

**Significant and some not so significant changes from MGL Chapter156B
made by MGL 156D effective July 1, 2004.**

Existing law/156B et al	New Sec. #	New Law/ 156D	Comments
			All existing corporations on July 1, 2004 are subject to the law without amendment to their charters.
Scattered throughout BCL.	§1.20	Electronic filing of documents; signatures may be facsimile or electronic; duplicate copies of documents required except in certain cases; Sec of the Commonwealth (SOC) may waive duplicate copies; duplicate copies not required for electronic filings.	Duplicate copies not required for change of officers or principal place of business ¹ ; registration by a foreign corporation ² ; change of registered office or change or resignation agent of a foreign corporation ³ or annual reports ⁴ . Electronic filing not permitted until SOC adopts regulations authorizing such practice ⁵ .
Delayed effective date in some cases up to 30 days	§1.23	Delayed effective date up to 90 days and if no time is specified, at the close of business on the date specified.	Close of business is the close of business of the SOC, namely 4:00 PM per the commentary.
Clerk vs. Secretary Residence in MA is required for the Clerk but if not a registered agent is required.	§1.40 and §8.40	All Corporations are to have a Secretary (not a Clerk) and the Secretary need not be a resident of the Commonwealth. All corporations shall have a resident agent, whether or not the Secretary is a MA resident. (see, §5.01)	Existing Clerks shall have the duties of the Secretary and the title can be modified with the next annual meeting and report.
Voting classes and series are separate.	§1.40 (a) 45	Now called “Voting Groups” and there is no distinction between classes and series.	
Notices (there is not a single statutory provision in the BCL, but provisions throughout the BCL dealing with specific issues). I.e., §36	§1.41	Single Notice section dealing with all notice requirements. Notices to the Corporation may also be given electronically or by facsimile as well as the old fashioned way. §1.41 (e).	Notice to shareholders by mail effective when deposited in the US Mail without regard to the 5-day presumed delivery time in 1.41 (f) (2). Shareholders must consent to receive notices by electronic transmission. ⁶
Incorporators organize	§2.01	Incorporators’ sole role is to sign	No longer signed under pains and

¹ § 5.02

² §15.03

³ §15.08 and 15.09

⁴ §16.22

⁵ §1.40 (a) “Delivery”

⁶ §1.41 (d) (2), see also Commentary 1, §1.41,

Definition of abbreviations

MGL 156 D shall be referred to as the “ACT”

Existing Laws, MGL 156B, referred to as the “Business Corporation Law” or “BCL”

the entity, adopt the bylaws and elect the initial board of directors and officers.		the articles, deliver them to the SOC, and complete the formation under §2.05 of the ACT. ⁷	penalties of perjury. Knowingly filing false papers is subject to a substantial fine (up to \$100,000.) under §1.29.
Denoting type of stock authorized, par v. no-par, preferred, etc. BCL §13	§2.02	No need to designate type of stock unless there is more than one class of stock. May designate purposes, par/no par value.	
Resident Agent required if Clerk is a non-resident or a foreign Corporation	§2.02	Must appoint a resident agent in all cases.	Corporate officers can be so designated if there is a registered office within the Commonwealth. ⁸ For these purposes, an officer of the entity may be its attorney. ⁹
	§2.02	Many optional matters can be included in the Articles and many may be desirable in most cases.	See Exhibit A, attached hereto, which is taken verbatim from the official Commentary.
Corporate purposes are required §13	§3.01	No purposes are required unless there is a desire to limit the scope of the purposes of the entity.	There may still be a need to include a purpose if the entity will conduct business outside of Massachusetts and the other state requires specific purposes, or in the event the organization will conduct business in a regulated activity, i.e., banking or professional firms. ¹⁰
The power to be a partner in a business enterprise must be stated in the Articles.	§3.02	Included as a statutory power without the necessity of including same in the Articles §3.02 (a) (9)	
Guarantees of others have certain limitations. BCL §9B	§3.02	The power to guarantee is far more expansive with specific authority to do so for related parties as described in §3.02 (b)	§3.02 is a safe-harbor for related companies but is NOT a limitation on the rights granted in §3.02 (a) (7).

