by the president, by the board of directors, by the
492 holders of not less than 1,000 shares, or by the other
493 officers or persons provided in the articles of
493 incorporation or the bylaws.
495

496 (d) The shareholders of a corporation may
496 participate in a meeting of the shareholders by
497 communicating simultaneously with the other shareholders
498 from places designated in the notice of meeting by means
498 of conference telephones or other communications
499 equipment, so long as all shareholders participating in
500 the meeting can hear one another.
501

502 Sec. 10.50.135. NOTICE OF SHAREHOLDERS' MEETINGS.
502

502 (a) Beginning not less than 150 days before a meeting of
503 shareholders, the corporation shall notify the
504 shareholders of the time and manner in which (1)
504 nominations for the board of directors of the corporation
505 may be made and (2) issues may be placed on the
506

506 corporation ballot for consideration by the shareholders.
507 Notice shall be by publication in newspapers in all
507 regions of the state and shall appear at least weekly for
508 not less than four weeks.
510

511 (b) Written or printed notice stating the place, day
511 and hour of the meeting and, in case of a special meeting,
512 the purpose for which the meeting is called, shall be
513 delivered not less than 60 nor more than 90 days before
514 the date of the meeting, either personally or by mail, by
514 or at the direction of the president, the secretary, or
515 the officer or persons calling the meeting, to each
516 shareholder of record entitled to vote at the meeting. If
517 mailed, the notice is considered delivered when deposited
518 in the United States mail addressed to the shareholder at
518 his address as it appears on the stock transfer books of
519 the corporation, with postage prepaid.

521
521
522 Sec. 10.50.140. CLOSING OF TRANSFER BOOKS AND FIXING
522 RECORD DATE. (a) To determine the shareholders entitled
523 to notice of or to vote at a meeting of shareholders or an
524 adjournment of a meeting, or entitled to receive payment
525 of a dividend, or in order to make a determination of
526 shareholders for any other proper purpose, the board of
526 directors of a corporation may provide that the stock
527 transfer books shall be closed for a stated period not
528 exceeding 90 days. If the stock transfer books are closed
528 to determine shareholders entitled to notice of or to vote
529 at a meeting of shareholders, they shall be closed for at
530 least 60 days immediately preceding the meeting.

532 (b) Instead of closing the stock transfer books, the
532 bylaws, or in the absence of an applicable bylaw the board
533 of directors, may fix in advance a date as the record date
534 for the determination of shareholders. This record date
535 shall be not more than 90 days and, in case of a meeting
535 of shareholders, not less than 60 days before the date on
536 which the particular action requiring the determination of
537 shareholders is to be taken. If the stock transfer books
537 are not closed and no record date is fixed for the
538 determination of shareholders entitled to notice of or to
539 vote at a meeting of shareholders, or shareholders
539 entitled to receive payment of a dividend, the date on
540 which notice of the meeting is mailed or the date on which
541 the resolution of the board of directors declaring the
541 dividend is adopted is, as the case may be, the record
542 date for the determination of shareholders. When a
542 determination of shareholders entitled to vote at a
543 meeting of shareholders is made, the determination applies
544 to an adjournment of the meeting except when the
544 determination has been made through the closing of the
545 stock transfer books and the stated period of closing has
546 expired.

547
548 Sec. 10.50.145. VOTING LIST. (a) At least 60 days
548 before each meeting of shareholders, the officer or agent
549 having charge of the stock transfer books for shares of a
550 corporation shall make a list of the shareholders entitled
551 to vote at the meeting or an adjournment of the meeting,
552 arranged in alphabetical order, with the address of and
552 the number of shares held by each. The list shall be kept
553 on file at the registered office of the corporation and is
554 subject to inspection by a shareholder at any time during
555

555 usual business hours for a period of 60 days before the
556 meeting. The list shall also be produced and kept open at
556 the time and place of the meeting and shall be subject to
557 the inspection of a shareholder during the meeting. The
558 original stock transfer books are prima facie evidence as
559 to who are the shareholders entitled to examine the list
559 or transfer books or to vote at a meeting of shareholders.
561

562 (b) Failure to comply with the requirements of this
562 section does not affect the validity of the action taken
563 at the meeting.
564

