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Consolidation of Membership Corporations

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LEGISLATION

CONSOLIDATION OF MEMBERSHIP CORPORATIONS

Introduction

Since a corporation is a creature of the particular state of its incorporation, its formation, major structural changes and dissolution are matters of legislative concern. Merger and consolidation of corporations fall within this category of fundamental change.[1] A consolidation implies a union of two or more corporations, each surrendering its individual existence to form a new corporate entity.[2] In the case of merger, however, there is an absorption of one corporation by another with the result that one of the constituents survives to carry on.[3] Even though the practical effect of a transfer of the assets of one corporation to another may dissolve the former, it cannot effect an actual consolidation.[4] Merger and consolidation, then, are matters of public policy within the sole province of the legislature, to be regulated by statute.[5]

Merger and consolidation were unknown to the common law,[6] and both are rights conferred purely by statute.[7] Since they are stat-

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[1] See BALLANTINE, CORPORATIONS § 289 (Rev. ed. 1946).

[2] *See* Electric Bond & Share Co. v. State of New York, 249 App. Div. 371, 372, 293 N. Y. Supp. 175, 176 (3d Dep't), *aff'd mem.*, 274 N. Y. 625, 10 N. E. 2d 583 (1937); Cadman Memorial Cong. Soc. of Brooklyn v. Kenyon, 197 Misc. 124, 150, 95 N. Y. S. 2d 133, 156 (Sup. Ct. 1950), *rev'd on other grounds*, 279 App. Div. 1015, 111 N. Y. S. 2d 808 (2d Dep't 1952).

[3] *See* O'Donnell v. Milling & Lighting Co., 163 Misc. 860, 861, 298 N. Y. Supp. 9, 11 (Sup. Ct. 1937); see BALLANTINE, *op. cit. supra* note 1; PRASHKER, CASES AND MATERIALS ON THE LAW OF CORPORATIONS 887 (2d ed. 1949).

[4] *See* Cole v. M. I. Co., 133 N. Y. 164, 167, 30 N. E. 847, 858 (1892); see Agoodash Achim of Ithaca, Inc. v. Temple Beth-el, Inc., 147 Misc. 405, 263 N. Y. Supp. 81 (Sup. Ct. 1933).

[5] *See* Alpren v. Consolidated Edison Co. of N. Y., 168 Misc. 381, 383, 5 N. Y. S. 2d 254, 256 (Sup. Ct. 1938); Cong. Anshe Yosher v. F. U. R. S. Verein, 32 Misc. 269, 66 N. Y. Supp. 356 (Sup. Ct. 1900). "There was no attempt to comply with the provisions of any law authorizing the consolidation of corporations and there can be no such consolidation except pursuant to legislative authority." *Id.* at 273, 66 N. Y. Supp. at 359.

[6] *See* Davis v. Congregation Beth Tephila Israel, 40 App. Div. 424, 426, 57 N. Y. Supp. 1015, 1017 (1st Dep't 1899); Agoodash Achim of Ithaca, Inc. v. Temple Beth-el, Inc., *supra* note 4 at 410, 263 N. Y. Supp. at 87; Chevra Bnai Israel v. Chevra Bikur Cholim, 24 Misc. 189, 190, 52 N. Y. Supp. 712 (Sup. Ct. 1898) (The court held that a *membership* and a *religious* corporation could not consolidate as there was no legal sanction for such a union.).

[7] "Companies may consolidate but under the permission and safe-guards

utory rights, the legislature may impose such conditions as it deems fit, provided there is no infringement of any constitutional right. As the state has reserved to itself the power to alter, amend, or repeal [8] the charters of all corporations, non-confiscatory statutes permitting merger and consolidation are not unconstitutional [9] even in light of the fact that such a union may enlarge the scope of originally authorized corporate activity.[10]

Express statutory provisions exist allowing consolidation of stock,[11] insurance,[12] banking,[13] railroad [14] and religious corporations.[15] This article, however, will be restricted to a discussion of the consolidation of membership corporations. A membership corporation is defined as a non-stock, non-profit corporation.[16] Included within this definition are corporations formed for charitable, benevolent, fraternal or social purposes. Prior to 1953,[17] the law concerning consolidation of membership corporations [18] was inadequate. In substance, it provided that two or more domestic membership [19] corporations, formed for kindred purposes,[20] might consolidate, thereby forming a single corporation. This could be effected by executing a certificate of consolidation containing the requisite information [21] after

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of the statute. . . ." Cole v. M. I. Co., *supra* note 4 at 168, 30 N. E. at 848.