⁷ See Commentary §2.01

⁸ There is no change in the inclusion of exculpation of Directors that should be included in the Articles, if desired. See §2.02 (b)(4)

⁹ See Commentary to §5.01.

¹⁰ See official Commentary to §3.01, also note the SOC may still require such information on the official mandatory forms.

No provision for “emergency powers” in BCL.	§3.03	Emergency action specifically permitted.	Emergency is defined as a circumstance where a majority of the directors cannot be assembled due to a catastrophic event. §3.03 (d)
Name Reservation for 30 day, renewable for an additional 30	§4.02	Name reserved for 60 days with the right to renew for an additional 60.	The Model Act’s provisions of permitting foreign corporations to reserve their own names for a year and renewed from year to year thereafter was not adopted. ¹¹
Separate classes of stock are denoted in the Articles.	§§6.01-6.02	One, undesignated, authorization of stock is permitted but separate classes with designated powers and rights are permitted.	The Directors may carve up the authorized shares into classes or series, if authorized in the Articles. ¹² See §6.02 (b). However, before the Corporation issues shares of such class or series, the Corporation must file an Articles of Amendment to the Articles describing the right, preferences, voting power, etc., of such class or series.
Requirement for type of stock not covered in BCL.	§6.03	1 or more shares that together have unlimited voting rights and 1 or more shares that together are entitled to receive the net assets of the corporation upon dissolution shall be outstanding	
Subscription for shares not covered in BCL.	§6.20	Specific statutory scheme set for in the ACT including right to enforce the subscription as any other debt due to the entity.	
Limitation on consideration for shares from the corporation. BCL §18	§6.21	Much more flexibility in the types of consideration that the shares may be issued for.	See limitation and remedies for inadequate consideration in §§ 8.30 and 8.31. The Articles MAY provide that a share cannot be issued below a certain price.

¹¹ See Commentary to §4.02

¹² An amendment to the articles is necessary to take advantage of this section.

Repurchased stock is designated as “Treasury Stock” or restored to authorized and not issued when repurchased.	§6.31	Repurchased stock resume status of authorized but not issued.	If the Articles prohibit the reissue of repurchased shares, it has the effect of reducing the number of authorized shares of the Corporation. ¹³ In such case an article of amendment should be filed. ¹⁴
Meetings must be within the Commonwealth unless otherwise set forth in the Articles; but always in the United States. BCL §35	§7.01	Meetings, as a matter of right, can be held within or without the Commonwealth.	No need to include the Article provision to permit meeting outside of the Commonwealth.
Annual meeting must be in the first six months of the fiscal year. BCL §33	§7.01	No such restriction.	But a shareholder can compel a meeting if one is not held within the earlier of 6 months after the end of the corporation’s fiscal year or 15 months after its last meeting. See §7.03 (a).
Court Ordered meeting requires a petition of holders of 10% or more of the voting stock. BCL §34	§7.03	Any shareholder, holding as few as one share, may petition the court for a special meeting.	
Actions without a shareholder meeting may be accomplished by unanimous consent. BCL §43	§7.04	Consent from the minimum number of votes necessary to carry the action rather than by all shareholders is permitted, if set forth in the Articles. ¹⁵	Special care must be taken regarding notice to shareholders that could not vote on an issue if there are different classes or series. See §7.04 (d). ¹⁶ In addition, notice to non-consenting shareholders must be given seven days before the new, consented action takes place.
Notice of a shareholder meeting must be given no less than 7 days before the meeting unless notice is waived. BCL §36.	§7.05	Notice must be no less than 7 days but no more than 60 days , unless waived.	There is no change in the requirement that the purpose of the meeting must be described in the notice. Notices at one meeting for the subsequent meeting more than 60 days later must be re-noticed within the statutory period.

¹³ See §6.31 (b)

¹⁴ See §10.05 (6)

¹⁵ An amendment to the articles is necessary to take advantage of this section.

¹⁶ An amendment to the articles is necessary to take advantage of this section.

