

**Republic of
The Marshall Islands**

**ASSOCIATIONS
LAW**

This publication contains the text of Part I (Business Corporations Act), Part II (Revised Partnership Act), Part III (Limited Partnership Act) and Part IV (Limited Liability Company Act) of Title 52, Associations Law, of the Marshall Islands Revised Code, as amended, through the 31st Constitutional Regular Session, 2010. This publication is prepared by authority of The Trust Company of the Marshall Islands, Inc., Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960.

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ASSOCIATIONS LAW TABLE OF CONTENTS

PART I: BUSINESS CORPORATIONS ACT

DIVISION 1: GENERAL PROVISIONS

§ 1.	Short title.	1
§ 2.	Definitions.	1
§ 3.	Application of Business Corporations Act.	2
§ 4.	Registrars of Corporations; establishment and	3
§ 5.	Form of instruments; filing.	3
§ 6.	Certificates or certified copies as evidence	4
§ 7.	Approval of corporation charters (resident	4
§ 8.	Fees on filing articles of incorporation and	4
§ 9.	Annual registration fee.	4
§ 10.	Waiver of notice.	5
§ 10A.	Immunity from liability and suit.	5
§ 11.	Notice to shareholders of bearer shares.	5
§ 12.	Exemptions for non-resident entities.	5
§ 13.	Construction; adoption of United States	5

DIVISION 2: CORPORATE PURPOSES AND POWERS

§ 14.	Purposes.	6
§ 15.	General Powers.	6
§ 16.	Guarantee authorized by shareholders.	6
§ 17.	Defense of ultra vires.	7
§ 18.	Effect of incorporation; corporation as proper	7
§ 19.	Liability of directors, officers and	7

DIVISION 3: SERVICE OF PROCESS; REGISTERED AGENT

§ 20.	Registered agent for service of process.	7
§ 21.	Attorney General as agent for service of	8
§ 22.	Service of process on foreign corporations not authorized to do business.	8
§ 23.	Records and certificates of Attorney General.	9
§ 24.	Limitation on effect of division.	9

DIVISION 4: FORMATION OF CORPORATIONS; CORPORATE NAMES

§ 25.	Incorporators.	9
§ 26.	Corporate name.	9
§ 27.	Index of names of corporations.	10
§ 28.	Contents of articles of incorporation.	10
§ 29.	Powers and rights of bondholders.	11
§ 30.	Execution and filing of articles of incorporation.	11
§ 31.	Effect of filing articles of incorporation.	11
§ 32.	Organization meeting.	11

§ 33.	Bylaws.	12
§ 34.	Emergency bylaws and other powers in	12

DIVISION 5: CORPORATE FINANCE

§ 35.	Classes and series of shares.	13
§ 36.	Restrictions on transfer of shares.	13
§ 37.	Subscriptions for shares.	14
§ 38.	Consideration for shares.	14
§ 39.	Payment for shares.	15
§ 40.	Compensation for formation, reorganization	15
§ 41.	Determination of stated capital.	15
§ 42.	Form and content of certificates.	15
§ 43.	Dividends in cash, stock, or other property.	16
§ 44.	Share dividends.	16
§ 45.	Purchase or redemption by corporation of its	17
§ 46.	Reacquired shares.	17
§ 47.	Reduction of stated capital by action of the	18

DIVISION 6: DIRECTORS AND MANAGEMENT

§ 48.	Management of business of corporation.	18
§ 49.	Qualifications of directors.	18
§ 50.	Number of directors.	19
§ 51.	Election and term of directors.	19
§ 52.	Classes of directors.	19
§ 53.	Newly created directorships and vacancies.	19
§ 54.	Removal of directors.	19
§ 55.	Quorum; action by the board.	20
§ 56.	Meetings of the board.	20
§ 57.	Executive and other committees.	21
§ 58.	Director conflicts of interest.	21
§ 59.	Loans to employees and officers; guaranty of	21
§ 60.	Indemnification of directors and officers.	22
§ 61.	Standard of care to be observed by directors and officers.	22
§ 62.	Officers.	23
§ 63.	Removal of officers.	23

DIVISION 7: SHAREHOLDERS

§ 64.	Meetings of shareholders.	23
§ 65.	Notice of meetings of shareholders.	24
§ 66.	Waiver of notice.	24
§ 67.	Action by shareholders without a meeting.	24
§ 68.	Fixing record date.	25
§ 69.	Proxies.	25
§ 70.	Quorum of shareholders.	26
§ 71.	Vote of shareholders required.	26
§ 72.	Greater requirement as to quorum and vote	27
§ 73.	List of shareholders at meetings.	27
§ 74.	Qualification of voters.	27
§ 75.	Voting trusts.	28
§ 76.	Agreements among shareholders as to voting.	28

§ 77.	Conduct of shareholders' meetings.	28
§ 78.	Preemptive rights.	28
§ 79.	Shareholders' derivative actions.	29

DIVISION 8: CORPORATE RECORDS AND REPORTS

§ 80.	Requirement for keeping books of account,	30
§ 81.	Shareholders' right to inspect books and	30
§ 82.	Directors' right of inspection.	31
§ 83.	List of directors and officers.	31
§ 84.	Enforcement of right of inspection.	31
§ 85.	Annual report.	31

DIVISION 9: AMENDMENTS OF ARTICLES OF INCORPORATION

§ 86.	Right to amend articles of incorporation.	31
§ 87.	Reduction of stated capital by amendment.	31
§ 88.	Procedure for amendment.	32
§ 89.	Class voting on amendments.	32
§ 90.	Articles of amendment.	32
§ 91.	Effectiveness of amendment.	32
§ 92.	Right of dissenting shareholders to payment.	33
§ 93.	Restated articles of incorporation.	33

DIVISION 10: MERGER OR CONSOLIDATION

§ 94.	Definitions.	34
§ 95.	Merger or consolidation of domestic	34
§ 96.	Merger of subsidiary corporations.	35
§ 97.	Effect of merger or consolidation.	35
§ 98.	Merger or consolidation of domestic and	36
§ 99.	Sale, lease, exchange or other disposition of	37
§ 100.	Right of dissenting shareholder to receive	37
§ 101.	Procedure to enforce shareholder's right to	37

DIVISION 11: DISSOLUTION

§ 102.	Manner of effecting dissolution.	39
§ 103.	Judicial dissolution.	40
§ 104.	Dissolution on failure to pay annual registration	41
§ 105.	Winding up affairs of corporation after	41
§ 106.	Settlement of claims against corporation.	42

DIVISION 12: FOREIGN ENTITIES

§ 107.	Authorization of foreign entities.	43
§ 108.	Application to existing authorized foreign	43
§ 109.	Application for authority to do business.	43
§ 110.	Amendment of authority to do business.	44
§ 111.	Termination of authority of foreign entity.	44
§ 112.	Revocation of authority to do business.	45
§ 113.	Rights and liabilities of unauthorized foreign entity doing business.	45
§ 114.	Actions or special proceedings against foreign	45

§ 115.	Record of shareholders.	45
§ 116.	Liability of foreign corporations for failure to	46
§ 117.	Applicability to foreign corporations of other	46
§ 118.	Fees.	46

DIVISION 13: FOREIGN MARITIME ENTITIES

§ 119.	Method of registration.	46
§ 120.	Powers granted on registration.	47
§ 121.	Subsequent change of business address or	47
§ 122.	Revocation of registration.	47
§ 123.	Fees.	48
§ 124.	Termination of authority of foreign maritime	48
§ 125.	Actions or special proceedings against foreign	48

DIVISION 14: TRANSFER OR DOMICILE INTO AND OUT OF THE REPUBLIC

§ 126.	Definitions.	49
§ 127.	Domestication of foreign corporations.	49
§ 128.	Transfer of domicile of domestic corporation to foreign jurisdiction.	50
§ 129.	Fees.	51
§ 129.5	Power to prescribe new rules.	51
§ 130.	Merger or consolidation of domestic	51
§ 131.	Merger or consolidation of domestic	53
§ 132.	Conversion of other entities to a domestic	54
§ 133.	Conversion of domestic corporation to other	55

PART II: REVISED PARTNERSHIP ACT

DIVISION 1: GENERAL PROVISIONS

§ 1.	Definitions.	56
§ 2.	Knowledge and notice.	57
§ 3.	Effect of partnership agreement; nonwaivable	57
§ 4.	Supplemental principles of law	58
§ 5.	Execution, filing and recording of statements	58
§ 6.	Governing law.	59
§ 7.	Reserved power of the Marshall Islands to	59
§ 8.	Name of partnership	59
§ 9.	Indemnification	60
§ 10.	Registered agent for the service of process	60
§ 11.	Attorney General as agent for service of	61
§ 12.	Doing business	61
§ 13.	Restated certificate of partnership existence	61
§ 14.	Execution, amendment or cancellation by	62
§ 15.	Certificate of correction; corrected certificate	62
§ 16.	Business transactions of partner with the	62
§ 17.	Contractual appraisal rights	62
§ 18.	Contested matters relating to partners;	62
§ 19.	Interpretation and enforcement of partnership	63

DIVISION 2: NATURE OF PARTNERSHIP

§ 20.	Partnership as entity.	63
§ 21.	Formation of partnership; powers.	63
§ 22.	Partnership property	63
§ 23.	When property is partnership property.	64
§ 24.	Admission without contribution or partnership	64
§ 25.	Form of contribution	64
§ 26.	Liability for contribution.	64

DIVISION 3: RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

§ 27.	Partner agent of partnership.	65
§ 28.	Transfer of partnership property.	65
§ 29.	Certificate of partnership existence	65
§ 30.	Denial of status as partner.	66
§ 31.	Partnership liable for partner's actionable	66
§ 32.	Partner's liability.	66
§ 33.	Actions by and against partnership and partners.	66
§ 34.	Liability of purported partner.	67

DIVISION 4: RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP

§ 35.	Partner's rights and duties.	67
§ 36.	Distributions in kind.	68
§ 37.	Partner's rights and duties with respect to	68
§ 38.	General standards of partner's conduct	69
§ 39.	Actions by partnership and partners;	70
§ 40.	Continuation of partnership beyond definite	70
§ 41.	Classes and voting	71
§ 42.	Remedies for breach of partnership agreement.	71

DIVISION 5: TRANSFEREES AND CREDITORS OF PARTNER

§ 43.	Partner not co-owner of partnership property	71
§ 44.	Partner's economic interest in partnership; personal property.	72
§ 45.	Transfer of partner's economic interest	72

DIVISION 6: PARTNER'S DISSOCIATION

§ 46.	Partner's economic interest subject to charging order.	72
§ 47.	Events causing partner's dissociation	73
§ 48.	Partner's power to dissociate; wrongful	74
§ 49.	Effect of partner's dissociation.	74

DIVISION 7: PARTNER'S DISSOCIATION WHEN BUSINESS OR AFFAIRS NOT WOUND UP

§ 50.	Purchase of dissociated partner's partnership interest.	75
§ 51.	Dissociated partner's power to bind and	76

§ 52.	Dissociated partner's liability to other persons.	76
§ 53.	Certificate of dissociation.	76
§ 54.	Continued use of partnership name	76

DIVISION 8: WINDING UP PARTNERSHIP BUSINESS OR AFFAIRS

§ 55.	Events causing dissolution and winding up of partnership business or affairs	77
§ 56.	Partnership continues after dissolution.	77
§ 57.	Right to wind up partnership business or	78
§ 58.	Partner's power to bind partnership after	78
§ 59.	Certificate of dissolution.	78
§ 60.	Partner's liability to other partners after	78
§ 61.	Settlement of accounts and contributions	78

DIVISION 9: CONVERSION; MERGER; DOMESTICATION; AND TRANSFER

§ 62.	Conversion of certain entities to a domestic	79
§ 63.	Merger or consolidation.	80
§ 64.	Approval of conversion of a domestic	82
§ 65.	Domestication of non-Marshall Islands entities.	83
§ 66.	Transfer of domestic partnerships.	84

DIVISION 10: MISCELLANEOUS

§ 67.	Uniformity of application and construction.	85
§ 68.	Short title	86
§ 69.	Severability clause.	86
§ 70.	Fees	86
§ 71.	Cancellation of certificate of partnership	86
§ 72.	Reinstatement of partnership	86
§ 73.	Exemptions for non-resident entities.	87
§ 74.	Repeals.	87
§ 75.	Applicability	87
§ 76.	Effective Date	87

PART III: LIMITED PARTNERSHIP ACT

DIVISION 1: GENERAL PROVISIONS

§ 1.	Definitions.	88
§ 2.	Name set forth in certificate.	89
§ 3.	Registered agent for service of process.	89
§ 4.	Attorney General as agent for service of	90
§ 5.	Nature of business permitted; powers.	90
§ 6.	Business transactions of partner with the	90
§ 7.	Indemnification.	90
§ 8.	Contested matters relating to general partners;	91
§ 9.	Interpretation and enforcement of partnership	91

DIVISION 2: FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP

§ 10.	Certificate of limited partnership.	91
§ 11.	Amendment to certificate.	92
§ 12.	Cancellation of certificate.	92
§ 13.	Execution.	93
§ 14.	Execution, amendment or cancellation by	93
§ 15.	Filing.	93
§ 16.	Liability for false statement.	95
§ 17.	Notice.	95
§ 18.	Delivery of certificates to limited partners.	95
§ 19.	Restated certificate.	95
§ 20.	Merger and consolidation.	96
§ 21.	Contractual appraisal rights.	98
§ 22.	Certificate of correction.	98
§ 23.	Domestication of non-Marshall Islands entities.	98
§ 24.	Transfer of domestic limited partnerships.	100
§ 25.	Conversion of certain entities to a limited	101
§ 26.	Series of limited partners, general partners or partnership interests.	102
§ 27.	Approval of conversion of a limited	105

DIVISION 3: LIMITED PARTNERS

§ 28.	Admission of limited partners.	105
§ 29.	Classes and voting.	106
§ 30.	Liability to third parties.	107
§ 31.	Person erroneously believing himself or	108
§ 32.	Access to and confidentiality of information;	109
§ 33.	Remedies for breach of partnership	110

DIVISION 4: GENERAL PARTNERS

§ 34.	Admission of general partners.	110
§ 35.	Events of withdrawal.	110
§ 36.	General powers and liabilities.	111
§ 37.	Contributions by a general partner.	112
§ 38.	Classes and voting.	112
§ 39.	Remedies for breach of partnership	112
§ 39.	Remedies for breach of partnership	112

DIVISION 5: FINANCE

§ 40.	Form of contribution.	113
§ 41.	Liability for contribution.	113
§ 41.	Liability for contribution.	113
§ 42.	Allocation of profits and losses.	113
§ 43.	Allocation of distributions.	113
§ 44.	Defense of usury not available.	114

DIVISION 6: DISTRIBUTIONS AND WITHDRAWAL

§ 45.	Interim distributions.	114
§ 46.	Withdrawal of general partner and	114

§ 47.	Withdrawal of limited partner.	114
§ 48.	Distribution upon withdrawal.	114
§ 49.	Distribution in kind.	114
§ 50.	Right to distribution.	115
§ 51.	Limitations on distribution.	115
§ 52.	Nature of partnership interest.	115

DIVISION 7: ASSIGNMENT OF LIMITED LIABILITY COMPANY INTERESTS

§ 53.	Assignment of partnership interest.	115
§ 54.	Partner's partnership interest subject to	116
§ 55.	Right of assignee to become limited partner.	116
§ 56.	Powers of estate of deceased or incompetent	116

DIVISION 8: DISSOLUTION

§ 57.	Nonjudicial dissolution.	117
§ 58.	Judicial dissolution.	118
§ 59.	Winding up.	118
§ 60.	Distribution of assets.	118
§ 61.	Trustees or receivers for limited	119

DIVISION 9: DERIVATIVE ACTIONS

§ 62.	Right to bring action.	119
§ 63.	Proper plaintiff.	119
§ 64.	Complaint.	119
§ 65.	Expenses.	119

DIVISION 10: MISCELLANEOUS

§ 66.	Construction and application of Act and	120
§ 67.	Short title.	120
§ 68.	Severability.	120
§ 69.	Fees.	120
§ 70.	Reserved power of the Republic of the	120
§ 71.	Cancellation of certificate of limited	120
§ 72.	Reinstatement of domestic limited partnership.	120
§ 73.	Exemptions for non-resident entities.	121

PART IV: LIMITED LIABILITY COMPANY ACT

DIVISION 1: PRELIMINARY; GENERAL

§ 1.	Short title.	124
§ 2.	Definitions.	124
§ 3.	Name set forth in certificate.	125
§ 4.	Reservation of name.	125
§ 5.	Service of process; registered agent.	125
§ 6.	Nature of business permitted; powers.	127
§ 7.	Business transactions of member or manager	127

§ 8.	Indemnification.	128
§ 9.	Certificate of formation.	128

DIVISION 2: FORMATION; CERTIFICATE OF FORMATION

§ 10.	Amendment to certificate of formation.	128
§ 11.	Cancellation of certificate.	128
§ 12.	Execution.	129
§ 13.	Execution, amendment or cancellation by	129
§ 14.	Filing.	129
§ 15.	Notice.	130
§ 16.	Restated certificate.	130
§ 17.	Merger and consolidation.	131

DIVISION 3: MEMBERS

§ 18.	Admission of members.	133
§ 19.	Classes and voting.	134
§ 20.	Liability to third parties.	134
§ 21.	Events of bankruptcy.	134
§ 22.	Access to and confidentiality of information;	135
§ 23.	Remedies for breach of limited liability	135

DIVISION 4: MANAGERS

§ 24.	Admission of managers.	136
§ 25.	Management of limited liability company.	136
§ 26.	Contributions by a manager.	136
§ 27.	Classes and voting.	136
§ 28.	Remedies for breach of limited liability	136
§ 29.	Reliance on reports and information by	137

DIVISION 5: FINANCE

§ 30.	Form of contribution.	137
§ 31.	Liability for contribution.	137
§ 32.	Allocation of profits and losses.	137
§ 33.	Allocation of distributions.	138

DIVISION 6: DISTRIBUTIONS AND RESIGNATION

§ 34.	Interim distribution.	138
§ 35.	Resignation of manager.	138
§ 36.	Resignation of member.	138
§ 37.	Distribution upon resignation.	138
§ 38.	Distribution in kind.	138
§ 39.	Right to distribution.	139
§ 40.	Limitations on distribution.	139

DIVISION 7: ASSIGNMENT OF LIMITED LIABILITY COMPANY INTERESTS

§ 41.	Nature of limited liability company interest.	139
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§ 42.	Assignment of limited liability company	139
§ 43.	Rights of judgment creditor.	140
§ 44.	Right of assignee to become member.	140
§ 45.	Powers of estate of deceased or incompetent	140

DIVISION 8: DISSOLUTION

§ 46.	Dissolution.	140
§ 47.	Judicial dissolution.	141
§ 48.	Winding up.	142
§ 49.	Distribution of assets.	142

DIVISION 9: FOREIGN LIMITED LIABILITY COMPANIES

§ 50.	Law governing.	142
§ 51.	Registration required; application.	143
§ 52.	Issuance of registration.	143
§ 53.	Name; registered agent.	143
§ 54.	Amendments to application.	143
§ 55.	Cancellation of registration.	144
§ 56.	Doing business without registration.	144
§ 57.	Foreign limited liability companies doing	144
§ 58.	Execution; liability.	144
§ 59.	Service of process on registered foreign	144
§ 60.	Service of process on unregistered foreign	144

DIVISION 10: DERIVATIVE ACTIONS

§ 61.	Right to bring action.	145
§ 62.	Proper plaintiff.	145
§ 63.	Complaint.	145
§ 64.	Expenses.	145

DIVISION 11: MISCELLANEOUS

§ 65.	Construction and application of Act and	146
§ 66.	Severability.	146
§ 67.	Cases not provided for in this Act.	146
§ 68.	Filing fees.	146
§ 69.	Reserved power of the Republic of the	146
§ 70.	Annual fees associated with limited liability	146
§ 71.	Construction; adoption of Delaware	146
§ 72.	Immunity from liability and suit.	146
§ 73.	Contested matters relating to managers;	147
§ 74.	Interpretation and enforcement of limited	147
§ 75.	Contractual appraisal rights.	147
§ 76.	Domestication of non-Marshall Islands	147
§ 77.	Transfer of domestic limited liability	149
§ 78.	Conversion of other entities to a limited	150
§ 79.	Series of members, managers of limited	151
§ 81.	Delegation of rights and powers to manage.	153
§ 82.	Defense of usury not available.	154
§ 83.	RESERVED.	154

PART I:

**BUSINESS
CORPORATIONS ACT**

**DIVISION 1:
GENERAL PROVISIONS**

- § 1. Short title.**
- § 2. Definitions.**
- § 3. Application of Business Corporations Act.**
- § 4. Registrars of Corporations; establishment and duties.**
- § 5. Form of instruments; filing.**
- § 6. Certificates or certified copies as evidence (non-resident entities).**
- § 7. Approval of corporation charters (resident domestic and authorized foreign corporations).**
- § 8. Fees on filing articles of incorporation and other documents.**
- § 9. Annual registration fee.**
- § 10. Waiver of notice.**
- § 10A. Immunity from liability and suit.**
- § 11. Notice to shareholders of bearer shares.**
- § 12. Exemptions for non-resident entities.**
- § 13. Construction; adoption of United States corporation law.**

§ 1. Short title.

This Act shall be known and may be cited as the “Associations Law.” Part I of this title shall be known as the “Business Corporations Act.” References in Part I to “this Act” mean the Business Corporations Act. *[P.L. 1990-91, § 1.1; amended by P.L. 1990-93, § 2(1), adding the first sentence.]*

§ 2. Definitions.

As used in this Act, unless the context otherwise requires, the term:

- (a) “articles of incorporation” includes:
 - (i) the original articles of incorporation or any other instrument filed or issued under any statute to form a domestic or foreign corporation, amended, supplemented, corrected or restated by articles of amendment, merger, or consolidation or other instruments filed or issued under any statute; or
 - (ii) a special act or charter creating a domestic or foreign corporation, as amended, supplemented or restated;
- (b) “board” means board of directors;
- (c) “corporation” or “domestic corporation” means a corporation for profit formed under this Act, or existing on its effective date and theretofore formed

under any other general statute or by any special act of the Republic or which has transferred to the Republic pursuant to Division 14 of this Act;

(d) “foreign corporation” means a corporation for profit formed under laws of a foreign jurisdiction. “Authorized” when used with respect to a foreign corporation means having authority under Division 12 of this Act to do business in the Republic;

(e) “foreign maritime entity” means a foreign entity registered pursuant to the provisions of Division 13 of this Act;

(f) “government” means the Government of the Republic;

(g) “insolvent” means being unable to pay debts as they become due in the usual course of the debtor’s business;

(h) “legislature” means the Nitijela of the Republic;

(i) “non-resident corporation, partnership, trust, unincorporated association or other entity” means either a domestic corporation or a foreign corporation, partnership, trust, unincorporated association or other entity not doing business in the Republic;

(j) “resident domestic corporation” means a domestic corporation doing business in the Republic;

(k) “Registrar of Corporations” or “Registrars of Corporations” means the person or persons appointed by or pursuant to this Act with respect to the type of filing designated herein or their deputy or deputies;

(l) “Republic” means the Republic of the Marshall Islands;

(m) “treasury shares” means shares which have been issued, have been subsequently acquired, and are retained uncanceled by the corporation;

(n) “Trust Company” means The Trust Company of the Marshall Islands, Inc.;

(o) Solely for the purposes of this Act, “doing business in the Republic” means the corporation, partnership, trust, unincorporated association or other entity is carrying on business or conducting transactions in the Republic. A non-resident corporation, partnership, trust, unincorporated association or other entity shall not be deemed to be doing business in the Republic merely because it engages in one (1) or more or all of the following activities:

(i) maintains an administrative, management, executive, billing or statutory office in the Republic;

(ii) has officers or directors who are residents or citizens of the Republic; provided, however, that any income derived therefrom and received by such resident officers or directors shall be deemed domestic income;

(iii) maintains bank accounts or deposits, or borrows from licensed financial institutions carrying on business within the Republic;

(iv) makes or maintains professional contact with or uses the services of attorneys, accountants, bookkeepers, trust companies, administration companies, investment advisors, or other similar persons carrying on business within the Republic;

(v) prepares or maintains books and records of accounts, minutes, and share registries within the Republic;

(vi) holds meetings of its directors, shareholders, partnership or members within the Republic;

(vii) holds a lease or rental of property in the Republic, solely for the conduct of any activity specified in this subsection;

(viii) maintains an office in the Republic, solely for the conduct of any activities allowed in this subsection;

(ix) holds or owns shares, debt obligations or other securities in a corporation, partnership, trust, unincorporated association or other entity incorporated or organized in the Republic;

(x) maintains a registered business agent as required by any applicable provision of the laws of the Republic; and

(xi) secures and maintains registry in the Republic of any vessel, or conducts other activities in the Republic, solely related to the operation, chartering or disposition of any vessel outside of the Republic.

Notwithstanding the foregoing, nothing herein shall be deemed to exempt any entity described in this Act from the jurisdiction of the High Court of the Republic in respect to activities or transactions within the Republic. A non-resident domestic or foreign corporation, partnership, trust, unincorporated association or other entity shall not engage in:

(i) retailing, wholesaling, trading or importing goods or services for or with residents of the Republic; or

(ii) any extractive industry; or

(iii) any regulated professional service activity; or

(iv) the export of any commodity or goods manufactured, processed, mined or made in the Republic; or

(v) the ownership of real property. [*P.L. 1990-91, § 1.2; Paragraphs renumbered correctly; amended by P.L. 1990-93, § 2(2), deleting the word "International" in Paragraph (n).*]

§ 3. Application of Business Corporations Act.

(1) *To domestic and foreign corporations in general.* The Business Corporations Act applies to every resident and non-resident domestic corporation and to every foreign corporation authorized to do business or doing business in the Republic; but the provision of this Act shall not alter or amend the articles of incorporation of any domestic corporation in existence on the effective date of this Act, whether established by incorporation or created by special act. Any domestic corporation created prior to the effective date of this Act may at any time subject itself to the provisions of this Act by amending its articles of incorporation in accordance with the manner prescribed by Division 9 of this Act.

(2) *Banking and insurance corporations.* A corporation to which any banking law or insurance law of this Republic may be applicable shall also be subject to the Business Corporations Act, but such banking law or insurance law, as the case may be, shall prevail over any conflicting provisions of the Business Corporations Act.

(3) *Causes of action, liability or penalty.* This Act shall not affect any cause of action, liability, penalty, or action or special proceeding which on the effective date of this Act is accrued, existing, incurred or pending, but the same may be asserted, enforced, prosecuted, or defended as if this Act had not been enacted.

(4) *Joint ventures.* Any business venture carried on by two (2) or more corporations as partners shall be governed by the Revised Partnership Act.

(5) *Nature of business permitted; powers.* A non-resident domestic corporation may carry on any lawful business, purpose or activity with the exception of the

business of granting policies of insurance or assuming insurance risks, trust services or banking. [P.L. 1990-91, § 1.3; reference to “Act” in the parenthetical note was changed to “Part” for clarity; amended by P.L. 2005-27, § 3, adding new section.]

§ 4. Registrars of Corporations; establishment and duties.

(1) There are herewith established two (2) Registrars of Corporations: a Registrar of Corporations responsible for resident domestic and authorized foreign corporations, and a Registrar of Corporations responsible for non-resident corporations, partnerships, limited partnerships, limited liability companies, unincorporated associations, foreign maritime entities and other entities and the name index required by section 27 of this Act, which shall be appointed by the Cabinet.

(2) The Registrars shall be responsible for the filing and maintenance of all instruments required or permitted to be filed under this Act, such additional instruments as the Government may from time to time require, and the issuance of certificates and certified copies with respect to such filings and records, for the entities for which they are responsible.

(3) The Registrar of Corporations responsible for resident domestic and qualified foreign corporations shall be appointed by the Cabinet. The Registrar of Corporations responsible for non-resident corporations, foreign maritime entities and the name index shall be the Trust Company. The Trust Company shall appoint such deputy registrars outside of the Republic as it deems appropriate. [P.L. 1990-91, § 1.4; paragraphs were numbered as subsections to conform to format of the Code; amended by P.L. 1997-52, § 4; amended by P.L. 2005-27, § 4.]

§ 5. Form of instruments; filing.

(1) *General requirement.* Whenever any provision of this Act requires any instrument to be filed, such instrument shall be filed with the appropriate Registrar of Corporations and shall comply with the provision of this section unless otherwise expressly provided by the statute.

(2) *Language.* Every instrument shall be in the English language and may be accompanied by a translation, however, the governing language shall be English.

(3) *Execution.* All instruments shall be signed by an officer or director of the corporation or by a person authorized to sign on behalf of the corporation. Such signature shall be over the printed name and title of the signatory. Any signature on any instrument authorized to

be filed with a Registrar of Corporations under this Act may be a facsimile.

(4) *Acknowledgements.* Whenever any provision of this Act requires an instrument to be acknowledged such requirement is satisfied by either:

(a) The formal acknowledgement by the person or one (1) of the persons signing the instrument that it is his act and deed or the act and deed of the corporation, and that the facts stated therein are true. Such acknowledgment shall be made before a person who is authorized by the law of the Republic or the law of the place of execution to take acknowledgments. If such person has a seal of office he shall affix it to the instrument.

(b) The signature over the typed or printed name and title of the signatory, without more, of the person or persons signing the instrument, in which case such signature or signatures shall constitute the affirmation or acknowledgement of the signatory, under penalties of perjury, that the instrument is his act and deed or the act and deed of the corporation, and that the facts stated therein are true.

(5) *Filing.* Whenever any provision of this Act requires any instrument to be filed with a Registrar of Corporations, such requirement means that:

(a) The original instrument, and a duplicate copy, which may be either a signed copy or a photographic copy if such copy clearly shows the signatures on the instruments, shall be delivered to a Registrar or Deputy Registrar of Corporations accompanied by a receipt showing payment to the appropriate Registrar of Corporations of all fees required to be paid in connection with the filing of the instrument.

(b) Upon delivery of the original signed instrument with the required receipt and the duplicate copy, a Registrar or Deputy Registrar of Corporations shall certify that the instrument has been filed in his office by endorsing the word “Filed” and the date of filing on the original.

(c) A Registrar or Deputy Registrar of Corporations shall compare the duplicate copy with the original signed instrument, and if he finds that the text is identical, shall affix on the duplicate copy the same endorsement of filing as he affixed on the original. The said duplicate copy, as endorsed, shall be returned to the corporation. The endorsement constitutes the certificate of the Registrar that the document is a true copy of the instrument filed in his office and that it was filed as of the date stated in the endorsement.

(d) Any instrument filed in accordance with subsection (b) of this section shall be effective as of the filing date stated thereon.

(6) *Correction of filed instruments.* Any instrument relating to a domestic or foreign corporation and filed with a Registrar or Deputy Registrar of Corporations under this Act may be corrected with respect to any error apparent on the face or defect in the execution thereof by filing with a Registrar or Deputy Registrar of Corporations a certificate of correction, executed and acknowledged in the manner required for the original instrument. The certificate of correction shall specify the error or defect to be corrected and shall set forth the portion of the instrument in correct form. The corrected instrument when filed shall be effective as of the date the original instrument was filed.

(7) *Facsimile signature.*

(a) Any signature of a Registrar or Deputy Registrar of Corporations on any instrument or certificate filed or issued under this Act or the authority granted by this Act may be a facsimile.

(b) Any signature on any instrument authorized to be filed with a Registrar or Deputy Registrar of Corporations under this Act may be a facsimile. [P.L. 1990-91, § 1.5; amended by P.L. 1998-73, § 5; amended by P.L. 2000-18, § 5.]

§ 6. Certificates or certified copies as evidence (non-resident entities).

All certificates issued by the Registrar or Deputy Registrar of Corporations responsible for non-resident domestic and foreign corporations, foreign maritime entities, and other non-resident entities in accordance with the provisions of this Act and all copies of documents filed in his office in accordance with the provisions of this Act shall, when certified by him, be taken and received in all courts, public offices and official bodies as prima facie evidence of the facts therein stated and of the execution of such instruments. [P.L. 1990-91, § 1.6.]

§ 7. Approval of corporation charters (resident domestic and authorized foreign corporations).

Notwithstanding any other provision of this Act or any other law, the Registrar of Corporations responsible for resident domestic and authorized foreign corporations shall submit to the Cabinet for approval the proposed articles of incorporation, bylaws and any other documentation which the Registrar of Corporations or the Cabinet

may require from time to time. The Cabinet shall have the authority to cause the issuance of a corporate charter for any resident domestic corporation and such corporate charter shall be prima facie evidence of incorporation in the Republic as a resident domestic corporation. [P.L. 1990-91, § 1.7.]

§ 8. Fees on filing articles of incorporation and other documents.

(1) *Articles of incorporation.* On filing articles of incorporation a fee shall be paid to the appropriate Registrar of Corporations in such an amount as shall be prescribed from time to time by such Registrar and a receipt therefore shall accompany the documents presented for filing.

(2) *Increasing authorized number of shares; articles of merger or consolidation.* On filing with a Registrar or Deputy Registrar of Corporations an amendment of articles of incorporation increasing the authorized number of shares or articles of merger or consolidation of two (2) or more domestic corporations, a fee shall be paid computed in accordance with the schedule stated in subsection (1) of this section on the basis of the number of shares provided for in the articles of amendment or articles of merger or consolidation, except that all fees paid by the corporation with respect to the shares authorized prior to such amendment or merger or consolidation shall be deducted from the amount to be paid, but in no case shall the amount be less than ten dollars (U.S. \$10).

(3) *Articles of dissolution; articles of amendment; articles of merger or consolidation into foreign corporation.* On filing with a Registrar or Deputy Registrar of Corporations an amendment of articles of incorporation other than an amendment increasing the authorized number of shares, or articles of dissolution, or articles of merger or consolidation into a foreign corporation or any other document for which a certificate is issued under this Act, a fee shall be paid to the appropriate Registrar of Corporations in such amount as shall be prescribed from time to time by such Registrar.

(4) *Other fees.* Fees for certifying copies of documents and for filing, recording or indexing papers shall be fixed by a Registrar of Corporations. [P.L. 1990-91, § 1.8.]

§ 9. Annual registration fee.

Every domestic corporation and every foreign corporation authorized to do business in the Republic shall pay an annual fee to the appropriate Registrar of Corporations in such amount as shall be prescribed from time to time by such Registrar. [P.L. 1990-91, § 1.9.]

§ 10. Waiver of notice.

Whenever any notice is required to be given to any shareholder or director or bondholder of a corporation or to any other person under the provisions of this Act or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. [P.L. 1990-91, § 1.10.]

§ 10A. Immunity from liability and suit.

In the performance of their duties, the Registrar, any Deputy Registrar, and/or any trust corporation and/or agent appointed, authorized, recognized, and/or designated by the Registrar or any Deputy Registrar, or trust corporation, or by any person acting on their behalf for the administration of the provisions of this Act or any Regulation promulgated pursuant thereto or for the performance of any services, pursuant to this Act, together with any affiliate of any such agent, their stockholders, members, directors, officers and employees, wherever located, shall have full immunity from liability and from suit with respect to any act or omission or thing done by any of them in good faith in the exercise or performance, or in the purported exercise or performance, of any power, authority or duty conferred or imposed upon any of them under or in connection with this Act or any Regulation, as amended, or any other law or rule applicable to the performance of any of their said duties.

The immunity provided by this section shall only apply to those acts or omissions of agents and/or employees of the Registrar of Corporations done by them in the course of and in connection with the administration of the Republic of the Marshall Islands Corporate Program. [P.L. 1997-34, § 10A, adding new section.]

§ 11. Notice to shareholders of bearer shares.

Subject to the provisions of section 42 of this Act, any notice or information required to be given to shareholders of bearer shares shall be provided in the manner designated in the corporation's articles of incorporation or, in the absence of such designation or if the notice can no longer be provided as stated therein, the notice shall be published in a publication of general circulation in the Republic or in a place where the corporation has a place of business. Any notice requiring a shareholder to take action in order to secure a right or privilege shall be published in time to allow a reasonable opportunity for such action to be taken. [P.L. 1990-91, § 1.11.]

§ 12. Exemptions for non-resident entities.

Notwithstanding any provision of the Income Tax Act of 1989 (II MIRC, Chapter 1A), or any other law or regulation imposing taxes or fees now in effect or hereinafter enacted, a non-resident domestic or foreign corporation, partnership, trust, unincorporated association or limited liability company; and (solely for purposes of this section) the Administrator and Trust Company duly appointed by the Cabinet to act in the capacity of the Registrar of Corporations for non-resident entities pursuant to this Act and as the Maritime Administrator created pursuant to the Marshall Islands Maritime Act 1990 (34 MIRC, Chapter 3A), shall be exempt from any corporate tax, net income tax on unincorporated businesses, corporate profit tax, income tax, withholding tax on revenues of the entity, asset tax, tax reporting requirement on revenues of the entity, stamp duty, exchange controls or other fees or taxes other than those imposed by sections 8 and 9 of this division.

Interest, dividends, royalties, rents, payments (including payments to creditors), compensation or other distributions of income paid by a non-resident corporation to another non-resident corporation or to individuals or entities which are not citizens or residents of the Republic are exempt from any tax or withholding provisions of the laws of the Marshall Islands. [P.L. 1990-91, § 1.12; amended by P.L. 2000-18, § 12.]

§ 13. Construction; adoption of United States corporation law.

This Act shall be applied and construed to make the laws of the Republic, with respect to the subject matter hereof, uniform with the laws of the State of Delaware and other states of the United States of America with substantially similar legislative provisions. Insofar as it does not conflict with any other provision of this Act, the non-statutory law of the State of Delaware and of those other states of the United States of America with substantially similar legislative provisions is hereby declared to be and is hereby adopted as the law of the Republic, provided however, that this section shall not apply to resident domestic corporations. [P.L. 1990-91, § 1.13; amended by P.L. 2000-18, § 13.]

DIVISION 2:

CORPORATE PURPOSES AND POWERS

- § 14. Purposes.**
- § 15. General powers.**
- § 16. Guarantee authorized by shareholders.**
- § 17. Defense of ultra vires.**

§ 18. Effect of incorporation; corporation as proper party to action.

§ 19. Liability of directors, officers and shareholders.

§ 14. Purposes.

Corporations may be organized under this Act for any lawful business purpose or purposes. [P.L. 1990-91, § 2.1.]

§ 15. General Powers.

Every corporation, subject to any limitations provided in this Act or any other statute of the Republic or its articles of incorporation, shall have power in furtherance of its corporate purposes irrespective of corporate benefit to:

(a) have perpetual duration;

(b) sue and be sued in all courts of competent jurisdiction in the Republic and to participate in actions and proceedings, whether judicial, administrative, arbitral or otherwise, in like cases as natural persons;

(c) have a corporate seal, and to alter such a seal at pleasure, and to use it by causing it or a facsimile to be affixed or impressed or reproduced in any other manner;

(d) purchase, receive, take by grant, gift, devise, bequest, or otherwise, lease or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated;

(e) sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, or create a security interest in all, or any of its property, or any interest therein, wherever situated;

(f) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer, or otherwise dispose of, mortgage, and pledge, bonds and other obligations, shares, or other securities or interests issued by others, whether engaged in similar or different business, governmental, or other activities;

(g) make contracts, give guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property or any interest therein, wherever situated;

(h) lend money, invest and reinvest its funds, and have offices and exercise the powers granted by this division in any jurisdiction within or without the Republic;

(i) elect or appoint officers, employees and other agents of the corporation, define their duties, fix their compensation, and the compensation of directors, and to indemnify corporate personnel;

(j) adopt, amend or repeal bylaws relating to the business of the corporation, the conduct of its affairs, its rights or powers or the rights or powers of its shareholders, directors or officers;

(k) make donations for the public welfare or for charitable, educational, scientific, civic or similar purposes;

(l) pay pensions and establish pension plans, pension trusts, profit sharing plans, stock bonus plans, stock option plans and other incentive plans for any or all of its directors, officers, and employees;

(m) purchase, receive, take or otherwise acquire, own, hold, sell, lend, exchange, transfer or otherwise dispose of, pledge, use and otherwise deal in and with its own shares;

(n) be a promoter, incorporator, partner, member, associate, or manager of any partnership, corporation, joint venture, trust or other enterprise;

(o) domicile, redomicile, domesticate, file or Register itself, or move or transfer its place or situs of initial or subsequent registration, domicile, siege social or sitz or any other equivalent thereto from or to any place and to continue as a corporation of any place; and

(p) have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is formed. [P.L. 1990-91, § 2.2.]

§ 16. Guarantee authorized by shareholders.

A guarantee may be given by a corporation, although not in furtherance of its corporate purposes, when authorized at a meeting of shareholders by vote of the holders of a majority of all outstanding shares entitled to vote thereon. If authorized by a like vote, such guarantee may be secured by a mortgage or pledge of, or the creation of a security interest in, all or any part of the corporate property, or any interest therein, wherever situated. [P.L. 1990-91, § 2.3.]

§ 17. Defense of ultra vires.

No act of a corporation and no transfer of real or personal property to or by a corporation, otherwise lawful, shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such transfer, but such lack of capacity or power may be asserted in an action by:

(a) a shareholder against the corporation to enjoin the doing of any act or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made under any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the action and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, such compensation as may be equitable for the loss or damage sustained by any of them from the action of the court in setting aside and enjoining the performance of such contract; provided, that anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained;

(b) the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a derivative suit against the incumbent or former officers or directors of the corporation for loss or damage due to their unauthorized business. [P.L. 1990-91, § 2.4.]

§ 18. Effect of incorporation; corporation as proper party to action.

A corporation is a legal entity, considered in law as a fictional person distinct from its shareholders or members, and with separate rights and liabilities. The corporation is a proper plaintiff in a suit to assert a legal right of the corporation and a proper defendant in a suit to assert a legal right against the corporation. [P.L. 1990-91, § 2.5.]

§ 19. Liability of directors, officers and shareholders.

Unless otherwise provided by law, the directors, officers and shareholders of a foreign or domestic corporation shall not be liable for corporate debts and obligations. [P.L. 1990-91, § 2.6.]

DIVISION 3:

SERVICE OF PROCESS; REGISTERED AGENT

§ 20. Registered agent for service of process.

§ 21. Attorney General as agent for service of process.

§ 22. Service of process on foreign corporations not authorized to do business.

§ 23. Records and certificates of Attorney General.

§ 24. Limitation on effect of division.

§ 20. Registered agent for service of process.

(1) *Registered agent.* Every domestic corporation or foreign corporation, partnership, trust, unincorporated association or other entity authorized to do business in the Republic, or foreign maritime entity registered under the provisions of section 119 of this Act, shall designate a registered agent in the Republic upon whom process against such entity or any notice or demand required or permitted by law to be served may be served. The agent for a corporation having a place of business in the Republic shall be a resident domestic corporation having a place of business in the Republic or a natural person, resident of and having a business address in the Republic.

(2) *Registered agent for non-resident entities.* The registered agent for a non-resident domestic or foreign corporation, partnership, trust, unincorporated association or other entity, or for a foreign maritime entity, shall be the Trust Company.

(3) *Failure to maintain a registered agent.* A domestic corporation, authorized foreign corporation, partnership, trust, unincorporated association, foreign maritime entity, or other entity, which fails to maintain a registered agent as required by this Act shall be dissolved or its authority to do business or registration shall be revoked, as the case may be, in accordance with sections 104, 112, or 122 of this Act.

(4) *Manner of service.* Service of process on a Registered agent may be made in the manner provided by law for the service of summons as if the registered agent were a defendant.

(5) *Resignation by registered agent.* Any registered agent of a corporation may resign as such agent upon filing a written notice thereof with a Registrar of Corporations; provided, however that the registered agent shall notify the corporation not less than thirty (30) days prior to such filing and resignation. The registered agent shall mail or cause to be mailed to the corporation at the last

known address of the corporation, within or without the Republic or at the last known address of the person at whose request the corporation was formed, notice of the resignation of the agent. No designation of a new registered agent shall be accepted for filing until all charges owing to the former registered agent shall have been paid.

(6) *Making, revoking or changing designation by corporation.* A designation of a registered agent under this section may be made, revoked, or changed by filing an appropriate notification with a Registrar of Corporations.

(7) *Termination of designation.* The designation of a registered agent shall terminate upon filing a notice of resignation provided that the registered agent certifies that the corporation was notified not less than thirty (30) days prior to such filing as provided by subsection (5) of this section.

(8) *Notification by registered agent to corporation.* A registered agent, when served with process, notice or demand for the corporation which he represents, shall transmit the same to the corporation by personal notification or in the following manner: Upon receipt of the process, notice or demand, the registered agent shall cause a copy of such paper to be mailed to the corporation named therein at its last known address. Such mailing shall be by registered mail. As soon thereafter as possible if process was issued in the Republic, the registered agent may file with the clerk of the court of the Republic issuing the process or with the agency of the Government issuing the notice or demand either the receipt of such registered mailing or an affidavit stating that such mailing has been made, signed by the registered agent, or if the agent is a corporation, by an officer of the same, properly notarized. Compliance with the provisions of this subsection shall relieve the registered agent from any further obligation to the corporation for service of the process, notice or demand, but the agent's failure to comply with the provisions of this subsection shall in no way affect the validity of the service of the process, notice or demand.

(9) *Liability of registered agent; dismissal of action against.* A registered agent for service of process acting pursuant to the provisions of this section shall not be liable for the actions or obligations of the corporation for whom it acts. The registered agent shall not be a party to any suit or action against the corporation or arising from the acts or obligations of the corporation. If the Registered agent is named in any such action, the action shall be dismissed as to such agent. [P.L. 1990-91, § 3.1.]

§ 21. Attorney General as agent for service of process.

(1) *When Attorney General is agent for service.* Whenever a domestic corporation or foreign corporation, partnership, trust, unincorporated association or other entity authorized to do business in the Republic or a foreign maritime entity registered pursuant to Division 13 of this Act or a corporation which has transferred its domicile out of the Republic into another jurisdiction fails to maintain a registered agent in the Republic, or whenever its registered agent cannot with reasonable diligence be found at his business address, then the Attorney General shall be an agent of such corporation or other entity upon whom any process or notice or demand required or permitted by law to be served may be served upon.

(2) *Manner of service.* Service on the Attorney General as agent of a domestic or foreign corporation or other entity authorized to do business or on a foreign maritime entity registered under section 119 of this Act, shall be made by personally delivering to and leaving with him or his deputy or with any person authorized by the Attorney General to receive such service, at the office of the Attorney General in Majuro Atoll, duplicate copies of such process together with the statutory fee. The Attorney General shall promptly send one (1) of such copies by registered mail return receipt requested, to such corporation at the business address of its registered agent, or if there is no such office, the Attorney General shall mail such copy, in the case of a resident domestic corporation, in care of any director named in its articles of incorporation at his address stated therein, or in the case of a non-resident domestic corporation or other entity, at the address of the corporation without the Republic, or if none, at the last known address of a person at whose request the corporation was formed; or in the case of a foreign corporation authorized to do business, to such corporation at its address as stated in its application for authority to do business, or, in the case of a foreign maritime entity registered pursuant to Division 13 of this Act, to its principal place of business; or in the case of a corporation which has transferred its domicile out of the Republic to such corporation's registered agent as shown in the certificate of transfer of domicile. [P.L. 1990-91, § 3.2.]

§ 22. Service of process on foreign corporations not authorized to do business.

(1) *Attorney General as agent to receive service.* Every foreign corporation not authorized to do business or not registered under section 119 of this Act, which itself or through an agent does any business in the Republic or

does any other act in the Republic which under applicable law confers jurisdiction on Marshall Islands' courts as to claims arising out of such act, is deemed to have designated the Attorney General as its agent upon whom process against it may be served, in any action or special proceeding arising out of or in connection with the doing of such business or the doing of such other act. Such process may issue in any court in the Republic having jurisdiction of the subject matter.

(2) *Manner of service.* Service of such process upon the Attorney General shall be made by personally delivering to and leaving with him or his deputy, or with any person authorized by the Attorney General to receive such service, at the office of the Attorney General in Majuro Atoll, a copy of such process together with the statutory fee. Such service shall be sufficient if a copy of the process is:

(a) delivered personally without the Republic to such foreign corporation or other entity by a person and in the manner authorized to serve process by law of the jurisdiction in which service is made; or

(b) sent by or on behalf of the plaintiff to such foreign corporation by registered mail at the post office address specified for the purpose of mailing process, on file in the office of the Attorney General in the jurisdiction of its creation or with any official or body performing the equivalent function thereof, or if no such address is there specified, to its registered agent or other office there specified, or if no such office is specified, to the last address of such foreign corporation known to the plaintiff.

(3) *Proof of service.* Proof of service shall be by affidavit of compliance with this section filed, together with the process, within thirty (30) days after such service with the clerk of the court in which the action or special proceeding is pending. If a copy of the process is mailed in accordance with this section, there shall be filed with the affidavit of compliance either the return receipt signed by such foreign corporation or other official proof of delivery or, if acceptance was refused, the original envelope with a notation by the postal authorities that acceptance was refused. If acceptance was refused, a copy of the process together with notice of the mailing by registered mail and refusal to accept shall be promptly sent to such foreign corporation at the same address by ordinary mail and the affidavit of compliance shall so state. Service of process shall be complete ten (10) days after such papers are filed with the clerk of the court. The refusal to accept delivery of the registered mail or to sign the return receipt shall not affect the validity of the service and such foreign corporation

refusing to accept such registered mail shall be charged with knowledge of the contents thereof. [P.L. 1990-91, § 3.3.]

§ 23. Records and certificates of Attorney General.

The Government or its designee shall keep a record of each process served upon the Attorney General under this division, including the date of service. It shall, upon request made within five (5) years of such service, issue a certificate under its seal certifying as to the receipt of the process by an authorized person, the date and place of such service, and the receipt of the statutory fee. [P.L. 1990-91, § 3.4.]

§ 24. Limitation on effect of division.

Nothing contained in this division shall affect the validity of service of process on a corporation or other entity effected in any other manner permitted by law. [P.L. 1990-91, § 3.5.]

DIVISION 4:

**FORMATION OF CORPORATIONS;
CORPORATE NAMES**

§ 25. Incorporators.

§ 26. Corporate name.

§ 27. Index of names of corporations.

§ 28. Contents of articles of incorporation.

§ 29. Powers and rights of bondholders.

§ 30. Execution and filing of articles of incorporation.

§ 31. Effect of filing articles of incorporation.

§ 32. Organization meeting.

§ 33. Bylaws.

§ 34. Emergency bylaws and other powers in emergency.

§ 25. Incorporators.

Any person, partnership, association or corporation, singly or jointly with others, and without regard to his or their residence, domicile, or jurisdiction of incorporation, may incorporate or organize a corporation under this Act. [P.L. 1990-91, § 4.1.]

§ 26. Corporate name.

(1) *General requirements.* Except as otherwise provided in subsection (2) of this section, the name of a domestic or authorized foreign corporation shall:

(a) contain the word "corporation," "incorporated," "company," or "limited" or an abbreviation of one (1)

of such words; but a non-resident domestic corporation or a foreign corporation may, in place of any of the above mentioned words or abbreviations, include as part of its name such words, abbreviations, suffix, or prefix as will clearly indicate that it is a corporation as distinguished from a natural person or partnership;

(b) not be the same as the name of a corporation of any type or kind, as such name appears on the indices of names of existing domestic and authorized foreign corporations maintained by the Registrar of Corporations or a name so similar to any such name as to tend to confuse or deceive;

(c) notwithstanding subsection (1)(a) of this section, the Registrar of Corporations may waive the abbreviation, suffix or prefix requirements for the name of a non-resident domestic corporation where deemed appropriate.

(2) *Limitations on scope of requirement.* The provisions of subsection (1) of this section shall not:

(a) require any corporation, existing or authorized to do business on the effective date of this Act, to add to, modify or otherwise change its corporate name;

(b) prevent a corporation with which another corporation, domestic or foreign, is merged, or which is formed by the reorganization or consolidation of one (1) or more domestic or foreign corporations, or upon a sale, lease or other disposition to or exchange with, a domestic corporation of all or substantially all the assets of another domestic corporation, including its name, from having the same name as any of such corporations if at the time such other corporation was existing under the laws of the Republic or was authorized to do business in the Republic. [*P.L. 1990-91, § 4.2; amended by P.L. 2000-18, § 26.*]

§ 27. Index of names of corporations.

The Registrar of Corporations shall keep alphabetical indices of all names of all existing resident and non-resident domestic corporations, foreign maritime entities registered pursuant to Division 13 of this Act, and foreign corporations authorized to do business in the Republic in accordance with their respective duties provided in separately. Such indices shall be in addition to the files of articles of incorporation and other documents required to be kept by the Registrar of Corporations under this Act. [*P.L. 1990-91, § 4.3.*]

§ 28. Contents of articles of incorporation.

The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the duration of the corporation if other than perpetual;

(c) the purpose or purposes for which the corporation is organized. It shall be sufficient to state, either alone or with other businesses or purposes, that the purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under this Act, and by such statement all lawful acts and activities shall be within the purposes of the corporation, except for express limitations, if any;

(d) the registered address of the corporation in the Republic and the name and address of its registered agent;

(e) the aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one (1) class only, the par value of each of such shares, or a statement that all of such shares are without par value; or if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each class or that such shares are to be without par value;

(f) if the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class;

(g) subject to the provisions of section 42 of this Act, the number of shares to be issued as registered shares and as bearer shares and whether registered shares may be exchanged for bearer shares and bearer shares for registered shares;

(h) if bearer shares are authorized to be issued as provided in section 42 of this Act, the manner in which any required notice shall be given to shareholders of bearer shares;

(i) if the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

(j) if the initial directors are to be named in the articles of incorporation, the names and addresses of the persons who are to serve as directors until the first annual meeting of the shareholders or until their successors shall be elected and qualified;

(k) the name and address of each incorporator;

(l) any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the affairs of the corporation, including the designation of initial directors, subscription of stock by the incorporators, and any provision restricting the transfer of shares or providing for greater quorum or voting requirements with respect to shareholders or directors that are otherwise prescribed in this Act, and any provision which under this Act is required or permitted to be set forth in the bylaws. It is not necessary to enumerate in the articles of incorporation the general corporate powers stated in section 15 of this Act;

(m) in addition to the matters required to be set forth in the articles of incorporation by this section, the articles of incorporation may also contain a provision for elimination or limitation of personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director:

(i) for any breach of the director's duty of loyalty to the corporation or its stockholders;

(ii) for acts or omissions not undertaken in good faith or which involve intentional misconduct or a knowing violation of law; or

(iii) for any transaction from which the director derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective. [P.L. 1990-91, § 4.4.]

§ 29. Powers and rights of bondholders.

The articles of incorporation may confer upon the holders of any bonds, debentures, or other obligations issued or to be issued by the corporation, whether secured by mortgage or otherwise or unsecured, any one (1) or more of the following powers and rights:

(a) the power to vote on the election of directors, or other matters specified in the articles;

(b) the right of inspection of books of account, minutes, and other corporate records;

(c) any other rights to information concerning the financial condition of the corporation which its shareholders have or may have. [P.L. 1990-91, § 4.5.]

§ 30. Execution and filing of articles of incorporation.

Articles of incorporation shall be signed and acknowledged by each incorporator and filed with a Registrar or Deputy Registrar of Corporations in conformity with the provisions of section 5 of this Act. On filing the original copy of the articles of incorporation, the Registrar or Deputy Registrar of Corporations shall indicate thereon whether the corporation is a resident domestic corporation or a non-resident domestic corporation. [P.L. 1990-91, § 4.6.]

§ 31. Effect of filing articles of incorporation.

The corporate existence begins upon filing the articles of incorporation effective as of the filing date stated thereon. The endorsement by a Registrar or Deputy Registrar of Corporations, as required by section 5 of this Act, shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Act. [P.L. 1990-91, § 4.7.]

§ 32. Organization meeting.

(1) *Meeting.* After the filing of the articles of incorporation an organization meeting or meetings of the corporation shall be held either within or without the Republic for the purposes of doing such acts to perfect the organization of the corporation as are deemed appropriate and transacting such other business as may come before the meeting(s).

(2) *Who may hold.* The organization meeting(s) may be held by either:

(a) the original directors (if named in the articles of incorporation); or

(b) the incorporator or incorporators, in person or by proxy, whether or not they are subscribers; or

(c) if the articles of incorporation state that incorporators or others have subscribed to stock, by such subscribers; or

(d) if the subscriptions have been transferred, by the transferees of subscription rights.

(3) *Written consent.* Any action permitted to be taken at the organization meeting(s) may be taken without a meeting if all the directors, incorporators, subscribers or transferees, as the case may be, having the right to attend the meeting consent to and sign (an) instrument(s) setting forth the actions taken. [P.L. 1990-91, § 4.8.]

§ 33. Bylaws.

(1) *Power to make bylaws.* The initial bylaws of a corporation may be adopted by any person or persons of articles of incorporation authorized by section 32(2) of this division to hold (an) organizational meeting(s). Except as otherwise provided in the articles of incorporation, bylaws may be amended, repealed or adopted by vote of the shareholders. If so provided in the articles of incorporation or a bylaw adopted by the shareholders, bylaws may also be amended, repealed or adopted by the board of directors, but any bylaw adopted by the directors may be amended or repealed by shareholders entitled to vote thereon.

(2) *Scope.* The bylaws may contain any provision relating to the business of the corporation, the conduct of its affairs, its rights or powers or the rights or powers of its shareholders, directors or officers, not inconsistent with this Act or any other statute of the Republic or the articles of incorporation. [P.L. 1990-91, § 4.9.]

§ 34. Emergency bylaws and other powers in emergency.

(1) *Adoption of emergency bylaws.* The board of any corporation may adopt emergency bylaws, subject to repeal or change by action of the shareholders, which shall notwithstanding any different provisions elsewhere in this Act or in the certificate of incorporation or bylaws, be operative during any emergency resulting from an attack on the Republic or on a locality in which the corporation conducts its business or customarily holds meetings of its board or its shareholders, or during any nuclear or atomic disaster, or during the existence of any catastrophe, or other similar emergency condition, as a result of which a quorum of the board or a standing committee thereof cannot readily be convened for action. The emergency bylaws may make any provision that may be practical and necessary for the circumstances of the emergency, including provision that:

(a) a meeting of the board or a committee thereof may be called by any officer or director in such manner and under such conditions as shall be prescribed in the emergency bylaws;

(b) the director or directors in attendance at the meeting, or any greater number fixed by the emergency bylaws, shall constitute a quorum; and

(c) the officers or other persons designated on a list approved by the board before the emergency, all in such order of priority and subject to such conditions and for such period of time (not longer than reasonably necessary) after the termination of the emergency as may be provided in the emergency bylaws or in the resolution approving the list, shall, to the extent required to provide a quorum at any meeting of the board, be deemed directors for such meeting.

(2) *Change in directors during emergency.* The board either before or during any such emergency, may provide, and from time to time modify, lines of succession in the event that during such emergency any or all officers or agents of the corporation shall for any reason be rendered incapable of discharging their duties.

(3) *Change in location of office in an emergency.* The board, either before or during any such emergency, may, effective in the emergency, change the head office or designate several alternative head offices or regional offices, or authorize the officers to do so.

(4) *Immunization from liability.* No officer, director or employee acting in accordance with any emergency bylaws shall be liable except for willful misconduct.

(5) *Effect on non-emergency bylaws.* To the extent not inconsistent with any emergency bylaws so adopted, the bylaws of the corporation shall remain in effect during any emergency and upon its termination the emergency bylaws shall cease to be operative.

(6) *Notice in an emergency.* Unless otherwise provided in emergency bylaws, notice of any meeting of the board during such an emergency may be given only to such of the directors as it may be feasible to reach at the time and by such means as may be feasible at the time, including publication or radio.

(7) *Quorum in an emergency.* To the extent required to constitute a quorum at any meeting of the board during such an emergency, the officers of the corporation who are present shall, unless otherwise provided in emergency bylaws, be deemed, in order of rank and within the same rank in order of seniority, directors for such meeting.

(8) *Non-exclusive effect of emergency bylaws.* Nothing contained in this section shall be deemed exclusive of any other provisions for emergency powers consistent

with other sections of this Act which have been or may be adopted by corporations created under this Act. [P.L. 1990-91, § 4.10; Subsections renumbered.]