[8] N. Y. CONST. Art. X, § 1.

[9] See Beloff v. Consolidated Edison Co. of N. Y., 300 N. Y. 11, 87 N. E. 2d 561 (1949).

[10] *See* Alpren v. Consolidated Edison Co. of N. Y., 168 Misc. 381, 385, 5 N. Y. S. 2d 254, 257 (Sup. Ct. 1938).

[11] N. Y. STOCK CORP. LAW §§ 86, 91.

[12] N. Y. INS. LAW § 481.

[13] N. Y. BANKING LAW § 600 (merger).

[14] N. Y. RAILROAD LAW § 140.

[15] N. Y. RELIG. CORP. LAW § 13.

[16] N. Y. GEN. CORP. LAW § 2. "A non-stock corporation shall be either,
"1. A religious corporation,
"2. A membership corporation. . . ."
N. Y. MEMB. CORP. LAW § 2. "The term 'membership corporation' means a corporation not organized for pecuniary profit. . . ."

[17] The first provision concerning the consolidation of domestic membership corporations was enacted by Laws of N. Y. 1895, c. 559, and was embodied in N. Y. MEMB. CORP. LAW § 7.

[18] N. Y. MEMB. CORP. LAW §§ 50, 51.

[19] See Selkir v. Klein, 50 Misc. 194, 100 N. Y. Supp. 449 (Sup. Ct. 1906), and Chevra Bnai Israel v. Chevra Bikur Cholim, 24 Misc. 189, 52 N. Y. Supp. 712 (Sup. Ct. 1898), involving the proposed consolidation of a religious and a membership corporation. In both cases, the court held that there was no statutory sanction or warrant permitting the consolidation of a religious and a membership corporation, and therefore the court was powerless to legalize such a consolidation.

[20] *See* Matter of Young Women's Ass'n, 169 App. Div. 734, 742, 155 N. Y. Supp. 838, 844 (3d Dep't 1915) (dissenting opinion).

[21] N. Y. MEMB. CORP. LAW § 50. The certificate of consolidation shall state in substance: (1) the name of each corporation party to the consolidation and the date of filing of its certificate of incorporation; (2) the name

the prescribed consent of the members had been obtained.[22] The next step was to procure the approval of a justice of the Supreme Court by submitting the certificate together with a petition[23] containing the agreement for consolidation, and a statement of all the property and liabilities involved, and the amount and sources of each corporation's income.[24] With the indorsement of judicial approval, all the powers, rights, privileges and interests of each constituent corporation,[25] along with all the property,[26] vested in the consolidated corporation by operation of law.[27] The consolidated corporation was deemed to have assumed the liabilities and obligations of each constituent as though it had itself incurred these obligations. To prevent any devise, bequest, gift or grant from lapsing because of the consolidation, the statute declared that, where necessary, the existence of each constituent was deemed to continue in and through the consolidated corporation. Otherwise, however, such devise, bequest, gift or grant inured to the benefit of the consolidated corporation.[28]

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of the consolidated corporation which may be the name of one of the constituents or an entirely new name; (3) the territory in which its operations are to be located; (4) the city, village or town and the county in which its office is to be located; (5) the number of its directors, or not less than a stated minimum nor more than a stated maximum, but in no event less than three; (6) the names and residences of the directors until the first annual meeting; (7) the terms and conditions of the consolidation, if any.

[22] *Ibid.* Subscribed and acknowledged by *every member,* in person or by proxy, of each constituent corporation entitled to vote thereon; or by the president or a vice-president, and the secretary, or an assistant secretary, of each constituent corporation, with an annexed affidavit stating they have been authorized to execute and file such certificate by the votes of *two-thirds* of the members, in person or by proxy, entitled to vote thereon, and in the case of each constituent having more than five hundred members, a similar authorization from a vote of *two-thirds* of the members present at the meeting, in person or by proxy.

[23] *Ibid.* The petition for approval shall be made in ". . . the judicial district in which the office of the corporation is to be located."

[24] See Chevra Bnai Israel v. Chevra Bikur Cholim, 24 Misc. 189, 52 N. Y. Supp. 712 (Sup. Ct. 1898). The court, by dicta, stated that, even assuming that the corporations were similar within statutory purview, the attempted consolidation was void as judicial assent had not been obtained.