565 Sec. 10.50.150. QUORUM OF SHAREHOLDERS. One-third
565 of the shares entitled to vote, represented in person or
566 by ballots, constitutes a quorum at a meeting of
567 shareholders. Each outstanding share is entitled to one
567 vote on each matter submitted to a vote at a meeting of
568 shareholders. If a quorum is present, the affirmative
569 vote of the majority of the shares represented at the
569 meeting and entitled to vote on the subject matter is the
570 act of the shareholders, unless the vote of a great number
571 is required by this chapter or the articles of
571 incorporation or the bylaws.
573

574 Sec. 10.50.155. PROXY VOTING PROHIBITED. A
574 shareholder may not vote by proxy.
576

577 Sec. 10.50.160. VOTING FOR DIRECTORS. At an
577 election for directors every shareholder entitled to vote
578 may vote the number of shares owned by him for as many
579 persons as there are directors to be elected and for whose
580 election he has a right to vote. Shareholders may not
580 cumulate their votes.
582

583 Sec. 10.50.165. VOTING OF SHARES IN THE NAME OF
583
583 ANOTHER. (a) Shares held by an administrator, executor,
584 guardian or conservator may be voted by him, either in
585 person or by ballot, without a transfer of the shares into
586 his name.
587

587
588 (b) Shares standing in the name of a receiver may be
588 voted by him, and shares held by or under the control of a
589 receiver may be voted by him without the transfer of the
590 shares into his name if authority to do so is contained in
591 an appropriate order of the court by which the receiver
592 was appointed.
593

593
594 Sec. 10.50.170. VOTING OF PLEDGED SHARES. A
594 shareholder whose shares are pledged may vote the shares
595 until they have been transferred into the name of the
596 pledgee, and thereafter the pledgee may vote the shares so
597 transferred.
598

598
599 Sec. 10.50.175. CORPORATION BALLOT. (a) The
599 corporation shall prepare one ballot for each meeting of
600 the shareholders. The ballot shall be mailed to the
601 shareholders with the notice of meeting. Candidates for
602 the board of directors and proposals for shareholder
602 consideration shall be included in the ballot as provided
603 in this section.
604

604
605 (b) A candidate for director shall be nominated by
606

606
607 (1) a resolution adopted by the board of
608 directors; or
609

609
610 (2) a petition signed by at least 1,000
610 shareholders and filed with the secretary of the
611

511 corporation at least 120 days before the meeting at which
512 the election is to be held.
513

514 (c) A proposal for amendment of the bylaws or other
514 proper corporate purpose shall be included on the ballot
515 if authorized by
516

517 (1) a resolution adopted by the board of
517 directors setting out the proposal and directing that it
518 be submitted to a vote at the meeting of shareholders; or
520

521 (2) a petition, setting out the proposal and
521 directing that it be submitted to a vote at the next
522 meeting of shareholders, signed by at least 1,000
523 shareholders and filed with the secretary of the
523 corporation at least 120 days before the next meeting of
524 shareholders.
525

526 (d) A written or printed notice setting out the
526 candidates' qualifications for office and the proposals to
527 be put to a vote of the shareholders and any materials in
528 opposition to the proposals shall be given to each
528 shareholder or record entitled to vote within the time and
529 the manner provided in this chapter for the giving of
529 notice of meetings of shareholders.
531

532 Sec. 10.50.180. BOARD OF DIRECTORS. (a) The
532 business and affairs of a corporation shall be managed by
533 a board of directors. At least three-quarters of the
534 board of directors, including the chairman of the board of
535 directors, must be residents of the state. The articles
535 of incorporation or bylaws may prescribe other
536 qualifications for directors. The compensation of
537 directors shall be fixed by the bylaws.
538

639 (b) A director is entitled to attend any meeting of
639 a committee of the board of directors whether or not he is
640 a member of the committee. A director is entitled to
641 inspect all records of any committee of the board of
642 directors.
643

643 (c) An officer or employee of the corporation may
644 not serve as a member of the board of directors.
645