DIVISION 5:

CORPORATE FINANCE

- § 35. **Classes and series of shares.**
- § 36. **Restrictions on transfer of shares.**
- § 37. **Subscriptions for shares.**
- § 38. **Consideration for shares.**
- § 39. **Payment for shares.**
- § 40. **Compensation for formation, reorganization and financing.**
- § 41. **Determination of stated capital.**
- § 42. **Form and content of certificates.**
- § 43. **Dividends in cash, stock, or other property.**
- § 44. **Share dividends.**
- § 45. **Purchase or redemption by corporation of its own shares.**
- § 46. **Reacquired shares.**
- § 47. **Reduction of stated capital by action of the board.**

§ 35. **Classes and series of shares.**

(1) *Power to issue.* Every corporation shall have power to issue the number of shares stated in its articles of incorporation. Such shares may be of one (1) or more classes or one (1) or more series within any class thereof, any or all of which classes may be of shares with par value or shares without par value, and may be registered or bearer shares, with such voting powers, full or limited, or without voting powers and in such series and with such designations, preferences and relative, participating, optional or special rights and qualifications, limitations or restrictions thereon as shall be stated in the articles of incorporation or in the resolution providing for the issue of such shares adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the articles of incorporation.

(2) *Convertible shares.* The articles of incorporation or the resolution providing for the issue of shares adopted by the board of directors may provide that shares of any class of shares or of any series of shares within any class thereof shall be convertible into the shares of one (1) or more other classes of shares or series except into shares of a class or series having rights or preferences as to dividends or distribution of assets upon liquidation which are prior or superior in rank to those of the shares being converted.

(3) *Redeemable shares.* A corporation may provide in its articles of incorporation for one (1) or more classes or series of shares which are redeemable, in whole or in part, at the option of the corporation at such price or prices, within such period and under such conditions as are stated in the articles of incorporation or in the resolution providing for the issue of such shares adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the articles of incorporation.

(4) *Fractional shares.* A corporation may issue fractional shares.

(5) *Shares provided for by resolution of board.* Before any corporation shall issue any shares of any class or of any series of any class of which the voting powers, designations, preferences and relative, participating, optional or other rights, if any, of the qualifications, limitations or restrictions thereof, if any, have not been set forth in the articles of incorporation, but are provided for in a resolution adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the articles of incorporation, a statement setting forth a copy of such resolution and the number of shares of the class or series to be issued shall be executed, acknowledged, and filed in accordance with section 5 of this Act. Upon the filing of such statement, the resolution establishing and designating the class or series and fixing the relative rights and preferences thereof shall become effective and shall constitute an amendment of the articles of incorporation. [P.L. 1990-91, § 5.1.]

§ 36. **Restrictions on transfer of shares.**

(1) *In general.* A restriction on the transfer of shares of a corporation may be imposed either by the articles of incorporation or by the bylaws or by an agreement among any number of shareholders or among such holders and the corporation. No restriction so imposed shall be binding with respect to shares issued prior to the adoption of the restriction unless the holders of the shares are parties to an agreement or voted in favor of the restriction. Any restriction which absolutely prohibits the transfer of shares shall be null.

(2) *Restrictions.* Restrictions on the transfer of shares include those which:

- (a) obligate the holder of the restricted shares to offer to the corporation or to any other holders of securities of the corporation or to any person or to any combination of the foregoing, a prior opportunity, to be exercised within a reasonable time, to acquire the restricted shares;

(b) obligate the corporation or any holder of shares of the corporation or any other person or any combination of the foregoing, to purchase at a specified price the shares which are the subject of an agreement respecting the purchase and sale of the restricted securities;

(c) require the corporation or the holders of any shares of the corporation to consent to any proposed transfer of the restricted shares or to approve the proposed transferee of the restricted shares;

(d) prohibit the transfer of the restricted shares to designated persons or classes of persons, and such designation is not manifestly unreasonable; or

(e) any other restriction on the transfer of shares for the purpose of maintaining any tax advantage of the corporation or of accomplishing the business purposes of the corporation.

(3) *Annotation.* Any transfer restriction adopted under this section shall be noted on the face or the back of the stock certificate. [P.L. 1990-91, § 5.2.]

§ 37. Subscriptions for shares.

(1) *Irrevocability of subscription for six months.* A subscription for shares of a corporation to be organized shall be irrevocable for a period of six (6) months from its date unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers consent to the revocation of such subscription.

(2) *Writing required.* A subscription, whether made before or after the formation of a corporation, shall not be enforceable unless in writing and signed by the subscriber.

(3) *Time of payment calls.* Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the class or as to all shares of the same series, as the case may be.

(4) *Default in payment; penalties.* In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The bylaws may prescribe a penalty for failure to pay installments or calls that may become due,

but no penalty working a forfeiture of a subscription, or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of thirty (30) days after written demand has been made therefore. If mailed, such written demand shall be deemed to be made when sent by registered mail addressed to the subscriber at his last post office address known to the corporation. In the event of the sale of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on such shares shall be paid to the delinquent subscriber or to his legal representative. If no prospective purchaser offers a cash price sufficient to pay the full balance owed by the delinquent subscriber plus the expenses incidental to such sale, the shares subscribed for shall be canceled and restored to the status of authorized but unissued shares and all previous payments thereon shall be forfeited to the corporation and transferred to surplus.

(5) *Transfer of subscriptions.* Subscriptions for shares of stock are transferable unless otherwise provided in a subscription agreement. [P.L. 1990-91, § 5.3.]

§ 38. Consideration for shares.

(1) *Quality of consideration.* Consideration for the issue of shares shall consist of money or other property, tangible or intangible, or labor or services actually received by or performed for the corporation or for its benefit or in its formation or reorganization, or a combination thereof. In the absence of fraud in the transaction, the judgment of the board or shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

(2) *Amount of consideration for shares with par value.* Shares with par value may be issued for such consideration, not less than the par value thereof, as is fixed from time to time by the board.

(3) *Amount of consideration for shares without par value.* Shares without par value may be issued for such consideration as is fixed from time to time by the board unless the articles of incorporation reserve to the shareholders the right to fix the consideration. If such right is reserved as to any shares, a vote of the shareholders shall either fix the consideration to be received for the shares or authorize the board to fix such consideration.

(4) *Disposition of treasury shares.* Treasury shares may be disposed of by a corporation on such terms and conditions as are fixed from time to time by the board.

(5) *Consideration for share dividends.* That part of the surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for the issuance of such shares. [P.L. 1990-91, § 5.4.]

§ 39. Payment for shares.

(1) *Obligations for future payments or services not payment.* Neither obligations of the subscriber for future payments nor future service shall constitute payment or part payment for shares of a corporation.

(2) *Payment necessary before issuance of certificates.* Certificates for shares may not be issued until the full amount of the consideration therefore has been paid.

(3) *Rights of subscriber on full payment.* When the consideration for shares has been paid in full, the subscriber shall be entitled to all rights and privileges of a holder of such shares and to a certificate representing his shares, and such shares shall be deemed fully paid and non-assessable. [P.L. 1990-91, § 5.5.]

§ 40. Compensation for formation, reorganization and financing.

The reasonable charges and expenses of formation or reorganization of a corporation, and the reasonable expenses of and compensation for the sale of underwriting of its shares may be paid or allowed by the corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not fully paid or assessable. [P.L. 1990-91, § 5.6.]

§ 41. Determination of stated capital.

(1) *On shares with par value.* Upon issue by a corporation of shares with a par value not in excess of the authorized shares, the consideration received therefore shall constitute stated capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute surplus.

(2) *On shares without par value.* Upon issue by a corporation of shares without par value not in excess of the authorized shares, the entire consideration received therefore shall constitute stated capital unless the board within a period of sixty (60) days after issue allocates to surplus a portion, but not all, of the consideration received for such shares. No such allocation shall be made of any portion of the consideration received for shares without par value having a preference in the assets of the corporation upon involuntary liquidation except all or part of the amount, if any, of such consideration in excess of such preference, nor shall such allocation be

made of any portion of the consideration for the issue of shares without par value which is fixed by the shareholders pursuant to a right reserved in the articles of incorporation, unless such allocation is authorized by vote of the shareholders.

(3) *Increase by transfer for surplus.* The stated capital of a corporation may be increased from time to time by resolution of the board transferring all or part of surplus of the corporation to stated capital. [P.L. 1990-91, § 5.7.]

§ 42. Form and content of certificates.

(1) *Signature and seal.* The shares of a corporation shall be represented by certificates or shall be uncertificated shares. Certificates shall be signed by an officer(s) and/or a director, however designated, of the corporation, and may be sealed with the seal of the corporation, if any, or a facsimile thereof. The signatures upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent other than the corporation itself or its employees. In case any person who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer or director before such certificate is issued, it may be issued by the corporation with the same effect as if he/she were such officer or director at the date of issue. For the purposes of this section, “uncertificated shares” are shares of a corporation which:

(a) are not represented by an instrument;

(b) the transfer of which is registered upon books maintained for that purpose by or on behalf of the corporation issuing the shares; and

(c) are of a type commonly dealt in upon securities exchanges or markets.

(2) *Registered or bearer shares.* Shares may be issued either in registered form or in bearer form provided that the articles of incorporation prescribe the manner in which any required notice is to be given to shareholders of bearer shares in conformity with section 11 of this Act; provided, however, that resident domestic corporations shall not be allowed to issue shares in bearer form. The transfer of bearer shares shall be by delivery of the certificates. The articles of incorporation may provide that on request of a shareholder his bearer shares shall be exchanged for registered shares or his registered shares exchanged for bearer shares.

(3) *Statement regarding class and series.* Each certificate representing shares issued by a corporation which is authorized to issue shares of more than one (1) class shall set forth upon the face or back of the

certificate, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full statement of the designation, relative rights, preferences and limitations of the shares of each class authorized to be issued and, if the corporation is authorized to issue any class of preferred shares in series, the designation, relative rights, preferences and limitations of each such series so far as the same have been fixed and the authority of the board to designate and fix the relative rights, preferences and limitations of other series.

(4) *Other statements on certificate.* Each certificate representing shares shall when issued state upon the face thereof:

(a) that the corporation is formed under the laws of the Republic;

(b) the name of the person or persons to whom issued if a registered share;

(c) the number and class of shares, and the designation of the series, if any, which such certificate represents;

(d) the par value of each share represented by such certificate, or a statement that the shares are without par value; and

(e) if the share does not entitle the holder to vote, that it is non-voting, or if the right to vote exists only under certain circumstances, that the right to vote is limited.

(5) Unless otherwise provided by the articles of incorporation or bylaws, the board of directors of a corporation may provide by resolution that some or all of any or all classes and series shall be uncertificated shares, provided that such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation or transfer agent. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation or transfer agent shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on the certificates pursuant to subsections (3) and (4) of this section. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing shares of the same class and series shall be identical; provided however, that bearer shares may not be uncertificated.

(6) The board of directors may, by resolution, provide that some or all classes and series of uncertificated shares

shall be represented by certificates, provided that such resolution shall not become effective until the share certificates are issued.

(7) *Lost, stolen or destroyed stock certificates; issuance of new certificate or uncertificated shares.* A corporation may issue a new certificate of stock or uncertificated shares in place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares. [P.L. 1990-91, § 5.8; amended by P.L. 1998-73, § 42; amended by P.L. 2000-18, § 42.]

§ 43. Dividends in cash, stock, or other property.

(1) *General limitation.* A corporation may declare and pay dividends in cash, stock or other property on its outstanding shares, except when currently the corporation is insolvent or would thereby be made insolvent or when the declaration or payment would be contrary to any restrictions contained in the articles of incorporation. Dividends may be declared and paid out of surplus only; but in case there is no surplus, dividends may be declared or paid out of the net profits for the fiscal year in which the dividend is declared and for the preceding fiscal year.

(2) *Corporations engaged in exploitation of wasting assets.* A corporation engaged in the exploitation of natural resources or other wasting assets, including patents, or formed primarily for the liquidation of specific assets, may declare and pay dividends regardless of any surplus from the net profits derived from the liquidation or exploitation of such assets without making any deduction for the depletion of such assets resulting from lapse of time, consumption, liquidation or exploitation of such assets if the net assets remaining after such dividends are sufficient to cover the liquidation preferences of shares having such preferences in involuntary liquidation. [P.L. 1990-91, § 5.9.]

§ 44. Share dividends.

(1) *Restrictions on distribution.* A corporation may make pro rata distribution of its authorized but unissued shares to holders of any class or series of its outstanding shares subject to the following conditions:

(a) if a distribution of shares having a par value is made, such shares shall be issued at not less than the

par value thereof and there shall be transferred to stated capital at the time of such distribution an amount of surplus equal to the aggregate par value of such shares;

(b) if a distribution of shares without par value is made, the amount of stated capital to be represented by each such share shall be fixed by the board, unless the articles of incorporation reserved to the shareholders the right to fix the consideration for the issue of such shares; and there shall be transferred to stated capital at the time of such distribution an amount of surplus equal to the aggregate stated capital represented by such shares.

(2) *Payment out of unrealized appreciation prohibited.* Unrealized appreciation of assets, if any, shall not be included in the computation of surplus available for a share dividend.

(3) *Notice to shareholders.* Upon the payment of a dividend payable in shares, notice shall be given to the shareholders of the amount per share transferred from surplus.

(4) *Authorized by shareholders.* No dividend payable in shares of any class shall be paid unless the share dividend is specifically authorized by the vote of two-thirds of the shares of each class that might be adversely affected by such a share dividend.

(5) *Split-ups.* A split-up or division of the issued shares of any class into a greater number of shares of the same class without increasing the stated capital of the corporation shall not be construed to be a share dividend within the meaning of this section. [P.L. 1990-91, § 5.10.]

§ 45. Purchase or redemption by corporation of its own shares.

(1) *Purchase or redemption out of surplus.* A corporation, subject to any restrictions contained in its articles of incorporation, may purchase its own shares or redeem its redeemable shares out of surplus except when currently the corporation is insolvent or would thereby be made insolvent.

(2) *Purchase out of stated capital.* A corporation may purchase its own shares out of stated capital except when currently the corporation is insolvent or would thereby be made insolvent, if the purchase is made for the purpose of:

(a) eliminating fractions of shares;

(b) collecting or compromising indebtedness to the corporation; or

(c) paying dissenting shareholders entitled to receive payment for their shares under sections 92 or 100 of this Act.

(3) *Redemption out of stated capital.* A corporation subject to any restrictions contained in its articles of incorporation, may redeem or purchase its redeemable shares out of stated capital except when currently the corporation is insolvent or would thereby be made insolvent and except when such redemption or purchase would reduce net assets below the stated capital remaining after giving effect to the cancellation of such redeemable shares.

(4) *Purchase price of redeemable shares.* When its redeemable shares are purchased by a corporation within the period of redeemability, the purchase price thereof shall not exceed the applicable redemption price stated in the articles of incorporation. Upon a call for redemption, the amount payable by the corporation for shares having a cumulative preference on dividends may include the stated redemption price plus accrued dividends to the next dividend date following the date of redemption of such shares. [P.L. 1990-91, § 5.11.]

§ 46. Reacquired shares.

(1) *When shares required to be canceled.* Shares that have been issued and have been purchased, redeemed or otherwise reacquired by a corporation shall be canceled if they are reacquired out of stated capital, or if they are converted shares, or if the articles of incorporation require that such shares be canceled upon reacquisition.

(2) *Shares not required to be canceled.* Any shares reacquired by the corporation and not required to be canceled may be either retained as treasury shares or canceled by the board at the time of reacquisition or at any time thereafter.

(3) *Disposition of treasury shares.* Neither the retention of reacquired shares as treasury shares, nor their subsequent distribution to shareholders or disposition for a consideration shall change the stated capital. Treasury shares may be disposed of for such consideration as the directors may fix. When treasury shares are disposed of for a consideration, the surplus shall be increased by the full amount of the consideration received.

(4) *Reduction of stated capital on reacquisition of shares.* When reacquired shares other than converted shares are canceled, the stated capital of the corporation

shall be reduced by the amount of stated capital then represented by the shares so canceled. The amount by which stated capital has been reduced by cancellation of reacquired shares during a stated period of time shall be disclosed in the next financial statement covering such period that is furnished by the corporation to all its shareholders, or if practicable, in the first notice of dividend or share distribution that is furnished to the holders of each class or series of its shares between the end of the period and the next such financial statement, and in any event to all its shareholders within six (6) months of the date of the reduction of capital.

(5) *Canceled shares; eliminated shares.* Shares canceled under this section shall be restored to the status of authorized but unissued shares, except that if the articles of incorporation prohibit the reissue of any shares required or permitted to be canceled under this section, the board shall approve and deliver to a Registrar of Corporations articles of amendment under section 90 of this Act eliminating such shares from the number of authorized shares. [P.L. 1990-91, § 5.12.]

§ 47. Reduction of stated capital by action of the board.

(1) *When board may reduce capital.* Except as otherwise provided in the articles of incorporation, the board may at any time reduce the stated capital of a corporation by eliminating from stated capital amounts previously transferred by the board from surplus to stated capital and not allocated to any designated class or series of shares, or by eliminating any amount of stated capital represented by issued shares having a par value to the extent that the stated capital exceeds the aggregate par value of such shares, or by reducing the amount of stated capital represented by issued shares without par value.

If, however, the consideration for the issue of shares without par value was fixed by the shareholders under section 38(3) of this Act, the board shall not reduce the stated capital represented by such shares except to the extent, if any, that the board was authorized by the shareholders to allocate any portion of such consideration to surplus.

(2) *Limitation on amount of reduction.* No reduction of stated capital shall be made under this section unless after such reduction the stated capital exceeds the aggregate preferential amounts payable upon involuntary liquidation upon all issued shares having preferential rights in the assets plus the par value of all other issued shares with par value.

(3) *Notice to shareholders.* When a reduction of stated capital has been effected under this section, the amount

of such reduction shall be disclosed in the next financial statement covering the period in which such reduction is made that is furnished by the corporation to all its shareholders, or, if practicable, in the first notice of dividend or share distribution that is furnished to the holders of each class or series of its shares between the date of such reduction and the next such financial statement, and in any event to all its shareholders within six (6) months of the date of such reduction. [P.L. 1990-91, § 5.13.]

DIVISION 6:

DIRECTORS AND MANAGEMENT

§ 48. Management of business of corporation.

§ 49. Qualifications of directors.

§ 50. Number of directors.

§ 51. Election and term of directors.

§ 52. Classes of directors.

§ 53. Newly created directorships and vacancies.

§ 54. Removal of directors.

§ 55. Quorum; action by the board.

§ 56. Meetings of the board.

§ 57. Executive and other committees.

§ 58. Director conflicts of interest.

§ 59. Loans to employees and officers; guaranty of obligations of employees and officers.

§ 60. Indemnification of directors and officers.

§ 61. Standard of care to be observed by directors and officers.

§ 62. Officers.

§ 63. Removal of officers.

§ 48. Management of business of corporation.

Subject to limitations of the articles of incorporation and of this Act as to action which shall be authorized or approved by the shareholders, all corporate powers shall be exercised by or under authority of, and the business and affairs of every corporation shall be managed by, a board of directors. [P.L. 1990-91, § 6.1.]

§ 49. Qualifications of directors.

The articles of incorporation may prescribe special qualifications for directors. Unless otherwise provided in the articles of incorporation, directors may be of any nationality and need not be residents of the Republic or shareholders of the corporation. Directors of a resident corporation shall be natural persons. Non-resident corporations may appoint or elect directors which are corporations. [P.L. 1990-91, § 6.2.]

§ 50. Number of directors.

(1) *Number required.* The number of directors constituting the board of directors shall be one (1) or more. The number of directors of the corporation may be fixed by the bylaws, by the shareholders, or by action of the board under the specific provisions of a bylaw.

(2) *Increase or decrease.* The number of directors may be increased or decreased by amendment of the bylaws, by the shareholders, or by action of the board under the specific provisions of a bylaw, subject to the following limitations:

(a) if the board is authorized by the bylaws to change the number of directors, whether by amending the bylaws or by taking action under the specific provisions of a bylaw, such amendment or action shall require the vote of a majority of the entire board;

(b) no decrease shall shorten the term of any incumbent director. [P.L. 1990-91, § 6.3.]

§ 51. Election and term of directors.

(1) *Manner and term.* At each annual meeting of shareholders, directors shall be elected to hold office until the next annual meeting except as authorized by section 52 of this Act. The articles of incorporation may provide for the election of one (1) or more directors by the holders of the shares of any class or series.

(2) *Tenure.* Each director shall hold office until the expiration of the term for which he is elected, and until his successor has been elected and qualified. [P.L. 1990-91, § 6.4.]

§ 52. Classes of directors.

(a) The articles of incorporation may provide that the directors be divided into two (2) or more classes and that each class of directors serve for such term as specified in the articles of incorporation.

(b) The articles of incorporation may confer upon the holders of any class or series of shares the right to elect one (1) or more directors who shall serve for such term, and have such voting powers as shall be stated in the articles of incorporation. The terms of office and voting powers of the directors elected in the manner so provided in the articles of incorporation may be greater than or less than those of any other director or class of directors. If the articles of incorporation provide that the directors elected by the holders of a class or series of shares shall

have more or less than one (1) vote per director on any matter, every reference in this Act to a majority or other proportion of such directors shall refer to a majority or other proportion of the votes of such directors.

(c) In addition, the articles of incorporation may confer upon one (1) or more directors, whether or not elected separately by the holders of any class or series of stock, voting powers greater than or less than those of other directors. [P.L. 1990-91, § 6.5; amended by P.L. 1998-73, § 52; amended by P.L. 2010-35, adding §52(c).]

§ 53. Newly created directorships and vacancies.

(1) *How vacancies filled in general.* Newly created directorships resulting from an increase in the number of directors and vacancies occurring in the board for any reason except removal of directors without cause may be filled by vote of a majority of the directors then in office, although less than a quorum exists, unless the articles of incorporation or the bylaws provide that such newly created directorships or vacancies shall be filled by vote of the shareholders.

(2) *Vacancies on removal without cause.* Unless the articles of incorporation or the specific provisions of a bylaw adopted by the shareholders provide that the board shall fill vacancies occurring in the board by reason of the removal of directors without cause, such vacancies may be filled only by vote of the shareholders.

(3) *Term.* A director elected to fill a vacancy shall be elected to hold office for the unexpired term of his predecessor. [P.L. 1990-91, § 6.6; amended by P.L. 2005-27, § 53.]

§ 54. Removal of directors.

(1) *Removal for cause.* Any or all of the directors may be removed for cause by vote of the shareholders. The articles of incorporation or the specific provisions of a bylaw may provide for such removal by action of the board, except in the case of any director elected by cumulative voting, or by the holders of the shares of any class or series when so entitled by the provisions of the articles of incorporation.

(2) *Without cause.* If the articles of incorporation or the bylaws so provide, any or all of the directors may be removed without cause by vote of the shareholders.

(3) *Limitations on removal.* The removal of directors, with or without cause, as provided in subsections (1) and (2) of this section is subject to the following:

(a) in the case of a corporation having cumulative voting, no director may be removed when the votes cast against his removal would be sufficient to elect him if voted cumulatively at an election at which the same total number of votes were cast and the entire board, or the entire class of directors or which he is a member, were then being elected; and

(b) when by the provisions of the articles of incorporation the holders of the shares of any class or series, or holders of bonds, voting as a class are entitled to elect one (1) or more directors, any director so elected may be removed only by the applicable vote of the holders of the shares of that class or series, or the holders of such bonds, voting as a class. [P.L. 1990-91, § 6.7.]

§ 55. Quorum; action by the board.

(1) *Quorum defined.* Unless a greater proportion is required by the articles of incorporation, a majority of the entire board, present in person or by proxy at a meeting duly assembled, shall constitute a quorum for the transaction of business or of any specified item of business, except that the articles of incorporation or the bylaws may fix the quorum at less than a majority of the entire board but not less than one-third thereof.

(2) *Vote at meeting as action by board.* The vote of the majority of the directors present in person or by proxy at a meeting at which a quorum is present shall be the act of the board unless the articles of incorporation require the vote of a greater number.

(3) *Proxy.* Unless otherwise provided in the articles of incorporation or the bylaws, any director may be represented and vote at a meeting or unanimously consent to action without a meeting by a proxy or proxies given to another director appointed by instrument in writing, including a telegram, cable, telex, telefax or other writing transmitted by communications equipment. The articles of incorporation or the bylaws may contain restrictions, prohibitions or limitations upon the grant or use of proxies by directors.

(4) *Action without meeting.* Unless restricted by the articles of incorporation or bylaws, any action required or permitted to be taken at any meeting of the board of directors or of any committee thereof may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing and the writing or writings are filed with the minutes of the proceedings of the board or committee.

(5) *Participation by communication equipment.* Unless restricted by the articles of incorporation or bylaws, members of the board or any committee thereof may participate in a meeting of such board or committee by

means of communications equipment which permits the persons participating in the meeting to communicate with each other, and participation in a meeting pursuant to this paragraph shall constitute presence in person at such meeting.

(6) *Greater requirement as to quorum and vote of directors.* The articles of incorporation may contain provisions specifying either or both of the following:

(a) that the portion of directors that shall constitute a quorum for the transaction of business or of any specified item of business shall be greater than the proportion prescribed by subsection (1) of this section in the absence of such provision;

(b) that the proportion of votes of directors that shall be necessary for the transaction of business or of any specified item of business shall be greater than the proportion prescribed by subsection (2) of this section in the absence of such provision.

(7) *Amendment of articles with regard to quorum or votes of directors.* An amendment of the articles of incorporation which adds a provision permitted by subsection (6) of this section or which changes or strikes out such a provision, shall be authorized at a meeting of shareholders by a vote of the holders of two-thirds of all outstanding shares entitled to vote thereon, or of such greater proportion of shares, or class or series of shares, as may be provided specifically in the articles of incorporation for adding, changing, or striking out a provision permitted by subsection (6) of this section. [P.L. 1990-91, § 6.8; amended by P.L. 1998-73, § 55.]

§ 56. Meetings of the board.

(1) *Time and place.* Meetings of the board, regular or special, may be held at any place within or without the Republic, unless otherwise provided by the articles of incorporation or the bylaws. The time and place for holding meetings of the board may be fixed by or under the bylaws, or if not so fixed, by the board.

(2) *Notice of meetings.* Unless otherwise provided by the bylaws, regular meetings of the board may be held without notice if the time and place of such meetings are fixed by the bylaws or the board. Special meetings of the board may be called in the manner provided in the bylaws and shall be held upon notice to the directors. The bylaws may prescribe what shall constitute notice of meeting of the board. A notice or waiver of notice need not specify the purpose of any regular or special meeting of the board, unless required by the bylaws.

(3) *Waiver of notice.* Notice of a meeting need not be given to any director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting the lack of notice. [P.L. 1990-91, § 6.9.]

§ 57. Executive and other committees.

(1) *Appointment and powers of committees.* If the articles of incorporation or the bylaws so provide, the board, by resolution adopted by a majority vote of the entire board, may designate from among its members an executive committee and other committees, each of which to the extent provided in the resolution or in the articles of incorporation or bylaws of the corporation, shall have and may exercise all the authority of the board of directors, but no such committee shall have the authority as to the following matters:

- (a) the submission to shareholders of any action that requires shareholders' authorization under this Act;
- (b) the filling of vacancies in the board of directors or in a committee;
- (c) the fixing of compensation of the directors for serving on the board or on any committee;
- (d) the amendment or repeal of the bylaws, or the adoption of new bylaws;
- (e) the amendment or repeal of any resolution of the board which by its terms shall not be so amendable or repealable.

(2) *Tenure; effect of committee on duty of directors.* Each such committee shall serve at the pleasure of the board. The designation of any such committee and the delegation thereto of authority shall not alone relieve any director of his duty to the corporation under section 61 of this Act. [P.L. 1990-91, § 6.10.]

§ 58. Director conflicts of interest.

(1) *Effect of personal financial interest or common directorship.* No contract or other transaction between a corporation and one (1) or more of its directors, or between a corporation and any other corporation, firm, association or other entity in which one (1) or more of its directors are directors or officers, or have a substantial financial interest, shall be either void or voidable for this reason alone or by reason alone that such director or directors are present at the meeting of the board, or of a committee thereof, which approves such contract or transaction, or that his or their votes are counted for such purpose:

(a) if the material facts as to such director's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the board or committee, and the board or committee approves such contract or transaction by a vote sufficient for such purpose without counting the vote of such interested director, or, if the votes of the disinterested directors are insufficient to constitute an act of the board as defined in section 55 of this Act, by unanimous vote of the disinterested directors; or

(b) if the material facts as to such director's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the shareholders entitled to vote thereon, and such contract or transaction is approved by vote of such shareholders.

(2) *Determining quorum.* Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board or of a committee which approves such contract or transaction.

(3) *Additional restrictions on transactions with directors.* The articles of incorporation may contain additional restrictions on contracts or transactions between a corporation and its directors and may provide that contracts or transactions in violation of such restrictions shall be void or voidable by the corporation.

(4) *Compensation of board.* Unless otherwise provided in the articles of incorporation or the bylaws, the board shall have authority to fix the compensation of directors for services in any capacity. [P.L. 1990-91, § 6.11.]

§ 59. Loans to employees and officers; guaranty of obligations of employees and officers.

Unless restricted by the articles of incorporation or bylaws, any corporation may lend money to, or guarantee any obligations of, or otherwise assist any officer, director or employee of the corporation or of its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. However, a loan shall not be made by a corporation to any director unless it is authorized by a vote of the shareholders. For this purpose, the shares of the director who would be the borrower will not be entitled to vote. The loan, guaranty or other assistance may be with or without interest, and may be unsecured or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in this section contained shall be deemed to deny, limit or restrict the powers of guaranty or warranty

of any corporation at common law or under any statute. [P.L. 1990-91, § 6.12; amended by P.L. 1998-73, § 59.]

§ 60. Indemnification of directors and officers.

(1) *Actions not by or in right of the corporation.* A corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit 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 or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of no contest, or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(2) *Actions by or in right of the corporation.* A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the corporation to procure judgment in its favor by reason of the fact that he is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and

reasonably entitled to indemnity for such expenses which the court shall deem proper.

(3) *When director or officer successful.* To the extent that a director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (1) or (2) of this section, or in the defense of a claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(4) *Payment of expenses in advance.* Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid in advance of the final disposition of such action, suit or proceeding as authorized by the board of directors in the specific case upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation as authorized in this section.

(5) *Indemnification pursuant to other rights.* The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

(6) *Continuation of indemnification.* The indemnification and advancement of expenses provided by, or granted pursuant to, this section shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(7) *Insurance.* A corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director or officer of the corporation or is or was serving at the request of the corporation as a director or officer against any liability asserted against him and incurred by him in such capacity whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section. [P.L. 1990-91, § 6.13; amended by P.L. 1998-73, § 60.]

§ 61. Standard of care to be observed by directors and officers.

Directors and officers shall discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which ordinarily prudent men

would exercise under similar circumstances in like positions. In discharging their duties, directors and officers, when acting in good faith, may rely upon financial statements of the corporation represented to them to be correct by the president or the officer of the corporation having charge of its books or accounts, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such corporation. [P.L. 1990-91, § 6.14.]

§ 62. Officers.

(1) *Appointment.* Every corporation shall have a secretary and may have such officers, however designated, as shall be provided for in the articles of incorporation or bylaws. Such officers shall be appointed by the board or in the manner directed by the articles of incorporation or the bylaws. Additional officers from time to time may be appointed in the manner outlined by the articles or the bylaws or as the board may determine are desirable or necessary to carry on the business of the corporation.

(2) *Qualifications.* Officers of the corporation may be natural persons, a corporation or other business entity.

(3) *Election by shareholders.* The articles of incorporation or the bylaws may provide that all officers or that specified officers shall be elected by the shareholders instead of by the board.

(4) *Terms.* Unless otherwise provided in the articles of incorporation or bylaws, all officers shall be elected or appointed to hold office until the meeting of the board following the next annual meeting of shareholders, or in the case of officers elected by the shareholders, until the next annual meeting of the shareholders.

(5) *Tenure.* Each officer shall hold office for the term for which he is elected or appointed, and until his successor has been elected or appointed and qualified.

(6) *Same person for more than one office.* Any two (2) or more offices may be held by the same person unless the articles of incorporation or bylaws otherwise provide.

(7) *Security for performance.* The board may require any officer to give security for the faithful performance of his duties.

(8) *Duties.* All officers as between themselves and the corporation shall have such authority and perform such duties with respect to the management of the corporation as may be provided in the bylaws, or to the extent not so provided, by the board.

(9) *Nationality and residence.* Officers may be of any nationality and need not be residents of the Republic. [P.L. 1990-91, § 6.15; amended by P.L. 1998-73, § 62; amended by P.L. 2000-18, § 62.]

§ 63. Removal of officers.

(1) *Method of removal.* Any officer elected or appointed by the board may be removed by the board with or without cause except as otherwise provided in the articles of incorporation or the bylaws. An officer elected by the shareholders may be removed, with or without cause, only by vote of the shareholders, but his authority to act as an officer may be suspended by the board for cause.

(2) *Effect of removal without cause.* The removal of an officer without cause shall be without prejudice to his contract rights, if any. The election or appointment of an officer shall not of itself create contract rights. [P.L. 1990-91, § 6.16.]

DIVISION 7:

SHAREHOLDERS

§ 64. Meetings of shareholders.

§ 65. Notice of meetings of shareholders.

§ 66. Waiver of notice.

§ 67. Action by shareholders without a meeting.

§ 68. Fixing record date.

§ 69. Proxies.

§ 70. Quorum of shareholders.

§ 71. Vote of shareholders required.

§ 72. Greater requirement as to quorum and vote of shareholders.

§ 73. List of shareholders at meetings.

§ 74. Qualification of voters.

§ 75. Voting trusts.

§ 76. Agreements among shareholders as to voting.

§ 77. Conduct of shareholders' meetings.

§ 78. Preemptive rights.

§ 79. Shareholders' derivative actions.

§ 64. Meetings of shareholders.

(1) *Place of meeting.* Meetings of shareholders may be held at such place, either within or without the Republic, as may be designated in the bylaws.

(2) *Time of meeting; business.* An annual meeting of shareholders shall be held for the election of directors on a date and at a time designated by or in the manner provided in the bylaws. Any other proper business may be transacted at the annual meeting.

(3) *Failure to hold meeting.* A failure to hold the annual meeting at the designated time or to elect a sufficient number of directors to conduct the business of the corporation shall not affect otherwise valid corporate acts or cause a dissolution of the corporation except as may be otherwise specifically provided in this Act. If the annual meeting for election of directors is not held on the date designated therefore, the directors shall cause the meeting to be held as soon thereafter as convenient. If there is a failure to hold the annual meeting for a period of ninety (90) days after the date designated therefore, or if no date has been designated for a period of thirteen (13) months after the organization of the corporation or after its last annual meeting, holders of not less than ten percent (10%) of the shares entitled to vote in an election of directors may, in writing, demand the call of a special meeting specifying the time thereof, which shall not be less than two (2) nor more than three (3) months from the date of such call. The secretary of the corporation upon receiving the written demand shall promptly give notice of such meeting, or if he fails to do so within five (5) business days thereafter, any shareholder signing such demand may give such notice. The shares of stock represented at such meeting, either in person or by proxy, and entitled to vote thereat, shall constitute a quorum, notwithstanding any provision of the articles of incorporation or bylaws to the contrary.

(4) *Special meetings.* Special meetings of the shareholders may be called by the board of directors or by such person or persons as may be authorized by the articles of incorporation or the bylaws. At any such special meeting, only such business may be transacted which is related to the purpose or purposes set forth in the notice required by section 65.

(5) *Ballots.* The articles of incorporation or the bylaws may provide that elections of directors shall be by written ballot. [P.L. 1990-91, § 7.1; amended by P.L. 1998-73, § 64.]

§ 65. Notice of meetings of shareholders.

(1) *Requirement.* Whenever under the provisions of this Act shareholders are required or permitted to take any action at a meeting, written notice shall state the place, date and hour of the meeting and, unless it is the annual meeting, indicate that it is being issued by or at the direction of the person or persons calling the meeting. Notice of a special meeting shall also state the purpose for which the meeting is called.

(2) *Manner of giving notice to registered shareholders.* A copy of the notice of any meeting shall be given personally or sent by mail, telegraph, cablegram, telex or

teleprinter, not less than fifteen (15) nor more than sixty (60) days before the date of the meeting, to each registered shareholder entitled to vote at such meeting. If mailed, such notice is given when deposited in the mail, directed to the shareholder at his address as it appears on the record of shareholders, or, if he shall have filed with the secretary of the corporation a written request that notices to him be mailed to some other address, then directed to him at such other address.

(3) *Manner of giving notice to bearer shareholders.* Notice of any meeting shall be given to shareholders of bearer shares, subject to the provisions of section 42 of this Act, in accordance with the provisions of section 11 of this Act. The notice shall include a statement of the conditions under which shareholders may attend the meeting and exercise the right to vote.

(4) *Adjournments.* When a meeting is adjourned to another time or place, it shall not be necessary, unless the meeting was adjourned for lack of a quorum or unless the bylaws require otherwise, to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and at the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. However, if after the adjournment the board fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record on the new record date entitled to notice under subsection (1) of this section. [P.L. 1990-91, § 7.2.]

§ 66. Waiver of notice.

Notice of meeting need not be given to any shareholder who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any shareholder at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by him. [P.L. 1990-91, § 7.3.]

§ 67. Action by shareholders without a meeting.

Any action required by this Act to be taken by a meeting of shareholders of a corporation, or any action which may be taken at a meeting of the shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the shareholders entitled to vote with respect to the subject matter thereof. Such consent shall have the same effect as an unanimous vote of shareholders, and may be stated as such in any articles or documents filed with a Registrar of Corporations under this Act. [P.L. 1990-91, § 7.4.]

§ 68. Fixing record date.

For the purpose of determining the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or to express consent to or dissent from any proposal without a meeting, or for the purpose of determining shareholders entitled to receive payment of any dividend or the allotment of any rights, or for the purpose of any other action, the bylaws may provide for fixing or, in the absence of such provision, the board may fix, in advance a date as the record date for any such determination of shareholders. Such date shall not be more than sixty (60) nor less than fifteen (15) days before the date of such meeting, nor more than sixty (60) days prior to any other action. Notice shall be given in the manner prescribed by section 11 of this Act, to holders of bearer shares concerning the record date by which such holders are to present their shares to the corporation in order to be considered "holders of record" entitled to vote or claim any other right or privilege of a shareholder. [P.L. 1990-91, § 7.5.]

§ 69. Proxies.

(1) *Voting by proxy authorized.* Every shareholder entitled to vote at a meeting of shareholders or to express consent or dissent without a meeting may authorize another person to act for him by proxy.

(a) Without limiting the manner in which a shareholder may authorize another person or persons to act for such shareholder as proxy pursuant to subsection (1) of this section, the following shall constitute a valid means by which a shareholder may grant such authority:

(i) A shareholder may execute a writing authorizing another person or persons to act for such shareholder as proxy. Execution may be accomplished by the shareholder or such shareholder's authorized officer, director, employee or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature.

(ii) A shareholder may authorize another person or persons to act for such shareholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram, or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that

any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the shareholder. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information upon which they relied.

(b) Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to subsection (1)(a) of this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(c) A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally.

(2) *Signing; period of validity; revocability.* Every proxy must be signed by the shareholder or his attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the shareholder executing it, except as otherwise provided in this section.

(3) *Revocation by death or incompetence of shareholder.* The authority of the holder of a proxy to act shall not be revoked by the incompetence or death of the shareholder who executed the proxy unless, before the authority is exercised, written notice of an adjudication of such incompetence or of such death is received by the corporate officer responsible for maintaining the list of shareholders.

(4) *Issue of proxy by record holder.* Except when other provisions shall have been made by written agreement between the parties, the record holder of shares which are held by a pledgee as security or which belong to another, upon demand therefore and payment of necessary expenses thereof, shall issue to the pledgee or to such owner of such shares a proxy to vote or take other action thereon.

(5) *Sale of vote forbidden.* A shareholder shall not sell his vote, or issue a proxy to vote to any person for any

sum of money or anything of value, except as authorized in this section, section 75 and section 76 of this division.

(6) *When proxy is irrevocable.* A proxy which is entitled “irrevocable proxy” and which states that it is irrevocable, is irrevocable if and as long as it is coupled with an interest sufficient to support an irrevocable power, including when it is held by any of the following or a nominee of any of the following:

(a) a pledgee;

(b) a person who has purchased or agreed to purchase the shares;

(c) a creditor of the corporation who extends or continues credit to the corporation in consideration of the proxy if the proxy states that it was given in consideration of such extension or continuation of credit, the amount thereof, and the name of the person extending or continuing credit;

(d) a person who has contracted to perform services as an officer of the corporation, if a proxy is required by the contract of employment, if the proxy states that it was given in consideration of such contract of employment, the name of the employee and the period of employment contracted for; or

(e) a person designated by or under an agreement under section 76 of this division.

(7) *When proxy stated to be irrevocable becomes revocable.* Notwithstanding a provision in a proxy stating that it is irrevocable, the proxy becomes revocable after the pledge is redeemed, or the debt of the corporation is paid, or the period of employment provided for in the contract of employment has terminated or the agreement under section 76 has been terminated, and become revocable, in a case provided for in subsection (6)(c) and (d) of this section, at the end of the period, if any, specified therein as the period during which it is irrevocable, or three (3) years after the date of the proxy, whichever period is less, unless the period of irrevocability is renewed from time to time by the execution of a new irrevocable proxy as provided in this section. This paragraph does not affect the duration of a proxy under subsection (2) of this section.

(8) *Purchaser without knowledge of irrevocable proxy.* A proxy may be revoked notwithstanding a provision making it irrevocable, by a purchaser of shares without knowledge of the existence of the provision unless the existence of the proxy and its irrevocability is noted conspicuously on the face or back of the certificate

representing such shares. [P.L. 1990-91, § 7.6; amended by P.L. 1998-73, § 69; amended by P.L. 2005-27, § 69.]

§ 70. Quorum of shareholders.

(1) *Number constituting quorum.* Unless otherwise provided in the articles of incorporation, a majority of shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no event shall a quorum consist of fewer than one-third of the shares entitled to vote at a meeting.

(2) *Withdrawal of shareholders after quorum present.* When a quorum is once present to organize a meeting, it is not broken by the subsequent withdrawal of any shareholders.

(3) *Adjournment by less than quorum.* The shareholders present may adjourn the meeting despite the absence of a quorum. [P.L. 1990-91, § 7.7.]

§ 71. Vote of shareholders required.

(1) *Election of directors.* Directors shall, except as otherwise required by this Act or by the articles of incorporation as permitted by this Act, be elected by a plurality of the votes cast at a meeting of shareholders by the holders of shares entitled to vote in the election.

(2) *Cumulative voting.* The articles of incorporation of any corporation may provide that in all elections of directors of such corporation each shareholder shall be entitled to as many votes as shall equal the number of votes which, except for such provisions as to cumulative voting, he would be entitled to cast for the election of directors with respect to his shares multiplied by the number of directors to be elected, and that he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two (2) or more of them as he may see fit. This right, when exercised, shall be termed cumulative voting.

(3) *Action other than election of directors.* Whenever any corporate action, other than the election of directors, is to be taken under this Act by vote of the shareholders, it shall, except as otherwise required or permitted by this Act or by the articles of incorporation as permitted by this Act, be authorized by a majority of the votes cast at a meeting of shareholders by the holders of shares entitled to vote thereon. [P.L. 1990-91, § 7.8; amended by P.L. 1998-73, § 71.]

§ 72. Greater requirement as to quorum and vote of shareholders.

(1) *Greater requirement permitted.* The articles of incorporation may contain provisions specifying either or both of the following:

(a) that the proportion of shares, or the proportion of shares of any class or series thereof, the holders of which shall be present in person or by proxy at any meeting of shareholders in order to constitute a quorum for the transaction of any business or of any specified item of business, including amendments to the articles of incorporation, shall be greater than the proportion prescribed by this Act in the absence of such provision;

(b) that the proportion of votes of the holders of shares, or of the holders of shares of any class or series thereof, that shall be necessary at any meeting of shareholders for the transaction of any business or of any specified item of business, including amendments to the articles of incorporation, shall be greater than the proportion prescribed by this Act in the absence of such provision.

(2) *Amendment of articles.* An amendment of the articles of incorporation which adds a provision permitted by this section or which changes or strikes out such a provision, shall be authorized at a meeting of shareholders by vote of the holders of two-thirds of all outstanding shares entitled to vote thereon, or of such greater proportion of shares, or class or series of shares, as may be provided specifically in the articles of incorporation for adding, changing, or striking out a provision permitted by this section. [P.L. 1990-91, § 7.9; amended by P.L. 1998-73, § 72.]

§ 73. List of shareholders at meetings.

A list of registered shareholders as of the record date, and of holders of bearer shares who as of the record date have qualified for voting, certified by the corporate officer responsible for its preparation or by a transfer agent, shall be produced at any meeting of shareholders upon request of any shareholder at the meeting or prior thereto. If the right to vote at any meeting is challenged, the inspector of election, or person presiding thereat, shall require such list of shareholders to be produced as evidence of the right of the persons challenged to vote at such meeting, and all persons who appear from such list to be shareholders entitled to vote thereat may vote at such meeting. [P.L. 1990-91, § 7.10.]

§ 74. Qualification of voters.

(1) *Right of shareholder.* Every registered shareholder as of the record date and every holder of bearer shares who, as of the record date, has qualified for voting, shall be entitled at every meeting of shareholders to one (1) vote for every share standing in his name, unless otherwise provided in the articles of incorporation.

(2) *Treasury shares.* Treasury shares are not shares entitled to vote or to be counted in determining the total number of outstanding shares.

(3) *Shares held by subsidiary corporation.* Shares of a parent corporation held by a subsidiary corporation are not shares entitled to vote or to be counted in determining the total number of outstanding shares.

(4) *Shares held by fiduciary.* Shares held by an administrator, executor, guardian, conservator, committee, or other fiduciary, except a trustee, may be voted by him, either in person or by proxy, without transfer of such shares into his name. Shares held by a trustee may be voted by him, either in person or by proxy, only after the shares have been transferred into his name as trustee or into the name of his nominee.

(5) *Shares held by receiver.* Shares held by or under the control of a receiver may be voted by him without the transfer thereof into his name if authority to do so is contained in an order of the court by which such receiver was appointed.

(6) *Pledged shares.* Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the corporation he has expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his proxy, may represent such stock and vote thereon. This section shall not be deemed to invalidate any irrevocable proxy which is not otherwise illegal.

(7) *Shares in name of another corporation.* Shares standing in the name of another domestic or foreign corporation or any type or kind may be voted by such officer, agent or proxy as the bylaws of such corporation may provide, or, in the absence of such provision, as the board of such corporation may determine.

(8) *Limitations on right to vote.* The articles of incorporation may provide, except as limited by section 35 of this Act, either absolutely or conditionally, that the holder of any designated class or series of shares shall not be entitled to vote, or it may otherwise limit or define the respective voting powers of the several classes or series of shares, and, except as otherwise provided in this Act, such provisions of such articles shall prevail, according to their tenor, in all elections and in all

proceedings, over the provisions of this Act which authorize any action by the shareholders. [P.L. 1990-91, § 7.11; amended by P.L. 1998-73, § 74.]

§ 75. Voting trusts.

(1) *Voting trusts authorized.* Any shareholder, under an agreement in writing, may transfer his shares to a voting trustee for the purpose of conferring the right to vote thereon for a period not exceeding ten (10) years upon the terms and conditions stated therein. The certificates for shares so transferred shall be surrendered and canceled and new certificates therefore issued to such trustee stating that they are issued under such agreement, and in the entry of such ownership in the record of the corporation that fact shall also be noted, and such trustee may vote the shares so transferred during the term of such agreement. At the termination of the agreement, the shares surrendered shall be reissued to the owner in accordance with the terms of the trust agreement.

(2) *Right of inspection by certificate holders.* The trustee shall keep available for inspection by holders of voting trust certificates at his office or at a place designated in such agreement or of which the holders of voting trust certificates have been notified in writing, correct and complete books and records of account relating to the trust, and a record containing the names and addresses of all persons who are holders of voting trust certificates and the number and class of shares represented by the certificates held by them and the dates when they became the owners thereof. The record may be in written form or any other form capable of being converted into written form within a reasonable time.

(3) *Records in office of corporation.* A duplicate of every such agreement shall be filed in the office of the corporation and it and the record of voting trust certificate holders shall be subject to the same right of inspection by a shareholder of record or a holder of a voting trust certificate, in person or by agent or attorney, as are the records for the corporation under section 81 of this Act. The shareholder or holder of a voting trust certificate shall be entitled to the remedies provided in section 84 of this Act.

(4) *Extension agreements.* At any time within six (6) months before the expiration of such voting trust agreement as originally fixed or as extended one (1) or more times under this subsection, one (1) or more holders of voting trust certificates may, by agreement in writing, extend the duration of such voting trust agreement, nominating the same or a substitute trustee, for an additional period not exceeding ten (10) years.

Such extension agreement shall not affect the rights or obligations of persons not parties thereto and shall in every respect comply with and be subject to all the provisions of this section applicable to the original voting trust agreement. [P.L. 1990-91, § 7.12.]

§ 76. Agreements among shareholders as to voting.

An agreement between two (2) or more shareholders, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the shares held by them shall be voted as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon by them. [P.L. 1990-91, § 7.13.]

§ 77. Conduct of shareholders' meetings.

(1) *Selection of inspectors.* Unless otherwise provided in the bylaws, the board, in advance of any shareholders' meeting, may appoint one (1) or more inspectors to act at the meeting or any adjournment thereof. If inspectors are not so appointed, the person presiding at a shareholders' meeting may, and on the request of any shareholder entitled to vote thereat shall, appoint one (1) or more inspectors. In case any person appointed fails to appear or act, the vacancy may be filled by appointment made by the board in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, before entering upon the discharge of his duties, shall take an oath faithfully to execute the duties of inspector at such meeting.

(2) *Duties of inspectors.* Unless otherwise provided in the bylaws, the inspectors shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots, or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the results, and do such acts as are proper to conduct the election or vote with fairness to all shareholders entitled to vote thereat. Unless waived by vote of the shareholders, the inspectors shall make a report in writing of any challenge, question or matter determined by them and execute a sworn certificate of any fact found by them. Any report or certificate made by them shall be prima facie evidence of the facts stated and of the vote as certified by them. [P.L. 1990-91, § 7.14.]

§ 78. Preemptive rights.

(1) *When shares are subject to preemptive rights.* Except as otherwise provided in the articles of incorporation or in this section, in the event of:

(a) the proposed issuance by the corporation of shares, whether or not of the same class as those previously held, which would adversely affect the voting rights or rights to current and liquidating dividends of such holders; or

(b) the proposed issuance by the corporation of securities convertible into or carrying an option to purchase shares referred to in subsection 1(a) of this section; or

(c) the granting by the corporation of any options or rights to purchase shares or securities referred to in subsections 1(a) or (b) of this section, the holders of shares of any class shall have the right, during a reasonable time and on reasonable terms, to be determined by the board, to purchase such shares or other securities, as nearly as practicable, in such proportion as would, if such preemptive right were exercised, preserve the relative rights to current and liquidating dividends and voting rights of such holders and at a price or prices no less favorable than the price at which such shares, securities, options or rights are to be offered to other holders. The holders of shares entitled to preemptive right, and the number of shares for which they have a preemptive right, shall be determined by fixing a record date in accordance with section 68 of this Act.

(2) *When shares are not subject to preemptive rights.* Except as otherwise provided in the articles of incorporation, shareholders shall have no preemptive right to purchase:

(a) shares or other securities issued to effect a merger or consolidation; or

(b) shares or other securities issued or optioned to directors, officers, or employees of the corporation as an incentive to service or continued service with the corporation pursuant to an authorization given by the shareholders, and by the vote of the holders of the shares entitled to exercise preemptive rights with respect to such shares; or

(c) shares issued to satisfy conversion or option rights previously granted by the corporation; or

(d) treasury shares; or

(e) shares or securities which are part of the shares or securities of the corporation authorized in the original articles of incorporation and are issued, sold or optioned within two (2) years from the date of filing such articles.

(3) *Notice to shareholders of rights.* The holders of shares entitled to the preemptive right shall be given prompt notice setting forth the period within which and the terms and conditions upon which such shareholders may exercise their preemptive right. Such notice shall be given personally or by mail at least fifteen (15) days prior to the expiration of the period during which the right may be exercised.

(4) *Exception.* Except as otherwise provided in the articles of incorporation, this section does not apply to any corporation whose common shares are listed on a securities exchange or admitted for trading on an inter-dealer quotation system. [P.L. 1990-91, § 7.15; amended by P.L. 2006-52, § 78, adding new section.]

§ 79. Shareholders' derivative actions.

(1) *Right to bring action.* An action may be brought in the right of a corporation to procure a judgment in its favor, by a holder of shares or of voting trust certificates of the corporation or of a beneficial interest in such shares or certificates.

(2) *Ownership requirement.* In any such action, it shall be made to appear that the plaintiff is such a holder at the time of bringing the action and that he was such a holder at the time of the transaction of which he complains, or that his shares or his interest therein devolved upon him by operation of law.

(3) *Effort by plaintiff to secure action by board.* In any such action in the Republic, the complaint shall set forth with particularity the efforts of the plaintiff to secure the initiation of such action by the board or the reasons for not making such effort.

(4) *Settlement of action.* Such action in the Republic shall not be discontinued, compromised or settled, without the approval of the High Court of the Republic. If the High Court of the Republic shall determine that the interests of the shareholders or any class thereof will be substantially affected by such discontinuance, compromise, or settlement, the High Court, in its discretion, may direct that notice, by publication or otherwise, shall be given to the shareholders or class thereof whose interests it determines will be so affected; if notice is so directed to be given, the High Court may determine which one (1) or more of the parties to the action shall bear the expense of giving such notice, in such amount as the High Court shall determine and find to be reasonable in the circumstances, and the amount of such expense shall be awarded as special costs of the action and recoverable in the same manner as statutory taxable costs.

(5) *Disposition of proceeds.* If the action in the Republic on behalf of the corporation was successful, in whole or in part or if anything was received by the plaintiff or a claimant as the result of a judgment, compromise or settlement of an action of claim, the court may award the plaintiff or claimant reasonable expenses, including reasonable attorney's fees, and shall direct him to account to the corporation for the remainder of the proceeds so received by him.

(6) *Security for expenses.* In any action in the Republic authorized by this section, if the plaintiff holds less than five percent (5%) of any class of the outstanding shares or holds voting trust certificates or a beneficial interest in shares representing less than five percent (5%) of any class of such shares, then unless the shares, voting trust certificates or beneficial interest of such plaintiff has a fair value in excess of fifty thousand dollars (U.S. \$50,000), the corporation in whose right such action is brought shall be entitled at any stage of the proceedings before final judgment to require the plaintiff to give security for the reasonable expenses, including attorney's fees, which may be incurred by it in connection with such action, in such amount as the court having jurisdiction of such action shall determine upon the termination of such action. The amount of such security may thereafter from time to time be increased or decreased in the discretion of the court having jurisdiction of such action upon showing that the security provided has or may become inadequate or excessive. [P.L. 1990-91, § 7.16.]

DIVISION 8:

CORPORATE RECORDS AND REPORTS

§ 80. Requirement for keeping books of account, minutes and records of shareholders.

§ 81. Shareholders' right to inspect books and records.

§ 82. Directors' right of inspection.

§ 83. List of directors and officers.

§ 84. Enforcement of right of inspection.

§ 85. Annual report.

§ 80. Requirement for keeping books of account, minutes and records of shareholders.

(1) *Books of account and minutes.* Every domestic corporation shall keep correct and complete books and records of account and shall keep minutes of all meetings of shareholders, of actions taken on consent by shareholders, of all meetings of the board of directors, of actions taken on consent by directors and of meetings of the executive committee, if any. A resident domestic

corporation shall keep such books and records in the Republic.

(2) *Records of shareholders.* Every domestic corporation shall keep a record containing the names and addresses of all registered shareholders, the number and class of shares held by each and the dates when they respectively became the owners of record thereof. In addition, any such corporation, which issues bearer shares subject to the provisions of section 42 of this Act, shall maintain a record of all certificates issued in bearer form, including the number, class and dates of issuance of such certificates. A resident domestic corporation shall keep the records required to be maintained by this subsection at the office of the corporation in the Republic or at the office of its agent and Registrar in the Republic.

(3) *Forms of records.* Any records maintained by a corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or be in the form of, punch cards, magnetic tape, photographs, microphotographs or any other information storage device, provided that the records so kept can be converted into clearly legible written form within a reasonable time. Any corporation shall so convert any records so kept upon the request of any person entitled to inspect the same. When records are kept in such manner, a clearly legible written form produced from the cards, tapes, photographs, microphotographs or other information storage device shall be admissible in evidence, and accepted for all other purposes, to the same extent as an original written record of the same information would have been, provided the written form accurately portrays the record. [P.L. 1990-91, § 8.1; amended by P.L. 2000-18, § 80.]

§ 81. Shareholders' right to inspect books and records.

(1) *Right stated.* Any shareholder or holder of a voting trust certificate in person or by an attorney or other agent, may during the usual hours of business inspect, for a purpose reasonably related to his interests as a shareholder, or as the holder of a voting trust certificate, and make copies or extracts from the share register, books of account, and minutes of all proceedings.

(2) *Ground for refusal of right.* Any inspection authorized by subsection (1) of this section may be denied to a shareholder or other person who within five (5) years sold or offered for sale a list of shareholders of a corporation or aided or abetted any person in procuring for sale any such list of shareholders or who seeks such inspection for a purpose which is not in the interest of a business other than the business of the corporation or

who refuses to furnish an affidavit attesting to this right to inspect under this section.

(3) *Limitation of right forbidden.* The right of inspection stated by this section may not be limited in the articles or bylaws. [P.L. 1990-91, § 8.2.]

§ 82. Directors' right of inspection.

Every director shall have the absolute right at any reasonable time to inspect all books, records, documents of every kind, and the physical properties of the corporation, domestic or foreign, of which he is a director, and also of its subsidiary corporations, domestic or foreign. Such inspection by a director may be made in person or by agent or attorney, and the right of inspection includes the right to make extracts. In the case of authorized foreign corporations this right extends only to such books, records, documents and properties of such corporations as are kept or located in the Republic. [P.L. 1990-91, § 8.3.]

§ 83. List of directors and officers.

If a shareholder or creditor of a resident domestic corporation, in person or by his attorney or agent, or a representative of either of the Registrars of Corporations or other government official makes a written demand on such corporation to inspect a current list of its directors and officers and their residence addresses, the corporation shall, within two (2) business days after receipt of the demand and for a period of one (1) week thereafter, make the list available for such inspection at its office during usual business hours. [P.L. 1990-91, § 8.4.]

§ 84. Enforcement of right of inspection.

Upon refusal of a lawful demand for inspection of records required to be maintained in the Republic, the person making the demand may apply to the High Court, upon such notice as the court may direct, for an order directing the corporation to show cause why an order should not be granted permitting such inspection by the applicant. Upon the return day of the order to show cause, the court shall hear the parties summarily, by affidavit or otherwise, and if it appears that the applicant is qualified and entitled to such inspection, the court shall grant an order compelling such inspection and awarding such further relief as the court may seem just and proper. On order of the court issued under this section, all officers and agents of the corporation shall produce to the inspectors or accountant so appointed all books and documents in their custody or power, under penalty of punishment for contempt of court. All expenses of the inspection shall be defrayed by the applicant unless the

court orders them to be paid or shared by the corporation. [P.L. 1990-91, § 8.5.]

§ 85. Annual report.

Upon the written request of any person who shall have been a shareholder of record for at least six (6) months immediately preceding his request, or of any person holding, or thereunto authorized in writing by the holders of, at least five percent (5%) of any class of the outstanding shares, the corporation shall give or mail to such shareholder an annual balance sheet and profit and loss statement for the preceding fiscal year, and, if any interim balance sheet or profit and loss statement has been distributed to its shareholders or otherwise made available to the public, the most recent such interim balance sheet or profit and loss statement. The corporation shall be allowed a reasonable time to prepare such annual balance sheet and profit and loss statement. [P.L. 1990-91, § 8.6.]

DIVISION 9:

**AMENDMENTS OF ARTICLES
OF INCORPORATION**

- § 86. Right to amend articles of incorporation.**
- § 87. Reduction of stated capital by amendment.**
- § 88. Procedure for amendment.**
- § 89. Class voting on amendments.**
- § 90. Articles of amendment.**
- § 91. Effectiveness of amendment.**
- § 92. Right of dissenting shareholders to payment.**
- § 93. Restated articles of incorporation.**

§ 86. Right to amend articles of incorporation.