Attendance at the shareholders meeting, held without proper notice, may or may not be deemed a waiver.	§7.06	Attendance at the meeting without proper notice is a waiver, unless at the beginning of the meeting the shareholder objects to holding the meeting or if the objection deals with a matter not properly noticed, the shareholder objects to considering the matter when it is presented.	
Record Date cannot be more than 60 days before the shareholder meeting. BCL 42.	§7.07	Record date not more than 70 days before the meeting.	
Remote communications and participation at a meeting not covered in the BCL.	§7.08	Private Companies may hold a meeting on the phone or by electronic means.	The statute specifies that the remote attendee <i>read or hear</i> the proceeding so the statute presumes methods other than a conference call where all parties can hear each other and interact orally.
Voting Lists are governed by BCL §32	§7.20	A detailed comprehensive revision of the voting list rules are set out in §7.20	The list may be held outside of Massachusetts at the corporation's principal place of business or where the annual or special meeting is to be held.
Proxies valid for 6 months after issuance. BCL §41	§7.22	Proxies valid for 11 months unless a longer or shorter period is set forth in the appointment.	A more comprehensive definition of an irrevocable proxy, coupled with an interest, is provided in §7.22 (d).
A single quorum rule applies to the meeting. BCL §39.	§7.25	Different quorums may be appropriate for different parts of the meeting, depending upon with classes or series of stock have voting rights.	
A plurality vote for directors is not addressed in the BCL.	§7.28	A plurality elects directors. Shareholders cannot cumulate their votes for directors unless the articles so provide. Also cumulative voting is authorized, if set forth in the Articles. ¹⁷	So if you have vote for three directors on a slate you cannot vote 3 times for the same choice.

¹⁷ An amendment to the articles is necessary to take advantage of this section.

Voting trusts not addressed by the BCL. Case law recognized such arrangements for many years.	§7.30	Voting trusts specifically authorized and regulated in this section.	Subject to the rules against perpetuities, there is no time limit of the duration of a voting trust.
Nothing comparable in the BCL.	§7.32	A Shareholder Agreement shall be effective even though it is inconsistent with 1 or more sections of MGL 156 D.	This is an important provision for closely held corporations. Examples of specific items set forth in this section are the elimination of a board of directors, distribution not consistent with stock ownership (subject to 6.40 above), designating officers and directors, provide division of voting power, consideration for stock in property and or services as well as money, <u>how to break deadlocks</u>, dissolution upon specific events. A copy of §7.32 is appended for your convenience. ¹⁸
Notice of Shareholder Agreements	§7.32	Must be conspicuously noted on each certificate.	If the Agreement post dates the issuance of stock, all stock must be recalled to note the Agreement. Subsequent purchasers of stock that are unaware of the agreement are bound by the agreement but may rescind the stock purchase. §7.32 (c). There are several pages of Commentary that should be consulted as well.
Derivative Proceedings are not substantially governed by BCL. See §46.	§§7.40-7.47	Several provisions governing the standing, demand obligations, dismissal, settlement subject to court approval and expenses of suit.	Specific authority for costs from the plaintiff to the corporation if the court finds that the suit “was commenced or maintained without reasonable cause of for an improper purpose.” § 7.26 (2).
There must be a minimum of three directors unless there are two or less shareholders. In such a case the number of directors can be as few as the number of shareholders. BCL §47	§8.03	If authorized in the articles of organization, there may be as few as 1 director. The board or shareholders may increase the number of directors.	The requirement to designate fewer directors than shareholders in the case of less than 3 directors MUST be set forth in the Articles to be permitted. §8.03 (a). There are new rights and restrictions on the Board that should be consulted.

¹⁸ See page 14, infra.