[25] N. Y. MEMB. CORP. LAW § 51. ". . . [A]ll the debts due on whatever account to either of them, and other things in action belonging to either of them, shall be deemed to be transferred to and vested in such consolidated corporation without further act or deed . . . all claims, demands, property and every other interest shall be as effectually the property of the consolidated corporation as they were of the constituent corporations. . . ."

[26] *Ibid.* ". . . [T]itle to all real estate, taken by deed or otherwise under the laws of this state, vested in either of the constituent corporations shall not be deemed to revert or be in any way impaired by reason of the consolidation but shall be vested in the consolidated corporation."

[27] Rockefeller Foundation v. State of New York, 144 Misc. 460, 258 N. Y. Supp. 812 (Ct. Cl. 1932); see Electric Bond & Share Co. v. State of New York, 249 App. Div. 371, 293 N. Y. Supp. 175 (3d Dep't), *aff'd mem.*, 274 N. Y. 625, 10 N. E. 2d 583 (1937).

[28] See Matter of Jolson, 202 Misc. 907, 114 N. Y. S. 2d 135 (Surr. Ct. 1952); Matter of Hoagland, 194 Misc. 803, 74 N. Y. S. 2d 156 (Surr. Ct.),

Shortcomings of the Old Statute

Although the statute provided that a single corporation was to be formed by consolidation, there was no express provision as to whether it was to be a new entity or one of the constituent corporations.[29] Because of the different consequences attaching to each alternative,[30] it seemed desirable that this be clarified.

A further defect lay in the inadequacy of the information required to be contained in the petition for approval. A mere statement of monetary compatibility coupled with a recital of the agreement for consolidation seems incomplete criteria upon which to determine whether, in the interests of the public and each constituent corporation, such a union would prove beneficial.

Since the statute did not require each constituent corporation to petition for approval of the consolidation, this process could take the form of an *ex parte* order,[31] thereby reducing statutory mandates to a mere formality.[32] Furthermore, the interests of the individual members were not protected [33] in that there was no provision requiring notice to dissenters nor permitting an appearance by an aggrieved member.[34] Whereas a shareholder of a stock corporation who does not assent to a proposed consolidation can require the corporation to appraise and purchase his stock,[35] no such remedy existed in favor of a member. Finally, although consolidation of domestic corporations was permitted, there was no express statutory authority allowing it between domestic and foreign membership corporations, even though, in some cases, the foreign corporation might be of national scope and membership, and perhaps better able to carry out the

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aff'd mem., 272 App. Div. 1040, 74 N. Y. S. 2d 911 (1st Dep't 1947), *aff'd mem.*, 297 N. Y. 920, 79 N. E. 2d 746 (1948); Matter of Doane, 124 Misc. 663, 208 N. Y. Supp. 320 (Surr. Ct. 1925).

[29] The statutes of several other jurisdictions have avoided this uncertainty by providing for the merger or consolidation of such corporations. See DEL. CODE ANN. tit. 8, §§ 255(a), 256(a) (1953); LA. REV. STAT. tit. 12, § 136 (1950); PA. STAT. ANN. tit. 15, § 2851-801 (Purdon, Supp. 1952); VA. CODE § 13-40 (1950).

[30] *Compare* O'Donnell v. Milling & Lighting Co., 163 Misc. 860, 861, 298 N. Y. Supp. 9, 11 (Sup. Ct. 1937), *with* People v. New York C. & S. L. R. R., 129 N. Y. 474, 482, 29 N. E. 959, 960 (1892).

[31] See Matter of Lodge Principle & Civility No. 39, Order Sons of Italy, Inc., 166 N. Y. Supp. 452 (Sup. Ct. 1917) (An *ex parte* order consolidating two membership corporations was set aside.).

[32] 1953 N. Y. LEGIS. ANNUAL 98.

[33] *Id.* at 99.

[34] N. Y. MEMB. CORP. LAW § 7, Laws of N. Y. 1895, c. 559, contained a provision for notice to be given to "interested" parties and permitted their appearance before the court. However, Section 51 of the Membership Corporations Law, the statute effective prior to Sept. 1, 1953, contained no such provision.

[35] N. Y. STOCK CORP. LAW § 87.

purposes for which the domestic corporation was formed. Such a view seems provincial where, with proper statutory safeguards, a beneficial union between foreign and domestic membership corporations might be effected.