A corporation may amend its articles of incorporation from time to time in any and as many respects as may be desired, provided such amendment contains only such provisions as might lawfully be contained in original articles of incorporation filed at the time of making such amendment. [P.L. 1990-91, § 9.1.]

§ 87. Reduction of stated capital by amendment.

Reduction of stated capital which is not authorized by action of the board may be effected by an amendment of the articles of incorporation, but no reduction of stated capital shall be made by amendment unless after such reduction the stated capital exceeds the aggregate preferential amount payable upon involuntary liquidation upon all issued shares having preferential rights in assets plus the par value of all other issued shares with par value. [P.L. 1990-91, § 9.2.]

§ 88. Procedure for amendment.

(1) *General method of amending.* Amendment of the articles of incorporation may be authorized by vote of the holders of a majority of all outstanding shares entitled to vote thereon at a meeting of shareholders or by written consent of all shareholders entitled to vote thereon.

(2) *Certain amendments may be approved by board.* Alternatively, any one (1) or more of the following amendments may be approved by the board:

(a) to specify or change the location of the office or registered address of the corporation;

(b) to make, revoke or change the designation of a registered agent, or to specify or change the address of its registered agent.

(3) *Amendment by incorporators.* The articles of incorporation may be amended by consent in writing of all the incorporators provided the incorporators verify that no shares have been issued.

(4) *Amendment by subscribers.* The articles of incorporation may be amended by consent in writing of the holders of all outstanding subscription rights to shares of the corporation provided such holders verify that no shares have been issued.

(5) *Other provisions for amendment unaffected.* This section shall not alter the vote required under any other section for the adoption of an amendment referred to therein, nor alter the authority of the board to authorize amendments under any other section. [P.L. 1990-91, § 9.3.]

§ 89. Class voting on amendments.

Notwithstanding any provisions in the articles of incorporation, the holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, and in addition to the authorization of an amendment by vote of the holders of a majority of all outstanding shares entitled to vote thereon, the amendment shall be authorized by vote of the holders of a majority of all outstanding shares of the class if the amendment would increase or decrease the aggregate number of authorized shares of such class, increase or decrease the par value of the shares of such class, or alter or change the powers, preferences or special rights of the shares of such class so as to affect them adversely. If any proposed amendment would alter or change the powers, preferences, or special rights of one (1) or more series of any class so as to affect them adversely, but shall not so affect the entire class, then only the shares of the series

so affected by the amendment shall be considered a separate class for the purposes of this section. [P.L. 1990-91, § 9.4.]

§ 90. Articles of amendment.

The articles of amendment shall be executed and acknowledged in accordance with provisions of section 5 of this Act and shall set forth:

(a) the name of the corporation;

(b) the date its articles of incorporation were filed with a Registrar or Deputy Registrar of Corporations;

(c) each section affected thereby;

(d) if any such amendment provides for a change or elimination of issued shares and, if the manner in which the same shall be effected is not set forth in the articles of amendment, then a statement of the manner in which the same shall be effected shall be included in or annexed to the articles of amendment or furnished without cost to any shareholder who requests a copy of such statement;

(e) if any amendment reduces stated capital, then a statement of the manner in which the same is effected and the amounts from which and to which stated capital is reduced; and

(f) the manner in which the amendment of the articles of incorporation was authorized.

The articles of amendment shall be filed with a Registrar or Deputy Registrar of Corporations in accordance with the provisions of section 5 of this Act. [P.L. 1990-91, § 9.5.]

§ 91. Effectiveness of amendment.

(1) *Time when effective.* Upon filing of the articles of amendment with a Registrar or Deputy Registrar of Corporations, the amendment shall become effective as of the filing date stated thereon and the articles of incorporation shall be deemed to be amended accordingly.

(2) *Limitations on effect of amendment.* No amendment shall affect any existing cause of action in favor of or against the corporation, or any pending suit to which it shall be party, or the existing rights of persons other than shareholders; and in the event the corporation name shall be changed, no suit brought by or against the corporation under its former name shall abate for that reason. [P.L. 1990-91, § 9.6.]

§ 92. Right of dissenting shareholders to payment.

A holder of any adversely affected shares who does not vote on or consent in writing to an amendment in the articles of incorporation shall, subject to and by complying with the provisions of section 101 of this Act, have the right to dissent and to receive payment for such shares, if the articles of amendment:

- (a) alter or abolish any preferential right of any outstanding shares having preferences; or
- (b) create, alter, or abolish any provision or right in respect of the redemption of any outstanding shares; or
- (c) alter or abolish any preemptive right of such holder to acquire shares or other securities; or
- (d) exclude or limit the right of such holder to vote on any matter, except as such right may be limited by the voting rights given to new shares then being authorized of any existing or new class. [P.L. 1990-91, § 9.7.]

§ 93. Restated articles of incorporation.

(1) *Procedures for integrating document.* A corporation may, whenever desired, integrate into a single instrument all of the provisions of its articles of incorporation which are then in effect and operative as a result of there having theretofore been filed with a Registrar of Corporations one (1) or more articles or other instruments pursuant to this Act, and it may at the same time also further amend its articles of incorporation by adopting restated articles of incorporation.

(2) *Adoption of restated articles.* If the restated articles of incorporation merely restate and integrate but do not further amend the articles of incorporation, as theretofore amended or supplemented by any instrument that was filed pursuant to this Act, it may be adopted by the board of directors without a vote of the shareholders, or it may be proposed by the directors and submitted by them to the shareholders for adoption, in which case the procedure and vote required by section 88(1) of this division for amendment of the articles of incorporation shall be applicable. If the restated articles of incorporation restate and integrate and also further amend in any respect the articles of incorporation, as theretofore amended or supplemented, it shall be proposed by the directors and adopted by the shareholders in the manner and by the vote prescribed by section 88(1) of this division.

(3) *Form of restated articles.* Restated articles of incorporation shall be specifically designated as such in their

heading. They shall state, either in their heading or in an introductory paragraph, the corporation's present name, and, if it has been changed, the name under which it was originally incorporated, and the date of filing of its original articles of incorporation with a Registrar of Corporations. Restated articles of incorporation shall also state that they were duly adopted in accordance with this section. If they were adopted by the board of directors without a vote of the shareholders, they shall state that they only restate and integrate and do not further amend the provisions of the corporation's articles of incorporation, as theretofore amended or supplemented, and that there is no discrepancy between those provisions and the provisions of the restated articles. Restated articles of incorporation may omit (a) such provisions of the original articles of incorporation which named the incorporator or incorporator(s), the initial board of directors and the original subscribers for shares, and (b) such provisions contained in any amendment to the articles of incorporation as were necessary to effect a change, exchange, reclassification, subdivision, combination or cancellation of stock, if such change, exchange, reclassification, subdivision, combination or cancellation has become effective. Any such omissions shall not be deemed a further amendment.

(4) *Execution and filing.* Restated articles of incorporation shall be executed, acknowledged and filed in accordance with section 5 of this Act. Upon their filing with a Registrar of Corporations, the original articles of incorporation, as theretofore amended or supplemented, shall be superseded; thenceforth, the restated articles of incorporation, including any further amendments or changes made thereby, shall be the articles of incorporation of the corporation, but the original date of incorporation shall remain unchanged.

(5) *Effect of amended and restated articles.* Any amendment or change effected in connection with the restatement and integration of the articles of incorporation shall be subject to any other provision of this Act, not inconsistent with this section, which would apply if separate articles of amendment were filed to effect such amendment or change. [P.L. 1990-91, § 9.8; amended by P.L. 2005-27, § 93.]

DIVISION 10:

MERGER OR CONSOLIDATION

- § 94. Definitions.**
- § 95. Merger or consolidation of domestic corporations.**
- § 96. Merger of subsidiary corporations.**
- § 97. Effect of merger or consolidation.**
- § 98. Merger or consolidation of domestic and**

foreign corporations.

§ 99. Sale, lease, exchange or other disposition of assets.

§ 100. Right of dissenting shareholder to receive payment for shares.

§ 101. Procedure to enforce shareholder's right to receive payment for shares.

§ 94. Definitions.

Whenever used in this division:

(a) "merger" means a procedure whereby any two (2) or more corporations merge into a single corporation, which is any one (1) of the constituent corporations.

(b) "consolidation" means a procedure whereby any two (2) or more corporations consolidate into a new corporation formed by the consolidation.

(c) "constituent corporation" means an existing corporation that is participating in the merger or consolidation with one (1) or more other corporations.

(d) "surviving corporation" means the new corporation into which one (1) or more constituent corporations are merged.

(e) "consolidated corporation" means the new corporation into which two (2) or more constituent corporations are consolidated. [P.L. 1990-91, § 10.1.]

§ 95. Merger or consolidation of domestic corporations.

(1) *Power stated.* Two (2) or more domestic corporations may merge or consolidate as provided in this division.

(2) *Plan of merger or consolidation.* The board of each corporation proposing to participate in a merger or consolidation shall approve a plan of merger or consolidation setting forth:

(a) the name of each constituent corporation, and if the name of any of them has been changed, the name under which it was formed, and the name of the surviving corporation, or the name, or the method of determining it, of the consolidated corporation;

(b) as to each constituent corporation, the designation and number of outstanding shares of each class and series, specifying the classes and series entitled to vote and further specifying each class and series, if any, entitled to vote as a class;

(c) the terms and conditions of the proposed merger or consolidation, including the manner and basis of converting the shares of each constituent corporation into shares, bonds or other securities of the surviving or consolidated corporation, or the cash or other consideration to be paid or delivered in exchange for shares of each constituent corporation, or a combination thereof;

(d) in case of merger, a statement of any amendment in the articles of incorporation of the surviving corporation to be effected by such merger; in case of consolidation all statements required to be included in articles of incorporation for a corporation formed under this Act, except statements as to facts not available at the time the plan of consolidation is approved by the board;

(e) such other provisions with respect to the proposed merger or consolidation as the board considers necessary or desirable.

(3) *Authorization by shareholders.* The board of each constituent corporation, upon approving such plan of merger or consolidation, shall submit such plan to a vote of shareholders of each such corporation in accordance with the following:

(a) notice of the meeting, accompanied by a copy of the plan of merger or consolidation, shall be given to each shareholder of record, whether or not entitled to vote;

(b) the plan of merger or consolidation shall be authorized at a meeting of shareholders by vote of the holders of a majority of outstanding shares entitled to vote thereon, unless any class of shares of any such corporation is entitled to vote thereon as a class, in which event, as to such corporation, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of a majority of the shares of total shares entitled to vote thereon. The shareholders of the outstanding shares of a class shall be entitled to vote as a class if the plan of merger or consolidation contains any provisions which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class.

(4) *Articles of merger or consolidation.* After approval of the plan of merger or consolidation by the board and shareholders of each constituent corporation, the articles of merger or consolidation shall be executed by each corporation in accordance with section 5 of this Act and shall set forth:

(a) the plan of merger or consolidation, and, in case of consolidation, any statement required to be included in the articles of incorporation for a corporation formed under this Act but which was omitted under subsection (2)(d) of this section;

(b) the date when the articles of incorporation of each constituent corporation were filed with a Registrar of Corporations; and

(c) the manner in which the merger or consolidation was authorized with respect to each constituent corporation.

(5) *Filing.* The articles of merger or articles of consolidation shall be filed with a Registrar or Deputy Registrar of Corporations in accordance with the provisions of section 5 of this Act.

(6) *Payment of fees before merger or consolidation.* No corporation shall be merged or consolidated under this division until all fees to the Registrar of Corporations and Registered Agent due or which would be due or assessable for the entire calendar month during which the merger or consolidation becomes effective have been paid by the corporation. [P.L. 1990-91, § 10.2; amended by P.L. 2000-18, § 95.]

§ 96. Merger of subsidiary corporations.

(1) *Without approval of shareholders authorized.* Any domestic corporation owning at least ninety percent (90%) of the outstanding shares of each class of another domestic corporation or corporations may merge such other corporation or corporations into itself without the authorization of the shareholders of any such corporation. Its board shall approve a plan of merger, setting forth:

(a) the name of each subsidiary corporation to be merged and the name of the surviving corporation, and if the name of any of them has been changed, the name under which it was formed;

(b) the designation and number of outstanding shares of each class of each subsidiary corporation to be merged and the number of such shares of each class owned by the surviving corporation;

(c) the terms and conditions of the proposed merger, including the manner and basis of converting the shares of each subsidiary corporation to be merged not owned by the surviving corporation, into shares, bonds or other securities of the surviving corporation, or the case or other consideration to be paid or delivered in

exchange for shares of each such subsidiary corporation, or a combination thereof; and

(d) such other provisions with respect to the proposed merger as the board considers necessary or desirable.

(2) *Plan of merger.* A copy of such plan of merger or an outline of the material features thereof shall be delivered, personally or by mail, to all holders of shares of each subsidiary corporation to be merged not owned by the surviving corporation, unless the giving of such copy or outline has been waived by such holders.

(3) *Filing of articles of merger.* The surviving corporation shall deliver duplicate originals of the articles of merger to a Registrar or Deputy Registrar of Corporations. The articles shall set forth:

(a) the plan of merger;

(b) the dates when the articles of incorporation of each constituent corporation were filed with a Registrar or Deputy Registrar of Corporations; and

(c) if the surviving corporation does not own all the shares of each subsidiary corporation to be merged, either the date of the giving to holders of shares of each such subsidiary corporation not owned by the surviving corporation of a copy of the plan of merger or an outline of the material features thereof, or a statement that the giving of such copy or outline has been waived, if such is the case.

The articles of merger shall be filed with a Registrar or Deputy Registrar of Corporations in accordance with the provisions of section 5 of this Act. [P.L. 1990-91, § 10.3.]

§ 97. Effect of merger or consolidation.

(1) *When effective.* Upon the filing of the articles of merger or consolidation by a Registrar or Deputy Registrar of Corporations or on such date subsequent thereto, not to exceed thirty (30) days, as shall be set forth in such articles, the merger or consolidation shall be effective.

(2) *Effects stated.* When such merger or consolidation has been effected:

(a) Such surviving or consolidated corporation shall thereafter consistent with its articles of incorporation as altered or established by the merger or consolidation, possess all the rights, privileges, immunities, powers and purposes of each of the constituent corporations.

(b) All the property, real and personal, including subscriptions to shares, causes of action and every other asset of each of the constituent corporations, shall vest in such surviving or consolidated corporation without further act or deed.

(c) The surviving or consolidated corporation shall assume and be liable for all the liabilities, obligations and penalties of each of the constituent corporations. No liability or obligation due or to become due, claim or demand for any cause existing against any such corporation, or any shareholder, officer or director thereof, shall be released or impaired by such merger or consolidation. No action or proceeding, whether civil or criminal, then pending by or against any such constituent corporation, or any shareholder, officer or director thereof, shall abate or be discontinued by such merger or consolidation, but may be enforced, prosecuted, settled or compromised as if such merger or consolidation had not occurred, or such surviving or consolidated corporation may be substituted in such action or special proceeding in place of any constituent corporation.

(d) In the case of a merger, the articles of incorporation of the surviving corporation shall be automatically amended to the extent, if any, that changes in its articles of incorporation are set forth in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required and permitted to be set forth in articles of incorporation of a corporation formed under this Act, shall be its articles of incorporation.

(e) Unless otherwise provided in the articles of merger or consolidation, a constituent corporation which is not the surviving corporation or the consolidated corporation, ceases to exist and is dissolved. [P.L. 1990-91, § 10.4.]

§ 98. Merger or consolidation of domestic and foreign corporations.

(1) *Method.* One (1) or more foreign corporations and one (1) or more domestic corporations may be merged or consolidated with each other in the following manner, if such merger or consolidation is permitted by the laws of the jurisdiction under which each such foreign corporation is organized:

(a) each domestic corporation shall comply with the provisions of this Act with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply

with the applicable provisions of the laws of the jurisdiction under which it is organized;

(b) if the surviving or consolidated corporation is to be governed by the laws of any jurisdiction other than this jurisdiction, it shall comply with the provisions of this Act with respect to foreign corporations if it is to transact business in this jurisdiction, and in every case it shall file with the appropriate Registrar or Deputy Registrar of Corporations:

(i) an agreement that it may be served with process in the Republic in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or consolidated corporation;

(ii) an irrevocable appointment of the Government's designee as its agent to accept service of process in any such proceeding;

(iii) an agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this Act with respect to the rights of dissenting shareholders; and

(iv) a certificate of merger or consolidation issued by the appropriate official of the foreign jurisdiction.

(2) *Effect.* The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations if the surviving or consolidated corporation is to be governed by the laws of this jurisdiction. If the surviving or consolidated corporation is to be governed by the laws of any jurisdiction other than the Republic, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other jurisdiction provide otherwise.

(3) *Effective date.* The effective date of a merger or consolidation in cases where the surviving or consolidated corporation is to be governed by the laws of any jurisdiction other than this jurisdiction shall be determined by the filing requirements and laws of such other jurisdiction.

(4) *Merger of subsidiary corporation.* The procedure for the merger of a subsidiary corporation or corporations under section 96 of this division shall be available where

either a subsidiary corporation or the corporations owning at least ninety percent (90%) of the outstanding shares of each class of a subsidiary is a foreign corporation, and such merger is permitted by the laws of the jurisdiction under which such foreign corporation is incorporated. [P.L. 1990-91, § 10.5.]

§ 99. Sale, lease, exchange or other disposition of assets.

(1) *Method of authorizing.* A sale, lease, exchange or other disposition of all or substantially all the assets of a corporation, if not made in the usual or regular course of the business actually conducted by such corporation, shall be authorized only in accordance with the following procedure:

(a) the board shall approve the proposed sale, lease, exchange or other disposition and direct its submission to a vote of the shareholders;

(b) notice of meeting shall be given to each shareholder of record, whether or not entitled to vote;

(c) at such meeting the shareholders may authorize such sale, lease, exchange or other disposition and may fix or may authorize the board to fix any or all terms and conditions thereof and the consideration to be received by the corporation therefore. Such authorization shall require the affirmative vote of the holders of two-thirds of the shares of the corporation entitled to vote thereon unless any class of shares is entitled to vote thereon as a class, in which event such authorization shall require the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon.

(2) *Mortgage or pledge of corporate property.* The board may authorize any mortgage or pledge of, or the creation of a security interest in, all or any part of the corporate property, or any interest therein, wherever situated. Unless the articles of incorporation provide otherwise, no vote or consent of shareholders shall be required to authorize such action by the board. [P.L. 1990-91, § 10.6.]

§ 100. Right of dissenting shareholder to receive payment for shares.

Any shareholder of a corporation shall have the right to dissent from any of the following corporate actions and receive payment of the fair value of his shares:

(a) any plan of merger or consolidation to which the corporation is a party; or

(b) any sale or exchange of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution, but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all the net proceeds of sales be distributed to the shareholders in accordance with their respective interests within one (1) year after the date of sale; provided however,

(c) that the right of a dissenting shareholder to receive payment of the fair value of his shares shall not be available under this section if for the shares of any class or series of stock, which shares or depository receipts in respect thereof, at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting of shareholders to act upon the agreement of merger or consolidation, were either (i) listed on a securities exchange or admitted for trading on an interdealer quotation system or (ii) held of record by more than 2,000 holders. The right of a dissenting shareholder to receive payment of the fair value of his or her shares shall not be available under this section for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the shareholders of the surviving corporation as provided in Sections 96 and 98 (4) of this Division. [P.L. 1990-91, § 10.7; P.L. 2009-15, § 100]

§ 101. Procedure to enforce shareholder's right to receive payment for shares.

(1) *Objection by shareholder to proposed corporate action.* A shareholder intending to enforce his rights under section 92 or 100 of this Act to receive payment for his shares if the proposed corporate action referred to therein is taken shall file with the corporation, before the meeting of shareholders at which the action is submitted to a vote, or at such meeting but before the vote, written objection to the action. The objection shall include a statement that he intends to demand payment for his shares if the action is taken. Such objection is not required from any shareholder to whom the corporation did not give notice of such meeting in accordance with this Act or where the proposed action is authorized by written consent of shareholders without a meeting.

(2) *Notice by corporation to shareholders of authorized action.* Within twenty (20) days after the shareholders' authorization date, which term as used in this section

means the date on which the shareholders' vote authorizing such action was taken, or the date on which such consent without a meeting was obtained from the requisite shareholders, the corporation shall give written notice of such authorization or consent by registered mail to each shareholder who filed written objections of from whom written objection was not required, excepting any who voted for or consented in writing to the proposed action.

(3) *Notice by shareholder of election to dissent.* Within twenty (20) days after the giving of notice to him, any shareholder to whom the corporation was required to give such notice and who elects to dissent shall file with the corporation a written notice of such election, stating his name and residence address, the number and classes of shares as to which he dissents, and a demand for payment of the fair value of his shares. Any shareholder who elects to dissent from a merger under section 96 shall file a written notice of such election to dissent within twenty (20) days after the giving to him of a copy of the plan of merger or an outline of the material features thereof under section 96 of this division.

(4) *Dissent as to fewer than all shares.* A shareholder may not dissent as to fewer than all the shares, held by him of record, that he owns beneficially. A nominee or fiduciary may not dissent on behalf of any beneficial owner as to fewer than all the shares of such owner held of record by such nominee or fiduciary.

(5) *Effect of filing notice of election to dissent.* Upon filing a notice of election to dissent, the shareholder shall cease to have any of the rights of a shareholder except the right to be paid the fair value of his shares.

(6) *Offer by corporation to dissenting shareholder to pay for shares.* Within seven (7) days after the expiration of the period within which shareholders may file their notices of election to dissent, or within seven (7) days after the proposed corporate action is consummated, which ever is later, the corporation or, in the case of a merger or consolidation, the surviving or consolidated corporation, shall make a written offer by registered mail to each shareholder who has filed such notice of election to pay for his shares at a specified price which the corporation considers to be their fair value. If within thirty (30) days after the making of such offer, the corporation making the offer and any shareholder agree upon the price to be paid for his shares, payment therefor shall be made within thirty (30) days after the making of such offer upon the surrender of the certificates representing such shares.

(7) *Procedure on failure of corporation to pay dissenting shareholder.* The following procedures shall apply if the corporation fails to make such offer within such period of seven (7) days, or if it makes the offer and any dissenting shareholder fails to agree with it within the period of thirty (30) days thereafter upon the price to be paid for shares owned by such shareholder:

(a) The corporation shall, within twenty (20) days after the expiration of whichever is applicable of the two (2) periods last mentioned, institute a special proceeding in the High Court of the Republic in which the office of the corporation is located to determine the rights of dissenting shareholders and to fix the fair value of their shares. In the case of Marshall Islands corporations whose shares are traded on a national or local securities exchange located outside of the Marshall Islands, such proceedings may be instituted in any court in the country where the shares of the company are primarily traded. If, in the case of merger or consolidation, the surviving or consolidated corporation is a foreign corporation without an office in the Marshall Islands, such proceeding shall be brought in the country where the office of the domestic corporation, whose shares are to be valued, was located.

(b) If the corporation fails to institute such proceedings within such period of twenty (20) days, any dissenting shareholder may institute such proceeding for the same purpose not later than thirty (30) days after the expiration of such twenty (20) day period. If such proceeding is not instituted within such thirty (30) day period, all dissenter's rights shall be lost unless the court, for good cause shown, shall otherwise direct.

(c) All dissenting shareholders, excepting those who, as provided in subsection (6) of this section have agreed with the corporation upon the price to be paid for their shares, shall be made parties to such proceeding, which shall have the effect of an action quasi in rem against their shares. The corporations shall serve a copy of the petition in such proceeding upon each dissenting shareholder in the manner provided by law for the service of a summons.

(d) The court shall determine whether each dissenting shareholder, as to whom the corporation requests the court to make such a determination, is entitled to receive payment for his shares. If the corporation does not request any such determination or if the court finds that any dissenting shareholder is so entitled, it shall proceed to fix the value of the shares, which for the purposes of this section, shall be the fair value as of the close of business on the day prior to the shareholder's

authorization date, excluding any appreciation or depreciation directly or indirectly induced by such corporate action or its proposal. The court may, if it so elects, appoint an appraiser to receive evidence and recommend a decision on the question of fair value.

(e) The final order in the proceeding shall be entered against the corporation in favor of each dissenting shareholder who is a party to the proceeding and is entitled thereto for the value of his shares so determined. Within sixty (60) days after the final determination of the proceeding, the corporation shall pay to each dissenting shareholder the amount found to be due him, upon surrender of the certificates representing his shares.

(8) *Disposition of shares acquired by the corporation.* Shares acquired by the corporation upon the payment of the agreed value therefore or the amount due under the final order, as provided in this section, shall become treasury shares or be canceled except that, in the case of a merger or consolidation, they may be held and disposed of as the plan of merger or consolidation may otherwise provide.

(9) *Right to receive payment by dissenting shareholder as exclusive.* The enforcement by a shareholder of his right to receive payment for his shares in the manner provided herein shall exclude the enforcement by such shareholder of any right to which he might otherwise be entitled by virtue of share ownership, except that this section shall not exclude the right of such shareholder to bring or maintain an appropriate action to obtain relief on the ground that such corporate action will be or is illegal or fraudulent as to such shareholder. [P.L. 1990-91, § 10.8; amended by P.L. 1998-73, § 101.]

DIVISION 11:

DISSOLUTION

§ 102. **Manner of effecting dissolution.**

§ 103. **Judicial dissolution.**

§ 104. **Dissolution on failure to pay annual registration fee or appoint or maintain registered agent.**

§ 105. **Winding up affairs of corporation after dissolution.**

§ 106. **Settlement of claims against corporation.**

§ 102. **Manner of effecting dissolution.**

(1) *Meeting of shareholders.* Except as otherwise provided in its articles of incorporation, a corporation may be dissolved if, at a meeting of shareholders, the holders of two-thirds of all outstanding shares entitled to vote on

a proposal to dissolve, by resolution consent that the dissolution shall take place.

(2) *Consent without meeting.* Whenever all the shareholders entitled to vote on a proposal to dissolve shall consent in writing to dissolution, no meeting of shareholders will be necessary.

(3) *Articles of dissolution; contents, filing.* Articles of dissolution shall be signed and filed with the appropriate Registrar or Deputy Registrar of Corporations in accordance with the provisions of section 5 of this Act. The articles of dissolution shall set forth the name of the corporation, the date of filing of the articles of incorporation, that the corporation elects to dissolve, the manner in which the dissolution was authorized by the shareholders, a statement that the directors shall be trustees of the corporation for the purpose of winding up the affairs of the corporation, and a listing of either the names and addresses of the directors and officers or the address of the corporation and the name and address of the corporation's legal representative(s) for the purpose of winding up its affairs.

(4) *Time when effective.* The dissolution shall become effective as of the filing date stated on the articles of dissolution.

(5) *Dissolution before issuance of shares or beginning of business; procedure.* If a corporation has not issued shares or has not commenced the business for which the corporation was organized, a majority of the incorporators, or, if directors were named in the articles of incorporation or have been elected, a majority of the directors, may surrender all of the corporation's rights and franchises by filing in the office of the Registrar of Corporations a certificate, executed and acknowledged by a majority of the incorporators or directors, stating that no shares of stock have been issued or that the business or activity for which the corporation was organized has not been begun; that no part of the capital of the corporation has been paid, or, if some capital has been paid, that the amount actually paid in for the corporation's shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto; that if the corporation has begun business but it has not issued shares, all debts of the corporation have been paid; that if the corporation has not begun business but has issued stock certificates, all issued stock certificates, if any, have been surrendered and canceled; and that all rights and franchises of the corporation are surrendered. Upon such certificate becoming effective in accordance with section 5 of this Act, the corporation shall be dissolved.

(6) *Payment of fees before dissolution.* No corporation shall be dissolved under this Act until all fees to the

Registrar of Corporations and Registered Agent due or which would be due or assessable for the entire calendar month during which the dissolution becomes effective have been paid by the corporation.

(7) *Voluntary revocation of dissolution.*

(a) At any time prior to the expiration of three (3) years following the voluntary dissolution of a corporation pursuant to this section, a corporation may revoke the dissolution theretofore effected by it in the following manner.

(i) For purposes of this subsection, the term “shareholders” shall mean the shareholders of record on the date the dissolution became effective.

(ii) The board of directors shall adopt a resolution recommending that the dissolution be revoked and directing that the question of the revocation be submitted to a vote at a special meeting of shareholders.

(iii) Notice of the special meeting of shareholders shall be given in accordance with section 64(4) of this Act to each of the shareholders.

(iv) At the meeting a vote of the shareholders shall be taken on a resolution to revoke the dissolution. If a majority of the shares of the corporation which was outstanding and entitled to vote upon dissolution at the time of its dissolution shall be voted for the resolution, articles of revocation of dissolution shall be executed and acknowledged in accordance with section 5 of this Act, which shall state:

(1) the name of the corporation;

(2) the names and respective addresses of its directors or legal representative; and

(3) that a majority of shares of the corporation which was outstanding and entitled to vote upon a dissolution at the time of its dissolution have voted in favor of a resolution to revoke the dissolution; or, if it be the fact, that, in lieu of a meeting and vote of the shareholders, the shareholders have given their written consent to the revocation in accordance with section 67 of this Act.

(b) Upon filing in the office of the Registrar of Corporations of the articles of revocation of dissolution, the Registrar or Deputy Registrar, upon being satisfied that the requirements of this section have been

complied with, shall issue a certificate that the dissolution has been revoked. Upon the issuance of such certificate by a Registrar or Deputy Registrar, the revocation of the dissolution shall become effective and the corporation may again carry on its business.

(c) Upon the issuance of the certificate by the Registrar or Deputy Registrar to which this subsection refers, the provisions of section 64(3) of this Act shall govern, and the period of time the corporation was in dissolution shall be included within the calculation of the ninety (90) day and thirteen (13) month periods to which section 64(3) of this Act refers. An election of directors, however, may be held at the special meeting of shareholders to which this subsection refers, and in that event, that meeting of shareholders shall be deemed an annual meeting of shareholders for purposes of section 64(3) of this Act.

(d) If, after dissolution became effective, any other corporation organized under the laws of the Marshall Islands shall have adopted the same name as the corporation, or shall have adopted a name so nearly similar thereto as not to distinguish it from the corporation, then, in such case, the corporation shall not be reinstated under the same name which it bore when its dissolution became effective, but shall adopt and be reinstated under some other name, and in such case the articles to be filed under this subsection shall set forth the name borne by the corporation at the time its dissolution became effective and the new name under which the corporation is to be reinstated. *[P.L. 1990-91, § 11.1; amended by P.L. 2000-18, § 102; amended by P.L. 2005-27, § 102, adding new section.]*

§ 103. Judicial dissolution.

A shareholders’ meeting to consider adoption of a resolution to institute a special proceeding on any of the grounds specified below, notwithstanding any provision in the articles of incorporation, by the holders of ten percent (10%) of all outstanding shares entitled to vote thereon, or if the articles of incorporation authorize a lesser proportion of shares to call the meeting, by such lesser proportion. A meeting under this section may not be called more often than once in any period of twelve (12) consecutive months. Except as otherwise provided in the articles of incorporation, the holders of one-half of all outstanding shares of a corporation entitled to vote in an election of directors may adopt at the meeting a resolution and institute a special proceeding in the High Court of the Republic for dissolution on one (1) or more of the following grounds:

(a) that the directors are so divided respecting the management of the corporation's affairs that the votes required for action by the board cannot be obtained;

(b) that the shareholders are so divided that the votes required for the election of directors cannot be obtained;

(c) that there is internal dissension and two (2) or more factions of shareholders are so divided that dissolution would be beneficial to the shareholders;

(d) that the acts of the directors are illegal, oppressive or fraudulent;

(e) that the corporate assets are being misapplied or wasted.

If it appears, following due notice to all interested persons and a hearing that any of the foregoing grounds for dissolution of the corporation exists, the High Court shall make a judgment that the corporation shall be dissolved. The Clerk of the High Court shall transmit certified copies of the judgment to the appropriate Registrar of Corporations. Upon filing with a Registrar of Corporations, the corporation shall be dissolved. [P.L. 1990-91, § 11.2.]

§ 104. Dissolution on failure to pay annual registration fee or appoint or maintain registered agent.

(1) *Procedure for dissolution.* On failure of a corporation to pay the annual registration fee or to maintain a registered agent for a period of one (1) year, the appropriate Registrar of Corporations shall cause a notification to be sent to the corporation through its last recorded registered agent that its articles of incorporation will be revoked unless within ninety (90) days of the date of the notice, payment of the annual registration fee has been received or a registered agent has been appointed, as the case may be. Furthermore, if any corporation abuses or misuses its corporate powers, privileges or franchises, including, but not limited to, participating in activities in violation of section 3(5) of this Act, the registered agent in its sole discretion shall have the power to resign as registered agent of such corporation. In either case, the Registrar of Corporations shall issue a proclamation declaring that the articles of incorporation have been revoked and the corporation dissolved as of the date stated in the proclamation. The proclamation of the Registrar of Corporations shall be filed and the date of revocation and dissolution shall be marked on the record of the articles of incorporation of the corporation named in the proclamation, and notice shall be given thereof to the last recorded registered agent. Thereupon

the affairs of the corporation shall be wound up in accordance with the procedure provided in this division.

(2) *Erroneous annulment.* Whenever it is established to the satisfaction of the Registrar of Corporations that the articles of incorporation were erroneously revoked, and the corporation was involuntarily dissolved (annulled) he may restore the corporation to full existence by publishing and filing in his office a proclamation to that effect, provided however, that the Registrar of Corporations shall not be held liable for any such error.

(3) *Reinstatement of annulled corporation.* Whenever the articles of incorporation of a corporation have been revoked and the corporation dissolved pursuant to subsection (1) of this section, the corporation may request that the Registrar of Corporations reinstate the corporation. After being satisfied that all arrears to the Republic of the Marshall Islands have been paid, that the corporation has again retained a qualified registered agent and paid any arrears to the same, the corporation may be restored to full existence in the same manner and with the same effect as provided in subsection (2) of this section. [P.L. 1990-91, § 11.3; amended by P.L. 1998-73, § 104; amended by P.L. 2000-18, § 104; amended by P.L. 2005-27, § 104.]

§ 105. Winding up affairs of corporation after dissolution.

(1) *Continuation of corporation for winding up.* All corporations, whether they expire by their own limitations or are otherwise dissolved, shall nevertheless be continued for a term of three (3) years from such expiration or dissolution as bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, to discharge their liabilities, and to distribute to the shareholders any remaining assets, but not for the purpose of continuing the business for which the corporation was organized. With respect to any action, suit, or proceeding begun by or against the corporation either prior to or within three (3) years after the date of its expiration or dissolution, and not concluded within such period, the corporation shall be continued as a body corporate beyond that period for the purpose of concluding such action, suit or proceeding and until any judgment, order, or decree therein shall be fully executed.

(2) *Trustees.* Upon the dissolution of any corporation, or upon the expiration of the period of its corporate existence, the directors shall be trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell and convey the property, real and personal, as may be required by the laws of the country where situated,

prosecute and defend all such suits as may be necessary or proper for the purposes aforesaid, distribute the money and other property among the shareholders after paying or adequately providing for payment of its liabilities and obligations, and do all other acts which might be done by the corporation, before dissolution, that may be necessary for the final settlement of the unfinished business of the corporation.

(3) *Supervision by court of liquidation.* At any time within three (3) years after the filing of the articles of dissolution, the High Court of the Republic, in a special proceeding instituted under this subsection, upon the petition of the corporation, or of a creditor, claimant, director, officer, shareholder, subscriber for shares, incorporator or the Attorney General on behalf of the Government of the Republic, may continue the liquidation of the corporation under the supervision of the court in the Republic and may make all such orders as it may deem proper in all matters in connection with the dissolution or in winding up the affairs of the corporation, including the appointment or removal of a receiver, who may be a director, officer or shareholder of the corporation. [P.L. 1990-91, § 11.4.]

§ 106. Settlement of claims against corporation.

(1) *Notice to creditors.* Any time within one (1) year after dissolution, a resident domestic corporation shall and a non-resident corporation may give notice requiring all creditors and claimants, including any with unliquidated or contingent claims and any with whom the corporation has unfulfilled contracts, to present their claims in writing and in detail at a specified place and by a specified day, which shall not be less than six (6) months after the first publication of such notice. Resident domestic corporations shall publish such notice at least once a week for four (4) successive weeks in a newspaper of general circulation in the county in which the office of the corporation was located at the date of dissolution, or if none exists, in a newspaper of general circulation elsewhere in the Republic. If non-resident domestic corporations elect to publish notice, such notice shall be published at least once a week for four successive weeks in a newspaper of general circulation in the county in which the last known Registered Agent of the corporation is located at the date of dissolution or if none exists in a newspaper of general circulation elsewhere in the Republic, or in such other location(s) outside the Marshall Islands at which the corporation has maintained an office or conducted business. On or before the date of the first publication of such notice, the corporation shall mail a copy thereof, postage prepaid and addressed to his last known address, to each person believed to be a creditor of or claimant against the corporation whose name and address are known to or can with due diligence be ascertained by the corporation. The

giving of such notice shall not constitute a recognition that any person is a proper creditor or claimant, and shall not revive or make valid or operate as a recognition of the validity of, or a waiver of any defense or counter claim in respect of any claim against the corporation, its assets, directors, officers, or shareholders, which has been barred by any statute of limitations or become invalid by any cause, or in respect of which the corporation, its directors, officers, or shareholders, have any defense or counter-claim.

(2) *Filing or barring claims.* Any claims which shall have been filed as provided in such notice and which shall be disputed by the corporation may be submitted for determination to the High Court of the Republic. Any person whose claim is, at the date of the first publication of such notice, barred by any statute of limitations is not a creditor or claimant entitled to any notice under this section. The claim of any such person and all other claims which are not timely filed as provided in such notice except claims which are the subject of litigation on the date of the first publication of such notice, and all claims which are so filed but are disallowed by the court, shall be forever barred as against the corporation, its assets, directors, officers and shareholders, except to such extent, if any, as the court may allow them against any remaining assets of the corporation in the case of a creditor who shows satisfactory reason for his failure to file his claim as so provided. Any claim not banned by this subsection may be reviewed by the court to determine the amount and form of security sufficient to compensate claimants.

(3) *Claims by Government.* Notwithstanding this section, tax claims and other claims by the Government shall not be required to be filed under those sections, and such claims shall not be barred because not so filed, and distribution of the assets of the corporation, or any part thereof, may be deferred until determination of any such claims. [P.L. 1990-91, § 11.5; amended by P.L. 1998-73, § 106.]

DIVISION 12:

FOREIGN ENTITIES

- § 107. Authorization of foreign entities.**
- § 108. Application to existing authorized foreign entities.**
- § 109. Application for authority to do business.**
- § 110. Amendment of authority to do business.**
- § 111. Termination of authority of foreign entity.**
- § 112. Revocation of authority to do business.**
- § 113. Rights and liabilities of unauthorized foreign entity doing business.**
- § 114. Actions or special proceedings against foreign entities.**
- § 115. Record of shareholders.**

§ 116. Liability of foreign corporations for failure to disclose information.

§ 117. Applicability to foreign corporations of other provisions.

§ 118. Fees.

§ 107. Authorization of foreign entities.

(1) *Authorization required.* A foreign corporation, partnership, trust, unincorporated association or other entity (each of which is hereinafter sometimes referred to as a foreign “entity” and all of which are hereinafter sometimes referred to as “foreign entities”) shall not do business in the Republic until it has been authorized to do so as provided in this division. A foreign entity may be authorized to do in the Republic any business which it is authorized to do in the jurisdiction of its creation, and which may be done in the Republic by a domestic entity.

(2) *Activities which do not constitute doing business.* Without excluding other activities which may not constitute doing business in the Republic, a foreign entity shall not be considered to be doing business in the Republic, for the purposes of this Act, by reason of carrying on in the Republic any one (1) or more of the following activities:

(a) maintaining or defending any action or proceeding, or effecting settlement thereof or the settlement of claims or disputes;

(b) holding meetings of its directors or shareholders;

(c) maintaining bank accounts;

(d) for purposes outside of the Republic, maintaining facilities or agencies only for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities;

(e) for a foreign maritime entity to maintain a registered agent and registered address or carry on activities authorized by section 120 of this Act; or

(f) engaging in any activity which may be conducted by a non-resident domestic corporation as set forth in section 2(o) of this Act. [P.L. 1990-91, § 12.1.]

§ 108. Application to existing authorized foreign entities.

Every foreign entity which on the effective date of this Act is authorized to do business in the Republic shall continue to have such authority. Such foreign entity, its shareholders, directors, officers, partners and members shall have the same rights, franchises and privileges and shall be subject to the same limitations, restrictions, liabilities and penalties as a foreign entity authorized under this Act, its shareholders, directors, officers, partners and members, respectively. Reference in this Act to an application for authority shall, unless the context otherwise requires, include the statement and designation and any amendment thereof required to be filed with a Registrar of Corporations under prior statutes to obtain authority to do business. [P.L. 1990-91, § 12.2.]

§ 109. Application for authority to do business.

(1) *Contents.* A foreign entity, in order to procure authority to transact business in the Republic, shall make application to a Registrar of Corporations. The application shall be signed and verified by an officer or attorney-in-fact for the corporation and shall set forth:

(a) the name of the foreign entity;

(b) the jurisdiction and date of its creation;

(c) the address of the principal office of the entity in the state or country under the laws of which it is created;

(d) a statement of the business which it proposes to do in the Republic and a statement that it is authorized to do that business in the jurisdiction of its creation;

(e) an atoll within the Republic in which its office is to be located;

(f) the name and address within the Republic of the registered agent and a statement that the registered agent is to be its agent upon whom process against it may be served;

(g) a designation of the Government’s designee as its agent upon whom process against it may be served under the circumstances stated in section 21 and the post office address within or without the Republic to which the Government’s designee shall mail a copy of any process against it served upon it; and

(h) a statement that the foreign entity has not since its creation or since the date its authority to do business in the Republic was last surrendered, engaged in any activity constituting the doing of business therein contrary to law.

Any foreign entity applying for authority to do business in the Republic shall comply with the provisions of the Foreign Investment Business License Act 1990 (10 MIRC, Chapter 5A).

(2) *Certificate of existence.* Attached to the application for authority shall be a certificate by an authorized officer of the jurisdiction of its creation that the foreign entity is an existing entity. If such certificate is in a foreign language, a translation thereof under oath of the translator shall be attached thereto. [P.L. 1990-91, § 12.3; reference to the Foreign Investment Advisory Board Act, 1987, in subsection (1) was changed to reflect that Act's repeal and reference was made to the current Act governing licensing of foreign entities.]

§ 110. Amendment of authority to do business.

(1) *Requirement stated.* A foreign entity authorized to do business in the Republic may have its authority amended to effect any of the following changes:

- (a) to change its name if such change has been effected under the laws of the jurisdiction of its creation;
- (b) to enlarge, limit or otherwise change the business which it proposes to do in the Republic;
- (c) to change the location of its office in the Republic;
- (d) to specify or change the post office address to which the Government's designee shall mail a copy of any process against it served upon it; and
- (e) to make, revoke or change the designation of a registered agent or to specify or change this address. Every foreign entity authorized to do business in the Republic which shall amend its articles of incorporation or other document upon which its existence is based or shall be a party to a merger or consolidation shall, within thirty (30) days after the amendment or merger or consolidation becomes effective, file with a Registrar or Deputy Registrar of Corporations a copy of the amendment or a copy of the articles of merger or consolidation, duly certified by the proper officer of the jurisdiction in which the entity was created or under the laws of which the merger or consolidation was effected, together with a translation of the amendment or articles under oath of the translator.

(2) *Procedure.* An application to have its authority to do business amended shall be made to a Registrar of Corporations. The requirements in respect to the form

and contents of such application, the manner of its execution, and the filing of duplicate originals thereof with a Registrar or Deputy Registrar of Corporations shall be the same as in the case of an original application for authority to do business. [P.L. 1990-91, § 12.4.]

§ 111. Termination of authority of foreign entity.

(1) *Surrender of authority.* A foreign entity authorized to transact business in the Republic may withdraw from the Republic upon filing with a Registrar or Deputy Registrar of Corporations an application for withdrawal, which shall set forth:

- (a) the name of the entity and the jurisdiction in which it is created;
- (b) the date it was authorized to do business in the Republic;
- (c) that the entity surrenders its authority to do business in the Republic;
- (d) that the entity revokes the authority of its registered agent in the Republic to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in the Republic during the time the entity was authorized to do business in the Republic may thereafter be made on such entity by service thereof on the Government's designee; and
- (e) a post office address to which the Registrar of Corporations may mail a copy of any process against the entity that may be served on him.

The application for withdrawal shall be made on forms prescribed and furnished by a Registrar or Deputy Registrar of Corporations and shall be executed by the entity in accordance with section 5 of this Act, or if the entity is in the hands of a receiver or trustee, shall be executed on behalf of the entity by such receiver or trustee and verified by him. The application for withdrawal shall be filed with a Registrar or Deputy Registrar of Corporations in accordance with the provisions of section 5 of this Act. Upon such filing the authorization of the entity to do business in the Republic is terminated.

(2) *Termination of existence in foreign jurisdiction.* When an authorized foreign entity is dissolved or its authority or existence is otherwise terminated or canceled in the jurisdiction of its creation or when such foreign entity is merged into or consolidated with another foreign entity, a certificate of the official in charge of records in the jurisdiction of creation of such foreign entity, which

certificate attests to the occurrence of any such event, or a certified copy of an order or decree of a court of such jurisdiction directing the dissolution of such foreign entity or the termination of its existence shall be delivered to the appropriate Registrar of Corporations who shall file such document in accordance with section 5 of this Act. The authority of the entity to transact business in the Republic shall thereupon cease. Service of process in any action, suit or proceeding based upon any cause of action which arose in the Republic during the time the entity was authorized to transact business in the Republic may thereafter be made on such entity by service on the Registrar of Corporations. [P.L. 1990-91, § 12.5.]

§ 112. Revocation of authority to do business.

The authority of a foreign entity to do business in the Republic may be revoked by the appropriate Registrar of Corporations on the same grounds and in the same manner as provided in section 104 with respect to revocation of articles of incorporation. [P.L. 1990-91, § 12.6.]

§ 113. Rights and liabilities of unauthorized foreign entity doing business.

(1) *Actions or special proceedings by entity.* A foreign entity doing business in the Republic without authority shall not maintain any action or special proceeding in the Republic unless and until such entity has been authorized to do business in the Republic and it has paid to the Government all fees, penalties and taxes for the years or parts thereof during which it did business in the Republic without authority. This prohibition shall apply to any successor in interest of such foreign entity.

(2) *Validity of contracts or acts of unauthorized entity defending action.* The failure of a foreign entity to obtain authority to do business in the Republic shall not impair the validity of any contract or act of such foreign entity or the right of any other party to the contract to maintain any action or special proceeding thereon, and shall not prevent such foreign entity from defending any action or special proceeding in the Republic. [P.L. 1990-91, § 12.7.]

§ 114. Actions or special proceedings against foreign entities.

(1) *By resident of the Republic or domestic corporation.* Subject to the limitations with regard to personal jurisdiction elsewhere provided by law, and action or special proceeding against a foreign entity may be maintained by a

resident of the Republic or by a domestic corporation of any type or kind.

(2) *By another foreign entity or non-resident.* Except as otherwise provided in this division, an action or special proceeding against a foreign entity may be maintained in the Republic, by another foreign entity of any type or kind or by a non-resident in the following cases only:

(a) where the action is brought to recover damages for the breach of a contract made or to be performed within the Republic, or relating to property situated within the Republic at the time of the making of the contract;

(b) where the cause of action arose within the Republic, except where the object of the action or special proceeding is to affect the title of real property situated outside the Republic;

(c) where the subject matter of the litigation is situated within the Republic.

(d) where the action or special proceeding is based on a liability for acts done within the Republic by a foreign entity; and

(e) where the defendant is a foreign entity doing business in the Republic, subject to the provisions of subsection (3) of this section.

(3) *Dismissal for inconvenience to parties.* Any action upon a cause of action not arising out of business transacted or activities performed within the Republic brought against a foreign entity by a non-resident of the Republic or a foreign entity may in the discretion of the High Court of the Republic be dismissed if it appears that the convenience of the Republic would be better served by an action brought in some other jurisdiction. [P.L. 1990-91, § 12.8.]

§ 115. Record of shareholders.

A resident of the Republic who shall have been a shareholder of record of an authorized foreign corporation for at least six (6) months preceding his demand, upon at least ten (10) days' written demand may require such foreign corporation to produce a record of its Registered shareholders containing the names and addresses of such shareholders, the number and class of shares held by each and the date when they respectively became the owners of record thereof, and, if such corporation issues bearer shares, a record of all certificates issued in bearer form, including the number,

class and dates of issuance of such certificates. The shareholder requiring production of such records shall have the right to examine in person or by an agent or attorney at the office of the foreign corporation in the Republic or at such other place in the Republic as may be designated by the foreign corporation, the record of shareholders or an exact copy thereof certified as correct by the corporate officer or agent for keeping or producing such record, and to make extracts therefrom. Any inspection authorized by this section may be denied to such shareholder or other person upon his refusal to furnish to the corporation an affidavit that such inspection is not desired for a purpose which is in the interest of a business or object other than the business of the foreign corporation and that such shareholder or other person has not within five (5) years sold or offered for sale any list of shareholders of any domestic or foreign corporation or aided or abetted any person in procuring any such record of shareholders for any such purpose. [P.L. 1990-91, § 12.9.]

§ 116. Liability of foreign corporations for failure to disclose information.

A foreign corporation doing business in the Republic shall, in the same manner as a domestic corporation, disclose to its shareholders of record who are residents of the Republic the information required in sections 44(3), 46(4), or 47(3) of this Act. [P.L. 1990-91, § 12.10.]

§ 117. Applicability to foreign corporations of other provisions.

In addition to Divisions 1 and 3 of this Act, and the other sections of this division, the following provisions to the extent provided therein, shall apply to a foreign corporation doing business in the Republic, its directors, officers and shareholders:

- (a) Section 79 of this Act;
- (b) Section 98 of this Act; and
- (c) Section 101 of this Act. [P.L. 1990-91, § 12.11.]

§ 118. Fees.

Upon filing an application for authority to do business, a fee shall be paid to the appropriate Registrar of Corporations in the amount prescribed from time to time by such Registrar. [P.L. 1990-91, § 12.12.]

DIVISION 13:

FOREIGN MARITIME ENTITIES

§ 119. Method of registration.

§ 120. Powers granted on registration.

§ 121. Subsequent change of business address or address of lawful fiduciary or legal representative; amendment of document upon which existence is based.

§ 122. Revocation of registration.

§ 123. Fees.

§ 124. Termination of authority of foreign maritime entity.

§ 125. Actions or special proceedings against foreign maritime entities.

§ 119. Method of registration.

(1) *Eligibility.* A foreign entity whose indenture or instrument of trust, charter or articles of incorporation, agreement of partnership or other document recognized by the foreign State of its creation as the basis of its existence, which document directly or by force of law of the State of creation comprehends the power to own or operate vessels, and which confers or recognizes the capacity under the law of the State of creation to sue and be sued in the name of the entity or its lawful fiduciary or legal representative, may apply to the appropriate Registrar or Deputy Registrar of Corporations to be registered as a foreign maritime entity. The burden of establishing the capacity to sue and be sued shall be upon the applicant for such registration.

(2) *Form of Application.* The application shall be executed by an authorized signatory of the entity or an attorney-in-fact. The application shall be dated and shall state the following:

- (a) the name of the entity;
- (b) the legal character or nature of the entity;
- (c) the jurisdiction and date of its creation;
- (d) whether the entity has the power to own or operate a vessel;
- (e) whether the entity has the capacity to sue and be sued in its own name or, if not, in the name of its lawful fiduciary or legal representative;

(f) the address of the principal place of business of the entity and, if such place is not in the jurisdiction of the creation of the entity, either the address of its place of business or the name and address of its lawful fiduciary or legal representative within the jurisdiction of the creation of the entity;

(g) the full names and addresses of the persons vested under law with management of the entity at the time of application;

(h) the name and address within the Republic of the registered agent designated in accordance with the requirement of section 20(1) of this Act and a statement that the registered agent is to be its agent upon whom process against it may be served; and

(i) the title(s), or if other than an officer of the entity, the basis of the authority of the person(s) executing the document.

(3) *Filing; effective date.* Each application and any other document required or allowed to be filed pursuant to this division shall be filed in accordance with the provisions of section 5 of this Act, except as hereinafter provided:

(a) filing of the application or document along with payment or evidence of payment of required fees shall take effect upon endorsement by the office of the Maritime Administrator of the Republic who shall endorse the document as provided by section 5(5) of this Act, and cause the original copy to be submitted to the appropriate Registrar of Corporations for indexing and retention with the permanent records of that Registry;

(b) acknowledgment of an application or document may be performed pursuant to the provisions of section 5(4) of this Act, or by the Maritime Administrator of the Republic; and

(c) the applicant is registered and qualified as a foreign maritime entity as of the filing date endorsed by the Maritime Administrator of the Republic. [P.L. 1990-91, § 13.1]

§ 120. Powers granted on registration.

A registered foreign maritime entity shall have the following powers:

(a) to own and operate vessels registered under the laws of the Republic provided all requirements of the maritime law of the Republic are met.

(b) to do all things necessary to the conduct of the business of ownership and operation of Marshall Islands flag vessels and, for that purpose, to have one (1) or more offices in the Republic and to hold, purchase, lease, mortgage and convey real and personal property, subject to the organic law of the Republic. [P.L. 1990-91, § 13.2]

§ 121. Subsequent change of business address or address of lawful fiduciary or legal representative; amendment of document upon which existence is based.

(1) *Change of Address.* Whenever a change occurs in the address(es) stated under section 119(2)(f) of this Act, written notice of such change, stating the new information, shall be mailed to the registered agent named under section 119(2)(h) of this Act.

(2) *Amendment of document.* The appropriate Registrar of Corporations shall be notified whenever there is an amendment in the document upon which the existence of the entity is based which changes any of the following:

(a) name of the entity;

(b) legal nature of the entity;

(c) jurisdiction of creation;

(d) loss or restriction in the power of the entity to own or operate a vessel; and

(e) ability of the entity to sue or be sued.

Notice shall consist of filing with the Registrar or Deputy Registrar of the Corporations or the Maritime Administrator of the Republic, in accordance with section 5 of this Act, a certified copy of the document filed with the jurisdiction of creation. If such amendment is in a foreign language, a translation thereof into English certified by a translator shall be attached. [P.L. 1990-91, § 13.3.]

§ 122. Revocation of registration.

The registration of a foreign maritime entity may be revoked by the appropriate Registrar of Corporations on the same grounds and in the same manner provided in section 104 of this Act, with respect to dissolution of a corporation for failure to pay the annual fee or to maintain a registered agent. [P.L. 1990-91, § 13.4.]

§ 123. Fees.

A foreign maritime entity shall pay to the appropriate Registrar of Corporations such fees as such Registrar shall from time to time prescribe. [P.L. 1990-91, § 13.5]

§ 124. Termination of authority of foreign maritime entity.

(1) *Surrender of authority.* A foreign maritime entity authorized to transact business in the Republic may withdraw from the Republic upon filing with the appropriate Registrar or Deputy Registrar of Corporations an application for withdrawal, which shall set forth:

- (a) the name of the entity and the jurisdiction of its creation;
- (b) the date it was registered as a foreign maritime entity in the Republic;
- (c) that the entity surrenders the authority granted by its registration as a foreign maritime entity in the Republic;
- (d) that the entity revokes the authority of its registered agent in the Republic to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in the Republic during the time the entity was authorized to do business in the Republic may thereafter be made on such entity by service thereof on the Government's designee;
- (e) a post office address to which the Government's designee may mail a copy of any process against the entity that may be served on him.

The application for withdrawal shall be made on forms prescribed and furnished by the appropriate Registrar of Corporations and shall be executed by the entity in accordance with section 119 of this Act, or if the entity is in the hands of a receiver or trustee, shall be executed on behalf of the entity by such receiver or trustee and verified by him. The application for withdrawal shall be filed with the appropriate Registrar or Deputy Registrar of Corporations in accordance with the provisions of section 5 of this Act. Upon such filing the authorization of the entity to do business in the Republic is terminated.

(2) *Termination of existence in foreign jurisdiction.* When an authorized foreign maritime entity is dissolved or its authority or existence is otherwise terminated or canceled in the jurisdiction of its creation or when such foreign maritime entity is merged into or consolidated

with another foreign maritime entity, a certificate of the official in charge of corporate records in the jurisdiction of creation of such foreign maritime entity, which certificate attests to the occurrence of any such event, or a certified copy of an order or decree of a court of such jurisdiction directing the dissolution of such foreign entity; or the termination of its existence shall be delivered to the appropriate Registrar or Deputy Registrar of Corporations, who shall file such document in accordance with section 5 of this Act. The authority of the foreign maritime entity to transact business in the Republic shall thereupon cease. Service of process in any action, suit or proceeding based upon any cause of action which arose in the Republic during the time the foreign maritime entity was authorized to transact business in the Republic may thereafter be made on such entity by service on the Government's designee. [P.L. 1990-91, § 13.6.]

§ 125. Actions or special proceedings against foreign maritime entities.

(1) *By resident of the Republic or domestic entity.* Subject to the limitations with regard to personal jurisdiction contained in applicable law, an action or special proceeding against a foreign maritime entity may be maintained by a resident of the Republic or by a domestic entity of any type or kind.

(2) *By another foreign entity or non-resident.* Except as otherwise provided in this division, an action or special proceeding against a foreign maritime entity may be maintained in the Republic by another foreign entity of any type or kind or by a non-resident in the following cases only:

- (a) where the action is brought to recover damages for the breach of a contract made or to be performed within the Republic, or relating to property situated within the Republic at the time of the making of the contract;
- (b) where the cause of action arose within the Republic, except where the object of the action or special proceeding is to affect the title of real property situated outside the Republic;
- (c) where the subject matter of the litigation is situated within the Republic;
- (d) where the action or special proceeding is based on a liability for acts done within the Republic by a foreign maritime entity; and

(e) where the defendant is a foreign maritime entity doing business in the Republic, subject to the provisions of subsection (3) of this section.

(3) *Dismissal for inconvenience to parties.* Any action upon a cause of action not arising out of business transacted or activities performed within the Republic brought against a foreign maritime entity by a non-resident of the Republic or a foreign entity may in the discretion of the High Court of the Republic be dismissed if it appears that the convenience of the parties would be better served by an action brought in some other jurisdiction. [P.L. 1990-91, § 13.7.]

DIVISION 14:

TRANSFER OF DOMICILE INTO AND OUT OF THE REPUBLIC

§ 126. Definitions.

§ 127. Domestication of foreign corporations.

§ 128. Transfer of domicile of domestic corporation to foreign jurisdiction.

§ 129. Fees.

§ 126. Definitions.

As used in this Division 14 only, the term:

(a) “underlying articles of incorporation” when referring to a foreign corporation means the articles of incorporation, certificate of incorporation, charter, statute, memorandum or other instrument defining the constitution of the corporation, including all amendments and modifications thereto;

(b) “corporation” includes any incorporated legal entity, private law corporation or public law corporation, or similar entity;

(c) “foreign domicile” means the jurisdiction or state or province under whose laws the corporation was incorporated or constituted and which governed the internal affairs of such corporation immediately prior to its redomiciliation in the Republic;

(d) “foreign corporation” means any corporation the internal affairs of which are governed by the laws of any jurisdiction or state or province other than the Republic. [P.L. 1990-91, § 14.1; amended by P.L. 2005-27, § 126.]

§ 127. Domestication of foreign corporations.

(1) *General requirements.* Any foreign corporation may become domesticated in and continue in the

Republic by filing with a Registrar or Deputy Registrar of Corporations;

(a) articles of domestication which shall be executed and acknowledged in accordance with the provisions of section 5 of this Act, and subsection (6) of this section;

(b) a copy of its underlying articles of incorporation and, if said documents are not in English, an English translation thereof, certified by a translator;

(c) articles of incorporation, which shall state the information required by section 28 of this Act and which shall be executed and acknowledged in accordance with the provisions of section 5 of this Act and subsection (6) of this section;

(d) evidence of corporate existence; and

(e) acceptance of appointment by the corporation’s registered agent in the Republic in compliance with subsection 20(1) of this Act.