The term of a director elected to fill a vacancy is not limited in BCL §50.	§8.05 (d)	Unless otherwise set forth in the Articles or Bylaws, directors elected to fill such a vacancy shall serve until the next election when directors are elected.	Of particular concern for terms that exceed one year of staggered term directors. The Board may take the necessary steps to return the rotation of directors to the original terms. But See §8.06 (e) relating to public companies only.
Term of office may be as long as 5 years. BCL §50	§8.06	Terms cannot be longer than 3 years.	
Removal of a director requires a meeting and notice thereof indicating that removal of directors is proposed. BCL §51	§8.08 (d) & (e)	No notice and opportunity to be heard is required.	All directors need notice of the meeting but the director subject to the vote need not be given specific charges or an opportunity to be heard. Equitable concerns and other judicial due process concerns may come into play however. See also §8.43 for officers.
	§8.20	Board meeting may be held remotely so long as each director participating may simultaneously hear each other during the meeting. §8.20 (b)	The term “hear” is specific so email meetings are not authorized.
Waivers of notice should be given prior to the meeting. Common Law, no BCL provision.	§8.23	Waivers may be given after the meeting. Attendance at the meeting is a waiver, unless the director properly objects to the meeting being held and does not vote or assent to actions taken at the meeting.	
Conflict of Interest and Loans to Directors are not addresses in the BCL.	§§8.31-8.32	§8.31 Conflict of Interest and §8.32 Loans to Directors specifically addressed	There is extensive commentary that should be reviewed carefully.
Officers are President, Treasurer and Clerk. Unless modified in the bylaws, the Treasurer and Clerk are elected by the shareholders and the President by the Directors. BCL §48.	§8.40	Officers are President, Treasurer and Secretary and all officers may be elected by the Board.	We are finally spared the explanation of what a “clerk” is.
Indemnification of officers and directors must be provided in the Articles or bylaws voted upon by shareholders. BCL §67	§8.51	No shareholder authorization required in Articles or bylaws.	Special indemnification for ERISA fiduciaries is provided in §8.51 (b).

BCL does not have a provision for mandatory indemnification or court ordered indemnification	§§8.52 and 8.53	Mandatory indemnification is required for a director who was “wholly successful” on the merits or otherwise, in the defense of any proceedings to which he was a party because he was a director of the corporation.	Indemnification is for costs, including attorney’s fees. Corporation MAY advance expenses in anticipation of conclusion of the suit. See §8.53 for standards required for advances of expenses. See also applicability of indemnification provisions to officers in §8.56.
No provision for court ordered indemnification in the BCL.	§8.54	Court Ordered indemnification is provided.	
No mechanism to determine how to deal with discretionary indemnification in BCL.	§8.55	Disinterested directors or “special legal counsel” determines whether indemnification is warranted.	
No applicable provision.	§8.58	A corporation may, in its articles or bylaws, make the discretionary indemnification provisions mandatory.	
Domestication to and from a foreign corporation is not covered in the BCL.	§§9.20-9.25 and §§9.40-9.43	Domestication permitted is authorized in the state the corporation intends to move to or from.	As of the writing of the Commentary, only Delaware has enacted a domestication provision
Nonprofit conversion not covered in BCL.	§§9.30-9.35	Conversion from a profit to nonprofit corporation is authorized.	The conversion means the resulting entity is now governed by MGL ch. 180.
Conversion to or from another form of entity, both domestic and foreign not covered in BCL. But see §§78-79.	§§9.50-9.56	Conversion to or from another entity, both, domestic or foreign, authorized and regulated. Also see §15.21 for automatic withdrawal upon conversion in certain cases.	Again, when dealing with foreign entities, the other state involved must also permit such conversions.
Amendments to the Articles covered by BCL §§71 &77.	§§10.01-10.04	Clarification of rules for class votes and “adversely affected”.	
Articles of Amendment must be authorized by the shareholders. BCL does not cover amendments by directors.	§10.05	“Housekeeping” amendments may be voted and enacted by the directors without shareholder approval.	Commentary provides that the permitted amendments do not affect “substantive rights in any meaningful way.”
Corporate bylaws or articles may require voting by supermajority. BCL §8.	§10.21	Articles must specifically provide for voting by supermajority.	Shareholders can decrease voting supermajority but not less than a majority.
Appraisal rights discussed in BCL §§86-98	§§13.02-13.31	Appraisal rights generally follow BCL but codify some other court created provisions.	