646 Sec. 10.50.185. NUMBER OF DIRECTORS. (a) The
647 number of directors of a corporation shall be at least
648 three. The number of directors shall be fixed by the
649 bylaws, except that the number constituting the initial
650 board of directors shall be fixed by the chartering
650 legislation.
651

651 (b) The number of directors may be increased or
652 decreased by amendment to the bylaws, but a decrease may
653 not shorten the term of an incumbent director.
655

655 (c) In the absence of a bylaw fixing the number of
656 directors, the number shall be the same as that stated in
657 the chartering legislation.
659

659 (d) The board of directors shall be divided into two
660 classes, each class to be as nearly equal in number as
661 possible, with the term of office of directors of the
662 first class to expire at the first annual meeting of
663 shareholders after their election, that of the second
663 class to expire at the second annual meeting after their
664 election. At each annual meeting after the classification
665 the number of directors equal to the number of the class
666 whose term expires at the time of the meeting shall be
667 elected to hold office until the second succeeding annual
668

meeting if there are two classes. No classification of directors is effective prior to the first annual meeting of shareholders.

Sec. 10.50.190. ELECTION OF DIRECTORS. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors. Each director holds office for the term for which he is elected and until his successor is elected and qualified.

Sec. 10.50.195. VACANCIES. A vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors if immediately after filling any such vacancy at least two-thirds of the directors then holding office shall have been elected by the shareholders at a shareholders' meeting. A director elected by the board of directors to fill a vacancy shall serve until the next annual meeting. The shareholders shall elect a director for the unexpired term, if any, of the director's position to which the board elected his predecessor. A directorship to be filled by reason of an increase in the number of directors shall be filled by election at an annual meeting or at a special meeting of shareholders called for that purpose. In no case may a vacancy continue for longer than six months or until the next annual meeting, whichever occurs first.

Sec. 10.50.200. QUORUM OF DIRECTORS. A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number in the articles of incorporation, constitutes a quorum for the transaction of business unless a greater

number is required by the articles of incorporation or the
bylaws. The act of the majority of the directors present
at a meeting at which a quorum is present is the act of
the board of directors, unless the act of a greater number
is required by the articles of incorporation or the bylaws
or this chapter.

Sec. 10.50.205. PLACE AND NOTICE OF DIRECTORS'
MEETINGS. (a) Regular or special meetings of the board
of directors may be held only in the state.

(b) Regular meetings of the board of directors may
be held with or without notice as prescribed in the
bylaws. Special meetings of the board of directors may be
held only after the notice prescribed in the bylaws.
Attendance of a director at a meeting constitutes a waiver
of notice of the meeting, except when a director attends a
meeting for the express purpose of objecting to the
transaction of any business because the meeting is not
lawfully called or convened. The business to be
transacted or the purpose of a special meeting of the
board of directors must be specified in the notice or
waiver of notice of the meeting.

Sec. 10.50.210. PARTICIPATION BY TELEPHONE. The
members of the board of directors of a corporation, or a
committee designated by it, may participate in a meeting
of the board or committee by communicating simultaneously
with each other by means of conference telephones or
similar communications equipment, so long as all members
participating in the meeting can hear one another.
Participation in a meeting under this section constitutes
presence in person at the meeting.

723 Sec. 10.50.215. DISTRIBUTIONS. (a) Except for
723 distributions required to comply with subchapter U,
724 chapter 1 of the Internal Revenue Code of 1954, as amended
725 (26 U.S.C. secs. 1391 - 1397), a corporation may not make
726 a distribution to its shareholders unless

727
728 (1) the amount of the retained earnings of the
728 corporation immediately before the proposed distribution
729 equals or exceeds the amount of the proposed distribution;
729
730 or

731
732 (2) immediately after giving effect to the
732 proposed distribution

734
735 (A) the sum of the assets of the
735 corporation, exclusive of goodwill, capitalized
736 research and development expenses and deferred
737 charges would be at least equal to one and
737 one-fourth times its liabilities, not including
738 deferred taxes, deferred income and other
738 deferred credits; and

740
741 (B) the current assets of the corporation
741 would be at least equal to its current
742 liabilities or, if the average of the earnings
743 of the corporation before taxes on income and
743 before interest expense for the two preceding
744 fiscal years was less than the average of the
745 interest expense of the corporation for those
745 fiscal years, at least equal to one and
746 one-fourth times its current liabilities.