(2) *Articles of domestication.* The articles of domestication shall certify:

(a) the date on which and jurisdiction where the corporation was first formed, incorporated or otherwise came into being;

(b) the name of the corporation immediately prior to the filing of the articles of domestication and if the name of the corporation is being changed by an amendment filed with the articles of domestication, then the name of the corporation as amended;

(c) if the name of the corporation does not comply with the provisions of section 26(1) of this Act, then the corporation shall within ninety (90) days of domestication file an amendment to the articles of domestication changing the name of the corporation otherwise the registered agent or the Government’s designee will assign the corporation a new name;

(d) the jurisdiction that constituted the seat, domicile, siege social, sitz, principal place of business or central administration of the corporation, or any other equivalent thereto under applicable law, immediately prior to the filing of the articles of domestication;

(e) that the transfer of domicile has been approved by all necessary corporate action;

(f) that the transfer of domicile is not expressly prohibited under the laws of the foreign domicile;

(g) that the transfer of domicile is made in good faith and will not serve to hinder, delay or defraud existing shareholders, creditors, claimants or other parties in interest; and

(h) the name and address of the corporation's registered agent in the Republic.

(3) *Existence date.* Subject to the provisions of subsection (7) of this section, upon filing with a Registrar or Deputy Registrar of Corporations of the documents required by subsection (1) and (2) of this section, the corporation shall be domesticated and continued in the Republic and shall thereafter be subject to all the provisions of this Act; provided, that notwithstanding section 31 of this Act, the existence of the corporation shall be deemed to have commenced on the date the corporation commenced its existence in the jurisdiction in which the corporation was first formed, incorporated or otherwise came into being.

(4) *Prior obligations.* The domestication of any corporation in the Republic shall not affect any obligations or liabilities of the corporation incurred prior to its domestication nor to affect the choice of law applicable to prior obligations and rights of the corporation nor to affect adversely the rights of the corporation or of creditors or shareholders of the corporation existing immediately prior to such domestication. Property of every description, including rights of action and the business of the corporation shall continue to be vested in the corporation.

(5) *Application of Marshall Islands law.* From the date the domestication in the Republic becomes effective, the laws of the Marshall Islands, including the provisions of this Act, shall apply to the corporation to the same extent as if the corporation had been incorporated as a corporation in the Republic on that date. Upon their filing with a Registrar of Corporations, the articles of incorporation referenced in subsection (1)(c) of this section, including any further amendments or changes made thereby, shall be the articles of incorporation of the corporation, but the original date of incorporation shall remain unchanged.

(6) *Execution.* The articles of domestication and the articles of incorporation, as referenced in subsection (1)(c) of this section, shall be signed by an officer, director, trustee or other person performing functions for the corporation equivalent to those of an officer or director, however named or described, and who is duly authorized to sign the articles of domestication on behalf of the corporation.

(7) *Effective date of domestication.* The articles of domestication may provide that the corporation will become domesticated in the Republic on a date subsequent to the filing with a Registrar or Deputy Registrar of Corporations of the documents required by subsection (1) of this section, but not less than one (1) year after such filing has been completed, upon the delivery to a Registrar or Deputy Registrar of Corporations of an executed and acknowledged certificate of request of an officer or representative of the corporation (as specified in the articles of domestication) requesting that the domestication in the Republic become effective. In such case, the domestication shall become effective upon filing with a Registrar or Deputy Registrar of Corporations of such certificate of request. If the articles of domestication contain such a provision, and a certificate of request is not filed with a Registrar or Deputy Registrar of Corporations within such one (1) year period, then the documents filed under subsection (1) of this section shall lapse and be of no further force or effect. [P.L. 1990-91, § 14.2; amended by P.L. 2005-27, § 127.]

§ 128. Transfer of domicile of domestic corporation to foreign jurisdiction.

(1) *General requirement.* Any corporation subject to this Act may transfer its domicile from the Republic to a foreign jurisdiction and continue as a corporation of that jurisdiction if:

(a) such foreign jurisdiction permits such transfer;

(b) the corporation complies with all requirements of such foreign jurisdiction respecting such transfer;

(c) the corporation has paid or remitted payment of all funds necessary to satisfy all payment obligations to the Republic which are imposed pursuant to statutes and regulations enacted and in force at least ninety (90) days prior to such transfer and all payment obligations to the corporation's registered agent in the Republic; and

(d) such transfer is not prohibited by the articles of incorporation of the corporation.

(2) *When domestication effective; outbound.* Subject to the provisions of subsection (3) of this section, any such transfer of domicile shall be effective as and when provided under the laws of the jurisdiction into which the corporation's domicile is transferred. After the effectiveness of such transfer of domicile the corporation shall no longer be subject to the provisions of this Act or to any other provisions of the laws of the Republic except:

(a) in connection with actions, suits or proceedings respecting the activities of the corporation prior to such transfer of domicile;

(b) in connection with any contract, agreement or obligation incurred prior to such transfer of domicile;

(c) to the extent provided by the laws of the jurisdiction into which the corporation's domicile is transferred; and

(d) to the extent any other foreign corporation would be subject to such provisions.

(3) *Appointment of registered agent.* Concurrently with or prior to any transfer of domicile out of the Republic, the corporation shall appoint an authorized registered agent in the Republic to serve for a period of three (3) years subsequent to the transfer of domicile and obtain the written acceptance of such appointment, and the corporation shall notify its registered agent of the transfer; provided, however, if such appointment or such notification cannot reasonably be made at the time, then the transfer of domicile shall be effective without such appointment or notification as and when provided under the laws of the jurisdiction into which the corporation's domicile is transferred.

(4) *Certificate of transfer.* Subsequent to any transfer of domicile out of the Republic, the corporation shall, within a reasonable time after such transfer of domicile, cause to be forwarded through its registered agent in the Republic or otherwise to the appropriate Registrar of Corporations a certificate of transfer executed by an authorized officer or representative of the corporation satisfying:

(a) the jurisdiction which constitutes the new domicile of the corporation (or, as the case may be, the seat, siege social, sitz, or principal place of business or central administration of the corporation, or any other equivalent thereto under applicable law);

(b) a name and address where the corporation may be served with process in its new domicile;

(c) the effective date of the transfer of domicile;

(d) the name and address of its authorized registered agent in the Republic.

Upon receipt of the certificate of transfer, a Registrar of Corporations shall cause the certificate to be retained with the public record for such corporation and shall issue certified copies of the certificate when requested to do so.

(5) *Obligations prior to transfer of domicile.* The transfer of domicile of any corporation out of the Republic shall not affect any obligations or liabilities of the corporation incurred prior to such transfer, nor affect the choice of law applicable to obligations or rights prior to such transfer, nor adversely affect the rights of creditors or shareholders of the corporation existing immediately prior to such transfer. [P.L. 1990-91, § 14.3.]

§ 129. Fees.

There shall be paid to the appropriate Registrar of Corporations such fees as such Registrar shall from time to time prescribe. [P.L. 1990-91, § 14.4.]

DIVISION 15:

RULES AND REGULATIONS

§ 129.5 Power to prescribe new rules.

§ 129.5 Power to prescribe new rules.

The Registrar of Corporations, with the approval of the Attorney General and the Cabinet, shall have the power to prescribe rules and regulations as are deemed advisable to carry into effect the provisions of this Act. Such rules and regulations shall have the force and effect of law. [P.L. 1990-129, § 2, adding new section.]

DIVISION 16:

MISCELLANEOUS

§ 130. Merger or consolidation of domestic corporation and partnership.

§ 131. Merger or consolidation of domestic corporation and limited liability company.

§ 132. Conversion of other entities to a domestic corporation.

§ 133. Conversion of domestic corporation to other entities.

§ 130. Merger or consolidation of domestic corporation and partnership.

(1) Any one (1) or more domestic corporations of the Marshall Islands may merge or consolidate with one (1) or more partnerships or limited partnerships, of the Marshall Islands or of any other jurisdiction unless the laws of such other jurisdiction forbid such merger or consolidation. Such corporation or corporations and such one (1) or more partnerships or limited partnerships may merge with or into a corporation, which may be any one

(1) of such corporations, or they may merge with or into a partnership or limited partnership, which may be any one (1) of such partnerships or limited partnerships, or they may consolidate into a new corporation, partnership or limited partnership formed by the consolidation, which shall be a corporation, partnership or limited partnership of the Marshall Islands or any other jurisdiction, which permits such merger or consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section.

(2) Each such corporation, partnership or limited partnership shall enter into a written agreement of merger or consolidation. The agreement shall state:

(a) the terms and conditions of the merger or consolidation;

(b) the mode of carrying the same into effect;

(c) the manner of converting the shares of stock of each such corporation and the partnership interests of each such partnership or limited partnership into shares, partnership interest or other securities of the entity surviving or resulting from such merger or consolidation, and if any shares of any such corporation or any partnership interest of any such partnership or limited partnership are not to be converted solely into shares, partnership interests or other securities of the entity surviving or resulting from such merger or consolidation, the cash, property, rights or securities of any other corporation or entity which the holders of such shares or partnership interests are to receive in exchange for, or upon conversion of such shares or partnership interests and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares, partnership interests or other securities of the entity surviving or resulting from such merger or consolidation; and

(d) such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance of fractional shares or interests of the surviving or resulting corporation, partnership or limited partnership. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term "facts," as used in the preceding sentence, includes, but is not limited to, the

occurrence of any event, including a determination or action by any person or body, including the corporation.

(3) The agreement required by subsection (2) of this section shall be adopted, approved, certified, executed and acknowledged by each of the corporations in the same manner as is provided in section 95 of this Act and, in the case of the partnership or limited partnership, in accordance with their partnership agreements and in accordance with the laws of the jurisdiction under which they are formed, as the case may be. The agreement shall be filed and shall become effective for all purposes of the laws of the Marshall Islands when and as provided in section 97 of this Act. In lieu of filing the agreement of merger or consolidation, the surviving or resulting corporation, partnership or limited partnership may file a certificate of merger or consolidation, executed in accordance with section 5 of this Act, if the surviving or resulting entity is a corporation, by a partner, if the surviving or resulting entity is a partnership or by a general partner, if the surviving or resulting entity is a limited partnership, which states:

(a) the name and domicile of each of the constituent entities;

(b) that an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent entities in accordance with this subsection;

(c) the name of the surviving or resulting corporation, partnership or limited partnership;

(d) in the case of a merger in which a corporation is the surviving entity, such amendments or changes in the articles of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the articles of incorporation of the surviving corporation shall be its articles of incorporation;

(e) in the case of a consolidation in which a corporation is the resulting entity, that the articles of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;

(f) that the executed agreement of consolidation or merger is on file at an office of the surviving corporation, partnership or limited partnership and the address thereof;

(g) that a copy of the agreement of consolidation or merger will be furnished by the surviving or resulting entity, on request and without cost, to any stockholder of any constituent corporation or any partner of any constituent partnership or limited partnership; and

(h) the agreement, if any, required by subsection (4) of this section.

(4) If the entity surviving or resulting from the merger or consolidation is to be governed by the laws of any jurisdiction other than the Marshall Islands, it shall agree that it may be served with process in the Marshall Islands in any proceeding for enforcement of any obligation of any constituent corporation, partnership or limited partnership of the Marshall Islands, as well as for enforcement of any obligation of the surviving or resulting corporation, partnership or limited partnership arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings and shall irrevocably appoint the Government's designee as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Government's designee. In the event of such service upon the Government's designee in accordance with this subsection, the Government's designee shall forthwith notify such surviving or resulting corporation, partnership or limited partnership at its address so specified unless such surviving or resulting corporation, partnership or limited partnership shall have designated in writing to the Government's designee a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall enclose a copy of the process and any other papers served on the Government's designee pursuant to this subsection. *[P.L. 2000-18, § 130, adding new section.]*

§ 131. Merger or consolidation of domestic corporation and limited liability company.

(1) Any one (1) or more domestic corporations of the Marshall Islands may merge or consolidate with one (1) or more limited liability companies of the Marshall Islands or of any other jurisdiction unless the laws of such other jurisdiction forbid such merger or consolidation. Such corporation or corporations and such one (1) or more limited liability companies may merge with or into a corporation, which may be any one (1) of such corporations, or they may merge with or into a limited liability company, which may be any one (1) of such limited liability companies, or they may consolidate into a new corporation or limited liability company formed by the consolidation, which shall be a corporation or limited

liability company of the Marshall Islands or any other jurisdiction, which permits such merger or consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section.

(2) Each such corporation and limited liability company shall enter into a written agreement of merger or consolidation. The agreement shall state:

(a) the terms and conditions of the merger or consolidation;

(b) the mode of carrying the same into effect;

(c) the manner of converting the shares of stock of each such corporation and the limited liability company interests of each such limited liability company into shares, limited liability company interests or other securities of the entity surviving or resulting from such merger or consolidation, and if any shares of any such corporation or any limited liability company interest of any such limited liability company are not to be converted solely into shares, limited liability company interests or other securities of the entity surviving or resulting from such merger or consolidation, the cash, property, rights or securities of any other corporation or entity which the holders of such shares or limited liability company interests are to receive in exchange for, or upon conversion of such shares or limited liability company interests and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares, limited liability company interests or other securities of the entity surviving or resulting from such merger or consolidation; and

(d) such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance of fractional shares or interests of the surviving or resulting corporation or limited liability company. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement clearly and expressly set forth in the agreement of merger or consolidation. The term "facts," as used in the preceding sentence, includes, but is not limited to the occurrence of any event, including a determination or action by any person or body, including the corporation.

(3) The agreement required by subsection (2) of this section shall be adopted, approved, certified, executed and acknowledged by each of the corporations in the same manner as provided in section 95 of this Act and, in the case of the limited liability companies, in accordance with their limited liability company agreements and in accordance with the laws of the jurisdiction under which they are formed, as the case may be. The agreement shall be filed and shall become effective for all purposes of the laws of the Marshall Islands when and as provided in section 97 of this Act. In lieu of filing the agreement of merger or consolidation, the surviving or resulting corporation or limited liability company may file a certificate of merger or consolidation, executed in accordance with section 5 of this Act, if the surviving or resulting entity is a corporation, or by an authorized person, if the surviving or resulting entity is a limited liability company, which states:

(a) the name and domicile of each of the constituent entities;

(b) that an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent entities in accordance with this subsection;

(c) the name of the surviving or resulting corporation or limited liability company;

(d) in the case of a merger in which a corporation is the surviving entity, such amendments or changes in the articles of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or change are desired, a statement that the articles of incorporation of the surviving corporation shall be its articles of incorporation;

(e) in the case of a consolidation in which a corporation is the resulting entity, that the articles of incorporation of the resulting corporation shall be as set forth in an attachment to the certificate;

(f) that the executed agreement of consolidation or merger is on file at an office of the surviving corporation or limited liability company and the address thereof;

(g) that a copy of the agreement of consolidation or merger will be furnished by the surviving or resulting entity, on request and without cost, to any stockholder of any constituent corporation or any member of any constituent limited liability company; and

(h) the agreement, if any, required by subsection (4) of this section.

(4) If the entity surviving or resulting from the merger or consolidation is to be governed by the laws of any other jurisdiction other than the Marshall Islands, it shall agree that it may be served with process in the Marshall Islands in any proceeding for enforcement of any obligation of any constituent corporation or limited liability company of the Marshall Islands, as well as for enforcement of any obligation of the surviving or resulting corporation or limited liability company arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings and shall irrevocably appoint the Government's designee as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Government's designee. In the event of such service upon the Government's designee in accordance with this subsection, the Government's designee shall forthwith notify such surviving or resulting corporation or limited liability company at its address so specified, unless such surviving or resulting corporation or limited liability company shall have designated in writing to the Government's designee a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall enclose a copy of the process and any other papers served on the Government's designee pursuant to this subsection. *[P.L. 2000-18, § 131, adding new section.]*

§ 132. Conversion of other entities to a domestic corporation.

(1) As used in this section, the term "other entity" means a limited liability company, partnership, limited partnership or trust of the Marshall Islands.

(2) Any other entity may convert to a corporation incorporated under the laws of the Marshall Islands by complying with subsection (7) of this section and filing in the office of the Registrar of Corporations:

(a) a certificate of conversion that has been executed in accordance with subsection (8) of this section and filed in accordance with section 5 of this Act; and

(b) articles of incorporation that have been executed, acknowledged and filed in accordance with section 5 of this Act.

(3) The certificate of conversion shall state:

(a) the date on which the other entity was first formed;

(b) the name of the other entity immediately prior to the filing of the certificate of conversion;

(c) the name of the corporation as set forth in its articles of incorporation filed in accordance with subsection (2) of this section; and

(d) the fact that the other entity is a limited liability company, partnership, limited partnership or trust of the Marshall Islands.

(4) Upon the effective time of the certificate of conversion, the articles of incorporation and payment to the Registrar of Corporations of all fees prescribed under this Act, the other entity shall be converted into a corporation of the Marshall Islands and the corporation shall thereafter be subject to all of the provisions of this Act, except that notwithstanding section 31 of this Act, the existence of the corporation shall be deemed to have commenced on the date the other entity commenced its existence.

(5) The conversion of any other entity into a corporation of the Marshall Islands shall not be deemed to affect any obligations or liabilities of the other entity incurred prior to its conversion to a corporation of the Marshall Islands or the personal liability of any person incurred prior to such conversion.

(6) Unless otherwise agreed or otherwise provided by any laws of the Marshall Islands applicable to the converting limited liability company, partnership, limited partnership or trust, the converting other entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such other entity and shall constitute a continuation of the existence of the converting other entity in the form of a corporation of the Marshall Islands.

(7) Prior to filing a certificate of conversion with the office of the Registrar of Corporations, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate, and the articles of incorporation shall be approved by the same authorization required to approve the conversion.

(8) The certificate of conversion shall be signed by any officer, director, trustee, manager, partner or other person

performing functions equivalent to those of an officer or director of a corporation of the Marshall Islands, however, named or described, and who is authorized to sign the certificate of conversion on behalf of the other entity. *[P.L. 2000-18, § 132, adding new section.]*

§ 133. Conversion of domestic corporation to other entities.

(1) A domestic corporation of the Marshall Islands may, upon the authorization of such conversion in accordance with this section, convert to a limited liability company, partnership, limited partnership or trust of the Marshall Islands.

(2) The board of directors of the corporation which desires to convert under this section shall adopt a resolution approving such conversion, specifying the type of entity into which the corporation shall be converted and recommending the approval of such conversion by the stockholders of the corporation. Such resolution shall be submitted to the stockholders of the corporation at an annual or special meeting. Due notice of the time and purpose of the meeting shall be mailed to each holder of stock whether voting or nonvoting, of the corporation at the address of the stockholder as it appears on the records of the corporation, at least twenty (20) days prior to the date of the meeting. At the meeting the resolution shall be considered and a vote taken for its adoption or rejection. If all outstanding shares of stock of the corporation, whether voting or nonvoting, shall be voted for the adoption of the resolution, the corporation shall file with the Registrar of Corporations a certificate of conversion executed in accordance with section 5 of this Act, which certifies:

(a) the name of the corporation, and if it has been changed, the name under which it was originally incorporated;

(b) the date of filing of its original articles of incorporation with the Registrar of Corporations;

(c) the name of the limited liability company, partnership, or limited partnership into which the corporation shall be converted; and

(d) that the conversion has been approved in accordance with the provisions of this section.

(3) Upon the filing of a certificate of conversion in accordance with subsection (2) of this section and payment to the Registrar of Corporations of all fees prescribed under this Act, the Registrar of Corporations shall certify that the corporation has filed all documents

and paid all fees required by this Act, and thereupon the corporation shall cease to exist as a corporation of the Marshall Islands at the time the certificate of conversion becomes effective in accordance with section 5 of this Act. Such certificate of the Registrar of Corporations shall be prima facie evidence of the conversion by such corporation.

(4) The conversion of a corporation pursuant to a certificate of conversion under this section shall not be deemed to affect any obligations or liabilities of the corporation incurred prior to such conversion or the personal liability of any person incurred prior to such conversion.

(5) After the time the certificate of conversion becomes effective the corporation shall continue to exist as a limited liability company, partnership, limited partnership or trust of the Marshall Islands, and the laws of the Marshall Islands shall apply to the entity to the same extent as prior to such time.

(6) Unless otherwise provided in a resolution of conversion adopted in accordance with this section, the converting corporation shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not constitute a dissolution of such corporation and shall constitute a continuation of the existence of the converting corporation in the form of the applicable other entity of the Marshall Islands. *[P.L. 2000-18, § 133, adding new section; amended by P.L. 2005-27, § 133.]*

PART II:

REVISED

PARTNERSHIP ACT

DIVISION 1:
GENERAL PROVISIONS

- § 1. Definitions.**
- § 2. Knowledge and notice.**
- § 3. Effect of partnership agreement; nonwaivable provisions.**
- § 4. Supplemental principles of law.**
- § 5. Execution, filing and recording of statements and certificates.**
- § 6. Governing law.**
- § 7. Reserved power of the Marshall Islands to alter or repeal Act.**
- § 8. Name of partnership.**
- § 9. Indemnification.**
- § 10. Registered agent for the service of process.**
- § 11. Attorney General as agent for service of process.**
- § 12. Doing business.**
- § 13. Restated certificate of partnership existence.**
- § 14. Execution, amendment or cancellation by judicial order.**
- § 15. Certificate of correction; corrected certificate.**
- § 16. Business transactions of partner with the partnership.**
- § 17. Contractual appraisal rights.**
- § 18. Contested matters relating to partners; contested votes.**
- § 19. Interpretation and enforcement of partnership agreement.**

§ 1. Definitions.

As used in this Act, unless the context otherwise requires, the term:

(1) “business” includes every trade, occupation and profession, the holding or ownership of property and any other activity for profit.

(2) “certificate” means a certificate of partnership existence under section 29 of this Act, a certificate of dissociation under section 53 of this Act, a certificate of dissolution under section 59 of this Act, an amendment or cancellation of any of the foregoing under section 5 of this division, a certificate of correction and a corrected certificate under section 15 of this division, a certificate of conversion to partnership under section 62 of this Act, a certificate of merger or consolidation under section 63 of this Act, a certificate of partnership domestication under section 65 of this Act, a certificate of transfer under section 66 of this Act, and a certificate of termination of a certificate with a future effective date and a certificate of amendment of a certificate with a future effective date under section 5(8) of this division.

(3) “distribution” means a transfer of money or other property from a partnership to a partner in the partner’s capacity as a partner or to a transferee of all or a part of a partner’s economic interest.

(4) “economic interest” means a partner’s share of the profits and losses of a partnership and the partner’s right to receive distributions.

(5) “High Court” means the High Court of the Republic of the Marshall Islands.

(6) “liquidating trustee” means a person, other than a partner, carrying out the winding up of a partnership.

(7) “non-resident partnership” means a domestic partnership not doing business in the Republic of the Marshall Islands. “Not doing business in the Marshall Islands” will have the same meaning as found in the Marshall Islands Business Corporations Act (BCA), 18 MIRC 1.

(8) “partner” means a person who has been admitted to a partnership as a partner of the partnership.

(9) “partnership” or “domestic partnership” means an association of two (2) or more persons formed under section 21 of this Act, to carry on any business, purpose or activity.

(10) “partnership agreement” means the agreement, whether written, oral or implied, among the partners concerning the partnership, including amendments to the partnership agreement. A partnership is not required to execute its partnership agreement. A partnership is bound by its partnership agreement whether or not the partnership executes the partnership agreement.

(11) “partnership at will” means a partnership that is not a partnership for a definite term or particular undertaking.

(12) “partnership for a definite term or particular undertaking” means a partnership in which the partners have agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(13) “partnership interest” or “partner’s interest in the partnership” means all of a partner’s interests in the partnership, including the partner’s economic interest and all management and other rights.

(14) “person” means a natural person, partnership, limited partnership, trust, estate, limited liability company,

association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity, in each case, whether domestic or foreign.

(15) “property” means all property, real, personal or mixed, tangible or intangible, or any interest therein.

(16) “Registrar of Corporations” means the Registrar of domestic partnerships. The Registrar for resident partnerships is the Registrar of Corporations responsible for resident domestic and authorized foreign corporations. The Registrar for non-resident partnerships is The Trust Company of the Marshall Islands, Inc.

(17) “resident domestic partnership” means a domestic partnership doing business in the Republic of the Marshall Islands.

(18) “transfer” includes an assignment, conveyance, lease, mortgage, deed, and encumbrance. [P.L. 2005-28, § 1.]

§ 2. Knowledge and notice.

(1) A person knows a fact if the person has actual knowledge of it.

(2) A person has notice of a fact:

(a) if the person knows of it;

(b) if the person has received a notification of it;

(c) if the person has reason to know it exists from all of the facts known to the person at the time in question; or

(d) by reason of a filing or recording of a certificate to the extent provided by and subject to the limitations set forth in this Act.

(3) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in the ordinary course, whether or not the other person obtains knowledge of it.

(4) A person receives a notification when the notification:

(a) comes to the person’s attention; or

(b) is received at the person’s place of business or at any other place held out by the person as a place for receiving communications.

(5) Except as otherwise provided in subsection (6) of this section, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual’s attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual’s regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(6) A partner’s knowledge, notice or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner. [P.L. 2005-28, § 2.]

§ 3. Effect of partnership agreement; nonwaivable provisions

(1) Except as otherwise provided in subsection (2) of this section, relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this Act governs relations among the partners and between the partners and the partnership.

(2) The partnership agreement may not:

(a) vary the rights and duties under section 5 of this division except to eliminate the duty to provide copies of certificates to all of the partners;

(b) restrict a partner’s rights to obtain information as provided in section 37 of this Act, except as permitted by section 37(6) of this Act;

(c) eliminate the obligation of good faith and fair dealing under section 38(4) of this Act, but the partnership agreement may restrict the obligation or prescribe the standards by which the performance of the obligation is to be measured;

(d) vary the power to dissociate as a partner under section 48(1) of this Act, except to require the notice under section 47(1) of this Act to be in writing;

(e) vary the right of a court to expel a partner in the events specified in section 47(5) of this Act;

(f) vary the requirement to wind up the partnership business in cases specified in sections 55(4)-(6) of this Act; or

(3) Notwithstanding anything to the contrary contained in this section, sections 20, 22 and 43 of this Act may be modified only to the extent provided in a certificate of partnership existence and in a partnership agreement.

(4) It is the policy of this Act to give maximum effect to the principle of freedom of contract and to the enforceability of partnership agreements.

(5) A partner or another person shall not be liable to the partnership or the other partners or another person that is a party to or otherwise bound by a partnership agreement for the partner's or other person's good faith reliance on the provisions of the partnership agreement. *[P.L. 2005-28, § 3.]*

§ 4. Supplemental principles of law

(1) In any case not provided for in this Act, the rules of law and equity shall govern.

(2) No obligation of a partner to a partnership arising under a partnership agreement or a separate agreement or writing, and no note, instruction or other writing evidencing any such obligation of a partner, shall be subject to the defense of usury, and no partner shall interpose the defense of usury with respect to any such obligation in any action. *[P.L. 2005-28, § 4.]*

§ 5. Execution, filing and recording of statements and certificates

(1) A certificate may be filed with the Registrar of Corporations by delivery to the Registrar of Corporations of the signed copy of the certificate.

(2) A certificate filed by a partnership must be executed by at least one (1) partner or by one (1) or more authorized persons. The execution of a certificate by an individual as, or on behalf of, a partner or other person named as a partner in a certificate constitutes an oath or affirmation, under the penalties of perjury, that, to the best of the individual's knowledge and belief, the facts

stated therein are true. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his/her authority as a prerequisite to filing. Any signature on any certificate authorized to be filed with the Registrar of Corporations under any provision of this Act may be a facsimile, a conformed signature or an electronically transmitted signature. Upon delivery of any certificate, the Registrar of Corporations shall record the date of its delivery. Unless the Registrar of Corporations finds that any statement or certificate does not conform to law, upon receipt of all filing fees required by law the Registrar of Corporations shall:

(a) certify that the certificate has been filed with the Registrar of Corporations by endorsing upon the original certificate the word "Filed", and the date of the filing. This endorsement is conclusive of the date of its filing in the absence of actual fraud;

(b) file and index the endorsed certificate;

(c) prepare and return to the person who filed it or the person's representative, a copy of the signed certificate similarly endorsed, and shall certify such copy as a true copy of the signed certificate; and

(d) cause to be entered such information from the certificate as the Registrar of Corporations deems appropriate into the Registrar, and such information and a copy of such certificate shall be permanently maintained as a public record on a suitable medium.

(3) A person authorized by this Act to file a certificate may amend or cancel the certificate by filing an amendment or cancellation that names the partnership, identifies the certificate, and states the substance of the amendment or cancellation. A person authorized by this Act to file a certificate who becomes aware that such certificate was false when made, or that any matter described in the certificate has changed, making the certificate false in any material respect, shall promptly amend the certificate. Upon the filing of a certificate amending or correcting a certificate (or judicial decree of amendment) with the Registrar of Corporations, or upon the future effective date of a certificate amending or correcting a certificate (or judicial decree thereof), as provided for therein, the certificate being corrected or amended shall be corrected or amended as set forth therein. Upon the filing of a certificate of cancellation (or judicial decree thereof), or a certificate of merger or consolidation which acts as a certificate of cancellation, or a certificate of transfer, or upon the future effective date of a certificate of cancellation (or a judicial decree thereof) or of a certificate of merger or consolidation which acts as a certificate of cancellation, or a certificate

of transfer, as provided for therein, or as specified in section 10(3) of this division, the certificate of partnership existence is cancelled. A certificate of partnership existence shall be cancelled upon the dissolution and the completion of winding up of the partnership, or as provided in section 10(3) of this division, or upon the filing of a certificate of merger or consolidation if the domestic partnership is not the surviving or resulting entity in a merger or consolidation, or upon the filing of a certificate of transfer. A certificate of cancellation shall be filed with the Registrar of Corporations to accomplish the cancellation of a certificate of partnership existence upon the dissolution and the completion of winding up of a domestic partnership and shall set forth:

- (a) the name of the partnership;
- (b) the date of filing of its certificate of partnership existence; and
- (c) any other information the person filing the certificate of cancellation determines.

Upon the filing of a certificate of partnership domestication, or upon the future effective date of a certificate of partnership domestication, the entity filing the certificate of partnership domestication is domesticated as a partnership with the effect provided in section 65 of this Act. Upon the filing of a certificate of conversion to partnership, or upon the future effective date of a certificate of conversion to partnership, the entity filing the certificate of conversion to partnership is converted to a partnership with the effect provided in section 62 of this Act.

(4) A person who files a certificate pursuant to this section shall promptly send a copy of the certificate to every nonfiling partner and to any other person named as a partner in the certificate. Failure to send a copy of a certificate to a partner or other person does not limit the effectiveness of the certificate as to a person not a partner.

(5) The filing of a certificate of partnership existence under section 29 of this Act with the Registrar of Corporations shall make it unnecessary to file any other document.

(6) A certificate filed with the Registrar of Corporations shall be effective if there has been substantial compliance with the requirements of this Act.

(7) A certificate shall be effective at the time of its filing with the Registrar of Corporations or at any later date specified in the certificate.

(8) If any certificate filed in accordance with this Act provides for a future effective date and if, prior to such future effective date set forth in such certificate, the transaction is terminated or its terms are amended to change the future effective date or any other matter described in such certificate so as to make such certificate false or inaccurate in any respect, such certificate shall, prior to the future effective date set forth in such certificate, be terminated or amended by the filing of a certificate of termination or certificate of amendment of such certificate, executed in the same manner as the certificate being terminated or amended is required to be executed in accordance with this section, which shall identify the certificate which has been terminated or amended and shall state that the certificate has been terminated or the manner in which it has been amended. Upon the filing of a certificate of amendment of a certificate with a future effective date, the certificate identified in such certificate of amendment is amended. Upon the filing of a certificate of termination of a certificate with a future effective date, the certificate identified in such certificate of termination is terminated.

(9) A fee as determined by the Registrar shall be paid at the time of the filing of a certificate. [P.L. 2005-28, § 5.]

§ 6. Governing law.

(1) The law of the Marshall Islands governs relations among the partners and between the partners and the partnership.

(2) If (a) a partnership agreement provides for the application of the laws of the Marshall Islands, and (b) the partnership files with the Registrar of Corporations a certificate of partnership existence, then the partnership agreement shall be governed by and construed under the laws of the Marshall Islands. [P.L. 2005-28, § 6.]

§ 7. Reserved power of the Marshall Islands to alter or repeal Act

All provisions of this Act may be altered from time to time or repealed and all rights of partners are subject to this reservation. Unless expressly stated to the contrary in this Act, all amendments of this Act shall apply to partnerships and partners whether or not existing at the time of the enactment of any such amendment. [P.L. 2005-28, § 7.]

§ 8. Name of partnership

(1) The name of the partnership shall contain the words "Partnership."

(2) The name of a partnership may contain the name of a partner.

(3) The name of a partnership to be included in the certificate of partnership existence must be such as to distinguish it upon the records of the Registrar of Corporations from the name on such records of any partnership or limited partnership organized under the laws of the Marshall Islands and reserved, registered, formed or organized with the Registrar of Corporations; provided, however, that a partnership may be registered under any name which is not such as to distinguish it upon the records of the Registrar of Corporations from the name on such records of any, partnership or limited partnership reserved, registered, formed or organized under the laws of the Marshall Islands with the written consent of the other partnership or limited partnership, which written consent shall be filed with the Registrar of Corporations. [P.L. 2005-28, § 8.]

§ 9. Indemnification

Subject to such standards and restrictions, if any, as are set forth in its partnership agreement, a partnership may, and shall have the power to, indemnify and hold harmless any partner or other person from and against any and all claims and demands whatsoever. [P.L. 2005-28, § 9.]

§ 10. Registered agent for the service of process

(1) Every domestic partnership formed under sections 21 and 29 of this Act, shall designate a registered agent in the Marshall Islands upon whom process against such entity or any notice or demand required or permitted by law to be served may be served. The agent for a partnership having a place of business in the Marshall Islands shall be a resident domestic corporation having a place of business in the Marshall Islands or a natural person, resident of and having a business address in the Marshall Islands.

(2) The registered agent for a non-resident partnership shall be The Trust Company of the Marshall Islands, Inc.

(3) A domestic partnership which fails to maintain a registered agent as required by this Act shall be dissolved or its authority to do business or registration shall be revoked, as the case may be, in accordance with section 71 of this Act.

(4) Manner of service.

(a) Resident domestic partnership. Service of process on a resident domestic partnership may be made on the registered agent in the manner provided

by law for the service of summons as if the registered agent were a defendant.

(b) Non-resident partnership.

(i) Service of process on a non-resident domestic partnership may be made on the registered agent in the manner provided by law for the service of summons as if the registered agent were a defendant; or

(ii) Service of process may be sent to the registered agent via registered mail or courier as if the registered agent were a defendant.

(5) Any registered agent of a partnership may resign as such agent upon filing a written notice thereof with the Registrar of Corporations; provided, however that the registered agent shall notify the partnership not less than thirty (30) days prior to such filing and resignation. The registered agent shall mail or cause to be mailed to the partnership at the last known address of the partnership, within or without the Marshall Islands, or at the last known address of the person at whose request the partnership was formed, notice of the resignation of the agent. No designation of a new registered agent shall be accepted for filing until all charges owing to the former registered agent shall have been paid.

(6) A designation of a registered agent under this section may be made, revoked, or changed by filing an appropriate notification with the Registrar of Corporations.

(7) The designation of a registered agent shall terminate upon filing a notice of resignation provided that the registered agent certifies that the partnership was notified not less than thirty (30) days prior to such filing as provided by subsection (5) of this section.

(8) A registered agent, when served with process, notice or demand for the partnership which it represents, shall transmit the same to the partnership by personal notification or in the following manner: Upon receipt of the process, notice or demand, the registered agent shall cause a copy of such paper to be mailed to the partnership named therein at its last known address. Such mailing shall be by registered mail. As soon thereafter as possible if process was issued in the Marshall Islands, the registered agent may file with the clerk of the Marshall Islands court issuing the process or with the agency of the Government issuing the notice or demand either the receipt of such registered mailing or an affidavit stating that such mailing has been made, signed by the registered agent, or if the agent is a partnership, by an officer of the

same, properly notarized. Compliance with the provisions of this subsection shall relieve the registered agent from any further obligation to the partnership for service of the process, notice or demand, but the agent's failure to comply with the provisions of this subsection shall in no way affect the validity of the service of the process, notice or demand.

(9) A registered agent for service of process acting pursuant to the provisions of this section shall not be liable for the actions or obligations of the partnership for whom it acts. The registered agent shall not be a party to any suit or action against the partnership or arising from the acts or obligations of the partnership. If the Registered agent is named in any such action, the action shall be dismissed as to such agent. *[P.L. 2005-28, § 10.]*

§ 11. Attorney General as agent for service of process

(1) Whenever a domestic partnership fails to maintain a registered agent in the Marshall Islands, or whenever its registered agent cannot be found at its business address, then the Attorney General shall be an agent of such partnership upon whom process or notice or demand required or permitted by law to be served or may be served. The Attorney General shall also be agent for service of process of a partnership whenever authorized under this Act.

(2) Service on the Attorney General as agent of a domestic partnership shall be made by personally delivering to and leaving with him or his/her deputy or with any person authorized by the Attorney General to receive such service, at the office of the Attorney General in Majuro Atoll, duplicate copies of such process together with the statutory fee. The Attorney General shall promptly send one (1) of such copies by registered mail return receipt requested, to such partnership at the business address of its registered agent, or if there is no such office, the Attorney General shall mail such copy, in the case of a resident domestic partnership, in care of the partner or authorized person named in its certificate of partnership at his address stated therein, or in the case of a non-resident domestic partnership, at the address of the partnership without the Marshall Islands, or if none, at the last known address of the partner or authorized person in the certificate of partnership; or in the case of a partnership which has transferred its domicile out of the Marshall Islands to such partnership's registered agent as shown in the certificate of transfer of domicile. *[P.L. 2005-28, § 11.]*

§ 12. Doing business

A limited partnership, a partnership, a limited liability company, a business or other trust or association, or a corporation formed or organized under the laws of any foreign country or other foreign jurisdiction shall not be deemed to be doing business in the Marshall Islands solely by reason of its being a partner in a domestic partnership. *[P.L. 2005-28, § 12.]*

§ 13. Restated certificate of partnership existence

(1) A certificate of partnership existence may be restated by integrating into a single instrument all of the provisions of the certificate of partnership existence which are then in effect and operative as a result of there having been theretofore filed one (1) or more amendments pursuant to section 5(3) of this division or other instruments having the effect of amending a certificate of partnership existence and the certificate of partnership existence may be amended or further amended by the filing of a restated certificate of partnership existence. The restated certificate of partnership existence shall be specifically designated as such in its heading and shall set forth:

(a) the present name of the partnership, and if it has been changed, the name under which the partnership was originally formed;

(b) the date of filing of the original certificate of partnership existence with the Registrar of Corporations;

(c) the information required to be included pursuant to section 29(1) of this Act; and

(d) any other information desired to be included therein.

(2) Upon the filing of the restated certificate of partnership existence with the Registrar of Corporations, or upon the future effective date of a restated certificate of partnership existence as provided for therein, the initial certificate of partnership existence, as theretofore amended, shall be superseded; thenceforth, the restated certificate of partnership existence, including any further amendment made thereby, shall be the certificate of partnership existence of the partnership, but the original date of formation of the partnership shall remain unchanged.

(3) Any amendment effected in connection with the restatement of the certificate of partnership existence shall be subject to any other provision of this Act, not inconsistent with this section, which would apply if a

separate amendment were filed to effect such amendment. *[P.L. 2005-28, § 13.]*

§ 14. Execution, amendment or cancellation by judicial order

(1) If a person required by this Act to execute any certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal, may petition the High Court to direct the execution of the certificate. If the High Court finds that the execution of the certificate is proper and that any person so designated has failed or refused to execute the certificate, the High Court shall order the Registrar of Corporations to file an appropriate certificate.

(2) If a person required to execute a partnership agreement or amendment thereof fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the High Court to direct the execution of the partnership agreement or amendment thereof. If the High Court finds that the partnership agreement or amendment thereof should be executed and that any person so designated has failed or refused to do so, the High Court shall enter an order granting appropriate relief. *[P.L. 2005-28, § 14.]*

§ 15. Certificate of correction; corrected certificate

(1) Whenever any certificate authorized to be filed with the Registrar of Corporations under any provision of this Act has been so filed and is an inaccurate record of the action therein referred to, or was defectively or erroneously executed, such certificate may be corrected by filing with the Registrar of Corporations a certificate of correction of such certificate. The certificate of correction shall specify the inaccuracy or defect to be corrected, shall set forth the portion of the certificate in corrected form and shall be executed and filed as required by this Act. The certificate of correction shall be effective as of the date the original certificate was filed, except as to those persons who are substantially and adversely affected by the correction, and as to those persons the certificate of correction shall be effective from the filing date.

(2) In lieu of filing a certificate of correction, a certificate may be corrected by filing with the Registrar of Corporations a corrected certificate which shall be executed and filed as if the corrected certificate were the certificate being corrected, and a fee shall be paid to and collected by the Registrar of Corporations for filing of the corrected certificate. The corrected certificate shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected, and shall

set forth the entire certificate in corrected form. A certificate corrected in accordance with this section shall be effective as of the date the original certificate was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons the certificate as corrected shall be effective from the filing date. *[P.L. 2005-28, § 15.]*

§ 16. Business transactions of partner with the partnership

Except as provided in the partnership agreement, a partner may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume one (1) or more specific obligations of, provide collateral for and transact other business with, the partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner. *[P.L. 2005-28, § 16.]*

§ 17. Contractual appraisal rights

A partnership agreement or an agreement of merger or consolidation may provide that contractual appraisal rights with respect to a partnership interest or another interest in a partnership shall be available for any class or group of partners or partnership interests in connection with any amendment of a partnership agreement, any merger or consolidation in which the partnership is a constituent party to the merger or consolidation, any conversion of the partnership to another business form, any transfer to or domestication in any jurisdiction by the partnership, or the sale of all or substantially all of the partnership's assets. The High Court shall have jurisdiction to hear and determine any matter relating to any such appraisal rights for resident domestic partnerships. Any court, which can assert jurisdiction pursuant to its rules, shall have jurisdiction to hear and determine any matter relating to any such appraisal rights for non-resident domestic partnerships. *[P.L. 2005-28, § 17.]*

§ 18. Contested matters relating to partners; contested votes

(1) Upon application of any partner of a partnership which is formed under the laws of the Marshall Islands, the High Court may hear and determine the validity of any admission, election, appointment or dissociation of a partner of the partnership, and the right of any person to become or continue to be a partner of the partnership, and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records relating to the issue. In any such application, the partnership shall be named as a party, and service of copies of the application

upon the partnership shall be deemed to be service upon the partnership and upon the person or persons whose right to be a partner is contested and upon the person or persons, if any, claiming to be a partner or claiming the right to be a partner; and the person upon whom service is made shall forward immediately a copy of the application to the partnership and to the person or persons whose right to be a partner is contested and to the person or persons, if any, claiming to be a partner or the right to be a partner, in a postpaid, sealed, registered letter addressed to such partnership and such person or persons at their post office addresses last known to the person upon whom service is made or furnished to the person upon whom service is made by the applicant partner. The High Court may make such order respecting further or other notice of such application as it deems proper under the circumstances.

(2) Upon application of any partner of a partnership which is formed under the laws of the Marshall Islands, the High Court may hear and determine the result of any vote of partners upon matters as to which the partners of the partnership, or any class or group of partners, have the right to vote pursuant to the partnership agreement or other agreement or this Act (other than the admission, election, appointment or dissociation of partners). In any such application, the partnership shall be named as a party, and service of the application upon the person upon whom service is made shall be deemed to be service upon the partnership, and no other party need be joined in order for the High Court to adjudicate the result of the vote. The High Court may make such order respecting further or other notice of such application as it deems proper under the circumstances.

(3) Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents. *[P.L. 2005-28, § 18.]*

§ 19. Interpretation and enforcement of partnership agreement

Any action to interpret, apply or enforce the provisions of a partnership agreement of a partnership which is formed under the laws of the Marshall Islands or doing business in the Marshall Islands, or the duties, obligations or liabilities of such partnership to the partners of the partnership, or the duties, obligations or liabilities among partners or of partners to such partnership, or the rights or powers of, or restrictions on, such partnership or partners, including actions authorized by section 39 of this Act, may be brought in the High Court. *[P.L. 2005-28, § 19.]*

DIVISION 2:

NATURE OF PARTNERSHIP

- § 20. Partnership as entity.**
- § 21. Formation of partnership; powers.**
- § 22. Partnership property.**
- § 23. When property is partnership property.**
- § 24. Admission without contribution or partnership interest.**
- § 25. Form of contribution.**
- § 26. Liability for contribution.**

§ 20. Partnership as entity.

A partnership is a separate legal entity which is an entity distinct from its partners unless otherwise provided in a certificate of partnership existence and in a partnership agreement. *[P.L. 2005-28, § 20.]*

§ 21. Formation of partnership; powers.

(1) A partnership is formed when two (2) or more persons agree to carry on as co-owners of a business for profit and file a certificate of partnership existence pursuant to section 29 of this division.

(2) A partnership shall possess and may exercise all the powers and privileges granted by this Act or by any other law or by its partnership agreement, together with any powers incidental thereto, including such powers and privileges as are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the limited partnership.

(3) Notwithstanding any provision of this Act to the contrary, without limiting the general powers enumerated in subsection (2) of this section, a partnership shall, subject to such standards and restrictions, if any, as are set forth in its partnership agreement, have the power and authority to make contracts of guaranty and suretyship and enter into interest rate, basis, currency, hedge or other swap agreements or cap, floor, put, call, option, exchange or collar agreements, derivative agreements or other agreements similar to any of the foregoing. *[P.L. 2005-28, § 21.]*

§ 22. Partnership property

Unless otherwise provided in a certificate of partnership existence and in a partnership agreement, property acquired by a partnership is property of the partnership and not of the partners individually. *[P.L. 2005-28, § 22.]*

§ 23. When property is partnership property.

(1) Property is partnership property if acquired in the name of:

(a) the partnership; or

(b) one (1) or more persons with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(2) Property is acquired in the name of the partnership by a transfer to:

(a) the partnership in its name; or

(b) one (1) or more persons in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property

(3) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one (1) or more persons with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(4) Property acquired in the name of one (1) or more persons, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes. [P.L. 2005-28, § 23.]

§ 24. Admission without contribution or partnership interest.

Each person to be admitted as a partner to a partnership formed under section 21 of this division may be admitted as a partner and may receive a partnership interest in the partnership without making a contribution or being obligated to make a contribution to the partnership. Each person to be admitted as a partner to a partnership formed under section 21 of this division may be admitted as a partner without acquiring an economic interest in the partnership. Nothing contained in this section shall affect a partner's liability under section 32 of this Act. [P.L. 2005-28, § 24.]

§ 25. Form of contribution

The contribution of a partner may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services. [P.L. 2005-28, § 25.]

§ 26. Liability for contribution.

(1) A partner is obligated to the partnership to perform any promise to contribute cash or property or to perform services, even if the partner is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, the partner is obligated at the option of the partnership to contribute cash equal to that portion of the value of the contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the partnership may have against such partner under the partnership agreement or applicable law.

(2) A partnership agreement may provide that the partnership interest of any partner who fails to make any contribution that the partner is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting partner's interest in the partnership, subordinating the partner's partnership interest to that of non-defaulting partners, a forced sale of the partner's partnership interest, forfeiture of the partner's partnership interest, the lending by other partners of the amount necessary to meet the partner's commitment, a fixing of the value of the partner's partnership interest by appraisal or by formula and redemption or sale of the partner's partnership interest at such value, or other penalty or consequence. [P.L. 2005-28, § 26.]

DIVISION 3:

RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

- § 27. Partner agent of partnership.**
- § 28. Transfer of partnership property.**
- § 29. Certificate of partnership existence.**
- § 30. Denial of status as partner.**
- § 31. Partnership liable for partner's actionable conduct.**
- § 32. Partner's liability.**
- § 33. Actions by and against partnership and partners.**
- § 34. Liability of purported partner.**

§ 27. Partner agent of partnership.

Subject to the effect of a certificate of partnership existence under section 29 of this division:

(1) each partner is an agent of the partnership for the purpose of its business, purposes or activities. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership's business, purposes or activities or business, purposes or activities of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing had notice that the partner lacked authority.

(2) an act of a partner which is not apparently for carrying on in the ordinary course the partnership's business, purposes or activities or business, purposes or activities of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners. [P.L. 2005-28, § 27.]

§ 28. Transfer of partnership property.

(1) Partnership property may be transferred as follows:

(a) subject to the effect of a certificate of partnership existence under section 29 of this division, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name;

(b) partnership property held in the name of one (1) or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held; and

(c) partnership property held in the name of one (1) or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(2) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under section 27 of this division and:

(a) as to a subsequent transferee who gave value for property transferred under subsections (1)(a) and (b) of this section, proves that the subsequent transferee had

notice that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

(b) as to a transferee who gave value for property transferred under subsection (1)(c) of this section, proves that the transferee had notice that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(3) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection (2) of this section, from any earlier transferee of the property.

(4) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document. [P.L. 2005-28, § 28.]

§ 29. Certificate of partnership existence

(1) A partnership must file a certificate of partnership existence, which:

(a) must include:

(i) the name of the partnership; and

(ii) the name and address of the registered agent for service of process required to be maintained by section 10 of this Act; and

(b) may state:

(i) the names of the partners authorized to execute an instrument transferring real property held in the name of the partnership;

(ii) the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership; and

(iii) any other matter.

(2) A certificate of partnership existence supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(a) except for transfers of real property, a grant of authority contained in a certificate of partnership

existence is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another certificate. A filed cancellation of a limitation on authority revives the previous grant of authority; or

(b) a grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a certificate of partnership existence recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a cancellation of a limitation on authority revives the previous grant of authority.

(3) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the certificate containing the limitation on authority is of record in the office for recording transfers of that real property.

(4) Except as otherwise provided in subsections (2) and (3) of this section and sections 53 and 59 of this Act, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a certificate. [P.L. 2005-28, § 29.]

§ 30. Denial of status as partner.

If a person named in a certificate of partnership existence is or may be adversely affected by being so named, the person may petition the High Court to direct the correction of the certificate. If the High Court finds that correction of the certificate is proper and that an authorized person has failed or refused to execute and file a certificate of correction or a corrected certificate, the High Court shall order the Registrar of Corporations to file an appropriate correction. [P.L. 2005-28, § 30.]

§ 31. Partnership liable for partner’s actionable conduct.

(1) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(2) If, in the course of the partnership’s business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss. [P.L. 2005-28, § 31.]

§ 32. Partner’s liability.

(1) Except as otherwise provided in subsection (2) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(2) A person admitted as a partner into an existing partnership is not personally liable for any obligation of the partnership incurred before the person’s admission as a partner. [P.L. 2005-28, § 32.]

§ 33. Actions by and against partnership and partners.

(1) A partnership may sue and be sued in the name of the partnership.

(2) An action may be brought against the partnership and, to the extent not inconsistent with section 32 of this division, any or all of the partners in the same action or in separate actions.

(3) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from the assets of a partner liable as provided in section 32 of this division for a partnership obligation unless there is also a judgment against the partner for such obligation.

(4) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless:

(a) the claim is for an obligation of the partnership for which the partner is liable as provided in section 32 of this division and either:

(i) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(ii) the partnership is a debtor in bankruptcy;

(iii) the partner has agreed that the creditor need not exhaust partnership assets; or

(iv) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(b) liability is imposed on the partner by law or contract independent of the existence of the partnership.

(5) This section applies to any obligation of the partnership resulting from a representation by a partner or purported partner under section 34 of this division. [P.L. 2005-28, § 33.]

§ 34. Liability of purported partner.

(1) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one (1) or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If a partnership obligation results, the purported partner is liable with respect to that obligation as if the purported partner were a partner. If no partnership obligation results, the purported partner is liable with respect to that obligation jointly and severally with any other person consenting to the representation.

(2) If a person is thus represented to be a partner in an existing partnership, or with one (1) or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(3) A person is not liable as a partner merely because the person is named by another in a certificate of partnership existence.

(4) A person does not continue to be liable as a partner merely because of a failure to file a certificate of dissociation or to amend a certificate of partnership existence to indicate the partner's dissociation from the partnership.

(5) Except as otherwise provided in subsections (1) and (2) of this section, persons who are not partners as to each other are not liable as partners to other persons. [P.L. 2005-28, § 34.]

DIVISION 4:

RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP

§ 35. Partner's rights and duties.

§ 36. Distributions in kind.

§ 37. Partner's rights and duties with respect to information.

§ 38. General standards of partner's conduct.

§ 39. Actions by partnership and partners; derivative actions.

§ 40. Continuation of partnership beyond definite term or particular undertaking.

§ 41. Classes and voting.

§ 42. Remedies for breach of partnership agreement.

§ 35. Partner's rights and duties.

(1) Each partner is deemed to have an account that is:

(a) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

(b) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(2) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(3) In addition to indemnification under section 9 of this Act, a partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property; however, no person shall be

required as a consequence of any such indemnification to make any payment to the extent that the payment is inconsistent with section 32(2) of this Act.

(4) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(5) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (3) or (4) of this section constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(6) Each partner has equal rights in the management and conduct of the partnership business and affairs.

(7) A partner may use or possess partnership property only on behalf of the partnership.

(8) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the partnership.

(9) A person may become a partner only with the consent of all of the partners.

(10) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership may be undertaken only with the consent of all of the partners.

(11) This section does not affect the obligations of a partnership to other persons under section 27 of this Act.

(12) A partner has the power and authority to delegate to one (1) or more other persons the partner's rights and powers to manage and control the business and affairs of the partnership, including to delegate to agents, officers and employees of the partner or the partnership, and to delegate by a management agreement or other agreement with, or otherwise to, other persons. Such delegation by a partner shall not cause the partner to cease to be a partner of the partnership or cause the person to whom any such rights and powers have been delegated to be a partner of the partnership.

(13) Unless otherwise provided in a partnership agreement or another agreement, a partner shall have no preemptive right to subscribe to any additional issue of partnership interests or another interest in a partnership. [P.L. 2005-28, § 35.]

§ 36. Distributions in kind.

A partner, regardless of the nature of the partner's contribution, has no right to demand and receive any distribution from a partnership in kind. A partner may not be compelled to accept a distribution of any asset in kind from a partnership to the extent that the percentage of the asset distributed to the partner exceeds a percentage of that asset which is equal to the percentage in which the partner shares in distributions from the partnership. A partner may be compelled to accept a distribution of any asset in kind from a partnership to the extent that the percentage of the asset distributed to the partner is equal to a percentage of that asset which is equal to the percentage in which the partner shares in distributions from the partnership. [P.L. 2005-28, § 36.]

§ 37. Partner's rights and duties with respect to information.

(1) Each partner and the partnership shall provide partners, former partners and the legal representative of a deceased partner or partner under a legal disability and their agents and attorneys, access to the books and records of the partnership and other information concerning the partnership's business and affairs (in the case of former partners, only with respect to the period during which they were partners) upon reasonable demand, for any purpose reasonably related to the partner's interest as a partner in the partnership. The right of access shall include access to:

(a) true and full information regarding the status of the business and financial condition of the partnership;

(b) promptly after becoming available, a copy of the partnership's financial statements or tax filings, if applicable, for each year;

(c) a current list of the name and last known business, residence or mailing address of each partner;

(d) a copy of any certificate and written partnership agreement and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the certificate or the partnership agreement and any amendments thereto have been executed;

(e) true and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each partner and which each partner has agreed to contribute in the future, and the date on which each partner became a partner; and

(f) other information regarding the affairs of the partnership as is just and reasonable. The right of access includes the right to examine and make extracts from books and records and other information concerning the partnership's business and affairs. The partnership agreement may provide for, and in the absence of such provision in the partnership agreement, the partnership or the partner from whom access is sought may impose, reasonable standards (including standards governing what information and documents are to be furnished at what time and location and at whose expense) with respect to exercise of the right of access.

(2) A partnership agreement may provide that the partnership shall have the right to keep confidential from partners for such period of time as the partnership deems reasonable, any information which the partnership reasonably believes to be in the nature of trade secrets or other information the disclosure of which the partnership in good faith believes is not in the best interest of the partnership or could damage the partnership or its business or affairs or which the partnership is required by law or by agreement with a third party to keep confidential.

(3) A partnership and its partners may maintain the books and records and other information concerning the partnership in other than a written form if such form is capable of conversion into written form within a reasonable time.

(4) Any demand by a partner under this section shall be in writing and shall state the purpose of such demand.

(5) Any action to enforce any right arising under this section may be brought in the High Court. If the partnership or a partner refuses to permit access as described in subsection (1)(c) of this section or does not reply to a demand that has been made within five (5) business days after the demand has been made, the demanding partner, former partner, or legal representative of a deceased partner or partner under a legal disability may apply to the High Court for an order to compel such disclosure. The High Court is hereby vested with jurisdiction to determine whether or not the person making the demand is entitled to the books and records or other information concerning the partnership's business and affairs sought. The High Court may summarily order the partnership or partner to permit the demanding partner, former partner or legal representative of a deceased partner or partner under a legal disability and their agents and attorneys to provide access to the information described in subsection (1)(c) of this section and to make copies or extracts therefrom; or the High Court may summarily order the partnership or partner to

furnish to the demanding partner, former partner or legal representative of a deceased partner or partner under a legal disability and their agents and attorneys the information described in subsection (1)(c) of this section on the condition that the partner, former partner or legal representative of a deceased partner or partner under a legal disability first pay to the partnership or to the partner from whom access is sought the reasonable cost of obtaining and furnishing such information and on such other conditions as the High Court deems appropriate. When a demanding partner, former partner or legal representative of a deceased partner or partner under a legal disability seeks to obtain access to information described in subsection (1)(c) of this section, the demanding partner, former partner or legal representative of a deceased partner or partner under a legal disability shall first establish (a) that the demanding partner, former partner or legal representative of a deceased partner or partner under a legal disability has complied with the provisions of this section respecting the form and manner of making demand for obtaining access to such information and (b) that the information the demanding partner, former partner or legal representative of a deceased partner or partner under a legal disability seeks is reasonably related to the partner's interest as a partner in the partnership. The High Court may, in its discretion, prescribe any limitations or conditions with reference to the access to information, or award such other or further relief as the High Court may deem just and proper.

(6) The rights of a partner to obtain information as provided in this section may be restricted in an original partnership agreement or in any subsequent amendment approved or adopted by all of the partners and in compliance with any applicable requirements of the partnership agreement. [P.L. 2005-28, § 37.]

§ 38. General standards of partner's conduct

(1) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections (2) and (3) of this section.

(2) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(a) to account to the partnership and hold as trustee for it any property, profit or benefit derived by the partner in the conduct or winding up of the partnership business or affairs or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;

(b) to refrain from dealing with the partnership in the conduct or winding up of the partnership business

or affairs as or on behalf of a party having an interest adverse to the partnership; and

(c) to refrain from competing with the partnership in the conduct of the partnership business or affairs before the dissolution of the partnership.

(3) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business or affairs is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A partner shall discharge the duties to the partnership and the other partners under this Act or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(5) A partner does not violate a duty or obligation under this Act or under the partnership agreement solely because the partner's conduct furthers the partner's own interest.

(6) A partner may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume one (1) or more specific obligations of, provide collateral for and transact other business with, the partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

(7) This section applies to a person winding up the partnership business or affairs as the personal or legal representative of the last surviving partner as if the person were a partner. [P.L. 2005-28, § 38.]

§ 39. Actions by partnership and partners; derivative actions.

(1) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(2) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

(a) enforce the partner's rights under the partnership agreement;

(b) enforce the partner's rights under this Act, including:

(i) the partner's rights under sections 35, 37 or 38 of this division;

(ii) the partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to section 50 of this Act or enforce any other right under Division 6 or 7 of this Act; or

(iii) the partner's right to compel a dissolution and winding up of the partnership business under section 55 of this Act or enforce any other right under Division 8 of this Act; or

(c) enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(3) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon dissolution and winding up does not revive a claim barred by law.

(4) A partner may bring a derivative action in the High Court in the right of a partnership to recover a judgment in the partnership's favor.

(5) In a derivative action, the plaintiff must be a partner at the time of bringing the action and:

(a) at the time of the transaction of which the partner complains; or

(b) the partner's status as a partner had devolved upon the partner by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

(6) In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by the partnership or the reason for not making the effort.

(7) If a derivative action is successful, in whole or in part, as a result of a judgment, compromise or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from any recovery in any such action or from a partnership. [P.L. 2005-28, § 39.]

§ 40. Continuation of partnership beyond definite term or particular undertaking.