Incorporators' right to dissolve not set forth in BCL.	§14.01	New provision permits dissolution by incorporators.	For new corporations that never get off the ground or name holding corporations that never conducted business.
Detailed statutory scheme for claims against a dissolved corporation not provided but see BCL §§99-108	§§14.06-14.08	Statutory scheme to deal with "known non-contingent claims" (§14.06), "unknown claims" (§14.07), and reserves for unasserted product liability claims and contingent claims" (§14.08) set forth in detail.	Funds deposit with State Treasurer for safekeeping, but not abandoned property, upon liquidation.
Corporate retention of Articles, bylaws and incorporator and shareholder meetings are required to be maintained. BCL §32	§16.01	In addition to the BCL records, §16.01 requires the retention of directors' meetings, committee action, accounting records and financial statements. All such records need not be maintained in Massachusetts.	Corporations generally retained these items anyway, so no significant change in current practice is anticipated. Articles, bylaws, director resolution creating classes or series of shares, shareholder meeting for the last three year years and communications to shareholder under §16.20 for the last three years, names and addresses of all directors and the most recent annual report must be kept in the Commonwealth at the principal office, the office of the transfer agent or resident agent. §16.01 (e)
Shareholder inspection of records usually related to shareholder lists prior to a meeting. BCL 32	§16.02	The shareholders can have access to and have copies of all the documents set forth in 16.01 (e) as listed directly above.	Detailed provisions are provided to protect the corporation from harassment as well. Notice to review records must be at least 5 days.
No statutory right in BCL for the directors to inspect corporate books and records	§16.05	Directors have specific rights relating to the inspection of corporate records.	Right limited to fulfilling duty to the corporation. Rights regarding subsidiary records also covered.
Failure of notice to a shareholder not covered in BCL.	§16.06	When a shareholder cannot be found, section 16.06 deals with the lack of notice to such shareholder.	A balance between the requirement of notice and the failure of a shareholder to notify the corporation of a new address is set forth in this section.
There is no statutory provision that shareholders get a copy of the annual financial statements.	§16.20	Annual financial statements shall be delivered to any shareholder upon request.	The report is due no later than 120 days after the close of the fiscal year or before the annual meeting of the shareholders, if earlier.

Directors' liability for dividends and stock purchases when the corporation is insolvent or when the dividend renders the corporation insolvent is covered in BCL §61	§§6.40-6.41	Addition guidance is provided as to the applicability of director liability for dividends and stock repurchases.	
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EXHIBIT A
referenced on page 1 above at §2.02

OPTIONS IN THIS ACT THAT MAY BE ELECTED ONLY IN THE ARTICLES OF ORGANIZATION.

a. Options with respect to directors

- (1) The Board of Directors may be dispensed with entirely in limited circumstances or its functions may be restricted, see §8.01.
- (2) Power to compensate directors may be restricted or eliminated, see §8.11.
- (3) Election of directors by cumulative voting may be authorized, see §7.28.
- (4) Election of directors by greater than a plurality of votes may be authorized, see §7.28.
- (5) Directors may be elected by classes of shares, see §8.04
- (6) Power to remove directors without cause may be restricted or eliminated, see §8.08.
- (7) Terms of directors may be staggered so that all directors are not elected in the same year, see §8.06.
- (8) Power to fill vacancies may be limited to the shareholders, see §8.10.
- (9) Power to indemnify directors, officers, and employees may be limited, see §§8.50 – 8.58.

b. Options with respect to shareholders

- (1) Special voting groups of shareholders may be authorized, see §7.25.
- (2) Quorum for voting groups of shareholders may be increased or reduced, see §§7.25, 7.26 and 7.27.
- (3) Quorum for voting by voting groups of shareholders may be prescribed, see §7.26.
- (4) Greater than majority vote may be required for action by voting groups of shareholders, see §7.27, and see also §10.21.
- (5) Shareholder action without a meeting may be taken by less than unanimous consent of the shareholders entitled to vote, see §7.04.

c. Options with respect to shares

- (1) Shares may be divided into classes and classes into series, see §§6.01 and 6.02.
- (2) Cumulative voting for directors may be permitted, see §7.28.
- (3) Distributions may be restricted, see §6.40
- (4) Share dividends may be restricted, see §6.23.
- (5) Voting rights of classes of shares may be limited or denied, see §6.01.