748 (b) In determining the amount of the assets of the
748 corporation, no appreciation in value not yet realized may
749 in any event be included, except for readily marketable
750 securities, and profits derived from an exchange of assets
751 may not be included unless the assets received are
752 currently realizable in cash.
753

753 (c) For the purpose of this section "current assets"
754 may include net amounts which the board has determined in
755 good faith may reasonably be expected to be received from
756 customers during the 12-month period used in calculating
757 current liabilities under existing contractual
758 relationships obligating the customers to make fixed or
758 periodic payments during the term of the contract, after
759 giving effect to future costs not then included in current
760 liabilities but reasonably expected to be incurred by the
761 corporation in performing the contracts.
762

762 (d) The amount of a distribution payable in property
763 shall, for the purpose of this chapter, be determined on
764 the basis of the value at which the property is carried on
765 the corporation's financial statements in accordance with
766 generally accepted accounting principles.
768

768 (e) Subparagraph (a)(2)(B) of this section does not
769 apply to a corporation which does not classify its assets
770 into current and fixed assets under generally accepted
771 accounting principles.
772

772 Sec. 10.50.220. DISTRIBUTIONS IN PARTIAL
773 LIQUIDATION. The board of directors may, from time to
774 time, distribute to its shareholders in partial
775 liquidation a portion of its assets, subject to the
775 following provisions:
777

778 (1) A distribution may not be made at a time
778 when the corporation is insolvent or when the distribution
779 would render the corporation insolvent.
781

782 (2) A distribution may not be made unless the
782 distribution is authorized by the affirmative vote of the
783 holders of at least two-thirds of the shares voting on the
784 issue at a meeting of shareholders.
785

786 (3) Each distribution, when made, shall be
786 identified as a distribution in partial liquidation and
787 the amount per share disclosed to the shareholders
788 concurrently with the distribution.
789

790 Sec. 10.50.225. CERTAIN LOANS PROHIBITED. A loan
790 may not be made by a corporation to its officers or
791 directors, and a loan may not be made by a corporation
792 secured by its shares.
793

794 Sec. 10.50.230. LIABILITY OF DIRECTORS IN CERTAIN
794 CASES. (a) Directors who vote for or assent to the
795 declaration of a dividend or other distribution of the
796 assets of a corporation to its shareholders contrary to
796 the provisions of this chapter or contrary to restrictions
797 contained in the articles of incorporation are jointly and
798 severally liable to the corporation for the amount of the
799 dividend paid, or the value of assets distributed in
799 excess of the amount of the dividend or distribution which
800 could have been paid or distributed without a violation of
801 the provisions of this chapter or the restrictions in the
801 articles of incorporation.
803
803
803
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12

804 (b) Directors who vote for or assent to the purchase
804 by a corporation of its own shares contrary to the
805 provisions of this chapter are jointly and severally
806 liable to the corporation for the amount of consideration
807 paid in excess of the maximum amount which could have been
807 paid without a violation of the provisions of this
808 chapter.
809

810 (c) The directors who vote for or assent to the
810 distribution of assets of a corporation to its
811 shareholders during the liquidation of the corporation
812 without the payment and discharge of, or making adequate
813 provision for, all known debts, obligations, and
813 liabilities of the corporation are jointly and severally
814 liable to the corporation for the value of the assets
815 distributed, to the extent that the debts, obligations and
816 liabilities of the corporation are not paid and
816 discharged.
817

818 (d) The directors who vote for or assent to the
818 making of a loan to an officer or director of the
819 corporation, or the making of a loan secured by shares of
820 the corporation, are jointly and severally liable to the
821 corporation for the amount of the loan until it is repaid.
822

823 Sec. 10.50.235. EFFECT OF GOOD FAITH RELIANCE ON
823 FINANCIAL STATEMENTS OR BOOK VALUE. A director is not
824 liable under AS 10.50.230(a), (b) or (c) if

825
826 (1) he relied and acted in good faith upon
827 financial statements of the corporation represented to him
828 to be correct by the president or the officer of the
829 corporation having charge of its books of account, or
830