(1) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain

the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(2) If the partners, or those of them who habitually acted in the business or affairs during the term or undertaking, continue the business or affairs without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue. [P.L. 2005-28, § 40.]

§ 41. Classes and voting

(1) A partnership agreement may provide for classes or groups of partners having such relative rights, powers and duties as the partnership agreement may provide, and may make provision for the future creation in the manner provided in the partnership agreement of additional classes or groups of partners having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of partners. A partnership agreement may provide for the taking of an action, including the amendment of the partnership agreement, without the vote or approval of any partner or class or group of partners, including an action to create under the provisions of the partnership agreement a class or group of partnership interests that was not previously outstanding. A partnership agreement may provide that any partner or class or group of partners shall have no voting rights.

(2) The partnership agreement may grant to all or certain identified partners or a specified class or group of the partners the right to vote separately or with all or any class or group of the partners on any matter. Voting by partners may be on a per capita, number, financial interest, class, group or any other basis.

(3) A partnership agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any partners, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(4) On any matter that is to be voted on, consented to or approved by partners, the partners may take such action without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the partners having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all partners entitled to vote thereon were present and voted. On any matter that is to be voted

on by partners, the partners may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. Unless otherwise provided in a partnership agreement, a consent transmitted by electronic transmission by a partner or by a person or persons authorized to act for a partner shall be deemed to be written and signed for purposes of this subsection. For purposes of this subsection, the term “electronic transmission” means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

(5) If a partnership agreement provides for the manner in which it may be amended, it may be amended in that manner or with the approval of all the partners or as otherwise permitted by law. If a partnership agreement does not provide for the manner in which it may be amended, the partnership agreement may be amended with the approval of all the partners or as otherwise permitted by law. [P.L. 2005-28, § 41.]

§ 42. Remedies for breach of partnership agreement.

A partnership agreement may provide that (1) a partner who fails to perform in accordance with, or to comply with the terms and conditions of, the partnership agreement shall be subject to specified penalties or specified consequences, and (2) at the time or upon the happening of events specified in the partnership agreement, a partner shall be subject to specified penalties or specified consequences. Such specified penalties or specified consequences may include and take the form of any penalty or consequence set forth in section 26(2) of this Act. [P.L. 2005-28, § 42.]

DIVISION 5:

TRANSFEREES AND CREDITORS OF PARTNER

§ 43. Partner not co-owner of partnership property.

§ 44. Partner’s economic interest in partnership; personal property.

§ 45. Transfer of partner’s economic interest.

§ 46. Partner’s economic interest subject to charging order.

§ 43. Partner not co-owner of partnership property

Unless otherwise provided in a certificate of partnership existence and in a partnership agreement, a partner

is not a co-owner of partnership property and has no interest in specific partnership property. [P.L. 2005-28, § 43.]

§ 44. Partner's economic interest in partnership; personal property.

A partnership interest is personal property. Only a partner's economic interest may be transferred. [P.L. 2005-28, § 44.]

§ 45. Transfer of partner's economic interest

(1) A transfer, in whole or in part, of a partner's economic interest in the partnership:

(a) is permissible;

(b) does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business or affairs; and

(c) does not entitle the transferee to participate in the management or conduct of the partnership business or affairs, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

(2) A transferee of a partner's economic interest in the partnership has a right:

(a) to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(b) to receive upon the dissolution and winding up of the partnership business or affairs, in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(c) to seek under section 55(6) of this Act a judicial determination that it is equitable to wind up the partnership business or affairs.

(3) In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

(4) Upon transfer, the transferor retains the rights and duties of a partner other than the economic interest transferred.

(5) A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.

Upon request of a partnership or a partner, a transferee must furnish reasonable proof of a transfer.

(6) A transfer of a partner's economic interest in the partnership in violation of a restriction on transfer contained in a partnership agreement is ineffective.

(7) Notwithstanding anything to the contrary under applicable law, a partnership agreement may provide that a partner's economic interest may not be transferred prior to the dissolution and winding up of the partnership.

(8) A partnership interest in a partnership may be evidenced by a certificate of partnership interest issued by the partnership. A partnership agreement may provide for the transfer of any partnership interest represented by such a certificate and make other provisions with respect to such certificates.

(9) Except to the extent assumed by agreement, until a transferee of a partnership interest becomes a partner, the transferee shall have no liability as a partner solely as a result of the transfer.

(10) A partnership may acquire, by purchase, redemption or otherwise, any partnership interest or other interest of a partner in the partnership. Any such interest so acquired by the partnership shall be deemed canceled. [P.L. 2005-28, § 45.]

§ 46. Partner's economic interest subject to charging order.

(1) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the economic interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership which receiver shall have only the rights of a transferee, and the court may make all other orders, directions, accounts and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(2) A charging order constitutes a lien on the judgment debtor's economic interest in the partnership. The court may order a foreclosure of the economic interest subject to the charging order at any time. The purchaser at the foreclosure sale has only the rights of a transferee.

(3) At any time before foreclosure, an economic interest charged may be redeemed:

(a) by the judgment debtor;

(b) with property other than partnership property, by one (1) or more of the other partners; or

(c) by the partnership with the consent of all of the partners whose interests are not so charged.

(4) This Act does not deprive a partner of a right under exemption laws with respect to the partner's economic interest in the partnership.

(5) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's economic interest in the partnership.

(6) No creditor of a partner shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the partnership. [P.L. 2005-28, § 46.]

DIVISION 6:

PARTNER'S DISSOCIATION

§ 47. Events causing partner's dissociation.

§ 48. Partner's power to dissociate; wrongful dissociation.

§ 49. Effect of partner's dissociation.

§ 47. Events causing partner's dissociation

A partner is dissociated from a partnership upon the occurrence of any of the following events:

(1) the partnership's having notice of the partner's express will to withdraw as a partner on a later date specified by the partner in the notice or, if no later date is specified, then upon receipt of notice;

(2) an event agreed to in the partnership agreement as causing the partner's dissociation;

(3) the partner's expulsion pursuant to the partnership agreement;

(4) the partner's expulsion by the unanimous vote of the other partners if:

(a) it is unlawful to carry on the partnership business or affairs with that partner; or

(b) there has been a transfer of all or substantially all of that partner's economic interest, other than a transfer for security purposes, or a court order charging the

partner's interest which, in either case, has not been foreclosed;

(5) on application by or for the partnership or another partner to the High Court, the partner's expulsion by determination by the High Court because:

(a) the partner engaged in wrongful conduct that adversely and materially affected the partnership business or affairs;

(b) the partner willfully or persistently committed a material breach of either the partnership agreement or of a duty owed to the partnership or the other partners; or

(c) the partner engaged in conduct relating to the partnership business or affairs which makes it not reasonably practicable to carry on the business or affairs in partnership with the partner;

(6) the partner's:

(a) making an assignment for the benefit of creditors;

(b) filing a voluntary petition in bankruptcy;

(c) being adjudged as bankrupt or insolvent, or having entered against that partner an order for relief in any bankruptcy or insolvency proceeding;

(d) filing a petition or answer seeking for that partner any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;

(e) filing an answer or other pleading admitting or failing to contest the material allegations of a petition filed against that partner in any proceeding of this nature;

(f) seeking, consenting to or acquiescing in the appointment of a trustee, receiver or liquidator of that partner or of all or any substantial part of that partner's properties; or

(g) failing, within 120 days after its commencement, to have dismissed any proceeding against that partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, or failing, within ninety (90) days after the appointment without that partner's consent or acquiescence, to have vacated or stayed the appointment of a trustee, receiver or liquidator of that

partner or of all or any substantial part of that partner's properties, or failing, within ninety (90) days after the expiration of any such stay, to have the appointment vacated;

(7) in the case of a partner who is an individual:

(a) the partner's death;

(b) the appointment of a guardian or general conservator for the partner; or

(c) a judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) in the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire economic interest, but not merely by reason of the substitution of a successor trustee;

(9) in the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire economic interest, but not merely by reason of the substitution of a successor personal representative;

(10) the expiration of ninety (90) days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its existence has been terminated or its certificate of incorporation has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, if there is no revocation of the certificate of dissolution or no reinstatement of its existence, its certificate of incorporation or its right to conduct business;

(11) a partnership, a limited liability company, a trust or a limited partnership that is a partner has been dissolved and its business is being wound up; or

(12) termination of a partner who is not an individual, partnership, corporation, trust, limited partnership, limited liability company or estate. [P.L. 2005-28, § 47.]

§ 48. Partner's power to dissociate; wrongful dissociation.

(1) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to section 47(1) of this division.

(2) A partner's dissociation is wrongful only if any of the following apply:

(a) it is in breach of an express provision of the partnership agreement; or

(b) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking if any of the following apply:

(i) the partner withdraws by express will, unless the withdrawal follows within ninety (90) days after another partner's dissociation by death or otherwise under sections 47(6)-(12) of this division or wrongful dissociation under this subsection;

(ii) the partner is expelled by judicial determination under section 47(5) of this division;

(iii) the partner is dissociated under section 47(6) of this division; or

(iv) in the case of a partner who is not an individual, trust (other than a statutory trust), or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(3) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. Such liability is in addition to any other obligation of the partner to the partnership or to the other partners. [P.L. 2005-28, § 48.]

§ 49. Effect of partner's dissociation.

(1) If a partner's dissociation results in a dissolution and winding up of the partnership business, Division 8 of this Act applies; otherwise, Division 7 of this Act applies.

(2) Upon a partner's dissociation:

(a) the partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in section 57 of this Act;

(b) the partner's duty of loyalty under section 38(2)(c) of this Act terminates; and

(3) the partner's duty of loyalty under section 38(2)(a) and (b) of this Act and duty of care under section 38(3) of this Act continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to section 57 of this Act. [P.L. 2005-28, § 49.]

DIVISION 7:

PARTNER'S DISSOCIATION WHEN BUSINESS OR AFFAIRS NOT WOUND UP

§ 50. Purchase of dissociated partner's partnership interest.

§ 51. Dissociated partner's power to bind and liability to partnership.

§ 52. Dissociated partner's liability to other persons.

§ 53. Certificate of dissociation.

§ 54. Continued use of partnership name.

§ 50. Purchase of dissociated partner's partnership interest.

(1) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business or affairs under section 55 of this Act, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (2) of this section.

(2) The buyout price of a dissociated partner's partnership interest is an amount equal to the fair value of such partner's economic interest as of the date of dissociation based upon such partner's right to share in distributions from the partnership. Interest must be paid from the date of dissociation to the date of payment.

(3) Damages for wrongful dissociation under section 48(2) of this Act, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(4) A partnership shall indemnify a dissociated partner whose partnership interest is being purchased against all partnership obligations, whether incurred before or after the dissociation, except partnership obligations incurred by an act of the dissociated partner under section 51 of this division.

(5) If no agreement for the purchase of a dissociated partner's partnership interest is reached within 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (3) of this section.

(6) If a deferred payment is authorized under subsection (8) of this section, the partnership may tender a

written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (3) of this section, stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(7) The payment or tender required by subsection (5) or (6) of this section must be accompanied by the following:

(a) a written statement of partnership assets and liabilities as of the date of dissociation;

(b) the latest available partnership balance sheet and income statement, if any;

(c) a written explanation of how the estimated amount of the payment was calculated; and

(d) written notice which shall state that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action in the High Court under subsection (9) of this section to determine the buyout price of that partner's partnership interest, any offsets under subsection (3) of this section or other terms of the obligation to purchase.

(8) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the High Court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must bear interest and, to the extent it would not cause undue hardship to the business of the partnership, be adequately secured.

(9) A dissociated partner may maintain an action against the partnership, pursuant to section 39(2)(b)(ii) of this Act, to determine the buyout price of that partner's partnership interest, any offsets under subsection (3) of this section, or other terms of the obligation to purchase. The action must be commenced within 120 days after the partnership has tendered payment or an offer to pay or within one (1) year after written demand for payment if no payment or offer to pay is tendered. The High Court shall determine the buyout price of the dissociated partner's partnership interest, any offset due under subsection (3) of this section, and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (8) of

this section, the High Court shall also determine the security, if any, for payment and other terms of the obligation to purchase. The High Court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the High Court finds equitable, against a party that the High Court finds acted arbitrarily, vexatiously or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (7) of this section. [P.L. 2005-28, § 50.]

§ 51. Dissociated partner's power to bind and liability to partnership

(1) For one (1) year after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under Division 9 of this Act, is bound by an act of the dissociated partner which would have bound the partnership under section 27 of this Act before dissociation only if at the time of entering into the transaction the other party:

(a) reasonably believed that the dissociated partner was then a partner and reasonably relied on such belief in entering into the transaction;

(b) did not have notice of the partner's dissociation; and

(c) is not deemed to have had knowledge under section 29(3) of this Act or notice under section 53(3) of this division.

(2) A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (1) of this section. [P.L. 2005-28, § 51.]

§ 52. Dissociated partner's liability to other persons.

(1) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection (2) of this section.

(2) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under Division 9 of this Act, within one (1) year after the

partner's dissociation, only if the partner is liable for the obligation under section 32 of this Act and at the time of entering into the transaction the other party:

(a) reasonably believed that the dissociated partner was then a partner and reasonably relied on such belief in entering into the transaction;

(b) did not have notice of the partner's dissociation; and

(c) is not deemed to have had knowledge under section 29(3) of this Act or notice under section 53(3) of this division.

(3) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(4) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation. [P.L. 2005-28, § 52.]

§ 53. Certificate of dissociation.

(1) A dissociated partner or, after the filing by the partnership of a certificate of partnership existence, the partnership may file a certificate of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(2) A certificate of dissociation is a limitation on the authority of a dissociated partner for the purposes of sections 29(2) and (3) of this Act.

(3) For the purposes of sections 51(1)(c) and 52(2)(c) of this division, a person not a partner is deemed to have notice of the dissociation sixty (60) days after the certificate of dissociation is filed. [P.L. 2005-28, § 53.]

§ 54. Continued use of partnership name

Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership. [P.L. 2005-28, § 54.]

DIVISION 8:

WINDING UP PARTNERSHIP BUSINESS OR AFFAIRS

- § 55. Events causing dissolution and winding up of partnership business or affairs.
 - § 56. Partnership continues after dissolution.
 - § 57. Right to wind up partnership business or affairs.
 - § 58. Partner's power to bind partnership after dissolution.
 - § 59. Certificate of dissolution.
 - § 60. Partner's liability to other partners after dissolution.
 - § 61. Settlement of accounts and contributions among partners.
- § 55. Events causing dissolution and winding up of partnership business or affairs

A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

(1) in a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated pursuant to sections 47(2)-(12) of this Act, of that partner's express will to withdraw as a partner, on a later date specified by the partner in the notice or, if no later date is specified, then upon receipt of notice;

(2) in a partnership for a definite term or particular undertaking:

(a) within ninety (90) days after a partner's dissociation by death or otherwise under sections 47(6)-(12) of this act or wrongful dissociation under section 48(2) of this Act, at least half of the remaining partners express the will to wind up the partnership business, for which purpose a partner's rightful dissociation pursuant to section 48(2)(b)(i) of this Act constitutes the expression of that partner's will to wind up the partnership business;

(b) the express will of all of the partners to wind up the partnership business or affairs; or

(c) the expiration of the term or the completion of the undertaking;

(3) an event agreed to in the partnership agreement resulting in the winding up of the partnership business or affairs;

(4) an event that makes it unlawful for all or substantially all of the business or affairs of the partnership to be continued, but a cure of such illegality within ninety (90) days after the partnership has notice of the event is effective retroactively to the date of the event for purposes of this section;

(5) on application by or for a partner to the High Court, the entry of a decree of dissolution of a partnership by the High Court upon a determination by the High Court that it is not reasonably practicable to carry on the partnership business, purpose or activity in conformity with the partnership agreement; or

(6) on application by a transferee of a partner's economic interest to the High Court, a determination by the High Court that it is equitable to wind up the partnership business or affairs:

(a) after the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

(b) at any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer. [P.L. 2005-28, § 55.]

§ 56. Partnership continues after dissolution.

(1) Subject to subsection (2) of this section, a partnership continues after dissolution only for the purpose of winding up its business or affairs. The partnership is terminated when the winding up of its business or affairs is completed.

(2) At any time after the dissolution of a partnership and before the winding up of its business or affairs is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business or affairs wound up and the partnership terminated. In that event:

(a) the partnership resumes carrying on its business or affairs as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and

(b) the rights of a third party accruing under section 58(1) of this division or arising out of conduct in reliance on the dissolution before the third party knew

or received a notification of the waiver may not be adversely affected. [P.L. 2005-28, § 56.]

§ 57. Right to wind up partnership business or affairs.

(1) A partner at the time of dissolution, including a partner who has dissociated but not wrongfully, may participate in winding up the partnership's business or affairs, but on application of any partner or a partner's legal representative or transferee, the High Court for good cause shown, may order judicial supervision of the winding up.

(2) The legal representative of the last surviving partner may wind up a partnership's business or affairs.

(3) The persons winding up the partnership's business or affairs may, in the name of, and for and on behalf of, the partnership, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the partnership's business or affairs, dispose of and convey the partnership's property, discharge or make reasonable provision for the partnership's liabilities, distribute to the partners pursuant to section 61 of this division any remaining assets of the partnership, and perform other acts which are necessary or convenient to the winding up of the partnership's business or affairs. [P.L. 2005-28, § 57.]

§ 58. Partner's power to bind partnership after dissolution.

Subject to section 59 of this division, a partnership is bound by a partner's act after dissolution that:

(1) is appropriate for winding up the partnership business or affairs; or

(2) would have bound the partnership under section 27 of this Act before dissolution, if the other party to the transaction did not have notice of the dissolution. [P.L. 2005-28, § 58.]

§ 59. Certificate of dissolution.

(1) After dissolution, a partnership may file a certificate of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business or affairs.

(2) A certificate of dissolution cancels a filed certificate of partnership existence for the purposes of section 29(2) of this Act and is a limitation on authority for the purposes of section 29(3) of this Act.

(3) For the purposes of sections 27 and 58 of this Act, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of a certificate of dissolution sixty (60) days after it is filed.

(4) After filing a certificate of dissolution, a dissolved partnership may file a certificate of partnership existence which will operate with respect to a person not a partner as provided in sections 29(2) and (3) of this Act in any transaction, whether or not the transaction is appropriate for winding up the partnership business or affairs.

(5) If a partnership which has dissolved fails or refuses to file a certificate of dissolution, any partner or dissociated partner who is or may be adversely affected by the failure or refusal may petition the High Court to direct the filing. If the Court finds that the certificate of dissolution should be filed and that the partnership has failed or refused to do so, it shall enter an order granting appropriate relief. [P.L. 2005-28, § 59.]

§ 60. Partner's liability to other partners after dissolution.

(1) Except as otherwise provided in subsection (2) of this section and section 32 of this Act, after dissolution, a partner is liable to the other partners for the partner's share of any partnership obligation incurred under section 58 of this division.

(2) A partner who, with knowledge of the dissolution, causes the partnership to incur an obligation under section 58(2) of this division by an act that is not appropriate for winding up the partnership business or affairs is liable to the partnership for any damage caused to the partnership arising from the obligation. [P.L. 2005-28, § 60.]

§ 61. Settlement of accounts and contributions among partners.

(1) In winding up a partnership's business or affairs, the assets of the partnership, including the contributions of the partners required by this section, must be applied to pay or make reasonable provision to pay the partnership's obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (2) of this section.

(2) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business or affairs. In settling accounts among the

partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under section 32 of this Act.

(3) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to pay or make reasonable provision to pay partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under section 32 of this Act.

(4) If a partner fails to contribute, all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to pay or make reasonable provision to pay the partnership obligations for which they are personally liable under section 32 of this Act.

(5) A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under section 32 of this Act.

(6) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(7) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership. [P.L. 2005-28, § 61.]

DIVISION 9:

CONVERSION; MERGER; DOMESTICATION; AND TRANSFER

§ 62. Conversion of certain entities to a domestic partnership.

§ 63. Merger or consolidation.

§ 64. Approval of conversion of a domestic partnership.

§ 65. Domestication of non-Marshall Islands entities.

§ 66. Transfer of domestic partnerships.

§ 62. Conversion of certain entities to a domestic partnership.

(1) As used in this section, the term "other entity" means a domestic corporation or any other unincorporated business, including a limited partnership, or a limited liability company.

(2) Any other entity may convert to a domestic partnership by complying with subsection (8) of this section and filing with the Registrar of Corporations in accordance with section 5 of this Act:

(a) a certificate of conversion to partnership that has been executed in accordance with section 5 of this Act; and

(b) a certificate of partnership existence that complies with section 29 of this Act and has been executed in accordance with section 5 of this Act.

(3) The certificate of conversion to partnership shall state:

(a) the date on which and jurisdiction where the other entity was first created, formed or otherwise came into being;

(b) the name of the other entity immediately prior to the filing of the certificate of conversion to partnership;

(c) the name of the partnership as set forth in its certificate of partnership existence filed in accordance with subsection (2) of this section; and

(d) the future effective date (which shall be a date certain) of the conversion to a partnership if it is not to be effective upon the filing of the certificate of conversion to partnership and the certificate of partnership existence.

(4) Upon the filing with the Registrar of Corporations of the certificate of conversion to partnership and the certificate of partnership existence or upon the future effective date of the certificate of conversion to partnership and the certificate of partnership existence, the other entity shall be converted into a partnership and the partnership shall thereafter be subject to all of the provisions of this Act, except that the existence of the partnership shall be deemed to have commenced on the date the other entity commenced its existence.

(5) The conversion of any other entity into a partnership shall not be deemed to affect any obligations or liabilities of the other entity incurred prior to its

conversion to a partnership, or the personal liability of any person incurred prior to such conversion.

(6) When any conversion shall have become effective under this section, for all purposes of the laws of the Marshall Islands, all of the rights, privileges and powers of the other entity that has converted, and all property, real, personal and mixed, and all debts due to such other entity, as well as all other things and causes of action belonging to such other entity, shall remain vested in the domestic partnership to which such other entity has converted and shall be the property of such domestic partnership, and the title to any real property vested by deed or otherwise in such other entity shall not revert or be in any way impaired by reason of this Act; but all rights of creditors and all liens upon any property of such other entity shall be preserved unimpaired, and all debts, liabilities and duties of the other entity that has converted shall remain attached to the domestic partnership to which such other entity has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a domestic partnership.

(7) Unless otherwise agreed, the converting other entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such other entity and shall constitute a continuation of the existence of the converting other entity in the form of a domestic partnership. When another entity has been converted to a domestic partnership pursuant to this section, the domestic partnership shall, for all purposes of the laws of the Marshall Islands, be deemed to be the same entity as the converting other entity.

(8) Prior to filing a certificate of conversion to partnership with the Registrar of Corporations, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate, and a partnership agreement shall be approved by the same authorization required to approve the conversion; provided, that in any event, such approval shall include the approval of any person who, at the effective date of the conversion, shall be a partner of the partnership.

(9) In connection with a conversion hereunder, rights or securities of, or interests in, the other entity which is to be converted to a domestic partnership may be exchanged for or converted into cash, property, rights or securities of or interests in such domestic partnership or, in addition to or in lieu thereof, may be exchanged for or

converted into cash, property, rights or securities of or interests in another domestic partnership or other entity.

(10) In connection with the conversion of any other entity to a domestic partnership, a person is admitted as a partner of the domestic partnership at the time provided in and upon compliance with the partnership agreement. For the purpose of section 32(2) of this Act, a person who, at the effective date of the conversion of any other entity to a domestic partnership, is a partner of the partnership, shall be deemed admitted as a partner of the partnership at the effective date of such conversion. [P.L. 2005-28, § 62.]

§ 63. Merger or consolidation.

(1) As used in this section, “other business entity” means a corporation, association, or an unincorporated business, including a limited liability company, a limited partnership and a foreign partnership, but excluding a domestic partnership.

(2) Pursuant to an agreement of merger or consolidation, one (1) or more domestic partnerships may merge or consolidate with or into one (1) or more domestic partnerships or one (1) or more other business entities formed or organized under the laws of the Marshall Islands or any foreign country or other foreign jurisdiction, or any combination thereof, with such domestic partnership or other business entity as the agreement shall provide being the surviving or resulting domestic partnership or other business entity. Unless otherwise provided in the partnership agreement, a merger or consolidation shall be approved by each domestic partnership which is to merge or consolidate by all of its partners. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic partnership or other business entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting domestic partnership or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in a domestic partnership or other business entity which is not the surviving or resulting domestic partnership or other business entity in the merger or consolidation. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

(3) If a domestic partnership is merging or consolidating under this section, the domestic partnership or other

business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation executed by at least one (1) partner on behalf of the domestic partnership when it is the surviving or resulting entity with the Registrar of Corporations. The certificate of merger or consolidation shall state:

(a) the name and jurisdiction of formation or organization of each of the domestic partnerships and other business entities which is to merge or consolidate;

(b) that an agreement of merger or consolidation has been approved and executed by each of the domestic partnerships and other business entities which is to merge or consolidate;

(c) the name of the surviving or resulting domestic partnership or other business entity;

(d) the future effective date (which shall be a date certain) of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;

(e) that the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic partnership or other business entity, and shall state the address thereof;

(f) that a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting domestic partnership or other business entity, on request and without cost, to any partner of any domestic partnership or any person holding an interest in any other business entity which is to merge or consolidate; and

(g) if the surviving or resulting entity is not formed, organized or created under the laws of the Marshall Islands, a statement that such surviving or resulting entity agrees that it may be served with process in the Marshall Islands in any action, suit or proceeding for the enforcement of any obligation of any domestic partnership which is to merge or consolidate, irrevocably appointing the Attorney General as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the Attorney General. In the event of service hereunder upon the Attorney General, the procedures set forth in section 11 of this Act shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Attorney General with the address specified in the certificate of merger or consolidation provided

for in this section and any other address which the plaintiff may elect to furnish, together with copies of each process as required by the Attorney General, and the Attorney General shall notify such surviving or resulting entity at all such addresses furnished by the plaintiff in accordance with the procedures set forth in section 11 of this Act.

(4) Unless a future effective date is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date, a merger or consolidation shall be effective upon the filing with the Registrar of Corporations of a certificate of merger or consolidation.

(5) A certificate of merger or consolidation shall act as a certificate of cancellation of the certificate of partnership existence for a domestic partnership which is not the surviving or resulting entity in the merger or consolidation. Whenever this section requires the filing of a certificate of merger or consolidation, such requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation containing the information required by this section to be set forth in the certificate of merger or consolidation.

(6) An agreement of merger or consolidation approved in accordance with subsection (2) of this section may (a) effect any amendment to the partnership agreement or (b) effect the adoption of a new partnership agreement for a domestic partnership if it is the surviving or resulting partnership in the merger or consolidation. Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to the foregoing sentence shall be effective at the effective date of the merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a partnership agreement or other agreement or as otherwise permitted by law, including that the partnership agreement of any constituent domestic partnership to the merger or consolidation (including a domestic partnership formed for the purpose of consummating a merger or consolidation) shall be the partnership agreement of the surviving or resulting domestic partnership.

(7) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the Marshall Islands, all of the rights, privileges and powers of each of the domestic partnerships and other business entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of said domestic partnerships and other business entities, as well as all other things and

causes of action belonging to each of such domestic partnerships and other business entities, shall be vested in the surviving or resulting domestic partnership or other business entity, and shall thereafter be the property of the surviving or resulting domestic partnership or other business entity as they were of each of the domestic partnerships and other business entities that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the Marshall Islands, in any of such domestic partnerships and other business entities, shall not revert or be in any way impaired by reason of this Act; but all rights of creditors and all liens upon any property of any of said domestic partnerships and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of the said domestic partnerships and other business entities that have merged or consolidated shall thenceforth attach to the surviving or resulting domestic partnership or other business entity, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a domestic partnership, including a domestic partnership which is not the surviving or resulting entity in the merger or consolidation, shall not require such domestic partnership to wind up its affairs or pay its liabilities and distribute its assets under Division 8 of this Act.

(8) Except as provided by agreement with a person to whom a partner of a domestic partnership is obligated, a merger or consolidation of a domestic partnership that has become effective shall not affect any obligation or liability existing at the time of such merger or consolidation of a partner of a domestic partnership which is merging or consolidating.

(9) If a domestic partnership is a constituent party to a merger or consolidation that shall have become effective, but the domestic partnership is not the surviving or resulting entity of the merger or consolidation, then a judgment creditor of a partner of such domestic partnership may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the surviving entity of the merger or consolidation unless:

(a) the claim is for an obligation of the domestic partnership for which the partner is liable as provided in section 32 of this Act and either:

(i) a judgment based on the same claim has been obtained against the surviving or resulting entity of the merger or consolidation and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(ii) the surviving or resulting entity of the merger or consolidation is a debtor in bankruptcy;

(iii) the partner has agreed that the creditor need not exhaust the assets of the domestic partnership that was not the surviving or resulting entity of the merger or consolidation;

(iv) the partner has agreed that the creditor need not exhaust the assets of the surviving or resulting entity of the merger or consolidation; or

(v) a court grants permission to the judgment creditor to levy execution against the assets of the partner based on a finding that the assets of the surviving or resulting entity of the merger or consolidation that are subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of the assets of the surviving or resulting entity of the merger or consolidation is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(b) liability is imposed on the partner by law or contract independent of the existence of the surviving or resulting entity of the merger or consolidation.

(10) Unless otherwise provided in an agreement of merger or consolidation, a person acquiring an economic interest in a surviving or resulting domestic partnership pursuant to a merger or consolidation approved in accordance with subsection (2) of this section is admitted as a partner of the surviving or resulting domestic partnership at the time provided in and upon compliance with the partnership agreement of the surviving or resulting domestic partnership. *[P.L. 2005-28, § 63.]*

§ 64. Approval of conversion of a domestic partnership

(1) Upon compliance with this section, a partnership may convert to a domestic corporation or any other unincorporated business, including a limited partnership, or a limited liability company of the Marshall Islands.

(2) If the partnership agreement specifies the manner of authorizing a conversion of the partnership, the conversion shall be authorized as specified in the partnership agreement. If the partnership agreement does not specify the manner of authorizing a conversion of the partnership and does not prohibit a conversion of the partnership, the conversion shall be authorized in the same manner as is specified in the partnership agreement for authorizing a merger or consolidation that involves the partnership as a constituent party to the merger or consolidation. If the partnership agreement does not

specify the manner of authorizing a conversion of the partnership or a merger or consolidation that involves the partnership as a constituent party and does not prohibit a conversion of the partnership, the conversion shall be authorized by the approval by all the partners.

(3) Unless otherwise agreed, the conversion of a domestic partnership to another business form pursuant to this section shall not require such partnership to wind up its affairs or pay its liabilities and distribute its assets under Division 8 of this Act.

(4) In connection with a conversion of a domestic partnership to another business form pursuant to this section, rights or securities of or interests in the domestic partnership which is to be converted may be exchanged for or converted into cash, property, rights or securities of or interests in the business form into which the domestic partnership is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of or interests in another business form. [P.L. 2005-28, § 64.]

§ 65. Domestication of non-Marshall Islands entities.

(1) As used in this section, “non-Marshall Islands entity” means a foreign limited partnership, or a corporation, association, or any other unincorporated business, including a general partnership or a limited liability company, formed, incorporated, created or that otherwise came into being under the laws of any foreign country or other foreign jurisdiction.

(2) Any non-Marshall Islands entity may become domesticated as a partnership in the Marshall Islands by complying with subsection (7) of this section and filing with the Registrar of Corporations:

(a) a certificate of partnership domestication that has been executed in accordance with section 5 of this Act; and

(b) a certificate of partnership existence that complies with section 29 of this Act and has been executed in accordance with section 5 of this Act.

(3) The certificate of partnership domestication shall state:

(a) the date on which and jurisdiction where the non-Marshall Islands entity was first formed, incorporated, created or otherwise came into being;

(b) the name of the non-Marshall Islands entity immediately prior to the filing of the certificate of partnership domestication;

(c) the name of the partnership as set forth in the certificate of partnership existence filed in accordance with subsection (2) of this section;

(d) the future effective date (which shall be a date certain) of the domestication as a partnership if it is not to be effective upon the filing of the certificate of partnership domestication and the certificate of partnership existence;

(e) the jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the non-Marshall Islands entity, or any other equivalent thereto under applicable law, immediately prior to the filing of the certificate of partnership domestication;

(f) that the transfer of the domicile has been approved by all necessary action;

(g) that the transfer of domicile is not expressly prohibited under the laws of the foreign domicile;

(h) that the transfer of domicile is made in good faith and will not serve to hinder, delay or defraud existing partners, creditors, claimants or other parties in interest; and

(i) the name and address of the partnership’s registered agent in the Marshall Islands.

(4) Upon the filing with the Registrar of Corporations of the certificate of partnership domestication and the certificate of partnership existence or upon the future effective date of the certificate of partnership domestication and the certificate of partnership existence, the non-Marshall Islands entity shall be domesticated as a partnership in the Marshall Islands and the partnership shall thereafter be subject to all of the provisions of this Act, provided that the existence of the partnership shall be deemed to have commenced on the date the non-Marshall Islands entity commenced its existence in the jurisdiction in which the non-Marshall Islands entity was first formed, incorporated, created or otherwise came into being.

(5) The domestication of any non-Marshall Islands entity as a partnership in the Registrar of Corporations shall not be deemed to affect any obligations or liabilities of the non-Marshall Islands entity incurred prior to its domestication as a partnership in the Marshall Islands, or the personal liability of any person therefore.

(6) The filing of a certificate of partnership domestication shall not affect the choice of law applicable to the non-Marshall Islands entity, except that from the effective date

of the domestication, the laws of the Marshall Islands, including the provisions of this Act, shall apply to the non-Marshall Islands entity to the same extent as if the non-Marshall Islands entity had been formed as a partnership on that date.

(7) Prior to filing a certificate of partnership domestication with the Registrar of Corporations, the domestication shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-Marshall Islands entity and the conduct of its business or by applicable non-Marshall Islands law, as appropriate, and a partnership agreement shall be approved by the same authorization required to approve the domestication; provided that, in any event, such approval shall include the approval of any person who, at the effective date of the domestication, shall be a partner of the partnership.

(8) When any domestication shall have become effective under this section, for all purposes of the laws of the Marshall Islands, all of the rights, privileges and powers of the non-Marshall Islands entity that has been domesticated, and all property, real, personal and mixed, and all debts due to such non-Marshall Islands entity, as well as all other things and causes of action belonging to such non-Marshall Islands entity, shall remain vested in the domestic partnership to which such non-Marshall Islands entity has been domesticated and shall be the property of such domestic partnership, and the title to any real property vested by deed or otherwise in such non-Marshall Islands entity shall not revert or be in any way impaired by reason of this Act; but all rights of creditors and all liens upon any property of such non-Marshall Islands entity shall be preserved unimpaired, and all debts, liabilities and duties of the non-Marshall Islands entity that has been domesticated shall remain attached to the domestic partnership to which such non-Marshall Islands entity has been domesticated, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a domestic partnership. The rights, privileges, powers and interests in property of the non-Marshall Islands entity, as well as the debts, liabilities and duties of the non-Marshall Islands entity, shall not be deemed, as a consequence of the domestication, to have been transferred to the domestic partnership to which such non-Marshall Islands entity has domesticated for any purpose of the laws of the Marshall Islands.

(9) When a non-Marshall Islands entity has become domesticated as a domestic partnership pursuant to this section, the domestic partnership shall, for all purposes of the laws of the Marshall Islands, be deemed to be the same entity as the domesticating non-Marshall Islands entity. Unless otherwise agreed, or as required under

applicable non-Marshall Islands law, the domesticating non-Marshall Islands entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the domestication shall not be deemed to constitute a dissolution of such non-Marshall Islands entity and shall constitute a continuation of the existence of the domesticating non-Marshall Islands entity in the form of a domestic partnership.

(10) In connection with a domestication hereunder, rights or securities of, or interests in, the non-Marshall Islands entity that is to be domesticated as a domestic partnership may be exchanged for or converted into cash, property, rights or securities of, or interests in, such domestic partnership or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, another domestic partnership or other entity.

(11) In connection with the domestication of a non-Marshall Islands entity as a partnership in the Marshall Islands, a person is admitted as a partner of the domestic partnership at the time provided in and upon compliance with the partnership agreement. For the purpose of section 32(2) of this Act, a person who, at the effective date of the domestication of any non-Marshall Islands entity as a domestic partnership, is a partner of the partnership, shall be deemed admitted as a partner of the partnership at the effective date of such domestication. *[P.L. 2005-28, § 65.]*

§ 66. Transfer of domestic partnerships.

(1) Upon compliance with the provisions of this section, any domestic partnership may transfer to or domesticate in any jurisdiction that permits the transfer or domestication in such jurisdiction of a partnership.

(2) Unless otherwise provided in a partnership agreement, the transfer or domestication described in subsection (1) of this section shall be approved in writing by all of the partners. If all of the partners of the partnership or such other vote as may be stated in a partnership agreement shall approve the transfer or domestication described in subsection (1) of this section, a certificate of transfer shall be filed with the Registrar of Corporations in accordance with section 5 of this Act. The certificate of transfer shall state:

(a) the name of the partnership and, if it has been changed, the name under which its certificate of partnership existence was originally filed;

(b) the date of the filing of its original certificate of partnership existence with the Registrar of Corporations;

(c) the jurisdiction to which the partnership shall be transferred or in which it shall be domesticated;

(d) the future effective date (which shall be a date certain) of the transfer or domestication to the jurisdiction specified in subsection (2)(c) of this section if it is not to be effective upon the filing of the certificate of transfer;

(e) that the transfer or domestication of the partnership has been approved in accordance with the provisions of this section;

(f) in the case of a certificate of transfer, (i) that the existence of the partnership as a partnership of the Marshall Islands shall cease when the certificate of transfer becomes effective and (ii) the agreement of the partnership that it may be served with process in the Marshall Islands in any action, suit or proceeding for enforcement of any obligation of the partnership arising while it was a partnership of the Marshall Islands, and that it irrevocably appoints the Attorney General as its agent to accept service of process in any such action, suit or proceeding; and

(g) the address to which a copy of the process shall be mailed to it by the Attorney General. In the event of service hereunder upon the Attorney General, the procedures set forth in section 11 of this Act shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Attorney General with the address specified in this subsection and any other address that the plaintiff may elect to furnish, together with copies of such process as required by the Attorney General, and the Attorney General shall notify the partnership that has transferred or domesticated out of the Marshall Islands at all such addresses furnished by the plaintiff in accordance with the procedures set forth in section 11 of this Act.

(3) Upon the filing with the Registrar of Corporations of the certificate of transfer or upon the future effective date of the certificate of transfer and payment to the Registrar of Corporations of all fees prescribed in this Act, the Registrar of Corporations shall certify that the partnership has filed all documents and paid all fees required by this Act, and thereupon the partnership shall cease to exist as a partnership of the Marshall Islands. Such certificate of Registrar of Corporations shall be prima facie evidence of the transfer or domestication by such partnership out of the Marshall Islands.

(4) The transfer or domestication of a partnership out of the Marshall Islands in accordance with this section and the resulting cessation of its existence as a partner-

ship of the Marshall Islands pursuant to a certificate of transfer shall not be deemed to affect any obligations or liabilities of the partnership incurred prior to such transfer or domestication or the personal liability of any person incurred prior to such transfer or domestication, nor shall it be deemed to affect the choice of law applicable to the partnership with respect to matters arising prior to such transfer or domestication. Unless otherwise agreed, the transfer or domestication of a partnership out of the Marshall Islands in accordance with this section shall not require such partnership to wind up its affairs or pay its liabilities and distribute its assets under Division 8 of this Act.

(5) In connection with a transfer or domestication of a domestic partnership to or in another jurisdiction pursuant to subsection (1) of this section, rights or securities of, or interests in, such partnership may be exchanged for or converted into cash, property, rights or securities of, or interests in, the business form in which the partnership will exist in such other jurisdiction as a consequence of the transfer or domestication or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, another business form. [P.L. 2005-28, § 66.]

DIVISION 10:

MISCELLANEOUS

§ 67. **Uniformity of application and construction.**

§ 68. **Short title.**

§ 69. **Severability clause.**

§ 70. **Fees.**

§ 71. **Cancellation of certificate of partnership existence for failure to pay annual fee.**

§ 72. **Reinstatement of partnership.**

§ 73. **Exemptions for non-resident entities.**

§ 74. **Repeals.**

§ 75. **Applicability.**

§ 76. **Effective Date.**

§ 67. **Uniformity of application and construction.**

(1) This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this Act.

(2) This Act shall be applied and construed to make the laws of the Marshall Islands, with respect to the subject matter hereof, uniform with the laws of the State of Delaware of the United States of America. Insofar as it does not conflict with any other provision of this Act, or the decisions of the High and Supreme Courts of the

Republic of the Marshall Islands which takes precedence, the non-statutory law of the State of Delaware is hereby adopted as the law of the Marshall Islands. This subsection shall not apply to resident domestic partnerships. [P.L. 2005-28, § 67.]

§ 68. Short title

This Act may be cited as the “Marshall Islands Revised Partnership Act.” [P.L. 2005-28, § 68.]

§ 69. Severability clause.

If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable. [P.L. 2005-28, § 69.]

§ 70. Fees

(1) No document required to be filed under this Act shall be effective until the applicable fee required by the Registrar of Corporations is paid. An annual fee must be paid to the Registrar of Corporations for the continued existence of the partnership.

(2) The annual fee shall be due and payable on the anniversary date of the filing of a certificate of partnership existence. The Registrar of Corporations shall receive the annual fee. [P.L. 2005-28, § 70.]

§ 71. Cancellation of certificate of partnership existence for failure to pay annual fee

The certificate of partnership existence of a partnership shall be deemed to be canceled if the partnership shall fail to pay the annual fee due under section 70 of this division for a period of one (1) year from the date it is due, such cancellation to be effective on the first anniversary of such due date. [P.L. 2005-28, § 71.]

§ 72. Reinstatement of partnership

(1) A partnership whose certificate of partnership existence has been canceled pursuant to sections 10(3) or 71 of this Act may be reinstated by filing with the Registrar of Corporations a certificate of reinstatement accompanied by payment of the annual fee due under section 70 of this division and all penalties thereon for each year for which such partnership neglected, refused or failed to pay such annual fee, including each year between the cancellation of its certificate of partnership

existence and its revival. The certificate of reinstatement shall set forth:

(a) the name of the partnership at the time its certificate of partnership existence was canceled and, if such name is not available at the time of reinstatement, the name under which the partnership is to be reinstated;

(b) the date of filing of the original certificate of partnership existence of the partnership;

(c) the name and address of the partnership’s registered agent in the Marshall Islands;

(d) a statement that the certificate of reinstatement is filed by one (1) or more partners of the partnership authorized to execute and file the certificate of reinstatement to reinstate the partnership;

(e) that the reinstatement will not cause injury to any person including without limitations the partners, former partners, or creditors of the partnership;

(f) the petitioners agree to hold harmless the Registrar of Corporations for any costs, fees or expenses for any claims or liabilities arising from the reinstatement of the partnership; and

(g) any other matters the partner or partners executing the certificate of reinstatement determine to include therein.

(2) The certificate of reinstatement shall be deemed to be an amendment to the certificate of partnership existence of the partnership, and the partnership shall not be required to take any further action to amend its certificate of partnership existence under section 5 of this Act with respect to the matters set forth in the certificate of reinstatement.

(3) Upon the filing of a certificate of reinstatement, a partnership shall be reinstated with the same force and effect as if its certificate of partnership existence had not been canceled pursuant to sections 10(3) or 71 of this Act. Such reinstatement shall validate all contracts, acts, matters and things made, done and performed by the partnership, its partners, employees and agents during the time when its certificate of partnership existence was canceled pursuant to sections 10(3) or 71 of this Act, with the same force and effect and to all intents and purposes as if the certificate of partnership existence had remained in full force and effect. All real and personal property, and all rights and interests, which belonged to the partnership at the time its certificate of partnership

existence was canceled pursuant to sections 10(3) or 71 of this Act, or which were acquired by the partnership following the cancellation of its certificate of partnership existence pursuant to sections 10(3) or 71 of this Act, and which were not disposed of prior to the time of its reinstatement, shall be vested in the partnership after its reinstatement as fully as they were held by the partnership at, and after, as the case may be, the time its certificate of partnership existence was canceled pursuant to sections 10(3) or 71 of this Act. After its reinstatement, the partnership and its partners shall have the same liability for all contracts, acts, matters and things made, done or performed in the partnership's name and on its behalf by its partners, employees and agents as the partnership and its partners would have had if the partnership's certificate of partnership existence had at all times remained in full force and effect. [P.L. 2005-28, § 72.]

§ 73. Exemptions for non-resident entities.

(1) Notwithstanding any provision of the Income Tax Act of 1989 (11 MIRC, Chapter 1A), or any other law or regulation imposing taxes or fees now in effect or hereinafter enacted, a non-resident partnership, and (solely for the purposes of this section) the Administrator and Trust Company duly appointed by the Cabinet to act in the capacity of the Registrar of Corporations for non-resident entities pursuant to this Act and as the Maritime Administrator created pursuant to the Marshall Islands Maritime Act 1990 (34 MIRC, Chapter 3A), shall be exempt from any corporate tax, net income tax on unincorporated businesses, corporate profit tax, income tax, withholding tax on revenues of the entity, asset tax, tax reporting requirements on revenues of the entity, stamp duty, exchange controls or other fees or taxes other than those imposed by section 70 of this division.

(2) Interest, dividends, royalties, rents, payments (including payments to creditors), compensation or other distributions of income paid by a non-resident partnership to another non-resident partnership or to individuals or entities which are not citizens or residents of the Marshall Islands are exempt from any tax or withholding provisions of the laws of the Marshall Islands. [P.L. 2005-28, § 73.]

§ 74. Repeals.

As of the effective date of the Marshall Islands Revised Partnership Act, the Partnership Act, P.L. 1990-91, § 20.1 – § 20.49, is repealed. [P.L. 2005-28, § 74.]

§ 75. Applicability

On and after the effective date of the Marshall Islands Revised Partnership Act, this Act governs all partnerships. [P.L. 2005-28, § 75.]

§ 76. Effective Date

This Act shall take effect in accordance with the relevant provisions of Rules of Procedures of the Nitijela and the relevant provisions of the Constitution of the Republic of the Marshall Islands. [P.L. 2005-28, § 76.]

PART III:
LIMITED
PARTNERSHIP ACT

DIVISION 1:
GENERAL PROVISIONS

- § 1. Definitions.**
- § 2. Name set forth in certificate.**
- § 3. Registered agent for service of process.**
- § 4. Attorney General as agent for service of process.**
- § 5. Nature of business permitted; powers.**
- § 6. Business transactions of partner with the partnership.**
- § 7. Indemnification.**
- § 8. Contested matters relating to general partners; contested votes.**
- § 9. Interpretation and enforcement of partnership agreement.**

§ 1. Definitions.

As used in this Act unless the context otherwise requires, the term:

(1) “certificate of limited partnership” means the certificate referred to in section 10 of this Act, and the certificate as amended.

(2) “contribution” means any cash, property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in the capacity as a partner.

(3) “event of withdrawal of a general partner” means an event that causes a person to cease to be a general partner as provided in section 35 of this Act.

(4) “general partner” means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and so named in the certificate of limited partnership or similar instrument under which the limited partnership is organized if so required.

(5) “High Court” means the High Court of the Republic of the Marshall Islands.

(6) “knowledge” means a person’s actual knowledge of a fact, rather than the person’s constructive knowledge of the fact.

(7) “limited partner” means a person who has been admitted to a limited partnership as a limited partner as provided in section 28 of this Act.

(8) “limited partnership” or “domestic limited partnership” means a partnership formed by two (2) or more

persons under the laws of the Republic of the Marshall Islands and having one (1) or more general partners and one (1) or more limited partners.

(9) “liquidating trustee” means a person, other than a general partner, but including a limited partner, carrying out the winding up of a limited partnership.

(10) “non-resident limited partnership” means a domestic limited partnership not doing business in the Republic of the Marshall Islands. “Not doing business in the Marshall Islands” will have the same meaning as found in the Marshall Islands Business Corporations Act (BCA), 18 MIRC 1.

(11) “partner” means a limited or general partner.

(12) “partnership agreement” means any agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business. A limited partnership is not required to execute its partnership agreement. A limited partnership is bound by its partnership agreement whether or not the limited partnership executes the partnership agreement. A written partnership agreement or another written agreement or writing:

(a) may provide that a person shall be admitted as a limited partner of a limited partnership, or shall become an assignee of a partnership interest or other rights or powers of a limited partner to the extent assigned, and shall become bound by the partnership agreement (i) if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a partnership interest) executes the partnership agreement or any other writing evidencing the intent of such person to become a limited partner or assignee, or (ii) without such execution, if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a partnership interest) complies with the conditions for becoming a limited partner or assignee as set forth in the partnership agreement or any other writing; and

(b) shall not be unenforceable by reason of it not having been signed by a person being admitted as a limited partner or becoming an assignee as provided in subsection 12(a) of this section, or by reason of its having been signed by a representative as provided in this Act.

(13) “partnership interest” means a partner’s share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

(14) “person” means a natural person, partnership (whether general or limited), limited liability company, trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any

representative capacity, in each case, whether domestic or foreign.

(15) “personal representative” means, as to a natural person, the executor, administrator, guardian, conservator or other legal representative thereof and, as to a person other than a natural person, the legal representative or successor thereof.

(16) “Registrar of Corporations” means the Registrar of domestic limited partnerships. The Registrar for resident limited partnerships is the Registrar of Corporations responsible for resident domestic and authorized foreign corporations. The Registrar for non-resident limited partnerships is The Trust Company of the Marshall Islands, Inc.

(17) “resident domestic limited partnership” means a domestic limited partnership doing business in the Marshall Islands. [P.L. 1990-91, § 179; amended by P.L. 2005-26, § 1.]

§ 2. Name set forth in certificate.

The name of each limited partnership as set forth in its certificate of limited partnership:

(1) shall contain the words “Limited Partnership” or the abbreviation “L.P.” or “LP”;

(2) may contain the name of a partner;

(3) must be such as to distinguish it upon the records in the Office of the Registrar of Corporations from the name on such records of any partnership or limited partnership reserved, registered or organized under the laws of the Marshall Islands. [P.L. 1990-91, § 183; amended by P.L. 2005-26, § 2.]

§ 3. Registered agent for service of process.

(1) Every domestic limited partnership formed under section 10 of this Act shall designate a registered agent in the Marshall Islands upon whom process against such entity or any notice or demand required or permitted by law to be served may be served. The agent for a limited partnership having a place of business in the Marshall Islands shall be a resident domestic corporation having a place of business in the Marshall Islands or a natural person, resident of and having a business address in the Marshall Islands.

(2) The registered agent for a non-resident limited partnership shall be The Trust Company of the Marshall Islands, Inc.

(3) A domestic limited partnership which fails to maintain a registered agent as required by this Act shall

be dissolved or its authority to do business or registration shall be revoked, as the case may be, in accordance with section 71 of this Act.

(4) Manner of service.

(a) *Resident domestic limited partnership.* Service of process on a resident domestic limited partnership may be made on the registered agent in the manner provided by law for the service of summons as if the registered agent were a defendant.

(b) *Non-resident limited partnership.*

(i) Service of process on a non-resident domestic limited partnership may be made on the registered agent in the manner provided by law for the service of summons as if the registered agent were a defendant; or

(ii) Service of process may be sent to the registered agent via registered mail or courier as if the registered agent were a defendant.

(5) Any registered agent of a limited partnership may resign as such agent upon filing a written notice thereof with the Registrar of Corporations; provided, however that the registered agent shall notify the limited partnership not less than thirty (30) days prior to such filing and resignation. The registered agent shall mail or cause to be mailed to the limited partnership at the last known address of the limited partnership, within or without the Marshall Islands or at the last known address of the person at whose request the limited partnership was formed, notice of the resignation of the agent. No designation of the new registered agent shall be accepted for filing until all charges owing to the former registered agent shall have been paid.

(6) A designation of a registered agent under this section may be made, revoked, or changed by filing an appropriate notification with the Registrar of Corporations.

(7) The designation of a registered agent shall terminate upon filing a notice of resignation provided that the registered agent certifies that the limited partnership was notified not less than thirty (30) days prior to such filing as provided by subsection (5) of this section.

(8) A registered agent, when served with process, notice or demand for the limited partnership which it represents, shall transmit the same to the limited partnership by personal notification or in the following manner: Upon receipt of the process, notice or demand, the registered agent shall cause a copy of such paper to be mailed to the limited partnership named therein at its last known address. Such mailing shall be by registered

mail. As soon thereafter as possible if process was issued in the Marshall Islands, the registered agent may file with the clerk of the Marshall Islands court issuing the process or with the agency of the Government issuing the notice or demand either the receipt of such registered mailing or an affidavit stating that such mailing has been made, signed by the registered agent, or if the agent is a limited partnership, by an officer of the same, properly notarized. Compliance with the provisions of this subsection shall relieve the registered agent from any further obligation to the limited partnership for service of the process, notice or demand, but the agent's failure to comply with the provisions of this subsection shall in no way affect the validity of the service of the process, notice or demand.

(9) A registered agent for service of process acting pursuant to the provisions of this section shall not be liable for the actions or obligations of the limited partnership for whom it acts. The registered agent shall not be a party to any suit or action against the partnership or arising from the acts or obligations of the limited partnership. If the registered agent is named in any such action, the action shall be dismissed as to such agent. *[P.L. 1990-91, § 180; amended by P.L. 2005-26, § 3.]*

§ 4. Attorney General as agent for service of process.

(1) Whenever a domestic limited partnership fails to maintain a registered agent in the Marshall Islands, or whenever its registered agent cannot be found at its business address, then the Attorney General shall be an agent of such limited partnership upon whom process or notice or demand required or permitted by law to be served or may be served. The Attorney General shall also be agent for service of process of a limited partnership whenever authorized under this Act.

(2) Service on the Attorney General as agent of a domestic limited partnership shall be made by personally delivering to and leaving with him or his deputy or with any person authorized by the Attorney General to receive such service, at the office of the Attorney General in Majuro Atoll, duplicate copies of such process together with the statutory fee. The Attorney General shall promptly send one (1) of such copies by registered mail return receipt requested, to such limited partnership at the business address of its registered agent, or if there is no such office, the Attorney General shall mail such copy, in the case of a resident domestic limited partnership, in care of any general partner named in its Certificate of Limited Partnership at his address stated therein, or in the case of a non-resident domestic limited partnership, at the address of the limited partnership without the Marshall Islands, or if none, at the last known address of a general partner; or in the case of a limited partnership which has transferred its domicile out of the Marshall Islands to

such limited partnership's registered agent as shown in the certificate of transfer of domicile. *[P.L. 1990-91, § 180; amended by P.L. 2005-26, § 4.]*

§ 5. Nature of business permitted; powers.

(1) A limited partnership may carry on any lawful business, purpose or activity with the exception of the business of granting policies of insurance or assuming insurance risks or banking.

(2) A limited partnership shall possess and may exercise all the powers and privileges granted by this Act or by any other law or by its partnership agreement, together with any powers incidental thereto, including such powers and privileges as are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the limited partnership.

(3) Notwithstanding any provision of this Act to the contrary, without limiting the general powers enumerated in subsection (2) of this section, a limited partnership shall, subject to such standards and restrictions, if any, as are set forth in its partnership agreement, have the power and authority to make contracts of guaranty and suretyship and enter into interest rate, basis, currency, hedge or other swap agreements or cap, floor, put, call, option, exchange or collar agreements, derivative agreements or other agreements similar to any of the foregoing. *[P.L. 1990-91, § 181; amended by P.L. 2004-17, § 181; amended by P.L. 2005-26, § 5.]*

§ 6. Business transactions of partner with the partnership.

Except as provided in the partnership agreement, a partner may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume one (1) or more specific obligations of, provide collateral for and transact other business with, the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner. *[P.L. 1990-91, § 191; amended by P.L. 2004-17, § 191; amended by P.L. 2005-26, § 6.]*

§ 7. Indemnification.

Subject to such standards and restrictions, if any, as are set forth in its partnership agreement, a limited partnership may, and shall have the power to, indemnify and hold harmless any partner or other person from and against any and all claims and demands whatsoever. *[P.L. 2005-26, § 7, adding new section.]*

§ 8. Contested matters relating to general partners; contested votes.

(1) Upon application of any partner, the High Court may hear and determine the validity of any admission, election, appointment or removal or other withdrawal of a general partner of a limited partnership, and the right of any person to become or continue to be a general partner of a limited partnership, and, in case the right to serve as a general partner is claimed by more than one (1) person, may determine the person or persons entitled to serve as general partners; and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the limited partnership relating to the issue. In any such application, the limited partnership shall be named as a party and service of copies of the application upon the registered agent of the limited partnership shall be deemed to be service upon the limited partnership and upon the person or persons whose right to serve as a general partner is contested and upon the person or persons, if any, claiming to be a general partner or claiming the right to be a general partner; and the registered agent shall forward immediately a copy of the application to the limited partnership and to the person or persons whose right to serve as a general partner is contested and to the person or persons, if any, claiming to be a general partner or the right to be a general partner, in a postpaid, sealed, registered letter addressed to such limited partnership and such person or persons at their post office addresses last known to the registered agent or furnished to the registered agent by the applicant partner. The High Court may make such order respecting further or other notice of such application as it deems proper under the circumstances.

(2) Upon application of any partner, the High Court may hear and determine the result of any vote of partners upon matters as to which the partners of the limited partnership, or any class or group of partners, have the right to vote pursuant to the partnership agreement or other agreement or this division (other than the admission, election, appointment or removal or other withdrawal of general partners). In any such application, the limited partnership shall be named as a party and service of the application upon the registered agent of the limited partnership shall be deemed to be service upon the limited partnership, and no other party need be joined in order for the High Court to adjudicate the result of the vote. The High Court may make such order respecting further or other notice of such application as it deems proper under the circumstances.

(3) Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a

limitation upon the right otherwise existing of service of legal process upon non-residents. [P.L. 2005-26, § 8, adding new section.]

§ 9. Interpretation and enforcement of partnership agreement.

Any action to interpret, apply or enforce the provisions of a partnership agreement, or the duties, obligations or liabilities of a limited partnership to the partners of the limited partnership, or the duties, obligations or liabilities among partners or of partners to the limited partnership, or the rights or powers of, or restrictions on, the limited partnership or partners, may be brought in the High Court. [P.L. 2005-26, § 9, adding new section.]

DIVISION 2:

FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP

- § 10. Certificate of limited partnership.**
- § 11. Amendment to certificate.**
- § 12. Cancellation of certificate.**
- § 13. Execution.**
- § 14. Execution, amendment or cancellation by judicial order.**
- § 15. Filing.**
- § 16. Liability for false statement.**
- § 17. Notice.**
- § 18. Delivery of certificates to limited partners.**
- § 19. Restated certificate.**
- § 20. Merger and consolidation.**
- § 21. Contractual appraisal rights.**
- § 22. Certificate of correction.**
- § 23. Domestication of non-Marshall Islands entities.**
- § 24. Transfer of domestic limited partnerships.**
- § 25. Conversion of certain entities to a limited partnership.**
- § 26. Series of limited partners, general partners or partnership interests.**
- § 27. Approval of conversion of a limited partnership.**
- § 10. Certificate of limited partnership.**

(1) In order to form a limited partnership, one (1) or more persons (but not less than all of the general partners) must execute a certificate of limited partnership. The certificate of limited partnership shall be filed with the Registrar of Corporations and set forth:

- (a) The name of the limited partnership;
- (b) The address of the registered office and the name and address of the registered agent for service of

process required to be maintained under section 3 of this Act;

(c) The name and the business, residence or mailing address of each general partner; and

(d) Any other matters the partners determine to include therein.

(2) A limited partnership is formed at the time of the filing of the initial certificate of limited partnership with the Registrar of Corporations or at any later date or time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section. A limited partnership formed under this division shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited partnership's certificate of limited partnership. The filing of the certificate of limited partnership with the Registrar of Corporations shall make it unnecessary to file any other documents under this Act. *[P.L. 1990-91, § 180; amended by P.L. 2004-17, § 180; amended by P.L. 2005-26, § 10.]*

§ 11. Amendment to certificate.

(1) A certificate of limited partnership is amended by filing a certificate of amendment thereto with the Registrar of Corporations. The certificate of amendment shall set forth:

(a) the name of the limited partnership; and

(b) the amendment to the certificate.

(2) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made, or that any matter described has changed making the certificate false in any material respect, shall promptly amend the certificate.