The Present Status of the Law

By amendment and addition, effective September 1, 1953, the Legislature, upon the recommendation of the Law Revision Commission, substantially revised the Membership Corporations Law.[36] The present statute permits the consolidation of two or more domestic membership corporations to form a single corporation ". . . which may be either a new corporation or one of the constituent corporations. . . ." [37] When such an agreement is entered into, a certificate of consolidation containing general information required by the statute [38] may be executed and filed, provided the required membership consent has been acquired.[39] Furthermore, the statute now permits the consolidation of one or more domestic membership corporations [40] with one or more foreign non-stock, non-profit corporations organized for kindred purposes, if complementary legislation exists in the foreign jurisdiction.[41] The certificate of consolidation to be filed on the execution of such an agreement is basically the same as that required in the instance of consolidation between domestic corporations.[42] The surviving or resulting corporation may be either a

[36] The applicable provisions are now embodied in Sections 50-53 of the Membership Corporations Law. See 1953 LEG. DOC. No. 65(H), REPORT, N. Y. LAW REVISION COMMISSION (printed in McKinney's Session Law Service of N. Y., Feb. 25, 1953, No. 2 at A-88).

[37] N. Y. MEMB. CORP. LAW § 50.

[38] Basically, the information required in the certificate of consolidation remains unchanged from the requirements of the old statute. See note 21 *supra*. The additional provisions require a statement whether the consolidated corporation is to be a new corporation or one of the constituents and the mode of carrying the agreement for consolidation into effect.

[39] See note 22 *supra*. The section applicable to corporations whose membership exceeded five hundred was amended to require an authorization from two-thirds of the members *entitled to vote thereon* at a meeting at which a quorum of the members entitled to vote with respect to consolidation was present.

[40] This provision is inapplicable to a domestic cemetery corporation. N. Y. MEMB. CORP. LAW § 51(1).

[41] See People v. New York C. & S. L. R. R., 129 N. Y. 474, 29 N. E. 959 (1892).

[42] See note 21 *supra*. If, however, the consolidated corporation is, or is to be, incorporated under the laws of a jurisdiction other than New York, the certificate must state: that the consolidated corporation consents to be sued in respect to any property transferred to it by the Supreme Court which had been held by any one of the constituents for a charitable, religious, eleemosynary, benevolent, educational or similar use. The certificate must also provide that the consolidated corporation irrevocably appoints the Secretary of State as agent to accept service of process in such an action.

domestic or a foreign corporation.[43] Of necessity, the consent required of the members of each constituent foreign corporation will be governed by the laws of that foreign jurisdiction. Whether the proposed consolidation involves domestic, or domestic and foreign corporations, the certificate of consolidation may not be filed until the agreement has received judicial sanction. In either instance, an application for a court order approving the agreement must be made by *each* constituent corporation.[44] The petition must contain ". . . the agreement for consolidation . . . the approval of the agreement by the members of each constituent corporation . . . the objects and purposes of each such corporation to be promoted by the consolidation . . . a statement of all property, and the manner in which it is held, and of all liabilities and of the amount and sources of the annual income of each such corporation . . . whether any votes against adoption of the resolution approving the agreement for consolidation were cast . . . [and] facts showing that the consolidation is authorized by the laws of the jurisdiction under which each of the constituent corporations is incorporated." [45] A time for the hearing is then fixed and notice may be required to be given to the Attorney General [46] and to all "interested" persons. If no dissenting votes were cast, notice may be dispensed with except in those cases where notice to the Attorney General is required.[47]

The procedural aspect of this approval recognizes the substantive doctrine of *cy pres*.[48] A determination must be made to discover whether any of the assets of the constituent corporations are held for a charitable, religious, eleemosynary, benevolent, educational or simi-

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[43] See N. Y. MEMB. CORP. LAW § 51(2), (3).

[44] "Application for the order may be made in the judicial district in which the principal office of the consolidated corporation is to be located, or in which the office of one of the domestic constituent corporations is located." N. Y. MEMB. CORP. LAW § 52(1), added by Laws of N. Y. 1953, c. 843.

[45] *Ibid.*

[46] Notice must be given the Attorney General if the Supreme Court finds that assets of any of the constituent corporations are held for a charitable, religious, eleemosynary, benevolent, educational or similar use and directs a transference or conveyance thereof. *Id.* § 52(1), (2).

[47] See note 46 *supra*.