830 certified by an independent public or certified public
830 accountant or firm of certified public accountants fairly
831 to reflect the financial condition of the corporation; or
833
833

834 (2) in good faith in determining the amount
834 available for a dividend or distribution he considered the
835 assets to be of their book value.
837

837
838 Sec. 10.50.240. PRESUMPTION OF CONSENT OF DIRECTOR
838 AND FILING OF DISSENT. A director present at a meeting of
839 the board of directors at which action on a corporate
840 matter is taken is presumed to have assented to the action
841 taken unless his dissent is entered in the minutes of the
841 meeting or unless he files his written dissent to the
842 action with the person acting as secretary of the meeting
843 before its adjournment or forwards his dissent by
844 registered mail to the secretary of the corporation within
844 five days after the adjournment of the meeting. The right
845 to dissent does not apply to a director who voted in favor
846 of the action.
847

847
848 Sec. 10.50.245. DIRECTOR'S RIGHT TO CONTRIBUTION. A
848 director against whom a claim is asserted under
849 AS 10.50.230 - 10.50.240 is entitled to a contribution
850 from the other directors who voted for or assented to the
851 action upon which the claim is asserted.
852

852
853 Sec. 10.50.250. OFFICERS. The officers of a
853 corporation shall consist of a president, one or more
854 vice-presidents as prescribed by the bylaws, a secretary,
855 and a treasurer. Each of the officers shall be elected by
855 the board of directors at the time and in the manner
856 prescribed by the bylaws. Other necessary officers and
857

857 assistant officers and agents may be elected or appointed
857
857 by the board of directors or chosen in the manner
858
858 prescribed by the bylaws. Two or more offices may be held
859
859 by the same person, except the offices of president and
860
860 secretary.

861
861
862 Sec. 10.50.255. DUTIES OF OFFICERS. Officers and
862
862 agents of the corporation, as between themselves and the
863
863 corporation, may perform duties in the management of the
864
864 corporation as provided in the bylaws, or as determined by
865
865 resolution of the board of directors not inconsistent with
866
866 the bylaws.

867
867
868 Sec. 10.50.260. REMOVAL OF OFFICERS. An officer or
868
868 agent may be removed by the board of directors when, in
869
869 its judgment, the best interests of the corporation will
870
870 be served. Removal is without prejudice to the contract
871
871 rights of the person removed. Election or appointment of
871
871 an officer or agent does not of itself create contract
872
872 rights.

873
873
874 Sec. 10.50.262. TRANSACTIONS WITH AFFILIATED
874
874 PERSONS. (a) No person who is affiliated with the
875
875 corporation shall:

876
876
877 (1) acting as principal, knowingly sell any
877
877 security (except shares of the corporation) or other
878
878 property to the corporation or to any company controlled
879
879 by the corporation; or

880
880
881 (2) acting as principal, knowingly purchase any
881
881 security (except shares of the corporation) or other
882
882 property from the corporation or from any company
883
883 controlled by the corporation; or

885 (3) acting as principal, borrow money or other
885 property from the corporation or from any company
886 controlled by the corporation; or
887

887 (4) acting as principal, effect any transaction
888 in which the corporation, or any company controlled by the
888 corporation, is a joint or a joint and several participant
889 with such person; or
890

891 (5) acting as agent, accept from any source any
892 compensation (other than a regular salary or wages from
892 the corporation) for the purchase or sale of any property
893 to or for the corporation or to or for any company
894 controlled by the corporation,
895

896 unless, in each case, the board of directors of the
897 corporation determines by a two-thirds vote of a quorum of
897 its members that the terms of the transaction are
898 reasonable and fair and do not involve overreaching on the
899 part of any person concerned. Such finding, and the basis
900 upon which such finding is made, shall be recorded in the
901 minutes of the meeting at which approval of such
902 transaction is given. No director who is (or is
902 affiliated with) the affiliated person involved in a
903 transaction shall cast a vote in a decision to approve
904 that transaction.
905

905 (b) For purposes of this section:
906

907 (1) "person who is affiliated with the
908 corporation" shall mean any officer, director, employee,
908 or investment adviser of the corporation; and
909