- (6) Classes of shares may be given more or less than one vote per share, see §7.21.
- (7) Shares may be redeemed at the option of the corporation or the shareholder, see §6.01.
- (8) Reissue of redeemed shares may be prohibited, see §6.31.
- (9) Shareholders may be given preemptive rights to acquire unissued shares, see §6.30.
- (10) Redemption preferences may be ignored in determining lawfulness of distributions, see §6.40.

OPTIONS IN THIS ACT THAT MAY BE ELECTED EITHER IN THE ARTICLES OF ORGANIZATION OR IN THE BYLAWS

a. Options with respect to directors

- (1) Number of directors may be fixed or changed within limits, see §8.03.
- (2) Qualifications for directors may be prescribed, see §8.02
- (3) Notice of regular or special meetings of board of directors may be prescribed, see §8.22.
- (4) Power of board of directors to act without meeting may be restricted, see §8.21.
- (5) Quorum for meeting of board of directors may be increased or decreased (down to one-third) from majority, see §8.24.
- (6) Action at meeting of board of directors may require a greater than majority vote, see §8.24.
- (7) Power of directors to participate in meeting without being physically present may be prohibited, see §8.20
- (8) Board of directors may create committees and specify their powers, see §8.25.
- (9) Power of board of directors to amend bylaws may be restricted, see §§10.20 and 10.22.

b. Options with respect to shares

- (1) Shares may be issued without certificates, see §6.26.
- (2) Procedure for treating beneficial owner of street name shares as record owner may be prescribed, see §7.23.
- (3) Transfer of shares may be restricted, see §6.27.

Section 7.32. SHAREHOLDER AGREEMENTS

(a) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with 1 or more other sections of this chapter in that it:

- (1) eliminates the board of directors or restricts the discretion or powers of the board of directors;
- (2) governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in section 6.40;
- (3) establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;
- (4) governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;
- (5) establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer or employee of the corporation or among any of them;
- (6) transfers to 1 or more shareholders or other persons all or part of the authority to exercise corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;
- (7) requires dissolution of the corporation at the request of 1 or more of the shareholders or upon the occurrence of a specified event or contingency; or
- (8) otherwise governs exercise of the corporate powers or management of the business and affairs of the corporation or the relationship among the shareholders, the directors and the corporation, or among any of them, and is not contrary to public policy.

(b) An agreement authorized by this section shall be:

- (1) set forth (i) in the articles of organization or bylaws and approved by all persons who are shareholders at the time of the agreement or (ii) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation;
- (2) subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; and
- (3) valid for 10 years, unless the agreement provides otherwise.

(c) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by subsection (b) of section 6.26. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement does not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement is entitled to rescission of the purchase. A purchaser is considered to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission

authorized by this subsection shall be commenced within the earlier of 90 days after discovery of the existence of the agreement or 2 years after the time of purchase of the shares.

(d) An agreement authorized by this section automatically terminates when shares of the corporation are listed on a national securities exchange or are regularly traded in a market maintained by 1 or more members of a national or affiliated securities association. If the agreement so terminates or otherwise ceases to be effective, the board of directors may, if the agreement is contained or referred to in the corporation's articles of organization or bylaws, adopt an amendment to the articles of organization or bylaws, without shareholder action, to delete the agreement and any references to it.

(e) To the extent that an agreement authorized by this section limits the discretion or powers of the board of directors, liability for acts or omissions otherwise imposed by law on directors shall be imposed instead upon the person or persons in whom the discretion or powers are vested.

(f) If an agreement is authorized by this section, shareholders shall not be personally liable for the acts or debts of the corporation on the ground that the agreement or its performance treats the corporation as if it were a partnership or results in a failure to observe corporate formalities that would otherwise apply.

(g) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

(h) Nothing contained in this section shall be construed to limit the effectiveness of any agreement or arrangement permitted by or not inconsistent with any other provision of this chapter.