[48] In general, the doctrine states that ". . . wherever the donor has indicated a general intention or dominant purpose that the property is to be devoted to a charitable use, the court will, if possible, adopt any reasonable method of promoting this object." See 4 POMEROY, EQUITY JURISPRUDENCE § 1027-a (5th ed., Symons, 1941). This doctrine is now embraced in N. Y. PERS. PROP. LAW § 12 and N. Y. REAL PROP. LAW § 113. But in Saltsman v. Greene, 136 Misc. 497, 243 N. Y. Supp. 576 (Sup. Ct.), *aff'd mem.*, 231 App. Div. 781, 246 N. Y. Supp. 913 (3d Dep't 1930), *aff'd mem.*, 256 N. Y. 636, 177 N. E. 172 (1931), the court held the doctrine to be inapplicable where the testator specifically directed the purposes to which the gift in trust was to be applied. The specific purpose of the trust failed, and, as the will did not indicate any *other* general charitable purpose to which the property was to be devoted, the property passed as in intestacy.

lar purpose, use, or trust without a condition requiring a reconveyance by reason of the consolidation. If the Supreme Court finds that the assets are so held it may, on notice to the Attorney General, ". . . direct that [they] . . . be transferred or conveyed to the consolidated corporation, subject to such use, purpose or trust . . . or to one or more other domestic or foreign corporations . . . engaged in substantially similar activities, upon an express trust. . . ." [49]

After the requirements of the statute have been complied with, and a hearing has been held before the Supreme Court, the court may disapprove or require a modification of the agreement if it finds that the interests of the dissenting members are or may be substantially prejudiced by the proposed consolidation.[50] If, however, the court does modify the agreement, it must direct that it be submitted, as modified, to the members of each constituent corporation.[51] This provision recognizes that the court's judgment is not infallible and that the modification may prove unfavorable or prejudicial to the assenting members. If, on the other hand, no judicial modification is appended thereto, and if it appears that the interests neither of the constituents nor of the public will be adversely affected, the court must then approve the consolidation. If there were unanimous membership approval at the execution of the original certificate, nothing more than filing the agreement, as approved, need be done. However, if there were less than unanimous approval, a resolution of the members is deemed to authorize the filing of the certificate.[52]

Conclusion

Basically, the effects of a consolidation remain unchanged. Under the new law, however, on the filing of the certificate, the separate

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[49] N. Y. MEMB. CORP. LAW § 52(2). A plan for accomplishing such purposes could properly be included in the application under ". . . the objects and purposes of each such corporation to be promoted by the consolidation. . . ." *Id.* § 52(1).

[50] In Matter of Young Women's Ass'n, 169 App. Div. 734, 155 N. Y. Supp. 838 (3d Dep't 1915), the court stated that dissenters are not aggrieved so long as the objects for which the original corporation was created are being carried out. The mere fact that they may have fewer rights in electing officers or directors does not add merit to their cause. Such an interference with their rights may well justify a refusal to consent, yet it is an insufficient ground for interference with judicial discretion in approving a consolidation. "The law guards and preserves the objects of the corporations, but it does not undertake to establish a permanent condition of membership. . . ." *Id.* at 740, 155 N. Y. Supp. at 843.

[51] For the required membership consent, see note 22 *supra*, the elements of which are embodied in Section 51(4) of the Membership Corporations Law.

[52] ". . . [A] resolution of the members . . . shall be deemed to authorize the filing of the certificate . . . notwithstanding any modification of the agreement directed by . . . the court, unless the resolution . . . expressly directs that a further authorization be obtained from the members . . . before filing . . . the certificate." N. Y. MEMB. CORP. LAW § 50.

existence of each constituent *domestic* corporation ceases and only the consolidated corporation remains.[53]

Whereas the former rule made no exceptions with respect to devises, bequests, gifts or grants to a constituent corporation, since they were deemed to have passed to the consolidated corporation, the present statute expressly alludes to the provisions of the Real [54] and Personal Property Laws [55] which permit the Supreme Court to exercise jurisdiction over such a gift, grant or bequest to religious, educational, charitable or benevolent uses under certain circumstances.[56] Hence a transfer to a consolidated corporation is made subject to any provision the Supreme Court may have made concerning property possessed by any of the constituents and dedicated to one of the aforementioned uses. If such gift, devise, bequest or grant is governed by the laws of a foreign jurisdiction, the New York rule is not binding on the foreign court, and the existence of each constituent is deemed to continue in and through the consolidated corporation.