(3) Notwithstanding the requirements of subsection (2) of this section, no later than ninety (90) days after the happening of any of the following events an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed by a general partner:

(a) the admission of a new general partner;

(b) the withdrawal of a general partner; or

(c) a change in the name of the limited partnership.

(4) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners may determine.

(5) Unless otherwise provided in this Act or in the certificate of amendment, a certificate of amendment shall be effective at the time of its filing with the Registrar of Corporations.

(6) If after the dissolution of a limited partnership but prior to the filing of a certificate of cancellation as provided in section 12 of this Act:

(a) a certificate of limited partnership has been amended to reflect the withdrawal of all general partners of a limited partnership, the certificate of limited partnership shall be amended to set forth the name and the business, residence or mailing address of each person winding up the limited partnership's affairs, each of whom shall execute and file such certificate of amendment, and each of whom shall not be subject to liability as a general partner by reason of such amendment; or

(b) a person shown on a certificate of limited partnership as a general partner is not winding up the limited partnership's affairs, the certificate of limited partnership shall be amended to add the name and the business, residence or mailing address of each person winding up the limited partnership's affairs, each of whom shall execute and file such certificate of amendment, and each of whom shall not be subject to liability as a general partner by reason of such amendment. A person shown on a certificate of limited partnership as a general partner who is not winding up a limited partnership's affairs need not execute a certificate of amendment which is being executed and filed as required under this subsection. *[P.L. 1990-91, § 203; amended by P.L. 2004-17, § 203; amended by P.L. 2005-26, § 11.]*

§ 12. Cancellation of certificate.

A certificate of limited partnership shall be cancelled upon the dissolution and the completion of winding up of the partnership, or as provided in section 71 of this Act, or upon the filing of a certificate of merger or consolidation if the limited partnership is not the surviving or resulting entity in a merger or consolidation, or upon the filing of a certificate of transfer. A certificate of cancellation shall be filed with the Registrar of Corporations to accomplish the cancellation of a certificate of limited partnership upon the dissolution and the completion of winding up of a limited partnership and shall set forth:

(1) the name of the limited partnership;

(2) the date of filing of its certificate of limited partnership;

(3) the future effective date (which shall be date certain) of cancellation if it is not to be effective upon the filing of the certificate; and

(4) any other information the person filing the certificate of cancellation determines. *[P.L. 1990-91, § 202; amended by P.L. 2004-17, § 202; amended by P.L. 2005-26, § 12.]*

§ 13. Execution.

(1) Each certificate required by this Act to be filed with the Registrar of Corporations shall be executed in the following manner:

(a) an initial certificate of limited partnership, a certificate of limited partnership domestication, a certificate of conversion to limited partnership, a certificate of transfer must be signed by all general partners;

(b) a certificate of amendment or a certificate of correction must be signed by at least one (1) general partner and by each other general partner designated in the certificate of amendment or a certificate of correction as a new general partner, but if the certificate of amendment or a certificate of correction reflects the withdrawal of a general partner as a general partner, it need not be signed by that former general partner;

(c) a certificate of cancellation must be signed by all general partners or, if the general partners are not winding up the limited partnership's affairs, then by all liquidating trustees; provided, however, that if the limited partners are winding up the limited partnership's affairs, a certificate of cancellation shall be signed by the limited partners or, if there is more than one (1) class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate;

(d) if a domestic limited partnership is filing a certificate of merger or consolidation, the certificate of merger or consolidation must be signed by at least one (1) general partner of the domestic limited partnership, or if the certificate of merger or consolidation is being filed by an other business entity (as defined in section 20(1) of this division), the certificate of merger or consolidation, must be signed by a person authorized by such other business entity;

(e) a certificate of reinstatement must be signed by at least one (1) general partner; and

(f) a certificate of termination of a certificate with a future effective date or a certificate of amendment of a certificate with a future effective date being filed in accordance with section 15(3) of this division shall be signed in the same manner as the certificate with a future effective date being amended or terminated is required to be signed under this Act.

(2) Unless otherwise provided in the partnership agreement, any person may sign any certificate or amendment thereof or enter into a partnership agreement or amendment thereof by an agent, including an attorney-in-fact. An authorization, including a power of attorney, to sign any certificate or amendment thereof or to enter into a partnership agreement or amendment thereof need not be in writing, need not be sworn to, verified or acknowledged, and need not be filed with the Registrar of Corporations, but if in writing, must be retained by a general partner.

(3) The execution of a certificate by a general partner constitutes an oath or affirmation, under the penalties of perjury, that, to the best of the general partner's knowledge and belief, the facts stated therein are true. *[P.L. 1990-91, § 180; amended by P.L. 2005-26, § 13.]*

§ 14. Execution, amendment or cancellation by judicial order.

(1) If a person required by section 13 of this division to execute any certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the High Court to direct the execution of the certificate. If the Court finds that the execution of the certificate is proper and that any person so designated has failed or refused to execute the certificate, it shall order the Registrar of Corporations to record an appropriate certificate.

(2) If a person required to execute a partnership agreement or amendment thereof fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the High Court to direct the execution of the partnership agreement or amendment thereof. If the Court finds that the partnership agreement or amendment thereof should be executed and that any person so designated has failed or refused to do so, it shall enter an order granting appropriate relief. *[P.L. 2005-26, § 14, adding new section.]*

§ 15. Filing.

(1) The signed copy of the certificate of limited partnership and of any certificates of amendment, correction, amendment of a certificate with a future effective date, termination of a certificate with a future effective date or cancellation (or of any judicial decree of amendment or cancellation), and of any certificate of

merger or consolidation, any restated certificate, any corrected certificate, any certificate of transfer, any certificate of limited partnership domestication, and any certificate of reinstatement shall be delivered to the Registrar of Corporations. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of that person's authority as a prerequisite to filing. Any signature on any certificate authorized to be filed with the Registrar of Corporations under any provision of this Act may be a facsimile, a conformed signature or an electronically transmitted signature. Upon delivery of any certificate, the Registrar of Corporations shall record the date of its delivery. Unless the Registrar of Corporations finds that any certificate does not conform to law, upon receipt of all filing fees required by law the Registrar of Corporations shall:

(a) certify that the certificate of limited partnership, the certificate of amendment, the certificate of correction, the certificate of amendment of a certificate with a future effective date, the certificate of termination of a certificate with a future effective date, the certificate of cancellation (or of any judicial decree of amendment or cancellation), the certificate of merger or consolidation, restated certificate, the corrected certificate, the certificate of conversion to limited partnership, the certificate of transfer, the certificate of limited partnership domestication or certificate of reinstatement has been filed with the Registrar of Corporations by endorsing upon the signed certificate the word "Filed," and the date of the filing. This endorsement is conclusive of the date of its filing in the absence of actual fraud;

(b) file and index the endorsed certificate;

(c) prepare and return to the person who filed it or that person's representative a copy of the signed certificate, similarly endorsed, and shall certify such copy as a true copy of the signed certificate; and

(d) cause to be entered such information from the certificate as the Registrar of Corporations deems appropriate into the Registrar, and such information and a copy of such certificate shall be permanently maintained as a public record on a suitable medium.

(2) Upon the filing of a certificate of amendment (or judicial decree of amendment), certificate of correction, corrected certificate or restated certificate with the Registrar of Corporations, or upon the future effective date of a certificate of amendment (or judicial decree thereof) or restated certificate, as provided for therein, the certificate of limited partnership shall be amended, corrected or restated as set forth therein. Upon the filing of a certificate of cancellation (or a judicial decree thereof), or a certificate of merger or consolidation which

acts as a certificate of cancellation, or a certificate of transfer, or upon the future effective date of a certificate of cancellation (or a judicial decree thereof) or of a certificate of merger or consolidation which acts as a certificate of cancellation, or a certificate of transfer, as provided for therein, or as specified in section 3(3) of this Act, the certificate of limited partnership is cancelled. Upon the filing of a certificate of limited partnership domestication, or upon the future effective date of a certificate of limited partnership domestication, the entity filing the certificate of limited partnership domestication is domesticated as a limited partnership with the effect provided in section 23 of this division. Upon the filing of a certificate of conversion to limited partnership, or upon the future effective date of a certificate of conversion to limited partnership, the entity filing the certificate of conversion to limited partnership is converted to a limited partnership with the effect provided in section 25 of this division. Upon the filing of a certificate of reinstatement, the limited partnership shall be reinstated with the effect provided in section 72 of this Act.

(3) If any certificate filed in accordance with this Act provides for a future effective date and if, prior to such future effective date set forth in such certificate, the transaction is terminated or its terms are amended to change the future effective date or any other matter described in such certificate so as to make such certificate false or inaccurate in any respect, such certificate shall, prior to the future effective date set forth in such certificate, be terminated or amended by the filing of a certificate of termination or certificate of amendment of such certificate, executed in accordance with section 13 of this division, which shall identify the certificate which has been terminated or amended and shall state that the certificate has been terminated or the manner in which it has been amended. Upon the filing of a certificate of amendment of a certificate with a future effective date, the certificate identified in such certificate of amendment is amended. Upon the filing of a certificate of termination of a certificate with a future effective date, the certificate identified in such certificate of termination is terminated.

(4) A fee shall be paid at the time of the filing of a certificate of limited partnership, a certificate of amendment, a certificate of correction, a certificate of amendment of a certificate with a future effective date, a certificate of termination of a certificate with a future effective date, a certificate of cancellation, a certificate of merger or consolidation, a restated certificate, a corrected certificate, a certificate of conversion to limited partnership, a certificate of transfer, a certificate of limited partnership domestication or a certificate of reinstatement. *[P.L. 1990-91, § 180; amended by P.L. 2005-26, § 15.]*

§ 16. Liability for false statement.

(1) If any certificate of limited partnership or certificate of amendment, correction, reinstatement or cancellation or certificate of conversion to limited partnership, certificate of transfer, or certificate of limited partnership domestication contains a materially false statement, one who suffers loss by reasonable reliance on the statement may recover damages for the loss from:

(a) any general partner who executes the certificate and knew or should have known the statement to be false in any material respect at the time the certificate was executed; and

(b) any general partner who thereafter knows that any arrangement or other fact described in the certificate is false in any material respect or has changed, making the statement false in any material respect, if that general partner had sufficient time to amend, correct or cancel the certificate, or to file a petition for its amendment, correction or cancellation, before the statement was reasonably relied upon.

(2) No general partner shall have any liability for failing to cause the amendment, correction or cancellation of a certificate to be filed or failing to file a petition for its amendment, correction or cancellation pursuant to subsection (1) of this section if the certificate of amendment, certificate of correction, certificate of cancellation or petition is filed within ninety (90) days of when that general partner knew or should have known to the extent provided in subsection (1) of this section that the statement in the certificate was false in any material respect. *[P.L. 1990-91, § 184; amended by P.L. 2004-17, § 184; amended by P.L. 2005-26, § 16.]*

§ 17. Notice.

The fact that a certificate of limited partnership is on file with the Registrar of Corporations is notice that the partnership is a limited partnership and is notice of all other facts set forth therein which are required to be set forth in a certificate of limited partnership by sections 10(1)(a)-(c) and 11(6) of this division and which are permitted to be set forth in a certificate of limited partnership by section 26(2) of this division. *[P.L. 2005-26, § 17, adding new section.]*

§ 18. Delivery of certificates to limited partners.

Upon the return by the Registrar of Corporations pursuant to section 15 of this division of a certificate marked "Filed," the general partners shall promptly deliver or mail a copy of the certificate to each limited partner if the partnership agreement so requires. *[P.L. 2005-26, § 18, adding new section.]*

§ 19. Restated certificate.

(1) A limited partnership may, whenever desired, integrate into a single instrument all of the provisions of its certificate of limited partnership which are then in effect and operative as a result of there having theretofore been filed with the Registrar of Corporations one (1) or more certificates or other instruments pursuant to any of the sections referred to in this Act and it may at the same time also further amend its certificate of limited partnership by adopting a restated certificate of limited partnership.

(2) If the restated certificate of limited partnership merely restates and integrates but does not further amend the initial certificate of limited partnership, as theretofore amended or supplemented by any instrument that was executed and filed pursuant to any of the sections in this Act, it shall be specifically designated in its heading as a "Restated Certificate of Limited Partnership" together with such other words as the partnership may deem appropriate and shall be executed by a general partner and filed as provided in section 15 of this division with the Registrar of Corporations. If the restated certificate restates and integrates and also further amends in any respect the certificate of limited partnership, as theretofore amended or supplemented, it shall be specifically designated in its heading as an "Amended and Restated Certificate of Limited Partnership" together with such other words as the partnership may deem appropriate and shall be executed by at least one (1) general partner and by each other general partner designated in the restated certificate of limited partnership as a new general partner, but if the restated certificate reflects the withdrawal of a general partner as a general partner, such restated certificate of limited partnership need not be signed by that former general partner, and filed as provided in section 15 of this division with the Registrar of Corporations.

(3) A restated certificate of limited partnership shall state, either in its heading or in an introductory paragraph, the limited partnership's present name, and, if it has been changed, the name under which it was originally filed, and the date of filing of its original certificate of limited partnership with the Registrar of Corporations, and the future effective date (which shall be date certain) of the restated certificate if it is not to be effective upon the filing of the restated certificate. A restated certificate shall also state that it was duly executed and is being filed in accordance with this section. If the restated certificate only restates and integrates and does not further amend the limited partnership's certificate of limited partnership as theretofore amended or supplemented and there is no discrepancy between those provisions and the restated certificate, it shall state that fact as well.

(4) Upon the filing of the restated certificate of limited partnership with the Registrar of Corporations, or upon the future effective date of a restated certificate of limited partnership as provided for therein, the initial certificate of limited partnership, as theretofore amended or supplemented, shall be superseded; thenceforth, the restated certificate of limited partnership, including any further amendment or changes made thereby, shall be the certificate of limited partnership of the limited partnership, but the original effective date of formation shall remain unchanged.

(5) Any amendment or change effected in connection with the restatement and integration of the certificate of limited partnership shall be subject to any other provision of this division, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change. *[P.L. 2005-26, § 19, adding new section.]*

§ 20. Merger and consolidation.

(1) As used in this section, “other business entity” means a corporation, association, a limited liability company, or an unincorporated business, including a partnership, but excluding a domestic limited partnership.

(2) Pursuant to an agreement of merger or consolidation, one (1) or more domestic limited partnerships may merge or consolidate with or into one (1) or more domestic limited partnerships or one (1) or more other business entities formed or organized under the laws of the Marshall Islands or any foreign country or other foreign jurisdiction, or any combination thereof, with such domestic limited partnership or other business entity as the agreement shall provide being the surviving or resulting domestic limited partnership or other business entity. Unless otherwise provided in the partnership agreement, a merger or consolidation shall be approved by each domestic limited partnership which is to merge or consolidate (a) by all general partners, and (b) by the limited partners or, if there is more than one (1) class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a limited partnership or other business entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting limited partnership or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a

limited partnership or other business entity which is not the surviving or resulting limited partnership or other business entity in the merger or consolidation. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

(3) If a domestic limited partnership is merging or consolidating under this section, the domestic limited partnership or other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation executed by at least one (1) general partner on behalf of the domestic limited partnership when it is the surviving or resulting entity with the Registrar of Corporations. The certificate of merger or consolidation shall state:

(a) the name and jurisdiction of formation or organization of each of the domestic limited partnerships and other business entities which is to merge or consolidate;

(b) that an agreement of merger or consolidation has been approved and executed by each of the domestic limited partnerships and other business entities which is to merge or consolidate;

(c) the name of the surviving or resulting domestic limited partnership or other business entity;

(d) the future effective date (which shall be date certain) of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;

(e) that the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited partnership or other business entity, and shall state the address thereof;

(f) that a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting domestic limited partnership or other business entity, on request and without cost, to any partner of any domestic limited partnership or any person holding an interest in any other business entity which is to merge or consolidate; and

(g) if the surviving or resulting entity is not a domestic limited partnership or corporation or limited liability company organized under the laws of the Marshall Islands, a statement that such surviving or resulting other business entity agrees that it may be served with process in the Marshall Islands in any action, suit or proceeding for the enforcement of any obligation of any domestic limited partnership which is to merge or consolidate, irrevocably appointing the

Attorney General as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the Attorney General. In the event of service hereunder upon the Attorney General the procedures set forth in section 4 of this Act shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Attorney General with the address specified in the certificate of merger or consolidation provided for in this section and any other address which the plaintiff may elect to furnish, together with copies of such process as required by the Attorney General and the Attorney General shall notify such surviving or resulting other business entity at all such addresses furnished by the plaintiff in accordance with the procedures set forth in section 4 of this Act.

(4) Unless a future effective date is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date, a merger or consolidation shall be effective upon the filing with the Registrar of Corporations a certificate of merger or consolidation.

(5) A certificate of merger or consolidation shall act as a certificate of cancellation for a domestic limited partnership which is not the surviving or resulting entity in the merger or consolidation. Whenever this section requires the filing of a certificate of merger or consolidation, such requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation containing the information required by this section to be set forth in the certificate of merger or consolidation.

(6) Notwithstanding anything to the contrary contained in a partnership agreement, a partnership agreement containing a specific reference to this subsection may provide that an agreement of merger or consolidation approved in accordance with subsection (2) of this section may (a) effect any amendment to the partnership agreement or (b) effect the adoption of a new partnership agreement for a limited partnership if it is the surviving or resulting limited partnership in the merger or consolidation. Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to the foregoing sentence shall be effective at the effective date of the merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a partnership agreement or other agreement or as otherwise permitted by law, including that the partnership agreement of any constituent limited partnership to the merger or consolidation (including a limited partnership formed for the purpose of consummating a merger or consolidation) shall be the partnership agreement of the surviving or resulting limited partnership.

(7) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the Marshall Islands, all of the rights, privileges and powers of each of the domestic limited partnerships and other business entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of said domestic limited partnerships and other business entities, as well as all other things and causes of action belonging to each of such domestic limited partnerships and other business entities, shall be vested in the surviving or resulting domestic limited partnership or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited partnership or other business entity as they were of each of the domestic limited partnerships and other business entities that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the Marshall Islands, in any of such domestic limited partnerships and other business entities, shall not revert or be in any way impaired by reason of this Act; but all rights of creditors and all liens upon any property of any of said domestic limited partnerships and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of the said domestic limited partnerships and other business entities that have merged or consolidated shall thenceforth attach to the surviving or resulting domestic limited partnership or other business entity, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a domestic limited partnership, including a domestic limited partnership which is not the surviving or resulting entity in the merger or consolidation, shall not require such domestic limited partnership to wind up its affairs under section 59 of this Act or pay its liabilities and distribute its assets under section 60 of this Act.

(8) Except as provided by agreement with a person to whom a general partner of a limited partnership is obligated, a merger or consolidation of a limited partnership that has become effective shall not affect any obligation or liability existing at the time of such merger or consolidation of a general partner of a limited partnership which is merging or consolidating.

(9) If a limited partnership is a constituent party to a merger or consolidation that shall have become effective, but the limited partnership is not the surviving or resulting entity of the merger or consolidation, then a judgment creditor of a general partner of such limited partnership may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the surviving or resulting entity of the merger or consolidation unless:

(a) a judgment based on the same claim has been obtained against the surviving or resulting entity of the merger or consolidation and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(b) the surviving or resulting entity of the merger or consolidation is a debtor in bankruptcy;

(c) the general partner has agreed that the creditor need not exhaust the assets of the limited partnership that was not the surviving or resulting entity of the merger or consolidation;

(d) the general partner has agreed that the creditor need not exhaust the assets of the surviving or resulting entity of the merger or consolidation;

(e) A court grants permission to the judgment creditor to levy execution against the assets of the general partner based on a finding that the assets of the surviving or resulting entity of the merger or consolidation that are subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of the assets of the surviving or resulting entity of the merger or consolidation is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(f) liability is imposed on the general partner by law or contract independent of the existence of the surviving or resulting entity of the merger or consolidation. *[P.L. 2005-26, § 20, adding new section.]*

§ 21. Contractual appraisal rights.

A partnership agreement or an agreement of merger or consolidation may provide that contractual appraisal rights with respect to a partnership interest or another interest in a limited partnership shall be available for any class or group of partners or partnership interests in connection with any amendment of a partnership agreement, any merger or consolidation in which the limited partnership is a constituent party to the merger or consolidation, any conversion of the limited partnership to another business form, any transfer to or domestication in any jurisdiction by the limited partnership, or the sale of all or substantially all of the limited partnership's assets. The High Court shall have jurisdiction to hear and determine any matter relating to any such appraisal rights. *[P.L. 2005-26, § 21, adding new section.]*

§ 22. Certificate of correction.

(1) Whenever any certificate authorized to be filed with the Registrar of Corporations under any provision of this Act has been so filed and is an inaccurate record of the action therein referred to, or was defectively or

erroneously executed, such certificate may be corrected by filing with the Registrar of Corporations a certificate of correction of such certificate. The certificate of correction shall specify the inaccuracy or defect to be corrected, shall set forth the portion of the certificate in corrected form and shall be executed and filed as required by this Act. The certificate of correction shall be effective as of the date the original certificate was filed except as to those persons who are substantially and adversely affected by the correction, and as to those persons, the certificate of correction shall be effective from the filing date.

(2) In lieu of filing a certificate of correction, a certificate may be corrected by filing with the Registrar of Corporations a corrected certificate which shall be executed and filed as if the corrected certificate were the certificate being corrected, and a fee equal to the fee payable to the Registrar of Corporations if the certificate being corrected were then being filed shall be paid to and collected by the Registrar of Corporations for the use of the Marshall Islands in connection with the filing of the corrected certificate. The corrected certificate shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected and shall set forth the entire certificate in corrected form. A certificate corrected in accordance with this section shall be effective as of the date the original certificate was filed except as to those persons who are substantially and adversely affected by the correction and, as to those persons, the certificate as corrected shall be effective from the filing date. *[P.L. 2005-26, § 22, adding new section.]*

§ 23. Domestication of non-Marshall Islands entities.

(1) As used in this section, "non-Marshall Islands entity" means a foreign limited partnership, or a corporation, an association, or any other unincorporated business, a general partnership or a limited liability company, formed, incorporated, created or that otherwise came into being under the laws of any foreign country or other foreign jurisdiction.

(2) Any non-Marshall Islands entity may become domesticated as a limited partnership in the Marshall Islands by complying with subsection (7) of this section and filing with the Registrar of Corporations in accordance with section 15 of this division:

(a) a certificate of limited partnership domestication that has been executed in accordance with section 13 of this division; and

(b) a certificate of limited partnership that complies with section 10 of this division and has been executed in accordance with section 13 of this division.

(3) The certificate of limited partnership domestication shall state:

(a) the date on which and jurisdiction where the non-Marshall Islands entity was first formed, incorporated, created or otherwise came into being;

(b) the name of the non-Marshall Islands entity immediately prior to the filing of the certificate of limited partnership domestication;

(c) the name of the limited partnership as set forth in the certificate of limited partnership filed in accordance with subsection (2) of this section;

(d) the future effective date (which shall be date certain) of the domestication as a limited partnership if it is not to be effective upon the filing of the certificate of limited partnership domestication and the certificate of limited partnership;

(e) the jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the non-Marshall Islands entity, or any other equivalent thereto under applicable law, immediately prior to the filing of the certificate of limited partnership domestication;

(f) that the transfer of the domicile has been approved by all necessary action;

(g) that the transfer of domicile is not expressly prohibited under the laws of the foreign domicile;

(h) that the transfer of domicile is made in good faith and will not serve to hinder, delay or defraud existing general or limited partners, creditors, claimants or other parties in interest; and

(i) the name and address of the limited partnership's registered agent in the Marshall Islands.

(4) Upon the filing with the Registrar of Corporations the certificate of limited partnership domestication and the certificate of limited partnership or upon the future effective date of the certificate of limited partnership domestication and the certificate of limited partnership, the non-Marshall Islands entity shall be domesticated as a limited partnership in the Marshall Islands and the limited partnership shall thereafter be subject to all of the provisions of this Act, except that notwithstanding section 10 of this division, the existence of the limited partnership shall be deemed to have commenced on the date the non-Marshall Islands entity commenced its existence in the jurisdiction in which the non-Marshall Islands entity was first formed, incorporated, created or otherwise came into being.

(5) The domestication of any non-Marshall Islands entity as a limited partnership in the Marshall Islands shall not be deemed to affect any obligations or liabilities of the non-Marshall Islands entity incurred prior to its domestication as a limited partnership in the Marshall Islands, or the personal liability of any person therefore.

(6) The filing of a certificate of limited partnership domestication shall not affect the choice of law applicable to the non-Marshall Islands entity, except that from the effective date or time of the domestication, the law of the Marshall Islands, including the provisions of this Act, shall apply to the non-Marshall Islands entity to the same extent as if the non-Marshall Islands entity had been formed as a limited partnership on that date.

(7) Prior to filing a certificate of limited partnership domestication with the Registrar of Corporations, the domestication shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-Marshall Islands entity and the conduct of its business or by applicable non-Marshall Islands law, as appropriate, and a partnership agreement shall be approved by the same authorization required to approve the domestication; provided that, in any event, such approval shall include the approval of any person who, at the effective date or time of the domestication, shall be a general partner of the limited partnership.

(8) When any domestication shall have become effective under this section, for all purposes of the laws of the Marshall Islands, all of the rights, privileges and powers of the non-Marshall Islands entity that has been domesticated, and all property, real, personal and mixed, and all debts due to such non-Marshall Islands entity, as well as all other things and causes of action belonging to such non-Marshall Islands entity, shall remain vested in the domestic limited partnership to which such non-Marshall Islands entity has been domesticated and shall be the property of such domestic limited partnership, and the title to any real property vested by deed or otherwise in such non-Marshall Islands entity shall not revert or be in any way impaired by reason of this Act; but all rights of creditors and all liens upon any property of such non-Marshall Islands entity shall be preserved unimpaired, and all debts, liabilities and duties of the non-Marshall Islands entity that has been domesticated shall remain attached to the domestic limited partnership to which such non-Marshall Islands entity has been domesticated, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a domestic limited partnership. The rights, privileges, powers and interests in property of the non-Marshall Islands entity, as well as the debts, liabilities and duties of the non-Marshall Islands entity, shall not be deemed, as a conse-

quence of the domestication, to have been transferred to the domestic limited partnership to which such non-Marshall Islands entity has domesticated for any purpose of the laws of the Marshall Islands.

(9) When a non-Marshall Islands entity has become domesticated as a limited partnership pursuant to this section, the limited partnership shall, for all purposes of the laws of the Marshall Islands, be deemed to be the same entity as the domesticating non-Marshall Islands entity. Unless otherwise agreed, or as required under applicable non-Marshall Islands law, the domesticating non-Marshall Islands entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the domestication shall not be deemed to constitute a dissolution of such non-Marshall Islands entity and shall constitute a continuation of the existence of the domesticating non-Marshall Islands entity in the form of a domestic limited partnership. If, following domestication, a non-Marshall Islands entity that has become domesticated as a limited partnership continues its existence in the foreign country or other foreign jurisdiction in which it was existing immediately prior to domestication, the limited partnership and such non-Marshall Islands entity shall, for all purposes of the laws of the Marshall Islands, constitute a single entity formed, incorporated, created or otherwise having come into being, as applicable, and existing under the laws of the Marshall Islands and the laws of such foreign country or other foreign jurisdiction.

(10) In connection with a domestication hereunder, rights or securities of, or interests in, the non-Marshall Islands entity that is to be domesticated as a domestic limited partnership may be exchanged for or converted into cash, property, rights or securities of, or interests in, such domestic limited partnership or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, another domestic limited partnership or other entity. *[P.L. 2005-26, § 23, adding new section.]*

§ 24. Transfer of domestic limited partnerships.

(1) Upon compliance with the provisions of this section, any limited partnership may transfer to or domesticate in any jurisdiction that permits the transfer or domestication in such jurisdiction of a limited partnership.

(2) Unless otherwise provided in a partnership agreement, the transfer or domestication described in subsection (1) of this section shall be approved in writing by all of the partners. If all of the partners of the limited partnership or such other vote as may be stated in a partnership agreement shall approve the transfer or domestication described in subsection (1) of this section,

a certificate of transfer if the limited partnership's existence as a limited partnership of the Marshall Islands is to cease, executed in accordance with section 13 of this division, shall be filed with the Registrar of Corporations in accordance with section 15 of this division. The certificate of transfer shall state:

(a) the name of the limited partnership and, if it has been changed, the name under which its certificate of limited partnership was originally filed;

(b) the date of the filing of its original certificate of limited partnership with the Registrar of Corporations;

(c) the jurisdiction to which the limited partnership shall be transferred or in which it shall be domesticated;

(d) the future effective date (which shall be date certain) of the transfer or domestication to the jurisdiction specified in subsection (2)(c) of this section if it is not to be effective upon the filing of the certificate of transfer;

(e) that the transfer or domestication of the limited partnership has been approved in accordance with the provisions of this section;

(f) in the case of a certificate of transfer, (i) that the existence of the limited partnership as a limited partnership of the Marshall Islands shall cease when the certificate of transfer becomes effective and (ii) the agreement of the limited partnership that it may be served with process in the Marshall Islands in any action, suit or proceeding for enforcement of any obligation of the limited partnership arising while it was a limited partnership of the Marshall Islands, and that it irrevocably appoints the Attorney General as its agent to accept service of process in any such action, suit or proceeding; and

(g) the address to which a copy of the process referred to in subsection (2)(f) of this section shall be mailed to it by the Attorney General. In the event of service hereunder upon the Attorney General, the procedures set forth in section 4 of this Act shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Attorney General with the address specified in this subsection and any other address that the plaintiff may elect to furnish, together with copies of such process as required by the Attorney General, and the Attorney General shall notify the limited partnership that has transferred or domesticated out of the Marshall Islands at all such addresses furnished by the plaintiff in accordance with the procedures set forth in section 4 of this Act.

(3) Upon the filing in the office of the Registrar of Corporations of the certificate of transfer or upon the future effective date of the certificate of transfer and payment to the Registrar of Corporations of all fees prescribed in this Act, the Registrar of Corporations shall certify that the limited partnership has filed all documents and paid all fees required by this Act and thereupon the limited partnership shall cease to exist as a limited partnership of the Marshall Islands. Such certificate of the Registrar of Corporations shall be prima facie evidence of the transfer or domestication by such limited partnership out of the Marshall Islands.

(4) The transfer or domestication of a limited partnership out of the Marshall Islands in accordance with this section and the resulting cessation of its existence as a limited partnership of the Marshall Islands pursuant to a certificate of transfer shall not be deemed to affect any obligations or liabilities of the limited partnership incurred prior to such transfer or domestication or the personal liability of any person incurred prior to such transfer or domestication, nor shall it be deemed to affect the choice of law applicable to the limited partnership with respect to matters arising prior to such transfer or domestication. Unless otherwise agreed, the transfer or domestication of a limited partnership out of the Marshall Islands in accordance with this section shall not require such limited partnership to wind up its affairs under section 59 of this Act or pay its liabilities and distribute its assets under section 60 of this Act.

(5) In connection with a transfer or domestication of a domestic limited partnership to or in another jurisdiction pursuant to subsection (1) of this section, rights or securities of, or interests in, such limited partnership may be exchanged for or converted into cash, property, rights or securities of, or interests in, the business form in which the limited partnership will exist in such other jurisdiction as a consequence of the transfer or domestication or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, another business form. *[P.L. 2005-26, § 24, adding new section.]*

§ 25. Conversion of certain entities to a limited partnership.

(1) As used in this section, the term “other entity” means a domestic corporation or any other unincorporated business, including a general partnership or a limited liability company of the Marshall Islands.

(2) Any other entity may convert to a domestic limited partnership by complying with subsection (8) of this section and filing in the office of the Registrar of

Corporations in accordance with section 15 of this division:

(a) a certificate of conversion to limited partnership that has been executed in accordance with section 13 of this division; and

(b) a certificate of limited partnership that complies with section 10 of this division and has been executed in accordance with section 13 of this division.

(3) The certificate of conversion to limited partnership shall state:

(a) the date on which the other entity was first formed or otherwise came into being;

(b) the name of the other entity immediately prior to the filing of the certificate of conversion to limited partnership;

(c) the name of the limited partnership as set forth in its certificate of limited partnership filed in accordance with subsection (2) of this section; and

(d) the future effective date (which shall be date certain) of the conversion to a limited partnership if it is not to be effective upon the filing of the certificate of conversion to limited partnership and the certificate of limited partnership.

(4) Upon the filing with the Registrar of Corporations of the certificate of conversion to limited partnership and the certificate of limited partnership or upon the future effective date of the certificate of conversion to limited partnership and the certificate of limited partnership, the other entity shall be converted into a domestic limited partnership and the limited partnership shall thereafter be subject to all of the provisions of this Act, except that notwithstanding section 10 of this division, the existence of the limited partnership shall be deemed to have commenced on the date the other entity commenced its existence.

(5) The conversion of any other entity into a domestic limited partnership shall not be deemed to affect any obligations or liabilities of the other entity incurred prior to its conversion to a domestic limited partnership, or the personal liability of any person incurred prior to such conversion.

(6) When any conversion shall have become effective under this section, for all purposes of the laws of the Marshall Islands, all of the rights, privileges and powers of the other entity that has converted, and all property, real, personal and mixed, and all debts due to such other

entity, as well as all other things and causes of action belonging to such other entity, shall remain vested in the domestic limited partnership to which such other entity has converted and shall be the property of such domestic limited partnership, and the title to any real property vested by deed or otherwise in such other entity shall not revert or be in any way impaired by reason of this Act; but all rights of creditors and all liens upon any property of such other entity shall be preserved unimpaired, and all debts, liabilities and duties of the other entity that has converted shall remain attached to the domestic limited partnership to which such other entity has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a domestic limited partnership.

(7) Unless otherwise agreed, the converting other Marshall Islands entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such other entity and shall constitute a continuation of the existence of the converting other entity in the form of a domestic limited partnership. When an other entity has been converted to a limited partnership pursuant to this section, the limited partnership shall, for all purposes of the laws of the Marshall Islands, be deemed to be the same entity as the converting other entity.

(8) Prior to filing a certificate of conversion to limited partnership with the Registrar of Corporations, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate, and a partnership agreement shall be approved by the same authorization required to approve the conversion; provided, that in any event, such approval shall include the approval of any person who, at the effective date of the conversion, shall be a general partner of the limited partnership.

(9) In connection with a conversion hereunder, rights or securities of, or interests in, the other entity which is to be converted to a domestic limited partnership may be exchanged for or converted into cash, property, rights or securities of, or interests in, such domestic limited partnership or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, another domestic limited partnership or other entity. *[P.L. 2005-26, § 25, adding new section.]*

§ 26. Series of limited partners, general partners or partnership interests.

(1) A partnership agreement may establish or provide for the establishment of one (1) or more designated series of limited partners, general partners or partnership interests having separate rights, powers or duties with respect to specified property or obligations of the limited partnership or profits and losses associated with specified property or obligations, and any such series may have a separate business purpose or investment objective.

(2) Notwithstanding anything to the contrary set forth in this Act or under other applicable law, in the event that a partnership agreement establishes or provides for the establishment of one (1) or more series or states that the liabilities of a general partner are limited to the liabilities of a designated series, and if separate and distinct records are maintained for any such series and the assets associated with any such series are held (directly or indirectly, including through a nominee or otherwise) and accounted for separately from the other assets of the limited partnership, or any other series thereof, and if the partnership agreement so provides, and if notice of the limitation on liabilities of a series or a general partner as referenced in this subsection is set forth in the certificate of limited partnership, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series or general partner shall be enforceable only against the assets of such series or a general partner associated with such series and not against the assets of the limited partnership generally, any other series thereof, or any general partner not associated with such series, and, unless otherwise provided in the partnership agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited partnership generally or any other series thereof shall be enforceable against the assets of such series or a general partner associated with such series.

(3) Notice in a certificate of limited partnership of the limitation on liabilities of a series as referenced in subsection (2) of this section shall be sufficient for all purposes of subsection (2) of this section whether or not the limited partnership has established any series when such notice is included in the certificate of limited partnership, and there shall be no requirement that any specific series of the limited partnership be referenced in such notice. The fact that a certificate of limited partnership that contains the notice of the limitation on liabilities of a series or a general partner as referenced in subsection (2) of this section is on file with the Registrar of Corporations shall constitute notice of such limitation on liabilities.

(4) A limited partner may possess or exercise any of the rights and powers or act or attempt to act in one (1) or more of the capacities as permitted under section 30 of this Act, with respect to any series, without participating

in the control of the business of the limited partnership or with respect to any series thereof within the meaning of section 30(1) of this Act. A partnership agreement may provide for classes or groups of general partners or limited partners associated with a series having such relative rights, powers and duties as the partnership agreement may provide, and may make provision for the future creation in the manner provided in the partnership agreement of additional classes or groups of general partners or limited partners associated with the series having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of general partners or limited partners associated with the series. A partnership agreement may provide for the taking of an action, including the amendment of the partnership agreement, without the vote or approval of any general partner or limited partner or class or group of general partners or limited partners, including an action to create under the provisions of the partnership agreement a class or group of the series of partnership interests that was not previously outstanding.

(5) A partnership agreement may grant to all or certain identified general partners or limited partners or a specified class or group of the general partners or limited partners associated with a series the right to vote separately or with all or any class or group of the general partners or limited partners associated with the series, on any matter. Voting by general partners or limited partners associated with a series may be on a per capita, number, financial interest, class, group or any other basis.

(6) Section 47 of this Act shall apply to a limited partner with respect to any series with which the limited partner is associated. Except as otherwise provided in a partnership agreement, any event under this subsection or in a partnership agreement that causes a limited partner to cease to be associated with a series shall not, in itself, cause such limited partner to cease to be associated with any other series or to be a limited partner of the limited partnership or cause the termination of the series, regardless of whether such limited partner was the last remaining limited partner associated with such series. A limited partner shall cease to be a limited partner with respect to a series and to have the power to exercise any rights or powers of a limited partner with respect to such series upon the happening of either of the following events:

(a) the limited partner withdraws with respect to the series in accordance with section 47 of this Act; or

(b) except as otherwise provided in the partnership agreement, the limited partner assigns all of his or her partnership interest with respect to the series.

(7) Section 46 of this Act shall apply to a general partner with respect to any series with which the general partner is associated. A general partner shall cease to be a general partner with respect to a series and to have the power to exercise any rights or powers of a general partner with respect to such series upon an event of withdrawal of the general partner with respect to such series. Except as otherwise provided in a partnership agreement, either of the following events or any event in a partnership agreement that causes a general partner to cease to be associated with a series shall not, in itself, cause such general partner to cease to be associated with any other series or to be a general partner of the limited partnership:

(a) the general partner withdraws with respect to the series in accordance with section 46 of this Act; or

(b) the general partner assigns all of the general partner's partnership interest with respect to the series.

(8) Notwithstanding section 50 of this Act, but subject to subsections (9) and (10) of this section, and unless otherwise provided in a partnership agreement, at the time a partner associated with a series that has been established in accordance with subsection (2) of this section becomes entitled to receive a distribution with respect to such series, the partner has the status of, and is entitled to all remedies available to, a creditor of the series, with respect to the distribution. A partnership agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a series.

(9) Notwithstanding section 51 of this Act, a limited partnership may make a distribution with respect to a series that has been established in accordance with subsection (2) of this section. A limited partnership shall not make a distribution with respect to a series that has been established in accordance with subsection (2) of this section to a partner to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of such series, other than liabilities to partners on account of their partnership interests with respect to such series and liabilities for which the recourse of creditors is limited to specified property of such series, exceed the fair value of the assets associated with such series, except that the fair value of property of the series that is subject to a liability for which the recourse of creditors is limited shall be included in the assets associated with such series only to the extent that the fair value of that property exceeds that liability. For purposes of the immediately preceding sentence, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits

program. A limited partner who receives a distribution in violation of this subsection, and who knew at the time of the distribution that the distribution violated this subsection, shall be liable to a series for the amount of the distribution. A limited partner who receives a distribution in violation of this subsection, and who did not know at the time of the distribution that the distribution violated this subsection, shall not be liable for the amount of the distribution. Subject to section 51(3) of this Act, which shall apply to any distribution made with respect to a series under this subsection, this subsection shall not affect any obligation or liability of a limited partner under an agreement or other applicable law for the amount of a distribution.

(10) Subject to section 57 of this Act, except to the extent otherwise provided in the partnership agreement, a series may be terminated and its affairs wound up without causing the dissolution of the limited partnership. The termination of a series established in accordance with subsection (2) of this section shall not affect the limitation on liabilities of such series provided by subsection (2) of this section. A series is terminated and its affairs shall be wound up upon the dissolution of the limited partnership under section 57 of this Act or otherwise upon the first to occur of the following:

(a) at the time specified in the partnership agreement;

(b) upon the happening of events specified in the partnership agreement;

(c) unless otherwise provided in the partnership agreement, upon the affirmative vote or written consent of (i) all general partners associated with such series and (ii) the limited partners associated with such series or, if there is more than one (1) class or group of limited partners associated with such series, then by each class or group of limited partners associated with such series, in either case, by limited partners associated with such series who own more than two-thirds of the then current percentage or other interest in the profits of the limited partnership associated with such series owned by all of the limited partners associated with such series or by the limited partners in each class or group associated with such series, as appropriate;

(d) an event of withdrawal of a general partner associated with the series unless at the time there is at least one (1) other general partner associated with the series and the partnership agreement permits the business of the series to be carried on by the remaining general partner and that partner does so, but the series is not terminated and is not required to be wound up by reason of any event of withdrawal if (i) within ninety

(90) days or such other period as is provided for in the partnership agreement after the withdrawal either (A) if provided for in the partnership agreement, the then current percentage or other interest in the profits of the series specified in the partnership agreement owned by the remaining partners associated with the series agree, in writing or vote, to continue the business of the series and to appoint, effective as of the date of withdrawal, one (1) or more additional general partners for the series if necessary or desired, or (B) if no such right to agree or vote to continue the business of the series of the limited partnership and to appoint one (1) or more additional general partners for such series is provided for in the partnership agreement, then more than fifty percent (50%) of the then current percentage or other interest in the profits of the series owned by the remaining partners associated with the series or, if there is more than one (1) class or group of remaining partners associated with the series, then more than fifty percent (50%) of the then current percentage or other interest in the profits of the series owned by each class or classes or group or groups of remaining partners associated with the series agree, in writing or vote, to continue the business of the series and to appoint, effective as of the date of withdrawal, one (1) or more additional general partners for the series if necessary or desired, or (ii) the business of the series is continued pursuant to a right to continue stated in the partnership agreement and the appointment, effective as of the date of withdrawal, of one (1) or more additional general partners to be associated with the series if necessary or desired; or

(e) the termination of such series under subsection (12) of this section.

(11) Notwithstanding section 59(2) of this Act, unless otherwise provided in the partnership agreement, a general partner associated with a series who has not wrongfully terminated the series or, if none, the limited partners associated with the series or a person approved by the limited partners associated with the series or, if there is more than one (1) class or group of limited partners associated with the series, then by each class or group of limited partners associated with the series, in either case, by limited partners who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the series owned by all of the limited partners associated with the series or by the limited partners in each class or group associated with the series, as appropriate, may wind up the affairs of the series; but, if the series has been established in accordance with subsection (2) of this section, the High Court, upon cause shown, may wind up the affairs of the series upon application of any partner associated with the series, the partner's personal representative or assignee, and in connection therewith, may appoint a liquidating

trustee. The persons winding up the affairs of a series may, in the name of the limited partnership and for and on behalf of the limited partnership and such series, take all actions with respect to the series as are permitted under section 59(2) of this Act. The persons winding up the affairs of a series shall provide for the claims and obligations of the series and distribute the assets of the series as provided in section 60 of this Act, which section shall apply to the winding up and distribution of assets of a series. Actions taken in accordance with this subsection shall not affect the liability of limited partners and shall not impose liability on a liquidating trustee.

(12) On application by or for a partner associated with a series established in accordance with subsection (2) of this section, the High Court may decree termination of such series whenever it is not reasonably practicable to carry on the business of the series in conformity with a partnership agreement. [P.L. 2005-26, § 26, adding new section.]

§ 27. Approval of conversion of a limited partnership.

(1) Upon compliance with this section, a domestic limited partnership may convert to a domestic corporation or any other unincorporated business, including a general partnership or a limited liability company of the Marshall Islands.

(2) If the partnership agreement specifies the manner of authorizing a conversion of the limited partnership, the conversion shall be authorized as specified in the partnership agreement. If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership and does not prohibit a conversion of the limited partnership, the conversion shall be authorized in the same manner as is specified in the partnership agreement for authorizing a merger or consolidation that involves the limited partnership as a constituent party to the merger or consolidation. If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership or a merger or consolidation that involves the limited partnership as a constituent party and does not prohibit a conversion of the limited partnership, the conversion shall be authorized by the approval (a) by all general partners, and (b) by the limited partners or, if there is more than one (1) class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate.

(3) Unless otherwise agreed, the conversion of a domestic limited partnership to another business form pursuant to this section shall not require such limited partnership to wind up its affairs under section 59 of this Act or pay its liabilities and distribute its assets under section 60 of this Act.

(4) In connection with a conversion of a domestic limited partnership to another business form pursuant to this section, rights or securities of or interests in the domestic limited partnership which is to be converted may be exchanged for or converted into cash, property, rights or securities of or interests in the business form into which the domestic limited partnership is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of or interests in another business form. [P.L. 2005-26, § 27, adding new section.]

DIVISION 3:

LIMITED PARTNERS

§ 28. Admission of limited partners.

§ 29. Classes and voting.

§ 30. Liability to third parties.

§ 31. Person erroneously believing himself or herself limited partner.

§ 32. Access to and confidentiality of information; records.

§ 33. Remedies for breach of partnership agreement by limited partner.

§ 28. Admission of limited partners.

(1) In connection with the formation of a limited partnership, a person is admitted as a limited partner of the limited partnership upon the later to occur of:

(a) the formation of the limited partnership; or

(b) the time provided in and upon compliance with the partnership agreement or, if the partnership agreement does not so provide, when the person's admission is reflected in the records of the limited partnership.

(2) After the formation of a limited partnership, a person is admitted as a limited partner of the limited partnership:

(a) in the case of a person who is not an assignee of a partnership interest, including a person acquiring a partnership interest directly from the limited partnership and a person to be admitted as a limited partner of the limited partnership without acquiring a partnership interest in the limited partnership, at the time provided in and upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the consent of all partners and when the

person's admission is reflected in the records of the limited partnership;

(b) in the case of an assignee of a partnership interest, as provided in section 55 of this Act and at the time provided in and upon compliance with the partnership agreement or, if the partnership agreement does not so provide, when any such person's permitted admission is reflected in the records of the limited partnership; or

(c) unless otherwise provided in an agreement of merger or consolidation, in the case of a person acquiring a partnership interest in a surviving or resulting limited partnership pursuant to a merger or consolidation approved in accordance with section 20(2) of this Act, at the time provided in and upon compliance with the partnership agreement of the surviving or resulting limited partnership.

(3) In connection with the domestication of a non-Marshall Islands entity (as defined in section 23 of this Act) as a limited partnership in the Republic of the Marshall Islands in accordance with section 23 of this Act or the conversion of an other entity (as defined in section 25 of this Act) to a domestic limited partnership in accordance with section 25 of this Act, a person is admitted as a limited partner of the limited partnership at the time provided in and upon compliance with the partnership agreement.

(4) A person may be admitted to a limited partnership as a limited partner of the limited partnership and may receive a partnership interest in the limited partnership without making a contribution or being obligated to make a contribution to the limited partnership. Unless otherwise provided in a partnership agreement, a person may be admitted to a limited partnership as a limited partner of the limited partnership without acquiring a partnership interest in the limited partnership. Unless otherwise provided in a partnership agreement, a person may be admitted as the sole limited partner of a limited partnership.

(5) Unless otherwise provided in a partnership agreement or another agreement, a limited partner shall have no preemptive right to subscribe to any additional issue of partnership interests or another interest in a limited partnership. [P.L. 1990-91, § 186; amended by P.L. 2004-17, § 186; amended by P.L. 2005-26, § 28.]

§ 29. Classes and voting.

(1) A partnership agreement may provide for classes or groups of limited partners having such relative rights, powers and duties as the partnership agreement may provide, and may make provision for the future creation

in the manner provided in the partnership agreement of additional classes or groups of limited partners having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of limited partners.

A partnership agreement may provide for the taking of an action, including the amendment of the partnership agreement, without the vote or approval of any limited partner or class or group of limited partners, including an action to create under the provisions of the partnership agreement a class or group of partnership interests that was not previously outstanding.

(2) Subject to section 30 of this division, the partnership agreement may grant to all or certain identified limited partners or a specified class or group of the limited partners the right to vote separately or with all or any class or group of the limited partners or the general partners, on any matter. Voting by limited partners may be on a per capita, number, financial interest, class, group or any other basis.

(3) A partnership agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any limited partners, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(4) Any right or power, including voting rights, granted to limited partners as permitted under section 30 of this Act shall be deemed to be permitted by this section.

(5) Unless otherwise provided in a partnership agreement, on any matter that is to be voted on, consented to or approved by limited partners, the limited partners may take such action without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the limited partners having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all limited partners entitled to vote thereon were present and voted. Unless otherwise provided in a partnership agreement, on any matter that is to be voted on by limited partners, the limited partners may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. Unless otherwise provided in a partnership agreement, a consent transmitted by electronic transmission by a limited partner or by a person or persons authorized to

act for a limited partner shall be deemed to be written and signed for purposes of this subsection. For purposes of this subsection, the term “electronic transmission” means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

(6) If a partnership agreement provides for the manner in which it may be amended, it may be amended in that manner or with the approval of all the partners or as otherwise permitted by law. If a partnership agreement does not provide for the manner in which it may be amended, the partnership agreement may be amended with the approval of all the partners or as otherwise permitted by law. A limited partner and any class or group of limited partners have the right to vote only on matters as specifically set forth in this Act, on matters specifically provided by agreement, including a partnership agreement, and on any matter with respect to which a general partner may determine in its discretion to seek a vote of a limited partner or a class or group of limited partners if a vote on such matter is not contrary to a partnership agreement or another agreement to which a general partner or the limited partnership is a party. A limited partner and any class or group of limited partners have no other voting rights. A partnership agreement may provide that any limited partner or class or group of limited partners shall have no voting rights. [P.L. 2005-26, § 29, adding new section.]

§ 30. Liability to third parties.

(1) A limited partner is not liable for the obligations of a limited partnership unless he or she is also a general partner or, in addition to the exercise of the rights and powers of a limited partner, he or she participates in the control of the business. However, if the limited partner does participate in the control of the business, he or she is liable only to persons who transact business with the limited partnership reasonably believing, based upon the limited partner’s conduct, that the limited partner is a general partner.

(2) A limited partner does not participate in the control of the business within the meaning of subsection (1) of this section by virtue of possessing or, regardless of whether or not the limited partner has the rights or powers, exercising or attempting to exercise one (1) or more of the following rights or powers or having or, regardless of whether or not the limited partner has the rights or powers, acting or attempting to act in one (1) or more of the following capacities:

(a) to be an independent contractor for or to transact business with, including being a contractor for, or to be

an agent or employee of, the limited partnership or a general partner, or to be an officer, director or stockholder of a corporate general partner, or to be a limited partner of a partnership that is a general partner of the limited partnership, or to be a trustee, administrator, executor, custodian or other fiduciary or beneficiary of an estate or trust which is a general partner, or to be a trustee, officer, advisor, stockholder or beneficiary of a business trust or a statutory trust which is a general partner or to be a member, manager, agent or employee of a limited liability company which is a general partner;

(b) to consult with or advise a general partner or any other person with respect to any matter, including the business of the limited partnership, or to act or cause a general partner or any other person to take or refrain from taking any action, including by proposing, approving, consenting or disapproving, by voting or otherwise, with respect to any matter, including the business of the limited partnership;

(c) to act as surety, guarantor or endorser for the limited partnership or a general partner, to guaranty or assume one (1) or more obligations of the limited partnership or a general partner, to borrow money from the limited partnership or a general partner, to lend money to the limited partnership or a general partner, or to provide collateral for the limited partnership or a general partner;

(d) to call, request, or attend or participate at a meeting of the partners or the limited partners;

(e) to wind up a limited partnership pursuant to section 59 of this Act;

(f) to take any action required or permitted by law to bring, pursue or settle or otherwise terminate a derivative action in the right of the limited partnership;

(g) to serve on a committee of the limited partnership or the limited partners or partners or to appoint, elect or otherwise participate in the choice of a representative or another person to serve on any such committee, and to act as a member of any such committee directly or by or through any such representative or other person;

(h) to act or cause the taking or refraining from the taking of any action, including by proposing, approving, consenting or disapproving, by voting or otherwise, with respect to one (1) or more of the following matters:

(i) the dissolution and winding up of the limited partnership or an election to continue the limited

partnership or an election to continue the business of the limited partnership;

(ii) the sale, exchange, lease, mortgage, assignment, pledge or other transfer of, or granting of a security interest in, any asset or assets of the limited partnership;

(iii) the incurrence, renewal, refinancing or payment or other discharge of indebtedness by the limited partnership;

(iv) a change in the nature of the business;

(v) the admission, removal or retention of a general partner;

(vi) the admission, removal or retention of a limited partner;

(vii) a transaction or other matter involving an actual or potential conflict of interest;

(viii) an amendment to the partnership agreement or certificate of limited partnership;

(ix) the indemnification of any partner or other person;

(x) the making of, or calling for, or the making of other determinations in connection with, contributions;

(xi) the making of, or the making of other determinations in connection with or concerning, investments, including investments in property, whether real, personal or mixed, either directly or indirectly, by the limited partnership;

(xii) such other matters as are stated in the partnership agreement or in any other agreement or in writing; or

(xiii) the merger or consolidation of a limited partnership.

(i) to serve on the board of directors or a committee of, to consult with or advise, to be an officer, director, stockholder, partner (other than a general partner of a general partner of the limited partnership), member, manager, trustee, agent or employee of, or to be a fiduciary or contractor for, any person in which the limited partnership has an interest or any person providing management, consulting, advisory, custody or other services or products for, to or on behalf of, or otherwise having a business or other relationship with,

the limited partnership or a general partner of the limited partnership; or

(j) any right or power granted or permitted to limited partners under this chapter and not specifically enumerated in this subsection.

(3) The enumeration in subsection (2) of this section does not mean that the possession or exercise of any other powers or having or acting in other capacities by a limited partner constitutes participation by him or her in the control of the business of the limited partnership.

(4) A limited partner does not participate in the control of the business within the meaning of subsection (1) of this section by virtue of the fact that all or any part of the name of such limited partner is included in the name of the limited partnership.

(5) This section does not create rights or powers of limited partners. Such rights and powers may be created only by a certificate of limited partnership, a partnership agreement or any other agreement or in writing, or other sections of this chapter.

(6) A limited partner does not participate in the control of the business within the meaning of subsection (1) of this section regardless of the nature, extent, scope, number or frequency of the limited partner's possessing or, regardless of whether or not the limited partner has the rights or powers, exercising or attempting to exercise one (1) or more of the rights or powers or having or, regardless of whether or not the limited partner has the rights or powers, acting or attempting to act in one (1) or more of the capacities which are permitted under this section. [P.L. 1990-91, § 185; amended by P.L. 2004-17, § 185; amended by P.L. 2005-26, § 30.]

§ 31. Person erroneously believing himself or herself limited partner.

(1) Except as provided in subsection (2) of this section, a person who makes a contribution to a partnership and erroneously but in good faith believes that he or she has become a limited partner in the partnership is not a general partner in the partnership and is not bound by its obligations by reason of making the contribution, receiving distributions from the partnership or exercising any rights of a limited partner, if, within a reasonable time after ascertaining the mistake:

(a) in the case of a person who wishes to be a limited partner, he or she causes an appropriate certificate to be executed and filed; or

(b) in the case of a person who wishes to withdraw from the partnership, that person takes such action as may be necessary to withdraw.

(2) A person who makes a contribution under the circumstances described in subsection (1) of this section is liable as a general partner to any third party who transacts business with the partnership prior to the occurrence of either of the events referred to in subsection (1) of this section:

(a) if such person knew or should have known either that no certificate has been filed or that the certificate inaccurately refers to the person as a general partner; and

(b) if the third party actually believed in good faith that such person was a general partner at the time of the transaction, acted in reasonable reliance on such belief and extended credit to the partnership in reasonable reliance on the credit of such person. [P.L. 1990-91, § 189; amended by P.L. 2005-26, § 31.]

§ 32. Access to and confidentiality of information; records.

(1) Each limited partner has the right, subject to such reasonable standards (including standards governing what information and documents are to be furnished, at what time and location and at whose expense) as may be set forth in the partnership agreement or otherwise established by the general partners, to obtain from the general partners from time to time upon reasonable demand for any purpose reasonably related to the limited partner's interest as a limited partner:

(a) true and full information regarding the status of the business and financial condition of the limited partnership;

(b) promptly after becoming available, a copy of the limited partnership's financial statements or income tax returns, if applicable, for each year;

(c) a current list of the name and last known business, residence or mailing address of each partner;

(d) a copy of any written partnership agreement and certificate of limited partnership and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the partnership agreement and any certificate and all amendments thereto have been executed;

(e) true and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each partner and which each partner has agreed to contribute in the future, and the date on which each became a partner; and

(f) other information regarding the affairs of the limited partnership as is just and reasonable.

(2) A general partner shall have the right to keep confidential from limited partners for such period of time as the general partner deems reasonable, any information which the general partner reasonably believes to be in the nature of trade secrets or other information the disclosure of which the general partner in good faith believes is not in the best interest of the limited partnership or could damage the limited partnership or its business or which the limited partnership is required by law or by agreement with a third party to keep confidential.

(3) A limited partnership may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

(4) Any demand under this section shall be in writing and shall state the purpose of such demand.

(5) Any action to enforce any right arising under this section shall be brought in the High Court. If a general partner refuses to permit a limited partner to obtain from the general partner the information described in subsection (1)(c) of this section or does not reply to the demand that has been made within five (5) business days after the demand has been made, the limited partner may apply to the High Court for an order to compel such disclosure. The High Court is hereby vested with exclusive jurisdiction to determine whether or not the person seeking such information is entitled to the information sought. The High Court may summarily order the general partner to permit the limited partner to obtain the information described in subsection (1)(c) of this section and to make copies or abstracts therefrom, or the High Court may summarily order the general partner to furnish to the limited partner the information described in subsection (1)(c) of this section on the condition that the limited partner first pay to the limited partnership the reasonable cost of obtaining and furnishing such information and on such other conditions as the High Court deems appropriate. When a limited partner seeks to obtain the information described in subsection (1)(c) of this section, the limited partner shall first establish (a) that the limited partner has complied with the provisions of this section respecting the form and manner of making demand for obtaining such information, and (b) that the information the limited partner seeks is reasonably related to the limited partner's interest as a limited partner. The High Court may, in its discretion, prescribe any limitations or conditions with reference to the obtaining of information, or award such other or further relief as the High Court may deem just and proper. The High Court may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought and kept in the Marshall Islands

upon such terms and conditions as the order may prescribe.

(6) The rights of a limited partner to obtain information as provided in this section may be restricted in an original partnership agreement or in any subsequent amendment approved or adopted by all of the partners and in compliance with any applicable requirements of the partnership agreement. The provisions of this subsection shall not be construed to limit the ability to impose restrictions on the rights of a limited partner to obtain information by any other means permitted under this section. [P.L. 1990-91, § 188; amended by P.L. 2004-17, § 188; amended by P.L. 2005-26, § 32.]

§ 33. Remedies for breach of partnership agreement by limited partner.

A partnership agreement may provide that:

(1) a limited partner who fails to perform in accordance with, or to comply with the terms and conditions of, the partnership agreement shall be subject to specified penalties or specified consequences; and

(2) at the time or upon the happening of events specified in the partnership agreement, a limited partner shall be subject to specified penalties or specified consequences.

Such specified penalties or specified consequences may include and take the form of any penalty or consequence set forth in section 41 of this Act. [P.L. 2005-26, § 33, adding new section.]

DIVISION 4:

GENERAL PARTNERS

§ 34. Admission of general partners.

§ 35. Events of withdrawal.

§ 36. General powers and liabilities.

§ 37. Contributions by a general partner.

§ 38. Classes and voting.

§ 39. Remedies for breach of partnership agreement by general partner.

§ 34. Admission of general partners.

(1) A person may be admitted to a limited partnership as a general partner of the limited partnership and may receive a partnership interest in the limited partnership without making a contribution or being obligated to make a contribution to the limited partnership. Unless otherwise provided in a partnership agreement, a person may be admitted to a limited partnership as a general partner of the limited partnership without acquiring a partnership

interest in the limited partnership. Unless otherwise provided in a partnership agreement, a person may be admitted as the sole general partner of a limited partnership without making a contribution or being obligated to make a contribution to the limited partnership or without acquiring a partnership interest in the limited partnership. Nothing contained in this subsection shall affect the first sentence of section 36(2) of this division.

(2) After the filing of a limited partnership's initial certificate of limited partnership, unless otherwise provided in the partnership agreement, additional general partners may be admitted only with the written consent of each partner.

(3) Unless otherwise provided in a partnership agreement or another agreement, a general partner shall have no preemptive right to subscribe to any additional issue of partnership interests or another interest in a limited partnership. [P.L. 2005-26, § 34, adding new section.]

§ 35. Events of withdrawal.

(1) A person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

(a) the general partner withdraws from the limited partnership as provided in section 46 of this Act;

(b) the general partner ceases to be a general partner of the limited partnership as provided in section 53 of this Act;

(c) the general partner is removed as a general partner in accordance with the partnership agreement;

(d) unless otherwise provided in the partnership agreement, or with the written consent of all partners, the general partner:

(i) makes an assignment for the benefit of creditors;

(ii) files a voluntary petition in bankruptcy;

(iii) is adjudged bankrupt or insolvent, or has entered against him or her an order for relief in any bankruptcy or insolvency proceeding;

(iv) files a petition or answer seeking for himself or herself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;

(v) files an answer or other pleading admitting or failing to contest the material allegations of a

petition filed against him or her in any proceeding of this nature; or

(vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his properties;

(e) unless otherwise provided in the partnership agreement, or with the written consent of all partners, 120 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or if within ninety (90) days after the appointment without the general partner's consent or acquiescence of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his or her properties, the appointment is not vacated or stayed, or within ninety (90) days after the expiration of any such stay, the appointment is not vacated;

(f) in the case of a general partner who is a natural person:

(i) the general partner's death; or

(ii) the entry by a court of competent jurisdiction adjudicating the general partner incompetent to manage his or her person or property;

(g) in the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(h) in the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

(i) in the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter and the expiration of ninety (90) days after the date of notice to the corporation of revocation without a reinstatement of its charter;

(j) unless otherwise provided in the partnership agreement, or with the written consent of all partners, in the case of a general partner that is an estate, the distribution by the fiduciary of the estate's entire interest in the limited partnership;

(k) in the case of a general partner that is a limited liability company, the dissolution and commencement of winding up of the limited liability company; or

(1) in the case of a general partner who is not an individual, partnership, limited liability company, corporation, trust or estate, the termination of the general partner.

(2) A general partner who suffers an event that with the passage of the specified period becomes an event of withdrawal under subsections (1)(d) or (e) of this section shall notify each other general partner, or in the event that there is no other general partner, each limited partner, of the occurrence of the event within thirty (30) days after the date of occurrence of the event of withdrawal. [*P.L. 2005-26, § 35, adding new section.*]

§ 36. General powers and liabilities.

(1) Except as provided in this Act or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership that is governed by the Marshall Islands Revised Partnership Act.

(2) Except as provided in this Act, a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Marshall Islands Revised Partnership Act to persons other than the partnership and the other partners. Except as provided in this Act or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Marshall Islands Revised Partnership Act to the partnership and to the other partners.

(3) Unless otherwise provided in the partnership agreement, a general partner of a limited partnership has the power and authority to delegate to one (1) or more other persons the general partner's rights and powers to manage and control the business and affairs of the limited partnership, including to delegate to agents, officers and employees of the general partner or the limited partnership, and to delegate by a management agreement or another agreement with, or otherwise to, other persons. Unless otherwise provided in the partnership agreement, such delegation by a general partner of a limited partnership shall not cause the general partner to cease to be a general partner of the limited partnership or cause the person to whom any such rights and powers have been delegated to be a general partner of the limited partnership.

(4) A judgment creditor of a general partner of a limited partnership may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership unless:

(a) a judgment based on the same claim has been obtained against the limited partnership and a writ of

execution on the judgment has been returned unsatisfied in whole or in part;

(b) the limited partnership is a debtor in bankruptcy;

(c) the general partner has agreed that the creditor need not exhaust the assets of the limited partnership;

(d) a court grants permission to the judgment creditor to levy execution against the assets of the general partner based on a finding that the assets of the limited partnership that are subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of the assets of the limited partnership is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(e) liability is imposed on the general partner by law or contract independent of the existence of the limited partnership. *[P.L. 1990-91, § 187; amended by P.L. 2004-17, § 187; amended by P.L. 2005-26, § 36.]*

§ 37. Contributions by a general partner.

A general partner of a limited partnership may make contributions to the limited partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the rights and powers, and is subject to the restrictions, of a limited partner to the extent of his or her participation in the partnership as a limited partner. *[P.L. 2005-26, § 37, adding new section.]*

§ 38. Classes and voting.

(1) A partnership agreement may provide for classes or groups of general partners having such relative rights, powers and duties as the partnership agreement may provide, and may make provision for the future creation in the manner provided in the partnership agreement of additional classes or groups of general partners having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of general partners.

A partnership agreement may provide for the taking of an action, including the amendment of the partnership agreement, without the vote or approval of any general partner or class or group of general partners, including an

action to create under the provisions of the partnership agreement a class or group of partnership interests that was not previously outstanding.

(2) The partnership agreement may grant to all or certain identified general partners or a specified class or group of the general partners the right to vote, separately or with all or any class or group of the limited partners or the general partners, on any matter. Voting by general partners may be on a per capita, number, financial interest, class, group or any other basis.

(3) A partnership agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any general partner, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(4) Unless otherwise provided in a partnership agreement, on any matter that is to be voted on, consented to or approved by general partners, the general partners may take such action without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the general partners having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all general partners entitled to vote thereon were present and voted. Unless otherwise provided in a partnership agreement, on any matter that is to be voted on by general partners, the general partners may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. Unless otherwise provided in a partnership agreement, a consent transmitted by electronic transmission by a general partner or by a person or persons authorized to act for a general partner shall be deemed to be written and signed for purposes of this subsection. For purposes of this subsection, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process. *[P.L. 2005-26, § 38, adding new section.]*

§ 39. Remedies for breach of partnership agreement by general partner.

A partnership agreement may provide that (1) a general partner who fails to perform in accordance with, or to comply with the terms and conditions of, the partnership agreement shall be subject to specified penalties or

specified consequences, and (2) at the time or upon the happening of events specified in the partnership agreement, a general partner shall be subject to specified penalties or specified consequences. Such specified penalties or specified consequences may include and take the form of any penalty or consequence set forth in section 41(3) of this Act. *[P.L. 2005-26, § 39, adding new section.]*

DIVISION 5:

FINANCE

- § 40. Form of contribution.**
- § 41. Liability for contribution.**
- § 42. Allocation of profits and losses.**
- § 43. Allocation of distributions.**
- § 44. Defense of usury not available.**

§ 40. Form of contribution.

The contribution of a partner may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services. *[P.L. 1990-91, § 182; amended by P.L. 2004-17, § 182; amended by P.L. 2005-26, § 40.]*

§ 41. Liability for contribution.

(1) (a) Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any promise to contribute cash or property or to perform services, even if that partner is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, he or she is obligated at the option of the limited partnership to contribute cash equal to that portion of the agreed value (as stated in the records of the limited partnership) of the contribution that has not been made.

(b) The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited partnership may have against such partner under the partnership agreement or applicable law.

(2) (a) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this Act may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit, after the entering into of a partnership agreement or an amendment thereto which, in either case, reflects the obligation, and before

the amendment thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a partner to make a contribution or return.

(b) A conditional obligation of a partner to make a contribution or return money or other property to a limited partnership may not be enforced unless the conditions to the obligation have been satisfied or waived as to or by such partner. Conditional obligations include contributions payable upon a discretionary call of a limited partnership or a general partner prior to the time the call occurs.

(3) A partnership agreement may provide that the interest of any partner who fails to make any contribution that he or she is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting partner's proportionate interest in the limited partnership, subordinating the partnership interest to that of nondefaulting partners, a forced sale of his or her partnership interest, forfeiture of that partnership interest, the lending by other partners of the amount necessary to meet his or her commitment, a fixing of the value of that partnership interest by appraisal or by formula and redemption or sale of the partnership interest at such value, or other penalty or consequence. *[P.L. 1990-91, § 195; amended by P.L. 2005-26, § 41.]*

§ 42. Allocation of profits and losses.

The profits and losses of a limited partnership shall be allocated among the partners, and among classes or groups of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, profits and losses shall be allocated on the basis of the agreed value (as stated in the records of the limited partnership) of the contributions made by each partner to the extent they have been received by the limited partnership and have not been returned. *[P.L. 1990-91, § 193; amended by P.L. 2005-26, § 42.]*

§ 43. Allocation of distributions.

Distributions of cash or other assets of a limited partnership shall be allocated among the partners, and among classes or groups of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, distributions shall be made on the basis of the agreed value (as stated in the records of the limited partnership) of the contributions made by each partner to the extent they have been received by the limited partnership and have not been

returned. [P.L. 1990-91, § 192; amended by P.L. 2004-17, § 192; amended by P.L. 2005-26, § 43.]

§ 44. Defense of usury not available.

No obligation of a partner of a limited partnership to the limited partnership arising under the partnership agreement or a separate agreement or writing, and no note, instrument or other writing evidencing any such obligation of a partner, shall be subject to the defense of usury, and no partner shall interpose the defense of usury with respect to any such obligation in any action. [P.L. 2005-26, § 44, adding new section.]

DIVISION 6:

DISTRIBUTIONS AND WITHDRAWAL

§ 45. Interim distributions.

§ 46. Withdrawal of general partner and assignment of general partner's partnership interest.

§ 47. Withdrawal of limited partner.

§ 48. Distribution upon withdrawal.

§ 49. Distribution in kind.

§ 50. Right to distribution.

§ 51. Limitations on distribution.

§ 52. Nature of partnership interest.

§ 45. Interim distributions.

Except as provided in this division, to the extent and at the times or upon the happening of the events specified in the partnership agreement, a partner is entitled to receive from a limited partnership distributions before withdrawing from the limited partnership and before the dissolution and winding up thereof. [P.L. 2005-26, § 45, adding new section.]

§ 46. Withdrawal of general partner and assignment of general partner's partnership interest.

(1) A general partner may withdraw from a limited partnership at the time or upon the happening of events specified in the partnership agreement and in accordance with the partnership agreement. A partnership agreement may provide that a general partner shall not have the right to withdraw as a general partner of a limited partnership. Notwithstanding that a partnership agreement provides that a general partner does not have the right to withdraw as a general partner of a limited partnership, a general partner may withdraw from a limited partnership at any time by giving written notice to the other partners. If the withdrawal of a general partner violates a partner-

ship agreement, in addition to any remedies otherwise available under applicable law, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to the withdrawing general partner.

(2) Notwithstanding anything to the contrary set forth in this Act, a partnership agreement may provide that a general partner may not assign a partnership interest in a limited partnership prior to the dissolution and winding up of the limited partnership. [P.L. 2005-26, § 46, adding new section.]

§ 47. Withdrawal of limited partner.

A limited partner may withdraw from a limited partnership only at the time or upon the happening of events specified in the partnership agreement and in accordance with the partnership agreement. Notwithstanding anything to the contrary under applicable law, unless a partnership agreement provides otherwise, a limited partner may not withdraw from a limited partnership prior to the dissolution and winding up of the limited partnership. Notwithstanding anything to the contrary under applicable law, a partnership agreement may provide that a partnership interest may not be assigned prior to the dissolution and winding up of the limited partnership. [P.L. 1990-91, § 194; amended by P.L. 2004-17, § 194; amended by P.L. 2005-26, § 47.]

§ 48. Distribution upon withdrawal.

Except as provided in this division, upon withdrawal any withdrawing partner is entitled to receive any distribution to which such partner is entitled under a partnership agreement and, if not otherwise provided in a partnership agreement, such partner is entitled to receive, within a reasonable time after withdrawal, the fair value of such partner's partnership interest in the limited partnership as of the date of withdrawal based upon such partner's right to share in distributions from the limited partnership. [P.L. 1990-91, § 201; amended by P.L. 2004-17, § 201; amended by P.L. 2005-26, § 48.]

§ 49. Distribution in kind.

Except as provided in the partnership agreement, a partner, regardless of the nature of the partner's contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed exceeds a percentage of that asset which is equal to the percentage in which the partner shares in distributions from the

limited partnership. Except as provided in the partnership agreement, a partner may be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed is equal to a percentage of that asset which is equal to the percentage in which the partner shares in distributions from the limited partnership. [P.L. 1990-91, § 201; amended by P.L. 2005-26, § 49.]

§ 50. Right to distribution.

(1) Subject to sections 51 and 60 of this Act, and unless otherwise provided in the partnership agreement, at the time a partner becomes entitled to receive a distribution, he or she has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

(2) A partnership agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited partnership. [P.L. 1990-91, § 192; amended by P.L. 2004-17, § 192; amended by P.L. 2005-26, § 50.]

§ 51. Limitations on distribution.

(1) A limited partnership shall not make a distribution to a partner to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests and liabilities for which the recourse of creditors is limited to specified property of the limited partnership, exceed the fair value of the assets of the limited partnership, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited partnership only to the extent that the fair value of that property exceeds that liability. For purposes of this subsection, the term “distribution” shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

(2) A limited partner who receives a distribution in violation of subsection (1) of this section, and who knew at the time of the distribution that the distribution violated subsection (1) of this section, shall be liable to the limited partnership for the amount of the distribution. A limited partner who receives a distribution in violation of subsection (1) of this section, and who did not know at the time of the distribution that the distribution violated subsection (1) of this section, shall not be liable for the amount of the distribution. Subject to subsection (3) of this section, this subsection shall not affect any obligation or liability of a limited partner under an agreement or other applicable law for the amount of a distribution.

(3) Unless otherwise agreed, a limited partner who receives a distribution from a limited partnership shall have no liability under this Act or other applicable law for the amount of the distribution after the expiration of three (3) years from the date of the distribution. [P.L. 1990-91, § 194; amended by P.L. 2004-17, § 194; amend by P.L. 2005-26, § 51.]

§ 52. Nature of partnership interest.

A partnership interest is personal property. A partner has no interest in specific limited partnership property. [P.L. 1990-91, § 196; amended by P.L. 2005-26, § 52.]

DIVISION 7:

ASSIGNMENT OF PARTNERSHIP INTERESTS

§ 53. Assignment of partnership interest.

§ 54. Partner’s partnership interest subject to charging order.

§ 55. Right of assignee to become limited partner.

§ 56. Powers of estate of deceased or incompetent partner.

§ 53. Assignment of partnership interest.

(1) Unless otherwise provided in the partnership agreement:

(a) a partnership interest is assignable in whole or in part;

(b) an assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights or powers of a partner;

(c) an assignment of a partnership interest entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and

(d) A partner ceases to be a partner and to have the power to exercise any rights or powers of a partner upon assignment of all partnership interests. Unless otherwise provided in a partnership agreement, the pledge of, or granting of a security interest, lien or other encumbrance in or against, any or all of the partnership interest of a partner shall not cause the partner to cease to be a partner or to have the power to exercise any rights or powers of a partner.

(2) Unless otherwise provided in a partnership agreement, a partner's interest in a limited partnership may be evidenced by a certificate of partnership interest issued by the limited partnership. A partnership agreement may provide for the assignment or transfer of any partnership interest represented by such a certificate and make other provisions with respect to such certificates.

(3) Unless otherwise provided in a partnership agreement and except to the extent assumed by agreement, until an assignee of a partnership interest becomes a partner, the assignee shall have no liability as a partner solely as a result of the assignment.

(4) Unless otherwise provided in the partnership agreement, a limited partnership may acquire, by purchase, redemption or otherwise, any partnership interest or other interest of a partner in the limited partnership. Unless otherwise provided in the partnership agreement, any such interest so acquired by the limited partnership shall be deemed canceled. *[P.L. 1990-91, § 197; amended by P.L. 2004-17; § 197; amended by P.L. 2005-26, § 53.]*

§ 54. Partner's partnership interest subject to charging order.

(1) On application by a judgment creditor of a partner or of a partner's assignee, a court having jurisdiction may charge the partnership interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the limited partnership, which receiver shall have only the rights of an assignee, and the court may make all other orders, directions, accounts and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(2) A charging order constitutes a lien on the judgment debtor's partnership interest. The court may order a foreclosure of the partnership interest subject to the charging order at any time. The purchaser at the foreclosure sale has only the rights of an assignee.

(3) Unless otherwise provided in a partnership agreement, at any time before foreclosure, a partnership interest charged may be redeemed:

- (a) by the judgment debtor;
- (b) with property other than partnership property, by one (1) or more of the other partners; or
- (c) by the limited partnership with the consent of all of the partners whose interests are not so charged.

(4) This Act does not deprive a partner of a right under exemption laws with respect to the partner's partnership interest.

(5) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's assignee may satisfy a judgment out of the judgment debtor's partnership interest.

(6) No creditor of a partner shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited partnership. *[P.L. 1990-91, § 200; amended by P.L. 2004-17, § 200; amended by P.L. 2005-26, § 54.]*

§ 55. Right of assignee to become limited partner.

(1) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:

- (a) the partnership agreement so provides; or
- (b) all partners consent.

(2) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this Act. Notwithstanding the foregoing, unless otherwise provided in the partnership agreement, an assignee who becomes a limited partner is liable for the obligations of his or her assignor to make contributions as provided in section 41 of this Act, but shall not be liable for the obligations of the assignor. However, the assignee is not obligated for liabilities, including the obligations of the assignor to make contributions as provided in section 41 of this Act, unknown to the assignee at the time the assignee became a limited partner and which could not be ascertained from the partnership agreement.

(3) Whether or not an assignee of a partnership interest becomes a limited partner, the assignor is not released from liability to the limited partnership under this Act. *[P.L. 1990-91, § 197; amended by P.L. 2004-17, § 197; amended by P.L. 2005-26, § 55.]*

§ 56. Powers of estate of deceased or incompetent partner.

If a partner who is an individual dies or a court of competent jurisdiction adjudges the partner to be incompetent to manage the partner's person or property, the partner's personal representative may exercise all of the partner's rights for the purpose of settling the partner's estate or administering the partner's property, including any power under the partnership agreement of an assignee to become a limited partner. If a partner is a

corporation, trust or other entity and is dissolved or terminated, the powers of that partner may be exercised by its personal representative. [P.L. 1990-91, § 199; amended by P.L. 2005-26, § 56.]

DIVISION 8:

DISSOLUTION

§ 57. Nonjudicial dissolution

§ 58. Judicial dissolution.

§ 59. Winding up.

§ 60. Distribution of assets.

§ 61. Trustees or receivers for limited partnerships; appointment; powers; duties.

§ 57. Nonjudicial dissolution.

A limited partnership is dissolved and its affairs shall be wound up upon the first to occur of the following:

(1) At the time specified in a partnership agreement, but if no such time is set forth in the partnership agreement, then the limited partnership shall have a perpetual existence;

(2) Unless otherwise provided in a partnership agreement, upon the affirmative vote or written consent of (i) all general partners and (ii) the limited partners of a limited partnership or, if there is more than one (1) class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners who own more than two-thirds of the then current percentage or other interest in the profits of the limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate;

(3) An event of withdrawal of a general partner unless at the time there is at least one (1) other general partner and the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if (a) within ninety (90) days or such other period as is provided for in a partnership agreement after the withdrawal either (i) if provided for in the partnership agreement, the then current percentage or other interest in the profits of the limited partnership specified in the partnership agreement owned by the remaining partners agree, in writing by vote, to continue the business of the limited partnership and to appoint, effective as of the date of withdrawal, one (1) or more additional general partners if necessary or desired, or (ii) if no such right to agree or vote to continue the business of the limited partnership and to appoint one (1) or more additional general partners is provided for in the partnership

agreement, then more than fifty percent (50%) of the then current percentage or other interest in the profits of the limited partnership owned by the remaining partners or, if there is more than one (1) class or group of remaining partners, then more than fifty percent (50%) of the then current percentage or other interest in the profits of the limited partnership owned by each class or classes or group or groups of remaining partners agree, in writing or by vote, to continue the business of the limited partnership and to appoint, effective as of the date of withdrawal, one (1) or more additional general partners if necessary or desired, or (b) the business of the limited partnership is continued pursuant to a right to continue stated in the partnership agreement and the appointment, effective as of the date of withdrawal, of one (1) or more additional general partners if necessary or desired;

(4) At the time there are no limited partners; provided, that the limited partnership is not dissolved and is not required to be wound up if:

(a) unless otherwise provided in a partnership agreement, within ninety (90) days or such other period as is provided for in the partnership agreement after the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner, the personal representative of the last remaining limited partner and all of the general partners agree, in writing or by vote, to continue the business of the limited partnership and to the admission of the personal representative of such limited partner or its nominee or designee to the limited partnership as a limited partner, effective as of the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner; provided, that a partnership agreement may provide that the general partners or the personal representative of the last remaining limited partner shall be obligated to agree in writing to continue the business of the limited partnership and to the admission of the personal representative of such limited partner or its nominee or designee to the limited partnership as a limited partner, effective as of the occurrence of the event that caused the last limited partner to cease to be a limited partner; or

(b) a limited partner is admitted to the limited partnership in the manner provided for in the partnership agreement, effective as of the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner, within ninety (90) days or such other period as is provided for in the partnership agreement after the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner, pursuant to a provision of the partnership agreement that specifically provides for the admission of a limited partner to the limited partnership after there is no longer a remaining limited partner of the limited partnership.

(5) Upon the happening of events specified in a partnership agreement; or

(6) Entry of a decree of judicial dissolution under section 58 of this division. *[P.L. 1990-91, § 198; amended by P.L. 2004-17, § 198; amended by P.L. 2005-26, § 57.]*

§ 58. Judicial dissolution.

On application by or for a partner the High Court may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement. *[P.L. 1990-91, § 198; amended by P.L. 2004-17, § 198; amended by P.L. 2005-26, § 58.]*

§ 59. Winding up.

(1) Unless otherwise provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, or a person approved by the limited partners or, if there is more than one (1) class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate may wind up the limited partnership's affairs; but the High Court, upon cause shown, may wind up the limited partnership's affairs upon application of any partner, the partner's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee.

(2) Upon dissolution of a limited partnership and until the filing of a certificate of cancellation as provided in section 12 of this Act, the persons winding up the limited partnership's affairs may, in the name of, and for and on behalf of, the limited partnership, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the limited partnership's business, dispose of and convey the limited partnership's property, discharge or make reasonable provision for the limited partnership's liabilities, and distribute to the partners any remaining assets of the limited partnership, all without affecting the liability of limited partners and without imposing the liability of a general partner on a liquidating trustee. *[P.L. 1990-91, § 201; amended by P.L. 2005-26, § 59.]*

§ 60. Distribution of assets.

(1) Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(a) to creditors, including partners who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited partnership (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to partners and former partners under sections 45 or 48 of this Act;

(b) unless otherwise provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under sections 45 or 48 of this Act; and

(c) unless otherwise provided in the partnership agreement, to partners first for the return of their contributions and second respecting their partnership interests, in the proportions in which the partners share in distributions.

(2) A limited partnership which has dissolved:

(a) shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured contractual claims, known to the limited partnership;

(b) shall make such provision as will be reasonably likely to be sufficient to provide compensation for any claim against the limited partnership which is the subject of a pending action, suit or proceeding to which the limited partnership is a party; and

(c) shall make such provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the limited partnership or that have not arisen but that, based on facts known to the limited partnership, are likely to arise or to become known to the limited partnership within ten (10) years after the date of dissolution.

If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of assets available therefore. Unless otherwise provided in the partnership agreement, any remaining assets shall be distributed as provided in this Act. Any liquidating trustee winding up a limited partnership's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved limited partnership by reason of such person's actions in winding up the limited partnership.

(3) A limited partner who receives a distribution in violation of subsection (1) of this section, and who knew at the time of the distribution that the distribution violated subsection (1) of this section, shall be liable to the limited partnership for the amount of the distribution. For purposes of the immediately preceding sentence, the term “distribution” shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A limited partner who receives a distribution in violation of subsection (1) of this section, and who did not know at the time of the distribution that the distribution violated subsection (1) of this section, shall not be liable for the amount of the distribution. Subject to subsection (4) of this section, this subsection shall not affect any obligation or liability of a limited partner under an agreement or other applicable law for the amount of a distribution.

(4) Unless otherwise agreed, a limited partner who receives a distribution from a limited partnership to which this section applies shall have no liability under this Act or other applicable law for the amount of the distribution after the expiration of three (3) years from the date of the distribution.

(5) Section 51 of this Act shall not apply to a distribution to which this section applies. *[P.L. 1990-91, § 201; amended by P.L. 2005-26, § 60.]*

§ 61. Trustees or receivers for limited partnerships; appointment; powers; duties.

When the certificate of limited partnership of any limited partnership formed under this Act shall be canceled by the filing of a certificate of cancellation pursuant to section 12 of this Act, the High Court, on application of any creditor or partner of the limited partnership, or any other person who shows good cause therefore, at any time, may either appoint one (1) or more of the general partners of the limited partnership to be trustees, or appoint one (1) or more persons to be receivers, of and for the limited partnership, to take charge of the limited partnership’s property, and to collect the debts and property due and belonging to the limited partnership, with the power to prosecute and defend, in the name of the limited partnership, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by the limited partnership, if in being, that may be necessary for the final settlement of the unfinished business of the limited partnership. The powers of the trustees or receivers may be continued as long as the High Court shall think necessary for the purposes aforesaid. *[P.L. 2005-26, § 61, adding new section.]*

DIVISION 9:

DERIVATIVE ACTIONS

§ 62. Right to bring action.

§ 63. Proper plaintiff.

§ 64. Complaint.

§ 65. Expenses.

§ 62. Right to bring action.

A limited partner or an assignee of a partnership interest may bring an action in the High Court in the right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed. *[P.L. 1990-91, § 204; amended by P.L. 2005-26, § 62.]*

§ 63. Proper plaintiff.

In a derivative action, the plaintiff must be a partner or an assignee of a partnership interest at the time of bringing the action and:

(1) At the time of the transaction of which the plaintiff complains; or

(2) The plaintiff’s status as a partner or an assignee of a partnership interest had devolved upon the plaintiff by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner or an assignee of a partnership interest at the time of the transaction. *[P.L. 2005-26, § 63, adding new section.]*

§ 64. Complaint.

In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort. *[P.L. 2005-26, § 64, adding new section.]*

§ 65. Expenses.

If a derivative action is successful, in whole or in part, as a result of a judgment, compromise or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorney’s fees, from any recovery in any such action or from a limited partnership. *[P.L. 2005-26, § 64, adding new section.]*

DIVISION 10:

MISCELLANEOUS

§ 66. Construction and application of Act and partnership agreement.

§ 67. Short title.

§ 68. Severability.

§ 69. Fees.

§ 70. Reserved power of the Republic of the Marshall Islands to alter or repeal Act.

§ 71. Cancellation of certificate of limited partnership for failure to pay annual fee.

§ 72. Reinstatement of domestic limited partnership.

§ 73. Exemptions for non-resident entities.

§ 66. Construction and application of Act and partnership agreement.

(1) This Act shall be so applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act.

(2) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this Act.

(3) It is the policy of this Act to give maximum effect to the principle of freedom of contract and to the enforceability of partnership agreements.

(4) To the extent that, at law or in equity, a partner or other person has duties (including fiduciary duties) and liabilities relating thereto to a limited partnership or to another partner or to another person that is a party to or is otherwise bound by a partnership agreement, (a) any such partner or other person acting under the partnership agreement shall not be liable to the limited partnership or to any such other partner or to any such other person for the partner's or other person's good faith reliance on the provisions of the partnership agreement, and (b) the partner's or other person's duties and liabilities may be expanded or restricted by provisions in the partnership agreement.

(5) This Act shall be applied and construed to make the laws of the Marshall Islands, with respect to the subject matter hereof, uniform with the laws of the State of Delaware of the United States of America. Insofar as it does not conflict with any other provision of this Act, or the decisions of the High and Supreme Courts of the Republic of the Marshall Islands which take precedence, the non-statutory law of the State of Delaware is hereby adopted as the law of the Marshall Islands. This subsection shall not apply to resident domestic limited partnerships. *[P.L. 1990-91, § 206; amended by P.L. 2004-17, § 206; amended by P.L. 2005-26, § 66.]*

§ 67. Short title.

This Act may be cited as the "Marshall Islands Limited Partnership Act." *[P.L. 1990-91, § 205; amended by P.L. 2005-26, § 67.]*

§ 68. Severability.

If any provision of this Act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable. *[P.L. 2005-26, § 68, adding new section.]*

§ 69. Fees.

(1) No document required to be filed under this Act shall be effective until the applicable fee required by the Registrar of Corporations is paid. An annual fee must be paid to the Registrar of Corporations for the continued existence of the limited partnership.

(2) The annual fee shall be due and payable on the anniversary date of the filing of a certificate of limited partnership. The Registrar of Corporations shall receive the annual fee. *[P.L. 1990-91, § 180; amended by P.L. 2005-26, § 69.]*

§ 70. Reserved power of the Republic of the Marshall Islands to alter or repeal Act.

All provisions of this Act may be altered from time to time or repealed and all rights of partners are subject to this reservation. Unless expressly stated to the contrary in this Act, all amendments of this Act shall apply to limited partnerships and partners whether or not existing as such at the time of the enactment of any such amendment. *[P.L. 2005-26, § 70, adding new section.]*

§ 71. Cancellation of certificate of limited partnership for failure to pay annual fee.

The certificate of limited partnership of a domestic limited partnership shall be deemed to be canceled if the limited partnership shall fail to pay the annual fee due under section 69 of this division for a period of one (1) year from the date it is due, such cancellation to be effective on the first anniversary of such due date. *[P.L. 2005-26, § 71, adding new section.]*

§ 72. Reinstatement of domestic limited partnership.

(1) A domestic limited partnership whose certificate of limited partnership has been canceled pursuant to sections 3(3) or 71 of this Act may be reinstated by filing

a certificate of reinstatement with the Registrar of Corporations a certificate of reinstatement accompanied by the payment of the annual fee due under section 69 of this division and all penalties thereon for each year for which such domestic limited partnership neglected, refused or failed to pay such annual fee, including each year between the cancellation of its certificate of limited partnership and its reinstatement. The certificate of reinstatement shall set forth:

(a) the name of the limited partnership at the time its certificate of limited partnership was canceled and, if such name is not available at the time of reinstatement, the name under which the limited partnership is to be reinstated;

(b) the date of filing of the original certificate of limited partnership of the limited partnership;

(c) the name and address of the limited partnership's registered agent in the Marshall Islands;

(d) a statement that the certificate of reinstatement is filed by one (1) or more general partners of the limited partnership authorized to execute and file the certificate of reinstatement to reinstate the limited partnership;

(e) that the reinstatement will not cause injury to any person including without limitations the partners or limited partners, former partners or limited partners, or creditors of the limited partnership;

(f) the petitioners agree to hold harmless the Registrar of Corporations for any costs, fees or expenses for any claims or liabilities arising from the reinstatement of the limited partnership; and

(g) any other matters the general partner or general partners executing the certificate of reinstatement determine to include therein.

(2) The certificate of reinstatement shall be deemed to be an amendment to the certificate of limited partnership of the limited partnership, and the limited partnership shall not be required to take any further action to amend its certificate of limited partnership under section 11 of this Act with respect to the matters set forth in the certificate of reinstatement.

(3) Upon the filing of a certificate of reinstatement, a limited partnership shall be reinstated with the same force and effect as if its certificate of limited partnership had not been canceled pursuant to sections 3(3) or 71 of this Act. Such reinstatement shall validate all contracts, acts, matters and things made, done and performed by the limited partnership, its partners, employees and agents

during the time when its certificate of limited partnership was canceled pursuant to sections 3(3) or 71 of this Act, with the same force and effect and to all intents and purposes as if the certificate of limited partnership had remained in full force and effect. All real and personal property, and all rights and interests, which belonged to the limited partnership at the time its certificate of limited partnership was canceled pursuant to sections 3(3) or 71 of this Act, or which were acquired by the limited partnership following the cancellation of its certificate of limited partnership pursuant to sections 3(3) or 71 of this Act, and which were not disposed of prior to the time of its revival, shall be vested in the limited partnership after its reinstatement as fully as they were held by the limited partnership at, and after, as the case may be, the time its certificate of limited partnership was canceled pursuant to sections 3(3) or 71 of this Act. After its reinstatement, the limited partnership and its partners shall have the same liability for all contracts, acts, matters and things made, done or performed in the limited partnership's name and on its behalf by its partners, employees and agents as the limited partnership and its partners would have had if the limited partnership's certificate of limited partnership had at all times remained in full force and effect. *[P.L. 2005-26, § 72, adding new section.]*

§ 73. Exemptions for non-resident entities.

Notwithstanding any provision of the Income Tax Act of 1989 (11 MIRC, Chapter 1A), or any other law or regulation imposing taxes or fees now in effect or hereinafter enacted, a non-resident limited partnership and (solely for the purposes of this section) the Administrator and Trust Company duly appointed by the Cabinet to act in the capacity of the Registrar of Corporations for non-resident entities pursuant to this Act and as the Maritime Administrator created pursuant to the Marshall Islands Maritime Act 1990 (34 MIRC, Chapter 3A), shall be exempt from any corporate tax, net income tax on unincorporated businesses, corporate profit tax, income tax, withholding tax on revenues of the entity, asset tax, tax reporting requirements on revenues of the entity, stamp duty, exchange controls or other fees or taxes other than those imposed by section 69 of this division.

Interest, dividends, royalties, rents, payments (including payments to creditors), compensation or other distributions of income paid by a non-resident partnership to another non-resident limited partnership or to individuals or entities which are not citizens or residents of the Marshall Islands are exempt from any tax or withholding provisions of the laws of the Marshall Islands. *[P.L. 2005-26, § 73, adding new section.]*

PART IV:

LIMITED LIABILITY
COMPANY ACT

DIVISION 1:

PRELIMINARY; GENERAL

- § 1. **Short title.**
- § 2. **Definitions.**
- § 3. **Name set forth in certificate.**
- § 4. **Reservation of name.**
- § 5. **Service of process; registered agent.**
- § 6. **Nature of business permitted; powers.**
- § 7. **Business transactions of member or manager with the limited liability company.**
- § 8. **Indemnification.**

§ 1. **Short title.**

This Act may be cited as the Limited Liability Company Act of 1996. [P.L. 1996-14, § 1.]

§ 2. **Definitions.**

As used in this Act unless the context otherwise requires:

(1) “bankruptcy” means an event that causes a person to cease to be a member as provided in section 21 of this act.

(2) “certificate of formation” means the certificate referred to in section 9 of this Act, and the certificate as amended.

(3) “contribution” means any cash, property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services, which a person contributes to a limited liability company in his capacity as a member.

(4) “foreign limited liability company” means a limited liability company formed under the laws of any foreign country or other foreign jurisdiction and denominated as such under the laws of a foreign country or other foreign jurisdiction.

(5) “High Court” means the High Court of the Republic of the Marshall Islands.

(6) “knowledge” means a person’s actual knowledge of a fact, rather than the person’s constructive knowledge of the fact.

(7) “limited liability company” and “domestic limited liability company” means a limited liability company formed under the laws of the Republic of the Marshall Islands and having one (1) or more members.

(8) “limited liability company agreement” means any agreement, written or oral, of the member or members as

to the affairs of a limited liability company and the conduct of its business. A written limited liability company agreement or another written agreement or writing:

(a) may provide that a person shall be admitted as a member of a limited liability company, or shall become an assignee of a limited liability company interest or other rights or powers of a member to the extent assigned, and shall become bound by the limited liability company agreement:

(i) if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest) executes the limited liability company agreement or any other writing evidencing the intent of such person to become a member or assignee; or

(ii) without such execution, if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest) complies with the conditions for becoming a member or assignee as set forth in the limited liability company agreement or any other writing; and

(b) shall not be unenforceable by reason of its not having been signed by a person being admitted as a member or becoming an assignee as provided in subsection (a) of this section, or by reason of it having been signed by a representative as provided in this Act.

(9) “limited liability company interest” means a member’s share of the profits and losses of a limited liability company and a member’s right to receive distributions of the limited liability company’s assets.

(10) “liquidating trustee” means a person carrying out the winding up of a limited liability company.

(11) “manager” means a person who is named as a manager of a limited liability company in, or designated as a manager of a limited liability company pursuant to, a limited liability company agreement or similar instrument under which the limited liability company is formed.

(12) “member” means a person who has been admitted to a limited liability company as a member as provided in section 18 of this Act or, in the case of a foreign limited liability company, in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is organized.

(13) “non-resident limited liability company” means either a domestic limited liability company or a foreign limited liability company not doing business in the Marshall Islands. “Not doing business in the Marshall Islands” will have the same meaning as found in the Marshall Islands Business Corporations Act (BCA), 18 MIRC 1.

(14) “person” means a natural person, partnership (whether general or limited and whether domestic or foreign), limited liability company, foreign limited liability company, trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity.

(15) “personal representative” means, as to a natural person, the executor, administrator, guardian, conservator, or other legal representative thereof and, as to a person other than a natural person, the legal representative or successor thereof.

(16) “publicly traded limited liability company interest” means any limited liability company interest that is:

(a) listed on a securities exchange; or

(b) authorized for quotation on an interdealer quotation system or a registered national securities association.

(17) “Registrar of Corporations” means the Registrar of domestic limited liability companies. The Registrar for resident limited liability companies is the Registrar of Corporations responsible for resident domestic and authorized foreign corporations. The Registrar of Corporations for non-resident domestic limited liability companies shall be The Trust Company of the Marshall Islands, Inc.

(18) “resident domestic limited liability company” means a domestic limited liability company doing business in the Marshall Islands. [P.L. 1996-14, § 2; amended by P.L. 1997-54, § 2; amended by P.L. 1998-65, § 2, amended by P.L. 2000-14, § 2.]

§ 3. Name set forth in certificate.

The name of each limited liability company as set forth in its certificate of formation:

(1) shall contain the word “Limited Liability Company” or the abbreviation “L.L.C.”

(2) may contain the name of a member or manager;

(3) shall be such as to distinguish it upon the records in the Office of the Registrar of Corporations from the

name of any corporation, partnership, limited partnership, business trust, foreign maritime entity or limited liability company reserved, registered, formed or organized under the laws of the Republic of the Marshall Islands or qualified to do business or registered as a foreign corporation, foreign limited partnership or foreign limited liability company in the Republic of the Marshall Islands. [P.L. 1996-14, § 3.]

§ 4. Reservation of name.

The exclusive right to the use of a name may be reserved by:

(1) any person intending to organize a limited liability company under this Act and to adopt that name;

(2) any domestic limited liability company or any foreign limited liability company registered in the Republic of the Marshall Islands which, in either case, proposes to change its name;

(3) any foreign limited liability company intending to register in the Republic of the Marshall Islands and adopt that name; and

(4) any person intending to organize a foreign limited company and intending to have it register in the Republic of the Marshall Islands and adopt that name. [P.L. 1996-14, § 4.]

§ 5. Service of process; registered agent.

(1) *Registered agent for service of process.*

(a) *Registered agent.* Every domestic limited liability company or foreign limited liability company authorized to do business in the Marshall Islands under the provision of section 50 of this Act shall designate a registered agent in the Marshall Islands upon whom process against such limited liability company or any notice or demand required or permitted by law to be served may be served. The agent for a limited liability company having a place of business in the Marshall Islands shall be a resident domestic corporation having a place of business in the Marshall Islands or a natural person, resident of and having a business address in the Marshall Islands. The registered agent for a domestic or foreign limited liability company not having a place of business in the Marshall Islands shall be The Trust Company of The Marshall Islands, Inc. A domestic limited liability company or an authorized foreign limited liability company which fails to maintain a registered agent shall be dissolved or its authority to do business or registration shall be revoked or its certificate canceled, as the case may be.

(b) *Manner of service.*

(i) *Domestic limited liability company.* Service of process on a domestic limited liability company may be made on the registered agent in the manner provided by law for the service of summons as if the registered agent were a defendant.

(ii) *Non-resident domestic limited liability company.*

(1) Service of process on a non-resident domestic limited liability company may be made on the registered agent in the manner provided by law for the service of summons as if the registered agent were a defendant; or

(2) Service of process may be sent to the Registered agent via registered mail or courier as if the registered agent were a defendant.

(c) *Resignation by registered agent.* Any registered agent of a limited liability company may resign as such agent upon filing a written notice thereof with the Registrar of Corporations, provided however that the registered agent shall notify the limited liability company not less than thirty (30) days prior to such filing and resignation. The registered agent shall mail or cause to be mailed to the limited liability company at the last known address of the limited liability company, within or without the Marshall Islands or at the last known address of the person at whose request the limited liability company was formed, notice of the resignation of the agent. No designation of a new registered agent shall be accepted for filing until all charges owing to the former registered agent shall have been paid.

(d) *Making, revoking or changing designation by the limited liability company.* A designation of a registered agent under this section may be made, revoked, or changed by filing an appropriate notification with the Registrar of Corporations.

(e) *Termination of designation.* The designation of a registered agent shall terminate upon filing a notice of resignation provided that the registered agent certifies that the limited liability company was notified not less than thirty (30) days prior to such filing as provided by subsection (1)(c) of this section.

(f) *Notification by registered agent to the limited liability company.* A registered agent, when served with process, notice or demand for the limited liability company which he represents, shall transmit the same to the limited liability company by personal notification or in the following manner: Upon receipt of the process, notice or demand, the registered agent shall

cause a copy of such paper to be mailed to the limited liability company named therein at its last known address. Such mailing shall be by registered mail. As soon thereafter as possible if process was issued in the Marshall Islands, the registered agent may file with the clerk of the Marshall Islands court issuing the process or with the agency of the Marshall Islands government issuing the notice or demand either the receipt of such registered mailing or an affidavit stating that such mailing has been made, signed by the registered agent, or if the agent is a corporation, by an officer of the same, properly notarized. Compliance with the provisions of this paragraph shall relieve the registered agent from any further obligation to the corporation for service of the process, notice or demand, but the agent's failure to comply with the provisions of this paragraph shall in no way affect the validity of the service of the process, notice or demand.

(g) *Liability of registered agent; dismissal of action against.* A registered agent for service of process acting pursuant to the provisions of this section shall not be liable for the actions or obligations of the limited liability company for whom it acts. The Registered agent shall not be a party to any suit or action against the limited liability company or arising from the acts or obligations of the limited liability company. If the registered agent is named in any such action, the action shall be dismissed, without prejudice to the plaintiff to bring an action against the correct party.

(2) *Attorney General as agent for service of process.*

(a) *When Attorney General is agent for service.* Whenever a domestic limited liability company or foreign limited liability company authorized to do business in the Marshall Islands fails to maintain a registered agent in the Marshall Islands, or whenever its registered agent cannot with reasonable diligence be found at his business address, then the Attorney General shall be an agent of such limited liability company upon whom any process or notice or demand required or permitted by law to be served may be served.

(b) *Manner of service.* Service on the Attorney General as agent of a domestic or foreign limited liability company authorized to do business shall be made by personally delivering to and leaving with him or his deputy or with any person authorized by the Attorney General to receive such service, at the office of the Attorney General in Majuro Atoll, duplicate copies of such process together with the statutory fee. The Attorney General shall promptly send one (1) of such copies by registered mail return receipt requested, to such limited liability company at the business address of its registered agent, or if there is no such office, the Attorney General shall mail such copy, in

the case of a resident domestic limited liability company, in care of any member named in its certificate of formation at his address stated therein, or in the case of a nonresident domestic limited liability company, at the address of the limited liability company without the Marshall Islands, or if none, at the last known address of a person at whose request the limited liability company authorized to do business, to such limited liability company at its address as stated in its application for authority to do business.

(3) *Service of process on foreign limited liability company not authorized to do business.*

(a) *Attorney General as agent to receive service.* Every foreign limited liability company not authorized to do business which itself or through an agent does any business in the Marshall Islands or does any other act in the Marshall Islands which under section 51 of the Judiciary Act, 27 MIRC 2, confers jurisdiction on the Marshall Islands courts as to claims arising out of such act, is deemed to have designated the Attorney General as its agent upon whom process against it may be served, in any action or special proceeding arising out of or in connection with the doing of such business or the doing of such other act. Such process may issue in any court in the Marshall Islands having jurisdiction of the subject matter.

(b) *Manner of service.* Service of such process upon the Attorney General shall be made by personally delivering to and leaving with him or his deputy, or with any person authorized by the Attorney General to receive such service, at the office of the Attorney General in Majuro Atoll, a copy of such process together with the statutory fee. Such service shall be sufficient if a copy of the process is:

(i) delivered personally without the Marshall Islands to such foreign limited liability company by a person and in the manner authorized to serve process by law of the jurisdiction in which service is made; or

(ii) sent by or on behalf of the plaintiff to such foreign limited liability company by registered mail at the post office address specified for the purpose of mailing process, on file in the Attorney General in the jurisdiction of its formation or with any official or body performing the equivalent function thereof, or if no such address is there specified, to its registered agent or other office there specified, or if no such office is specified, to the last address of such foreign limited liability company known to the plaintiff.

(c) *Proof of service.* Proof of service shall be by affidavit of compliance with this section filed, together

with the process, within thirty (30) days after such service with the clerk of the court in which the action or special proceeding is pending. If a copy of the process is mailed in accordance with this section, there shall be filed with the affidavit of compliance either the return receipt signed by such foreign limited liability company or other official proof of delivery or, if acceptance was refused, the original envelope with a notation by the postal authorities that acceptance was refused. If acceptance was refused, a copy of the process together with notice of the mailing by registered mail and refusal to accept shall be promptly sent to such foreign corporation at the same address by ordinary mail and the affidavit of compliance shall so state. Service of process shall be complete ten (10) days after such papers are filed with the clerk of the court. The refusal to accept delivery of the registered mail or to sign the return receipt shall not affect the validity of the service and such foreign limited liability company refusing to accept such registered mail shall be charged with knowledge of the contents thereof.

(4) *Records and certificates of the Attorney General.* The Attorney General shall keep a record of each process served upon the Attorney General under this division, including the date of service. It shall, upon request made within five (5) years of such service, issue a certificate under its seal certifying as to the receipt of the process by an authorized person, the date and place of such service, and the receipt of the statutory fee.

(5) *Limitation on effect of division.* Nothing contained in this division shall affect the validity of service of process on a corporation effected in any other manner permitted by law. [P.L. 1996-14, § 5.]

§ 6. Nature of business permitted; powers.

(1) A limited liability company may carry on any lawful business, purpose or activity with the exception of the business of granting policies of insurance or assuming insurance risks, trust services or banking.

(2) A limited liability company shall possess and may exercise all the powers and privileges granted by this Act or by any other law or by its limited liability company agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the limited liability company. [P.L. 1996-14, § 6.]

§ 7. Business transactions of member or manager with the limited liability company.

Except as provided in a limited liability company agreement, a member or manager may lend money to, borrow money from, act as a surety, guarantor or

endorser for, guarantee or assume one (1) or more specific obligations of, provide collateral for, and transact other business with a limited liability company and, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a member or manager. [P.L. 1996-14, § 7.]

§ 8. Indemnification.

Subject to such standards and restrictions, if any, as are set forth in its limited liability company agreement, a limited liability company may, and shall have the power to, indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever. [P.L. 1996-14, § 8.]

DIVISION 2:

FORMATION; CERTIFICATE OF FORMATION

§ 9. Certificate of formation.

§ 10. Amendment to certificate of formation.

§ 11. Cancellation of certificate.

§ 12. Execution.

§ 13. Execution, amendment or cancellation by judicial order.

§ 14. Filing.

§ 15. Notice.

§ 16. Restated certificate.

§ 17. Merger and consolidation.

§ 9. Certificate of formation.

(1) In order to form a limited liability company, one (1) or more authorized persons must execute a certificate of formation. The certificate of formation shall be filed in the Office of the Registrar of Corporations and set forth:

(a) the name of the limited liability company;

(b) the name and address of the registered agent for service of process required to be maintained by section 5 of this Act;

(c) if the limited liability company is to have a specific date of dissolution, the latest date on which the limited liability company is to dissolve; and

(d) any other matters the members determine to include therein.

(2) A limited liability company is formed at the time of the filing of the initial certificate of formation in the Office of the Registrar of Corporations or at any later date or time specified in the certificate of formation if, in either case, there has been substantial compliance with the requirements of this section. A limited liability

company formed under this Act shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited liability company's certificate of formation.

(3) The filing of the certificate of formation in the Office of the Registrar of Corporations shall make it unnecessary to file any other documents under this section. [P.L. 1996-14, § 9.]

§ 10. Amendment to certificate of formation.

(1) A certificate of formation is amended by filing a certificate of amendment thereto in the Office of the Registrar of Corporations. The certificate of amendment shall set forth:

(a) the name of the limited liability company and date of the original filing of the certificate of formation; and

(b) the amendment to the certificate of formation.

(2) A manager or, if there is no manager, then any member who becomes aware that any statement in a certificate of formation is false in any material respect, shall promptly amend the certificate of formation.

(3) A certificate of formation may be amended at any time for any proper purpose.

(4) Unless otherwise provided in this division or unless a later effective date or time (which shall be a date or time certain) is provided for in the certificate of amendment, a certificate of amendment shall be effective at the time of its filing with the Registrar of Corporations. [P.L. 1996-14, § 10.]

§ 11. Cancellation of certificate.

A certificate of formation shall be canceled upon the dissolution and completion of winding up of a limited liability company, or at any other time that there are no members, or as provided in section 5 of this Act, or upon the filing of a certificate of merger or consolidation if the limited liability company is not the surviving or resulting entity in a merger or consolidation, or upon the conversion of a domestic limited liability company approved in accordance with section 80 of this Act. A certificate of cancellation shall be filed in the Office of the Registrar of Corporations to accomplish the cancellation of a certificate of formation upon the dissolution and the completion of winding up of a limited liability company or at any other time there are no members or upon the conversion of a domestic limited liability company approved in accordance with section 80 of this Act and shall set forth:

- (1) the name of the limited liability company;
- (2) the date of filing of its certificate of formation;
- (3) the reason for filing a certificate of cancellation;
- (4) the future effective date (which shall be a date or time certain) of cancellation if it is not to be effective upon the filing of the certificate;
- (5) in the case of the conversion of a domestic limited liability company, the name of the entity to which the domestic limited liability company has been converted; and,
- (6) any other information the person filing the certificate of cancellation determines. *[P.L. 1996-14, § 11; amended by P.L. 1998-65, § 11; amended by P.L. 2000-14, § 11.]*

§ 12. Execution.

(1) Each certificate required by this Act to be filed in the Office of the Registrar of Corporations shall be executed by one (1) or more authorized persons.

(2) Unless otherwise provided in a limited liability company agreement, any person may sign any certificate or amendment thereof or enter into a limited liability company agreement or amendment thereof by an agent, including an attorney-in-fact. An authorization, including a power of attorney, to sign any certificate or amendment thereof or to enter into a limited liability company agreement or amendment thereof need not be in writing, need not be sworn to, verified or acknowledged, and need not be filed in the Office of the Registrar of Corporations, but if in writing, must be retained by the limited liability company.

(3) The execution of a certificate by an authorized person constitutes an oath or affirmation, under the penalties of perjury that, to the best of the authorized person's knowledge and belief, the facts stated therein are true. *[P.L. 1996-14, § 12.]*

§ 13. Execution, amendment or cancellation by judicial order.

(1) If a person required to execute a certificate required by this Act fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the High Court of the Republic to direct the execution of the certificate. If the Court finds that the execution of the certificate is proper and that any person so designated has failed or refused to execute the certificate, it shall order the Registrar of Corporations to record an appropriate certificate.

(2) If a person required to execute a limited liability company agreement or amendment thereof fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the High Court of the Republic to direct the execution of the limited liability company agreement or amendment thereof. If the Court finds that the limited liability company agreement or amendment thereof should be executed and that any person required to execute the limited liability company agreement or amendment thereof has failed or refused to do so, it shall enter an order granting appropriate relief. *[P.L. 1996-14, § 13.]*

§ 14. Filing.

(1) The original signed copy of the certificate of formation and of any certificates of amendment, correction, amendment of a certificate of merger or consolidation, termination of a merger or consolidation or cancellation (or of any judicial decree of amendment or cancellation), and of any certificate of merger or consolidation, any restated certificate, any certificate of conversion to limited liability company, any certificate of transfer, and of any certificate of limited liability company domestication shall be delivered to the Registrar of Corporations. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Any signature on any certificate authorized to be filed with the Registrar of Corporations under any provision of this Act may be a facsimile. Unless the Registrar of Corporations finds that any certificate does not conform to law, upon receipt of all filing fees required by law he shall:

(a) certify that the certificate of formation, the certificate of amendment, the certificate of correction, the certificate of amendment of a certificate of merger or consolidation, the certificate of cancellation (or of any judicial decree of amendment or cancellation), the certificate of merger or consolidation, the restated certificate, the certificate of conversion to limited liability company, the certificate of transfer, or the certificate of limited liability domestication has been filed in the Registrar's office by endorsing upon the original certificate the word "Filed." This endorsement is conclusive of the date of its filing in the absence of actual fraud;

(b) file and index the endorsed certificate; and,

(c) prepare and return to the person who filed it or his representative a copy of the original signed instrument, similarly endorsed, and shall certify such copy as a true copy of the original signed instrument.

(2) Upon the filing of a certificate of amendment (or judicial decree of amendment) a certificate of correction or restated certificate in the Office of the Registrar of Corporations, or upon the future effective date or time of a certificate of amendment (or judicial decree thereof) or restated certificate, as provided for therein, the certificate of formation shall be amended or restated as set forth therein. Upon the filing of a certificate of cancellation (or a judicial decree thereof), or a certificate of merger or consolidation which acts as a certificate of cancellation, or upon the future effective date or time of a certificate of cancellation (or a judicial decree thereof) or of a certificate of merger or consolidation which acts as a certificate of cancellation, or a certificate of transfer as provided for therein, the certificate of formation is canceled. Upon the filing of a certificate of limited liability company domestication or upon the future effective date or time of a certificate of limited liability company domestication, the entity filing the certificate of limited liability company domestication is domesticated as a limited liability company with the effect provided in section 76 of this Act. Upon the filing of a certificate of conversion to limited liability company or upon the future effective date or time of a certificate of conversion to limited liability company, the entity filing the certificate of conversion to limited liability company is converted to a limited liability company with the effect provided in section 78 of this Act. Upon the filing of a certificate of amendment of a certificate of merger or consolidation, the certificate of merger or consolidation identified in the certificate of amendment of a certificate of merger or consolidation is amended. Upon the filing of a certificate of termination of a merger or consolidation, the certificate of merger or consolidation identified in the certificate of termination of a merger or consolidation is terminated.

(3) A fee as set forth in section 68 of this Act, shall be paid at the time of the filing of a certificate of formation, a certificate of amendment, a certificate of correction, a certificate of amendment of a certificate of merger or consolidation, a certificate of termination of a merger or consolidation, a certificate of cancellation, a certificate of merger or consolidation, a restated certificate, a certificate of conversion to limited liability company, a certificate of transfer, or a certificate of limited liability company domestication.

(4) A fee as set forth in section 68 of this Act shall be paid for a certified copy of any document on file as provided for by this division.

(5) *Correction of filed instruments.* Any instrument relating to a domestic or foreign limited liability company and filed with the Registrar of Corporations under this Act may be corrected with respect to any error apparent on the face or defect in the execution thereof by

filing with the Registrar of Corporations a certificate of correction, executed and acknowledged in the manner required for the original instrument. The certificate of correction shall specify the error or defect to be corrected and shall set forth the portion of the instrument in correct form. The corrected instrument when filed shall be effective as of the date the original instrument was filed. In lieu of filing a certificate of correction, a certificate may be corrected by filing with the Registrar of Corporations a corrected certificate which shall be executed and filed as if the corrected certificate were the certificate being corrected, and a fee equal to the fee payable to the Registrar of Corporations if the certificate being corrected were then being filed shall be paid and collected by the Registrar of Corporations for use of the Marshall Islands in connection with the filing of corrected certificate. The corrected certificate shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected and shall set forth the entire certificate in corrected form. A certificate corrected in accordance with this section shall be effective as of the date of the original certificate was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons the certificate as corrected shall be effective from the filing date. [P.L. 1996-14, §14; amended by P.L. 2000-14, § 14.]

§ 15. Notice.

The fact that a certificate of formation is on file in the Office of the Registrar of Corporations is notice that the entity formed in connection with the filing of the certificate of formation is a limited liability company formed under the laws of the Republic of the Marshall Islands and is notice for all other facts set forth therein which are required to be set forth in a certificate of formation by sections 9(1)(a), (b), (c) and (d) of this division. [P.L. 1996-14, § 15.]

§ 16. Restated certificate.

(1) A limited liability company may, whenever desired, integrate into a single instrument all of the provisions of its certificate of formation which are then in effect and operative as a result of there having theretofore been filed with the Registrar of Corporations one (1) or more certificates or other instruments pursuant to any of the sections referred to in this Act and it may at the same time also further amend its certificate of formation by adopting a restated certificate of formation.

(2) If a restated certificate of formation merely restates and integrates but does not further amend the initial certificate of formation, as theretofore amended or supplemented by any instrument that was executed and filed pursuant to any of the sections in this Act, it shall be

specifically designated in its heading as a “Restated Certificate of Formation” together with such other words as the limited liability company may deem appropriate and shall be executed by an authorized person and filed as provided in section 14 of this division in the Office of the Registrar of Corporations. If a restated certificate restates and integrates and also further amends in any respect the certificate of formation, as theretofore amended or supplemented, it shall be specifically designated in its heading as an “Amended and Restated Certificate of Formation” together with such other words as the limited liability company may deem appropriate and shall be executed by at least one (1) authorized person, and filed as provided in section 14 of this division in the Office of the Registrar of Corporations.

(3) A restated certificate of formation shall state, either in its heading or in an introductory paragraph, the limited liability company’s present name, and, if it has been changed, the name under which it was originally filed, and the date of filing of its original certificate of formation with the Registrar of Corporations, and the future effective date or time (which shall be a date or time certain) of the restated certificate. A restated certificate shall also state that it was duly executed and is being filed in accordance with this section. If a restated certificate only restates and integrates and does not further amend a limited liability company’s certificate of formation as theretofore amended or supplemented and there is no discrepancy between those provisions and the restated certificate, it shall state that fact as well.

(4) Upon the filing of a restated certificate of formation with the Registrar of Corporations, or upon the future effective date or time of a restated certificate of formation as provided for therein, the initial certificate of formation, as theretofore amended or supplemented, shall be superseded; thenceforth, the restated certificate of formation, including any further amendment or changes made thereby, shall be subject to any other provision of this division, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

(5) Any amendment or change effected in connection with the restatement and integration of the certificate of formation shall be subject to any other provision of this division, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change. *[P.L. 1996-14, § 16.]*

§ 17. Merger and consolidation.

(1) As used in this section, “other business entity” means a corporation, trust, or any other unincorporated business, including a partnership (whether general or

limited), and a foreign limited liability company, but excluding a domestic limited liability company.