A proposed consolidation is a matter of public concern and if legislative assent is to be more than perfunctory, an adequate procedure for approval is an absolute necessity. Some jurisdictions provide for filing the certificate with an administrative official,[57] while others outline a rather scanty procedure for judicial approval.[58] It is submitted that the New York legislature has developed an excellent method of obtaining judicial approval. It should prove an invaluable aid in determining whether or not a proposed consolidation *truly* merits such approval. The application can no longer be *ex parte* since all the constituent corporations must participate. The requirement of notice to the dissenting members will permit the questions of corporate compatibility and membership grievance to be adjudicated in one hearing, and will prevent possible further prejudice to the rights of the majority after the consolidation has been effected. Furthermore, the Supreme Court is not restricted in its search for

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[53] *Id.* § 53(1). "Consolidation merges the constituent companies, and unless by legislative enactment their separate existence is preserved, the previous entities are absorbed in the new body." Copp v. Colorado Coal & Iron Co., 29 Misc. 109, 110, 60 N. Y. Supp. 293, 294 (Sup. Ct. 1899).

[54] N. Y. REAL PROP. LAW § 113.

[55] N. Y. PERS. PROP. LAW § 12.

[56] See notes 54 and 55 *supra*. Both statutes provide that the Supreme Court shall have control over gifts, grants, devises and bequests to religious, educational, charitable or benevolent uses if no person is named as trustee and, if ". . . it shall appear to the court that circumstances have so changed . . . as to render impracticable or impossible a literal compliance with the terms of such instrument [containing such a gift, grant, devise or bequest], the court may . . . make an order directing that . . . [it] shall be administered . . . in such manner as in the judgment of the court will most effectually accomplish the general purpose of the instrument. . . ."

[57] DEL. CODE ANN. tit. 8, § 256(c); Laws of Minn. 1951, c. 550, § 36.

[58] MO. REV. STAT. § 352.150 (1949); PA. STAT. ANN. tit. 15, § 2851-801 (Purdon, Supp. 1952).

information to the members of each constituent, as the statute permits the appearance of "any interested person" to show cause why the application should not be granted. Sufficient information concerning the status and nature of all constituent corporations and the presence of these corporations before the tribunal will permit the approval, modification or disapproval to be predicated on facts and figures rather than on a scale of probabilities.

IRREVOCABLE PROXIES

Introduction

Broadly speaking, any delegation of authority to perform an act may come within the definition of a proxy.[1] However, the term as used in law generally has specific reference to the right to vote conferred upon another by a record shareholder in a stock corporation. At common law, in the absence of special authorization, a shareholder had to vote in person or not at all; the right of voting by proxy was unknown.[2] The nationwide dispersion of the stockholders of "big" or "listed" corporations clearly called for some convenient form of absentee voting so that the policies of these corporations could be expeditiously executed.[3] To satisfy this need, made urgent by modern business demands, many states, including New York,[4] have enacted statutes expressly authorizing the granting of proxies.

The New York statute, Section 19 of the General Corporation Law, provides that "[e]very member of a corporation, except a religious corporation, entitled to vote at any meeting thereof may vote by proxy." This is an absolute right and thus requires no permissive by-law to effectuate it.[5] Under this section, a proxy's authority

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[1] *See* Manson v. Curtis, 223 N. Y. 313, 319, 119 N. E. 559, 561 (1918). "'Proxy' has in fact a threefold connotation. It comprehends: (a) the *consent or authorization* given by one person to another authorizing the latter to act for the former; (b) the *instrument or paper* evidencing such authorization; and (c) the *person* authorized to act." PRASHKER, CASES AND MATERIALS ON THE LAW OF CORPORATIONS 456 (2d ed. 1949).

[2] *See* Matter of Hart v. Sheridan, 168 Misc. 386, 390, 5 N. Y. S. 2d 820, 824 (Sup. Ct. 1938); see Axe, *Corporate Proxies,* 41 MICH. L. REV. 38 n. 1 (1942).

[3] Without such a form of absentee voting, it would often be very difficult to obtain a necessary quorum. See BALLANTINE, CORPORATIONS § 180 (Rev. ed. 1946).

[4] N. Y. GEN. CORP. LAW § 19; see also N. Y. MEMB. CORP. LAW § 41.

[5] Matter of Flynn v. Kendall, 195 Misc. 221, 88 N. Y. S. 2d 299 (Sup.