(2) Pursuant to an agreement of merger or consolidation, one (1) or more domestic limited liability companies may merge or consolidate with or into one (1) or more domestic limited liability companies or one (1) or more other business entities formed or organized under the laws of the Republic of the Marshall Islands or any foreign country or other foreign jurisdiction or any combination thereof, with such domestic limited liability company or other business entity as the agreement shall provide being the surviving or resulting domestic limited liability company or other business entity. Unless otherwise provided in the limited liability company agreement, a merger or consolidation shall be approved by each domestic limited liability company which is to merge or consolidate by the members or, if there is more than one (1) class or group of members, then by each class or group of members, in either case, by members who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members or by the members in each class or group, as appropriate. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic limited liability company or other business entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting domestic limited liability company or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a domestic limited liability company or other business entity which is not the surviving or resulting limited liability company or other business entity in the merger or consolidation. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

(3) If a domestic limited liability company is merging or consolidating under this section, the domestic limited liability company or other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation executed by one (1) or more authorized persons on behalf of the domestic limited liability company when it is the surviving or resulting entity in the Office of the Registrar of Corporations. The certificate of merger or consolidation shall state:

(a) the name and jurisdiction of formation or organization of each of the domestic limited liability companies or other business entities which is to merge or consolidate;

(b) that an agreement of merger or consolidation has been approved and executed by each of the domestic limited liability companies and other business entities which is to merge or consolidate;

(c) the name of the surviving or resulting domestic limited liability company and other business entity;

(d) the future effective date or time (which shall be a date or time certain) of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;

(e) that the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited liability company or other business entity, and shall state the address thereof;

(f) that a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting domestic limited liability company or any person holding an interest in any other business entity which is to merge or consolidate; and

(g) if the surviving or resulting entity is not a domestic limited liability company, or a corporation or limited partnership or partnership organized under the laws of the Republic of the Marshall Islands, a statement that such surviving or resulting other business entity agrees that it may be served with process in the Republic of the Marshall Islands in any action, suit or proceeding for the enforcement of any obligation of any domestic limited liability company which is to merge or consolidate, irrevocably appointing the Attorney General as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the Attorney General. In the event of service hereunder upon the Attorney General, the procedures set forth in section 60(3) of this Act shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Attorney General with the address specified in the certificate of merger or consolidation provided for in this section and any other address which the plaintiff may elect to furnish, together with copies of such process as required by the Attorney General, and the Attorney General shall notify such surviving or resulting other business entity at all such addresses furnished by the plaintiff in accordance with the procedures set forth in section 60(3) of this Act.

(4) Unless a future effective date or time is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation

shall be effective upon the filing in the Office of the Registrar of Corporations of a certificate of merger or consolidation. If a certificate of merger or consolidation provides for a future effective date or time and if an agreement of merger or consolidation is amended to change the future effective date or time, or if an agreement of merger or consolidation permits a certificate of merger or consolidation to be amended to change the future effective date or time without an amendment to the agreement of merger or consolidation, or if an agreement of merger or consolidation is amended to change any other matter described in the certificate of merger or consolidation so as to make the certificate of merger or consolidation false in any material respect, as permitted by subsection (2) of this section prior to the future effective date or time, the certificate of merger or consolidation shall be amended by the filing of a certificate of amendment of a certificate of merger or consolidation which shall identify the certificate of merger or consolidation and the agreement of merger or consolidation, if applicable, which has been amended and shall state that the agreement of merger or consolidation, if applicable, has been amended and shall set forth the amendment to the certificate of merger or consolidation. If a certificate of merger or consolidation provides for a future effective date or time, and if an agreement of merger or consolidation is terminated as permitted by subsection (2) of this section prior to the future effective date or time, the certificate of merger or consolidation shall be terminated by the filing of a certificate of termination of a merger or consolidation which shall identify the certificate of merger or consolidation and the agreement of merger or consolidation which has been terminated and shall state that the agreement of merger or consolidation has been terminated.

(5) A certificate of merger or consolidation shall act as a certificate of cancellation for a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation. Whenever this section requires the filing of a certificate of merger or consolidation, such requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation containing the information required by this section to be set forth in the certificate of merger or consolidation.

(6) An agreement of merger or consolidation approved in accordance with subsection (3)(b) of this section may:

(a) effect any amendment to the limited liability company agreement; or

(b) effect the adoption of a new limited liability company agreement, for a limited liability company if it is the surviving or resulting limited liability company in the merger or consolidation.

Any amendment to a limited liability company agreement or adoption of a new limited liability company agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a limited liability company agreement or other agreement or as otherwise permitted by law, including that the limited liability company agreement of any constituent limited liability company to the merger or consolidation (including a limited liability company formed for the purpose of consummating a merger or consolidation) shall be the limited liability company agreement of the surviving or resulting limited liability company.

(7) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the Republic of the Marshall Islands, all of the rights, privileges and powers of each of the domestic limited liability companies and other business entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of said domestic limited liability companies and other business entities, as well as all other things and causes of action belonging to each of such domestic limited liability companies and other business entities, shall be vested in the surviving or resulting domestic limited liability company or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited liability company or other business entity, and may be enforced against it to the same extent as if said debts, liabilities and duties have been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a domestic limited liability company, including a domestic limited liability company, which is not the surviving or resulting entity in the merger or consolidation, shall not require such domestic limited liability company to wind up its affairs under section 48 of this Act or pay its liabilities and distribute its assets under section 49 of this Act. *[P.L. 1996-14, § 17; amended by P.L. 2000-14, § 17; amended by P.L. 2005-29, § 17.]*

DIVISION 3:

MEMBERS

- § 18. Admission of members.**
- § 19. Classes and voting.**
- § 20. Liability to third parties.**
- § 21. Events of bankruptcy.**
- § 22. Access to and confidentiality of information; records.**

§ 23. Remedies for breach of limited liability company agreement by member.

§ 18. Admission of members.

(1) In connection with the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company upon the later to occur of:

- (a) the formation of the limited liability company; or
- (b) the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, when the person's admission is reflected in the records of the limited liability company.

(2) After the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company:

- (a) in the case of a person acquiring a limited liability company interest directly from the limited liability company, at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company; or
- (b) in the case of an assignee of a limited liability company interest, as provided in section 44(1) of the Act and at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, when any such person's permitted admission is reflected in the records of the limited liability company; or

(c) unless otherwise provided in an agreement of merger or consolidation, in the case of a person acquiring a limited liability company interest in a surviving or resulting limited liability company pursuant to a merger or consolidation approved in accordance with section 17(2) of this Act, at the time provided in and upon compliance with the limited liability company agreement of the surviving or resulting limited liability company.

(3) In connection with the domestication of a non-Marshall Islands entity (as defined in section 76 of this Act) as a limited liability company in the Marshall Islands in accordance with section 76 of this Act or the conversion of another entity (as defined in section 78 of this Act) to a domestic limited liability company in

accordance with section 78 of this Act, a person is admitted as a member of the limited liability company at the time provided in and upon compliance with the limited liability company agreement.

(4) A person may be admitted to a limited liability company as a member of the limited liability company and may receive a limited liability company interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company. Unless otherwise provided in a limited liability company agreement, a person may be admitted to a limited liability company as a member of the limited liability company without acquiring a limited liability company interest in the limited liability company. Unless otherwise provided in a limited liability company agreement, a person may be admitted as the sole member of a limited liability company without making a contribution or being obligated to make a contribution to the limited liability company or without acquiring a limited liability company interest in the limited liability company. [P.L. 1996-14, § 18; amended by P.L. 2000-14, § 18.]

§ 19. Classes and voting.

(1) A limited liability company agreement may provide for classes or groups of members having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.

(2) A limited liability company agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers, on any matter. Voting by members may be on a per capita, number, financial interest, class, group or any other basis.

(3) A limited liability company agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice,

action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(4) Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on by members, the members may take such action without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting. Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on by members, the members may vote in person or by proxy. [P.L. 1996-14, § 19; amended by P.L. 2000-14, § 19.]

§ 20. Liability to third parties.

(1) Except as otherwise provided by the Act, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company; and no member or manager of a limited liability company shall be obligated personally for such debt, obligation or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.

(2) Notwithstanding the provisions of subsection (1) of this section, under a limited liability company agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations and liabilities of the limited liability company. [P.L. 1996-14, § 20; amended by P.L. 2000-14, § 20.]

§ 21. Events of bankruptcy.

A person ceases to be a member of a limited liability company upon the happening of any of the following events:

(1) Unless otherwise provided in a limited liability company agreement, or with the written consent of all members, a member:

(a) makes an assignment for the benefit of creditors;

(b) files a voluntary petition in bankruptcy;

(c) is adjudged bankrupt or insolvent, or has entered against him an order for relief, in any bankruptcy or insolvency proceeding;

(d) files a petition or answers seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;

(e) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature;

(f) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of his properties; or

(2) Unless otherwise provided in a limited liability company agreement, or with the written consent of all members, one hundred and twenty (120) days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within ninety (90) days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of his properties, the appointment is not vacated or stayed, or within ninety (90) days after the expiration of any such stay, the appointment is not vacated. *[P.L. 1996-14, § 21.]*

§ 22. Access to and confidentiality of information; records.

(1) Each member of a limited liability company has the right, subject to such reasonable standards (including standards governing what information and documents are to be furnished at what time and location and at whose expense) as may be set forth in a limited liability company agreement or otherwise established by the manager or, if there is no manager, then by the members, to obtain from the limited liability company from time to time upon reasonable demand for any purpose reasonably related to the member's interest as a member of the limited liability company:

(a) true and full information regarding the status of the business and financial condition of the limited liability company;

(b) a current list of the name and last known business, residence or mailing address of each member and manager;

(c) a copy of any written limited liability company agreement and certificate of formation and amendments thereto, together with executed copies of any written powers of attorney pursuant to which the limited liability company agreement and any certificate and all amendments thereto have been executed;

(d) true and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future, and the date on which each became a member; and

(e) other information regarding the affairs of the limited liability company as is just and reasonable.

(2) Each manager shall have the right to examine all of the information described in subsection (1) of this section for a purpose reasonably related to his position as a manager.

(3) The manager of a limited liability company shall have the right to keep confidential from the members, for each period of time as the manager deems reasonable, any information which the manager reasonably believes to be in the nature of trade secrets or other information the disclosure of which the manager in good faith believes is not in the best interest of the limited liability company or could damage the limited liability company or its business or which the limited liability company is required by law or by agreement with a third party to keep confidential.

(4) A limited liability company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

(5) Any demand by a member under this section shall be in writing and shall state the purpose of such demand.

(6) Any action to enforce any right arising under this section shall be brought in the High Court of the Republic. *[P.L. 1996-14, § 22.]*

§ 23. Remedies for breach of limited liability company agreement by member.

A limited liability company agreement may provide that:

(1) a member who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specific consequences; and

(2) at the time or upon the happening of events specified in the limited liability company agreement, a member shall be subject to specified penalties or specified consequences. *[P.L. 1996-14, § 23.]*

DIVISION 4:

MANAGERS

- § 24. **Admission of managers.**
- § 25. **Management of limited liability company.**
- § 26. **Contributions by a manager.**
- § 27. **Classes and voting.**
- § 28. **Remedies for breach of limited liability company agreement by manager.**
- § 29. **Reliance on reports and information by member or manager.**

§ 24. **Admission of managers.**

A person may be named or designated as a manager of the limited liability company as provided in section 2(11) of this Act. [P.L. 1996-14, § 24; amended by P.L. 2005-29, § 24.]

§ 25. **Management of limited liability company.**

Unless otherwise provided in a limited liability company agreement, the management of a limited liability company shall be vested in its members in proportions to the then current percentage or other interest of members in the profits of the limited liability company owned by all of the members, the decision of members owning more than fifty percent (50%) of the said percentage of other interest in the profits controlling; provided, however, that if a limited liability company agreement provides for the management in whole or in part, of a limited liability company by a manager, the management of the limited liability company, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the limited liability company agreement. The manager shall also hold the offices and have the responsibilities accorded to him by the members and set forth in a limited liability company agreement. Subject to section 35 of this Act, a manager shall cease to be a manager as provided in a limited liability company agreement. [P.L. 1996-14, § 25; amended by P.L. 2000-14, § 25.]

§ 26. **Contributions by a manager.**

A manager of a limited liability company may make contributions to the limited liability company and share in the profits and losses of, and in distributions from, the limited liability company as a member. A person who is both a manager and a member has the rights and powers, and is subject to the restrictions and liabilities, of a manager and, except as provided in a limited liability company agreement, also has the rights and powers, and is subject to the restrictions and liabilities, of a member to the extent of his participating in the limited liability company as a member. [P.L. 1996-14, § 26.]

§ 27. **Classes and voting.**

(1) A limited liability company agreement may provide for classes or groups of managers having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of managers having such relative rights, powers and duties senior to existing classes and groups of managers. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.

(2) A limited liability company agreement may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter. Voting by managers may be on a per capita, number, financial interest, class, group or any other basis.

(3) A limited liability company agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(4) Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on by managers, the managers may take such action without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the managers having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting. Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on by managers, the managers may vote in person or by proxy. [P.L. 1996-14, § 27; amended by P.L. 2000-14, § 27.]

§ 28. **Remedies for breach of limited liability company agreement by manager.**

A limited liability company agreement may provide that:

(1) a manager who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specific consequences; and

(2) at the time or upon the happening of events specified in the limited liability company agreement, a member shall be subject to specified penalties or specified consequences. [P.L. 1996-14, § 28.]

§ 29. Reliance on reports and information by member or manager.

A member or manager of a limited liability company shall be fully protected in relying in good faith upon the records of the limited liability company and upon such information, opinions, reports or statements presented to the limited liability company by any of its other managers, members, officers, employees, or committees of the limited liability company, or by any other person as to matters the member or manager reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the limited liability company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the limited liability company or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid. [P.L. 1996-14, § 29.]

DIVISION 5:

FINANCE

§ 30. Form of contribution.

§ 31. Liability for contribution.

§ 32. Allocation of profits and losses.

§ 33. Allocation of distributions.

§ 30. Form of contribution.

The contribution of a member to a limited liability company may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services. [P.L. 1996-14, § 30.]

§ 31. Liability for contribution.

(1) Except as provided in a limited liability company agreement, a member is obligated to a limited liability company to perform any promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or any other reason. If a member does not make the required contribution of property or services, he is obligated at the option of the

limited liability company to contribute cash equal to that portion of the agreed value (as stated in the records of the limited liability company) of the contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against such member under the limited liability company agreement or applicable law.

(2) Unless otherwise provided in a limited liability company agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this Act may be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit, after the entering into of a limited liability company agreement or an amendment thereto which, in either case, reflects the obligation, and before the amendment thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return. A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company prior to the time the call occurs.

(3) A limited liability company agreement may provide that the interest of any member who fails to make any contribution that he is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest to that of non-defaulting members, a forced sale of his limited liability company interest, forfeiture of his limited liability company interest, the lending by other members of the amount necessary to meet his commitment, a fixing of the value of his limited liability company interest by appraisal or by formula and redemption or sale of his limited liability company interest at such value, or other penalty or consequence. [P.L. 1996-14, § 31.]

§ 32. Allocation of profits and losses.

The profits and losses of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, profits and losses shall be allocated on the basis of the agreed value (as stated in the records of the limited liability company) of the contributions made by each member to the extent they have been received by the limited liability

company and have not been returned. [P.L. 1996-14, § 32.]

§ 33. Allocation of distributions.

Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, distributions shall be made on the basis of the agreed value (as stated in the records of the limited liability company) of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned. [P.L. 1996-14, § 33.]

DIVISION 6:

DISTRIBUTIONS AND RESIGNATION

§ 34. Interim distribution.

§ 35. Resignation of manager.

§ 36. Resignation of member.

§ 37. Distribution upon resignation.

§ 38. Distribution in kind.

§ 39. Right to distribution.

§ 40. Limitations on distribution.

§ 34. Interim distribution.

Except as provided in this Act, to the extent and at the times or upon the happening of the events specified in a limited liability company agreement, a member is entitled to receive from a limited liability company contributions before his resignation from the limited liability company and before the dissolution and winding up thereof. [P.L. 1996-14, § 34.]

§ 35. Resignation of manager.

A manager may resign as a manager of a limited liability company at the time or upon the happening of events specified in a limited liability company agreement and in accordance with the limited liability company agreement. A limited liability company agreement may provide that a manager shall not have the right to resign as a manager of a limited liability company. Notwithstanding that a limited liability company agreement provides that a manager does not have the right to resign as a manager of a limited liability company, a manager may resign as a manager of a limited liability company at any time by giving written notice to the members and other managers. If the resignation of a manager violates a limited liability company agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning

manager damages for breach of the limited liability company agreement and offset the damages against the amount otherwise distributable to the resigning manager. [P.L. 1996-14, § 35; amended by P.L. 2000-14, § 35.]

§ 36. Resignation of member.

A member may resign from a limited liability company at the time or upon the happening of events specified in a limited liability company agreement and in accordance with the limited liability company agreement. If a limited liability company agreement does not specify the time or the events upon the happening of which a member may resign or a definite time for the dissolution and winding up of a limited liability company, a member may resign upon not less than six (6) months prior written notice to the limited liability company at its registered office as set forth in the certificate of formation filed in the Office of the Registrar of Corporations and to each member and manager at each member's and manager's address as set forth on the records of the limited liability company. Notwithstanding anything to the contrary set forth in this division, a limited liability company agreement may provide that a member may not resign from a limited liability company or assign his limited liability company interest prior to the dissolution and winding up of the limited liability company. [P.L. 1996-14, § 36.]

§ 37. Distribution upon resignation.

Except as otherwise provided in this division, a member who resigns or otherwise ceases for any reason to be a member is entitled to receive on the terms and conditions provided in a limited liability company agreement any distribution to which such member is entitled under the limited liability company agreement, and if not otherwise provided in the limited liability company agreement, such member is entitled to receive, within a reasonable time after the date on which such member resigned or otherwise ceased to be a member, the fair value of such member's interest in the limited liability company as of the date on which such member resigned or otherwise ceased to be a member based upon such member's right to share in distributions from the limited liability company. [P.L. 1996-14, § 37; amended by P.L. 2000-14, § 37.]

§ 38. Distribution in kind.

Except as provided in a limited liability company agreement, a member, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Except as provided in a limited liability company agreement, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the

asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited liability company. [P.L. 1996-14, § 38.]

§ 39. Right to distribution.

Subject to sections 40 and 49 of this Act, and unless otherwise provided in a limited liability company agreement, at the time a member becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of a limited liability company with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company. [P.L. 1996-14, § 39.]

§ 40. Limitations on distribution.

(1) A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability.

(2) A member who receives a distribution in violation of subsection (1) of this section, and who knew at the time of the distribution that the distribution violated subsection (1) of this section, shall be liable to the limited liability company for the amount of the distribution. A member who receives a distribution in violation of subsection (1) of this section, and who did not know at the time of the distribution that the distribution violated subsection (1) of this section, shall not be liable for the amount of the distribution. Subject to subsection (3) of this section, this subsection (2) shall not affect any obligation or liability of a member under a limited liability company agreement or other applicable law for the amount of a distribution.

(3) Unless otherwise agreed, a member who receives a distribution from a limited liability company shall have no liability under this Act or other applicable law for the amount of the distribution after the expiration of three (3) years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of the said three (3) year period

and an adjudication of liability against such member is made in the said action. [P.L. 1996-14, § 40.]

DIVISION 7:

ASSIGNMENT OF LIMITED LIABILITY COMPANY INTERESTS

- § 41. Nature of limited liability company interest.**
- § 42. Assignment of limited liability company interest.**
- § 43. Rights of judgment creditor.**
- § 44. Right of assignee to become member.**
- § 45. Powers of estate of deceased or incompetent member.**

§ 41. Nature of limited liability company interest.

A limited liability company interest is personal property. A member has no interest in specific limited liability company property. [P.L. 1996-14, § 41.]

§ 42. Assignment of limited liability company interest.

(1) A limited liability company interest is assignable in whole or in part except as provided in a limited liability company agreement. The assignee of a member's limited liability company interest shall have no right to participate in the management of the business and affairs of a limited liability company except as provided in the limited liability company agreement and upon:

(a) the approval of all of the members of the limited liability company other than the member assigning his limited liability company interest; or

(b) compliance with any procedure provided for in the limited liability company agreement.

(2) Unless otherwise provided in a limited liability company agreement:

(a) an assignment entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and

(b) a member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of his limited liability company interest. Unless otherwise provided in a limited liability company agreement, the pledge of, or granting of a security interest, lien or other encumbrance in or against, any or all of the limited liability company

interest of a member shall not cause the member to cease to be a member or to have the power to exercise any rights or powers of a member.

(3) A limited liability company agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of limited liability company interest issued by the limited liability company.

(4) Unless otherwise provided in a limited liability company agreement and except to the extent assumed by agreement, until an assignee of a limited liability company interest becomes a member, the assignee shall have no liability as a member solely as result of the assignment.

(5) Unless otherwise provided in the limited liability company agreement, a limited liability company may acquire, by purchase, redemption or otherwise, any limited liability company interest or other interest of a member or manager in the limited liability company. Unless otherwise provided in the limited liability company agreement, any such interest so acquired by the limited liability company shall be deemed canceled. *[P.L. 1996-14, § 42; amended by P.L. 1998-65, § 42; amended by P.L. 2000-14, § 42.]*

§ 43. Rights of judgment creditor.

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the limited liability company interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the limited liability company interest. This Act does not deprive any member of the benefit of any exemption laws applicable to the member's limited liability company interest. Notwithstanding any other law, the remedies provided by this section shall be the sole remedies available to any creditor of a member's interest. *[P.L. 1996-14, § 43; amended by P.L. 2005-29, § 43.]*

§ 44. Right of assignee to become member.

(1) An assignee of a limited liability company interest may become a member as provided in a limited liability company agreement and upon:

(a) the approval of all of the members of the limited liability company other than the member assigning his limited liability company interest; or

(b) compliance with any procedure provided for in the limited liability company agreement.

(2) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under a limited liability company agreement and this Act. Notwithstanding the foregoing, unless otherwise provided in a limited liability company agreement, an assignee who becomes a member is liable for the obligations of his assignor to make contributions as provided in section 31 of this Act, but shall not be liable for the obligations of his assignor under Division 6 of this Act. However, the assignee is not obligated for liabilities, including the obligations of his assignor to make contributions as provided in section 31 of this Act, unknown to the assignee at the time he became a member and which could not be ascertained from a limited liability company agreement.

(3) Whether or not an assignee of a limited liability company interest becomes a member, the assignor is not released from his liability to a limited liability company under Divisions 5 and 6 of this Act. *[P.L. 1996-14, § 44.]*

§ 45. Powers of estate of deceased or incompetent member.

If a member who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the member's executor, administrator, guardian, conservator, or the member's personal representative may exercise all of the member's rights for the purpose of settling his estate or administering his property, including any power under a limited liability company agreement of an assignee to become a member. If a member is a corporation, trust or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor or personal representative. *[P.L. 1996-14, § 45; amended by P.L. 2000-14, § 45.]*

DIVISION 8:

DISSOLUTION

§ 46. Dissolution.

§ 47. Judicial dissolution.

§ 48. Winding up.

§ 49. Distribution of assets.

§ 46. Dissolution.

(1) A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

(a) at the time specified in a limited liability company agreement, or thirty (30) years from the date of the formation of the limited liability company if no such time is set forth in the limited liability company agreement;

(b) upon the happening of events specified in a limited liability company agreement;

(c) the written consent of all members; or, if there is more than one (1) class or group of members, then by each class or group of members, in either case, by members who own more than two-thirds of the then current percentage or other interest in the profits of the limited liability company owned by all of the members or by the members in each class or group, as appropriate;

(d) the death, retirement, resignation, expulsion, bankruptcy or dissolution of a member or the occurrence of any other event which terminates the continued membership of a member in the limited liability company unless the business of the limited liability company is continued either by the consent of all the remaining members within ninety (90) days following the occurrence of any such event or pursuant to a right to continue stated in the limited liability company agreement; or

(e) the entry of a decree of judicial dissolution under section 47 of this division.

(2) Upon dissolution, a certificate of cancellation shall be filed in accordance to section 11 of this Act.

(3) Dissolution on failure to pay annual registration fee or appoint or maintain registered agent.

(a) *Procedure for Dissolution.* On failure of a limited liability company to pay the annual registration fee or to maintain a registered agent for a period of one (1) year, the Registrar of Corporations on or about the first day of November of each year or on such other date as shall be determined by regulation, shall cause a notification to be sent to the limited liability company through its last recorded registered agent that its certificate of formation will be revoked unless within ninety (90) days of the date of the notice, payment of the annual registration fee has been received or a registered agent has been appointed, as the case may be. On the expiration of the ninety (90) day period, the Registrar of Corporations, in the event the limited liability company has not remedied its default, shall issue a proclamation declaring that the certificate of formation has been revoked and the limited liability company dissolved as of the date stated in the proclamation. The proclamation of the Registrar of Corporations shall be filed in his office and he shall mark on the record of the certificate of formation named in the proclamation the date of revocation and dissolution, and shall give notice to the last recorded registered agent. Thereupon the affairs of the corpora-

tion shall be wound up in accordance with the procedures provided in section 48 of this division.

(b) *Erroneous dissolution.* Whenever it is established to the satisfaction of the Registrar of Corporations that the certificate of formation was erroneously revoked by the Registrar of Corporations, he may restore the limited liability company to full existence by publishing and filing in his office a proclamation to that effect.

(c) *Reinstatement of Dissolved Limited Liability Company.* Whenever the certificate of formation of a limited liability company has been revoked by the Registrar of Corporations pursuant to subsection (3) of this section, the limited liability company may request that the Registrar of Corporations reinstate its certificate of formation. After being satisfied that all statutory arrears to the Republic of the Marshall Islands have been paid, that the limited liability company has again retained a qualified registered agent and paid any arrears to same, the limited liability company may be restored to full existence in the same manner and with the same effect as provided by subsection (3) of this section. Requests for reinstatement may not be submitted after three (3) years from the date of the proclamation which revoked the certificate of formation.

(4) Unless otherwise provided in a limited liability company agreement, the death, retirement, resignation, expulsion, bankruptcy or dissolution of any member or the occurrence of any other event that terminates the continued membership of any member shall not cause the limited liability company to be dissolved or its affairs to be wound up, and upon the occurrence of any such event, the limited liability company shall be continued without dissolution, unless within ninety (90) days following the occurrence of such event, members of the limited liability company or, if there is more than one (1) class or group of members, then each class or group of members, in either case, by members who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the limited liability company owned by all of the members or by the members in each class or group, as appropriate, agree in writing to dissolve the limited liability company. [P.L. 1996-14, § 46; amended by P.L. 1998-65, § 46; amended by P.L. 2000-14, § 46.]

§ 47. Judicial dissolution.

On application by or for a member or manager, the High Court of the Republic may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with a limited liability company agreement. [P.L. 1996-14, § 47.]

§ 48. Winding up.

(1) Unless otherwise provided in a limited liability company agreement, a manager who has not wrongfully dissolved a limited liability company or, if none, the members or a person approved by the members or, if there is more than one (1) class or group of members in either case, by members who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the limited liability company owned by all of the members or by the members in each class or group, as appropriate, may wind up the limited liability company's affairs; but the High Court of the Republic, upon cause shown, may wind up the limited liability company's affairs upon application of any member or manager, the member's or manager's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee.

(2) Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in section 11 of this Act, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company, all without affecting the liability of members and managers and without imposing liability on a liquidating trustee. *[P.L. 1996-14, § 48; amended by P.L. 2000-14, § 48.]*

§ 49. Distribution of assets.

(1) Upon the winding up of a limited liability company, the assets shall be distributed as follows:

(a) to creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members under sections 34 or 37 of this Act;

(b) unless otherwise provided in a limited liability company agreement, to members and former members in satisfaction of liabilities for distributions under section 34 or 37 of this Act; and,

(c) unless otherwise provided in a limited liability company agreement, to members first for the return of

their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.

(2) A limited liability company which has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured claims and obligations, known to the limited liability company and all claims and obligations which are known to the limited liability company but for which the identity of the claimant is unknown. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available therefore. Unless otherwise provided in a limited liability company agreement, any remaining assets shall be distributed as provided in this Act. Any liquidating trustee winding up a limited liability company's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved limited liability company by reason of such person's actions in winding up the limited liability company. *[P.L. 1996-14, § 49.]*

DIVISION 9:

FOREIGN LIMITED LIABILITY COMPANIES

- § 50. Law governing.**
- § 51. Registration required; application.**
- § 52. Issuance of registration.**
- § 53. Name; registered agent.**
- § 54. Amendments to application.**
- § 55. Cancellation of registration.**
- § 56. Doing business without registration.**
- § 57. Foreign limited liability companies doing business without having qualified; injunctions.**
- § 58. Execution; liability.**
- § 59. Service of process on registered foreign limited liability companies.**
- § 60. Service of process on unregistered foreign limited liability companies.**

§ 50. Law governing.

(1) Subject to the Constitution and laws of the Republic of the Marshall Islands:

(a) the laws of the jurisdiction or country under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members and managers;

(b) a foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of the Republic of the Marshall Islands and can function in the same fashion as a resident domestic limited liability company; and

(c) a foreign limited liability company shall be subject to section 5 of this Act. *[P.L. 1996-14, § 50.]*

§ 51. Registration required; application.

(1) Before doing business in the Republic of the Marshall Islands, a foreign limited liability company shall register with the Registrar of Corporations. In order to register, a foreign limited liability company shall submit to the Registrar of Corporations:

(a) a copy executed by an authorized person of an application for registration as a foreign limited liability company, setting forth:

(i) the name of the foreign limited liability company and, if different, the name under which it proposes to register and do business in the Republic of the Marshall Islands;

(ii) the state, territory, possession or other jurisdiction or country where formed, and the date of its formation and a statement from an authorized person that, as of the date of filing, the foreign limited liability company validly exists as a limited liability company under the laws of the jurisdiction of its formation;

(iii) the nature of the business or purposes to be conducted or promoted in the Republic of the Marshall Islands;

(iv) the name and address of the registered agent for service of process required to be maintained by section 53(2) of this division;

(v) a statement that the Attorney General is appointed the agent of the foreign limited liability company for service of process under the circumstances set forth in section 60 of this division; and

(vi) the date on which the foreign limited liability company first did, or intends to do, business in the Republic of the Marshall Islands.

(b) a fee as set forth in section 68 of this Act shall be paid.

(c) a person shall not be deemed to be doing business in the Republic of the Marshall Islands solely by reason of being a member or manager of a domestic

limited liability company or a foreign limited liability company. *[P.L. 1996-14, § 51.]*

§ 52. Issuance of registration.

(1) If the Registrar of Corporations finds that an application for registration conforms to law and all requisite fees have been paid, he shall:

(a) certify that the application has been filed in this office by endorsing upon the original application the word "Filed." This endorsement is conclusive of the date of its filing in the absence of actual fraud;

(b) file and index the endorsed application.

(2) The duplicate of the application, similarly endorsed, shall be returned to the person who filed the application or his representative.

(3) The filing of the application with the Registrar of Corporations shall make it unnecessary to file any other documents under this section. *[P.L. 1996-14, § 52.]*

§ 53. Name; registered agent.

(1) A foreign limited liability company may register with the Registrar of Corporations under any name (whether or not it is the name under which it is registered in the jurisdiction of its formation) that includes the words "Limited Liability Company" or the abbreviation "L.L.C." and that could be registered as a domestic limited liability company; provided, however, that a foreign limited liability company may register under any name which is not such as to distinguish it upon the records in the office of the Registrar of Corporations from the name of any domestic or foreign corporation, trust, limited liability company or limited partnership or partnership or foreign maritime entity reserved, registered or organized under the laws of the Republic of the Marshall Islands with the written consent of the other corporation, business trust, limited liability company or limited partnership, which written consent shall be filed with the Registrar of Corporations.

(2) Each foreign limited liability company shall have and maintain in the Republic of the Marshall Islands a registered agent for service of process on the foreign limited liability company. The provisions as set forth in section 5 of this Act apply. *[P.L. 1996-14, § 53; amended by P.L. 2000-14, § 53.]*

§ 54. Amendments to application.

If any statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed,

making the application false in any respect, the foreign limited liability company shall promptly file in the office of the Registrar of Corporations a certificate, executed by an authorized person, correcting such statement, together with a fee as set forth in section 68 of this Act. [P.L. 1996-14, § 54.]

§ 55. Cancellation of registration.

A foreign limited liability company may cancel its registration by filing with the Registrar of Corporations a certificate of cancellation, executed by an authorized person, together with a fee as set forth in section 68 of this Act. A cancellation does not terminate the authority of the Registrar of Corporations to accept service of process on the foreign limited liability company with respect to causes of action arising out of the doing of business in the Republic of the Marshall Islands. [P.L. 1996-14, § 55.]

§ 56. Doing business without registration.

(1) A foreign limited liability company doing business in the Republic of the Marshall Islands may not maintain any action, suit or proceeding in the Republic of the Marshall Islands until it has registered in the Republic of the Marshall Islands, and has paid to the Republic of the Marshall Islands all fees and penalties for the years or parts thereof, during which it did business in the Republic of the Marshall Islands without having registered.

(2) The failure of a foreign limited liability company to register in the Republic of the Marshall Islands does not impair:

(a) the validity of any contract or act of the foreign limited liability company;

(b) the right of any other party to the contract to maintain any action, suit or proceeding on the contract; or

(c) prevent the foreign limited liability company from defending any action, suit or proceeding in any court of the Republic of the Marshall Islands.

(3) A member or a manager of a foreign limited liability company is not liable for the obligations of the foreign limited liability company solely by reason of the limited liability company's having done business in the Republic of the Marshall Islands without registration.

(4) Any foreign limited liability company doing business in the Republic of the Marshall Islands without first having registered shall be fined and shall pay to the Registrar of Corporations two hundred dollars (U.S. \$200) for each year or part thereof during which the

foreign limited liability company failed to register in the Republic of the Marshall Islands. [P.L. 1996-14, § 56.]

§ 57. Foreign limited liability companies doing business without having qualified; injunctions.

The High Court of the Republic shall have jurisdiction to enjoin any foreign limited liability company, or any agent thereof, from doing any business in the Republic of the Marshall Islands if such foreign limited liability company has failed to register under this Act or if such foreign limited liability company has secured a certificate of the Registrar of Corporations under section 52 of this division on the basis of false or misleading representations. The Attorney General shall, upon his own motion or upon the relation of proper parties, proceed for this purpose by complaint. [P.L. 1996-14, § 57.]

§ 58. Execution; liability.

Section 12(3) of this Act shall be applicable to foreign limited liability companies as if they were domestic limited liability companies. [P.L. 1996-14, § 58.]

§ 59. Service of process on registered foreign limited liability companies.

The provisions as set forth in section 5 of this Act apply. [P.L. 1996-14, § 59.]

§ 60. Service of process on unregistered foreign limited liability companies.

(1) Any foreign limited liability company which shall do business in the Republic of the Marshall Islands without having registered under section 51 of this division shall be deemed to have thereby appointed and constituted the Attorney General of the Republic of the Marshall Islands its agent for the acceptance of legal process in any civil action, suit or proceeding against it in any court in the Republic of the Marshall Islands arising or growing out of any business done by it within the Republic of the Marshall Islands. The doing of business in the Republic of the Marshall Islands by such foreign limited liability company shall be a signification of the agreement of such foreign limited liability company that any such process when so served shall be of the same legal force and validity as if served upon an authorized manager or agent personally within the Republic of the Marshall Islands.

(2) Whenever the words "doing business", "the doing of business" or "business done in this country", by any such foreign limited liability company are used in this section, they shall mean the course or practice of carrying on any business activities in the Republic of the Marshall Islands, including, without limiting the generality of the

foregoing, the solicitation of business or orders in the Republic of the Marshall Islands.

(3) In the event of service upon the Attorney General in accordance with subsection (1) of this section, the Registrar of Corporations shall forthwith notify the foreign limited liability company thereof by letter, certified mail, return receipt requested, directed to the foreign limited liability company at the address furnished to the Attorney General by the plaintiff in such action, suit or proceeding. Such letter shall enclose a copy of the process and any other papers served upon the Attorney General. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Attorney General that service is being made pursuant to this subsection and to pay to the Attorney General a sum for the use of the Republic of the Marshall Islands, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Attorney General shall maintain an alphabetical record of any such process setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon him, the return date thereof, and the day and hour when the service was made. The Attorney General shall not be required to retain such information for a period longer than five (5) years from his receipt of the service of process. [P.L. 1996-14, § 60.]

DIVISION 10:

DERIVATIVE ACTIONS

- § 61. Right to bring action.**
- § 62. Proper plaintiff.**
- § 63. Complaint.**
- § 64. Expenses.**

- § 61. Right to bring action.**

A member or an assignee of a limited liability company interest may bring an action in the High Court of the Republic in the right of a limited liability company to recover a judgment in its favor if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed. [P.L. 1996-14, § 61; amended by P.L. 2000-14, § 61.]

- § 62. Proper plaintiff.**

In a derivative action, the plaintiff must be a member or an assignee of a limited liability company interest at the time of bringing the action and:

- (a) at the time of the transaction of which he complains; or

- (b) his status as a member or an assignee of a limited liability company interest had devolved upon him by operation of law or pursuant to the terms of a limited liability company agreement from a person who was a member or an assignee of a limited liability company interest at the time of the transaction. [P.L. 1996-14, § 62.]

§ 63. Complaint.

In a derivative action, the complaint shall set forth with particularity the effort, if any of the plaintiff to secure initiation of the action by a manager or member or the reasons for not making the effort. [P.L. 1996-14, § 63.]

§ 64. Expenses.

If a derivative action is successful, in whole or in part, as a result of a judgment, compromise or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from any recovery in any such action or from a limited liability company. [P.L. 1996-14, § 64.]

DIVISION 11:

MISCELLANEOUS

- § 65. Construction and application of Act and limited liability company agreement.**
- § 66. Severability.**
- § 67. Cases not provided for in this Act.**
- § 68. Filing fees.**
- § 69. Reserved power of the Republic of the Marshall Islands to alter or repeal Act.**
- § 70. Annual fees associated with limited liability companies.**
- § 71. Construction; adoption of Delaware limited liability company law.**
- § 72. Immunity from liability and suit.**
- § 73. Contested matters relating to managers; contested votes.**
- § 74. Interpretation and enforcement of limited liability company agreement.**
- § 75. Contractual appraisal rights.**
- § 76. Domestication of non-Marshall Island entities.**
- § 77. Transfer of domestic limited liability companies.**
- § 78. Conversion of other entities to a limited liability company.**
- § 79. Series of members, managers of limited**

liability company interest.

§ 80. Conversion of a domestic limited liability company to other entities.

§ 81. Delegation of rights and powers to manage.

§ 82. Defense of usury not available.

§ 83. Reserved.

§ 65. Construction and application of Act and limited liability company agreement.

(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this Act.

(2) It is the policy of this Act to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.

(3) To the extent that, at law or in equity, a member or manager has duties (including fiduciary duties) and liabilities relating thereto to a limited liability company or to another member or manager:

(a) any such member or manager acting under a limited liability company agreement shall not be liable to the limited liability company or to any such other member or manager for the member's or manager's good faith reliance on the provisions of the limited liability company agreement; and

(b) the member's or manager's duties and liabilities may be expanded or restricted by provisions in a limited liability company agreement.

(4) Unless the context otherwise requires, as used herein, the singular shall include the plural and the plural may refer to only the singular. The use of any gender shall be applicable to all genders. The captions contained herein are for purposes of convenience only and shall not control or affect the construction of this Act. *[P.L. 1996-14, § 65.]*

§ 66. Severability.

If any provision of this Act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end, the provisions of this Act are severable. *[P.L. 1996-14, § 66.]*

§ 67. Cases not provided for in this Act.

In any case not provided for in this Act, the rules of law and equity, including the law merchant, shall govern. *[P.L. 1996-14, § 67.]*

§ 68. Filing fees.

The applicable filing fees for all filed documentation shall be according to a fee schedule determined and amendable by the Registrar of Corporations. *[P.L. 1996-14, § 68.]*

§ 69. Reserved power of the Republic of the Marshall Islands to alter or repeal Act.

All provisions of this Act may be altered from time to time or repealed by legislation or regulation and all rights of members and managers are subject to this reservation. *[P.L. 1996-14, § 69.]*

§ 70. Annual fees associated with limited liability companies.

(1) Every domestic limited liability company and every foreign limited liability company registered to do business in the Republic of the Marshall Islands shall pay an annual fee.

(2) The annual fee shall be due and payable on the anniversary day of the filing of a certificate of formation. The Registrar of Corporations shall receive the annual fee.

(3) Government fees shall be the same as those outlined in Division 1 of the Business Corporations Act and non-resident domestic limited liability companies shall be exempt from all forms of taxation as provided in section 12 of the Business Corporations Act. *[P.L. 1996-14, § 70; amended by P.L. 2005-29, § 70.]*

§ 71. Construction; adoption of Delaware limited liability company law.

This Act shall be applied and construed to make the laws of the Republic, with respect to the subject matter hereof, uniform with the laws of the State of Delaware in the United States of America. Insofar as it does not conflict with any other provision of this Act, or the decisions of the High and Supreme Courts of the Republic of the Marshall Islands which shall take precedence, the non-statutory law of the State of Delaware is hereby adopted as the law of the Republic. This section shall not apply to resident domestic limited liability companies. *[P.L. 1997-35, § 71, adding new section.]*

§ 72. Immunity from liability and suit.

In the performance of their duties, the Registrar, any Deputy Registrar, and/or any trust corporation and/or any agent appointed, authorized, recognized, and/or designated by the Registrar or any Deputy Registrar, or trust

corporation, or by any person acting on their behalf for the administration of the provisions of this Act or any regulation promulgated pursuant thereto or for the performance of any services, pursuant to this Act, together with any affiliate of any such agent, their stockholders, members, directors, officers and employees, wherever located, shall have full immunity from liability and from suit with respect to any act or omission or thing done by any of them in good faith in the exercise or performance, or in the purported exercise or performance, of any power, authority or duty conferred or imposed upon any of them under or in connection with this Act or any regulation, as amended or any other law or rule applicable to the performance of any of their said duties.

The immunity provided by this section shall only apply to those acts or omissions of agents and/or employees of the entities described in this section, done by them in the course and scope of the Republic of the Marshall Islands Limited Liability Companies Program. [P.L. 1997-32, § 72, adding new section.]

§ 73. Contested matters relating to managers; contested votes.

(1) Upon application of a member or manager, the High Court may hear and determine the validity of any admission, election, appointment, removal or resignation of a manager of a limited liability company, and the right of any person to become or continue to be a manager of a limited liability company, and, in case the right to serve as a manager is claimed by more than one (1) person, may determine the person or persons entitled to serve as managers; and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the limited liability company relating to the issue. In any such application, the limited liability company shall be named as a party and service of copies of the application upon the registered agent of the limited liability company shall be deemed to be service upon the limited liability company and upon the person or persons whose right to serve as a manager is contested and upon the person or persons, if any, claiming to be a manager or claiming the right to be a manager, and the registered agent shall forward immediately a copy of the application to the limited liability company and to the person or persons whose right to serve as a manager is contested and to the person or persons, if any, claiming to be a manager or the right to be a manager, in a postpaid, sealed, registered letter addressed to such limited liability company and such person or persons at their post office addresses last known to the registered agent or furnished to the registered agent by the applicant member or manager. The High Court may make such order

respecting further or other notice of such application as it deems proper under these circumstances.

(2) Upon application of a member or manager, the High Court may hear and determine the result of any vote of members or managers upon matters as to which the members or managers of the limited liability company, or any class or group of members or managers, have the right to vote pursuant to the limited liability company agreement or other agreement or this division (other than the admission, election, appointment, removal or resignation of managers). In any such application, the limited liability company shall be named as a party and service of the application upon the registered agent of the limited liability company shall be deemed to be service upon the limited liability company, and no other party need be joined in order for the High Court to adjudicate the result of the vote. The High Court may make such order respecting further or other notice of such application as it deems proper under the circumstances. [P.L. 2000-14, § 73, adding new section.]

§ 74. Interpretation and enforcement of limited liability company agreement.

Any action to interpret, apply or enforce the provisions of a limited liability company agreement, or the duties, obligations or liabilities of a limited liability company to the members or managers of the limited liability company, or the duties, obligations or liabilities among members or managers and of members or managers to the limited liability company, or the rights or powers of, or restrictions on, the limited liability company, members or managers, may be brought in the High Court. [P.L. 2000-14, § 74, adding new section.]

§ 75. Contractual appraisal rights.

A limited liability company agreement or an agreement of merger or consolidation may provide that contractual appraisal rights with respect to a limited liability company interest or another interest in a limited liability company shall be available for any class or group of members or limited liability company interests in connection with any amendment of a limited liability company agreement, any merger or consolidation in which the limited liability company is a constituent party to the merger or consolidation, or the sale of all or substantially all of the limited liability company's assets. The High Court shall have jurisdiction to hear and determine any matter relating to any such appraisal rights. [P.L. 2000-14, § 75, adding new section.]

§ 76. Domestication of non-Marshall Islands entities.

(1) As used in this section, “non-Marshall Islands entity” means a foreign limited liability company (other than one (1) formed under the laws of the Marshall Islands) or a corporation, a trust, or any other unincorporated business, including a partnership (whether general (including a registered limited liability partnership) or limited partnership (including a registered limited liability limited partnership)) formed, incorporated, created or that otherwise came into being under the laws of any foreign country or other foreign jurisdiction (other than the Marshall Islands).

(2) Any non-Marshall Islands entity may become domesticated as a limited liability company in the Marshall Islands by complying with subsection (7) of this section and filing in the office of the Registrar of Corporations in accordance with section 14 of this Act:

(a) a certificate of limited liability company domestication that has been executed by one (1) or more authorized persons in accordance with section 12 of this Act; and

(b) a certificate of formation that complies with section 9 of this Act and has been executed by one (1) or more authorized persons in accordance with section 12 of this Act.

(3) The certificate of limited liability company domestication shall state:

(a) the date on which and jurisdiction where the non-Marshall Islands entity was first formed, incorporated, created or otherwise came into being;

(b) the name of the non-Marshall Islands entity immediately prior to the filing of the certificate of limited liability company domestication;

(c) the name of the limited liability company as set forth in the certificate of formation filed in accordance with subsection (2) of this section;

(d) the future effective date or time (which shall be a date or time certain) of the domestication as a limited liability company if it is not to be effective upon the filing of the certificate of limited liability company domestication and the certificate of formation;

(e) the jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the non-Marshall Islands entity, or any other equivalent thereto under applicable law, immediately prior to the filing of the certificate of limited liability company domestication;

(f) that the transfer of domicile has been approved by all necessary action;

(g) that the transfer of domicile is not expressly prohibited under the laws of the foreign domicile;

(h) that the transfer of domicile is made in good faith and will not serve to hinder, delay or defraud existing members, managers, creditors, claimants or other parties in interest; and

(i) the name and address of the corporation’s Registered agent in the Republic.

(4) Upon the filing in the office of the Registrar of Corporations of the certificate of limited liability company domestication and the certificate of formation or upon the future effective date or time of the certificate of limited liability company domestication and the certificate of formation, the non-Marshall Islands entity shall be domesticated as a limited liability company in the Marshall Islands and the limited liability company shall thereafter be subject to all of the provisions of this division, except that notwithstanding section 9 of this Act, the existence of the limited liability company shall be deemed to have commenced on the date the non-Marshall Islands entity commenced its existence in the jurisdiction in which the non-Marshall Islands entity was first formed, incorporated, created or otherwise came into being.

(5) The domestication of any non-Marshall Islands entity as a limited liability company in the Marshall Islands shall not be deemed to affect any obligations or liabilities of the non-Marshall Islands entity incurred prior to its domestication as a limited liability company in the Marshall Islands, or the personal liability of any person therefore.

(6) The filing of a certificate of limited liability company domestication shall not affect the choice of law applicable to the non-Marshall Islands entity, except that from the effective date or time of the domestication, the law of the Marshall Islands, including the provisions of this division, shall apply to the non-Marshall Islands entity to the same extent as if the non-Marshall Islands entity had been formed as a limited liability company on that date.

(7) Prior to filing a certificate of limited liability company domestication with the office of the Registrar of Corporations, the domestication shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-Marshall Islands entity and the conduct of its business or by applicable non-Marshall Islands law, as appropriate, and a limited liability company agreement shall be approved by the

same authorization required to approve the domestication.

(8) When any domestication shall become effective under this section, for all purposes of the laws of the Marshall Islands, all of the rights, privileges and powers of the non-Marshall Islands entity that has been domesticated, and all property, real, personal and mixed, and all debts due to such non-Marshall Islands entity, as well as all other things and causes of action belonging to such non-Marshall Islands entity, shall be vested in the domestic limited liability company and shall thereafter be the property of the domestic limited liability company as they were of the non-Marshall Islands entity immediately prior to its domestication, and the title to any real property vested by deed or otherwise in such non-Marshall Islands entity shall not revert or be in any way impaired by reason of this division, but all rights of creditors and all liens upon any property of such non-Marshall Islands entity shall be preserved unimpaired and all debts, liabilities and duties of the non-Marshall Islands entity that has been domesticated shall thenceforth attach to the domestic limited liability company and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by the domestic limited liability company. *[P.L. 2000-14, § 76, adding new section; amended by P.L. 2005-29, § 76.]*

§ 77. Transfer of domestic limited liability companies.

(1) Upon compliance with this section, any limited liability company may transfer to or domesticate in any jurisdiction that permits the transfer to or domestication in such jurisdiction of a limited liability company.

(2) Unless otherwise provided in a limited liability company agreement, a transfer or domestication described in subsection (1) of this section shall be approved in writing by all of the managers and all of the members. If all of the managers and all of the members of the limited liability company or such other vote as may be stated in a limited liability company agreement shall approve the transfer or domestication described in subsection (1) of this section, a certificate of transfer, executed in accordance with section 12 of this Act, shall be filed in the office of the Registrar of Corporations in accordance with section 14 of this Act. The certificate of transfer shall state:

(a) the name of the limited liability company and, if it has been changed, the name under which its certificate of formation was originally filed;

(b) the date of the filing of its original certificate of formation with the Registrar of Corporations;

(c) the jurisdiction to which the limited liability company shall be transferred or in which it shall be domesticated;

(d) the future effective date or time (which shall be a date or time certain) of the transfer or domestication to the jurisdiction specified in subsection (2)(c) of this section if it is not to be effective upon the filing of the certificate of transfer;

(e) that the transfer or domestication of the limited liability company has been approved in accordance with this section;

(f) that the existence of the limited liability company as a limited liability company of the Marshall Islands shall cease when the certificate of transfer becomes effective. The agreement of the limited liability company that it may be served with process in the Marshall Islands in any action, suit or proceeding for enforcement of any obligation of the limited liability company arising while it was a limited liability company of the Marshall Islands, and that it irrevocably appoints the Registrar of Corporations as its agent to accept service of process in any such action, suit or proceeding; and,

(g) the address to which a copy of the process referred to in subsection (2)(f) of this section shall be mailed to it by the Registrar of Corporations. In the event of service hereunder upon the Registrar of Corporations, the procedures set forth in this Act shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Registrar of Corporations with the address specified in this subsection and any other address that the plaintiff may elect to furnish, together with copies of such process as required by the Registrar of Corporations, and the Registrar of Corporations shall notify the limited liability company that has transferred or domesticated out of the Marshall Islands at all such addresses furnished by the plaintiff in accordance with the procedures set forth in this Act.

(3) Upon the filing in the office of the Registrar of Corporations of the certificate of transfer or upon the future effective date or time of the certificate of transfer and payment to the Registrar of Corporations of all fees prescribed in this Act, the Registrar of Corporations shall certify that the limited liability company has filed all documents and paid all fees required by this division, and thereupon the limited liability company shall cease to exist as a limited liability company of the Marshall Islands. Such certificate of the Registrar of Corporations shall be prima facie evidence of the transfer or domestication by such limited liability company out of the Marshall Islands.

(4) The transfer or domestication of a limited liability company out of the Marshall Islands in accordance with this section and the resulting cessation of its existence as a limited liability company of the Marshall Islands pursuant to a certificate of transfer shall not be deemed to affect any obligations or liabilities of the limited liability company incurred prior to such transfer or domestication or the personal liability of any person incurred prior to such transfer or domestication, nor shall it be deemed to affect the choice of law applicable to the limited liability company with respect to matters arising prior to such transfer or domestication. *[P.L. 2000-14, § 77, adding new section.]*

§ 78. Conversion of other entities to a limited liability company.

(1) As used in this section, the term, “other entity” means a corporation, trust or association or any other unincorporated business, including a partnership (whether general or limited) of the Marshall Islands.

(2) Any other entity may convert to a domestic limited liability company by complying with subsection (8) of this section and filing in the office of the Registrar of Corporations in accordance with section 14 of this Act:

(a) a certificate of conversion to limited liability company that has been executed by one (1) or more authorized persons in accordance with section 12 of this Act; and

(b) a certificate of formation that complies with section 9 of this Act and has been executed by one (1) or more authorized persons in accordance with section 12 of this Act.

(3) The certificate of conversion to limited liability company shall state:

(a) the date on which the other entity was first created, formed or otherwise came into being;

(b) the name of the other entity immediately prior to the filing of the certificate of conversion to limited liability company;

(c) the name of the limited liability company as set forth in the certificate of formation filed in accordance with subsection (2) of this section; and

(d) the future effective date or time (which shall be a date or time certain) of the conversion to a limited

liability company if it is not to be effective upon the filing of the certificate of conversion to limited liability company and the certificate of formation.

(4) Upon the filing in the office of the Registrar of Corporations of the certificate of conversion to limited liability company and the certificate of formation or upon the future effect date or time of the certificate of conversion to limited liability company and the certificate of formation, the other entity shall be converted into a domestic limited liability company and the limited liability company shall thereafter be subject to all of the provisions of this division, except that notwithstanding section 9 of this Act, the existence of the limited liability company shall be deemed to have commenced on the date the other entity commenced its existence.

(5) The conversion of any other entity into a domestic limited liability company shall not be deemed to affect any obligations or liabilities of the other entity incurred prior to its conversion to a domestic limited liability company or the personal liability of any person incurred prior to such conversion.

(6) When any conversion shall have become effective under this section, for all purposes of the laws of the Marshall Islands, all of the rights, privileges and powers of the other entity that has converted, and all property, real, personal and mixed, and all debts due to such other entity, as well as all other things and causes of action belonging to such other entity, shall be vested in the domestic limited liability company and shall thereafter be the property of the domestic limited liability company as they were of the other entity that has converted, and the title to any real property vested by deed or otherwise in such other entity shall not revert or be in any way impaired by reason of this division, but all rights of creditors and all liens upon any property of such other entity shall be preserved unimpaired and all debts, liabilities and duties of the other entity that has converted shall thenceforth attach to the domestic limited liability company and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

(7) Unless otherwise agreed, the converting other entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such other entity and shall constitute a continuation of the existence of the converting other entity in the form of a domestic limited liability company.

(8) Prior to filing a certificate of conversion to limited liability company with the office of the Registrar of Corporations, the conversion shall be approved in the

manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business, and a limited liability company agreement shall be approved by the same authorization required to approve the conversion. [P.L. 2000-14, § 78, adding new section; amended by P.L. 2000-19, § 78; amended by P.L. 2005-29, § 78.]

§ 79. Series of members, managers of limited liability company interest.

(1) A limited liability company agreement may establish or provide for the establishment of designated series of members, managers, or limited liability company interests having separate rights, powers or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and, to the extent provided in the limited liability company agreement, any such series may have a separate business purpose or investment objective.

(2) Notwithstanding anything to the contrary set forth in this Act or under other applicable law, in the event that a limited liability company agreement creates one (1) or more series, and if separate and distinct records are maintained for any such series and the assets associated with any such series are held and accounted for separately from the other assets of the limited liability company, or any other series thereof, and if the limited liability company agreement so provides, and notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the certificate of formation of the limited liability company, then the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, and unless otherwise provided in the limited liability company agreement none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of such series. The fact that a certificate of formation that contains the foregoing notice of the limitation on liabilities of a series is on file in the office of the Registrar of Corporations shall constitute notice of such limitation on liabilities of a series.

(3) Notwithstanding section 20 of this Act, under a limited liability company agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations and liabilities of one (1) or more series.

(4) A limited liability company agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members or managers associated with the series having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members or managers associated with the series. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or manager or class or group of members or managers, including an action to create under the provisions of the limited liability company agreement a class or group of the series of limited liability company interests that was not previously outstanding. A limited liability company agreement may provide that any member or class or group of members associated with a series shall have no voting rights.

(5) A limited liability company agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers by members or managers associated with a series may be on a per capita, number, financial interest, class, group or any other basis.

(6) Unless otherwise provided in a limited liability company agreement, the management of a series shall be vested in the members associated with such series in proportion to the then current percentage or other interest of members in the profits of the series owned by all of the members associated with such series, the decision of members owning more than fifty percent (50%) of the said percentage or other interest in the profits controlling; provided, however, that if a limited liability company agreement provides for the management of the series, in whole or in part, by a manager, the management of the series, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the limited liability company agreement. The manager of the series shall also hold the offices and have the responsibilities accorded to the manager as set forth in a limited liability company agreement. A series may have more than one (1) manager. Subject to section 35 of this Act, a manager shall cease to be a manager with respect to a series as provided in a limited liability company agreement. Except as otherwise provided in a limited liability company agreement, any event under this division or in a limited liability company agreement that causes a manager to cease to be a manager with respect to a series shall not, in itself, cause such manager to cease to be a manager of the limited liability company or with respect to any other series thereof.

(7) Notwithstanding section 39 of this Act, but subject to subsections (8) and (11) of this section, and unless otherwise provided in a limited liability company agreement, at the time a member associated with a series that has been established in accordance with subsection (2) of this section becomes entitled to receive a distribution with respect to such series, the member has the status of, and is entitled to all remedies available to, a creditor of the series, with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a series.

(8) Notwithstanding section 40(1) of this Act, a limited liability company may make a distribution with respect to a series that has been established in accordance with subsection (2) of this section; provided, that a limited liability company shall not make a distribution with respect to a series that has been established in accordance with subsection (2) of this section to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of such series, other than liabilities to members on account of their limited liability company interests with respect to such series and liabilities for which the recourse of creditors is limited to specified property of such series, exceed the fair value of the assets associated with such series, except that the fair value of property of the series that is subject to a liability for which the recourse of creditors is limited shall be included in the assets associated with such series only to the extent that the fair value of that property exceeds that liability. A member who receives a distribution in violation of this subsection, and who knew at the time of the distribution that the distribution violated this subsection, shall be liable to a series for the amount of the distribution. A member who receives a distribution in violation of this subsection, and who did not know at the time of the distribution that the distribution violated this subsection, shall not be liable for the amount of the distribution. Subject to section 40(3) of this Act, which shall apply to any distribution made with respect to a series under this subsection, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

(9) Unless otherwise provided in the limited liability company agreement, a member shall cease to be associated with a series and to have the power to exercise any rights or powers of a member with respect to such series upon the assignment of all of the member's limited liability company interest with respect to such series. Except as otherwise provided in a limited liability company agreement, any event under this division or a limited liability company agreement that causes a member to cease to be associated with a series shall not,

in itself, cause such member to cease to be associated with any other series or terminate the continued membership of a member in the limited liability company or cause the termination of the series, regardless of whether such member was the last remaining member associated with such series.

(10) Subject to section 46 of this Act, except to the extent otherwise provided in the limited liability company agreement, a series may be terminated and its affairs wound up without causing the dissolution of the limited liability company. The termination of a series established in accordance with subsection (2) of this section shall not affect the limitation on liabilities of such series provided by subsection (2) of this section. A series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under section 46 of this Act or otherwise upon the first to occur of the following:

(a) at the time specified in the limited liability company agreement;

(b) upon the happening of events specified in the limited liability company agreement;

(c) unless otherwise provided in the limited liability company agreement, upon the written consent of the members of the limited liability company associated with such series, or if there is more than one (1) class or group of members associated with such series, then by each class or group of members associated with such series, in either case, by members associated with such series who own more than two-thirds of the then current percentage or other interest in the profits of the series of the limited liability company owned by all of the members associated with such series or by the members in each class or group of such series, as appropriate;

(d) at any time there are no members associated with the series; provided, that, unless otherwise provided in the limited liability company agreement, the series is not terminated and is not required to be wound up if, within ninety (90) days or such other period as is provided for in the limited liability company agreement after the occurrence of the event that terminated the continued membership of the last remaining member associated with the series, the personal representative of the last member associated with the series agrees in writing to continue the business of the series and to the admission of a personal representative of such member or its nominee or designee to the limited liability company as a member associated with the series, effective as of the occurrence of the event that terminated the continued membership of the last remaining member associated with the series; or

(e) the termination of such series under subsection (1) of this section.

(11) Notwithstanding section 48(1) of this Act, unless otherwise provided in the limited liability company agreement, a manager associated with a series who has not wrongfully terminated the series or, if none, the members associated with the series or a person approved by the members associated with the series or, if there is more than one (1) class or group of members associated with the series, then by each class or group of members associated with the series, in either case, by members who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the series owned by all of the members associated with the series or by the members in each class or group associated with the series, as appropriate, may wind up the affairs of the series; but, if the series has been established in accordance with subsection (2) of this section, the High Court, upon cause shown, may wind up the affairs of the series upon application of any member associated with the series, the member's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee. The persons winding up the affairs of a series may, in the name of the limited liability company and for and on behalf of the limited liability company and such series, take all actions with respect to the series as are permitted under section 48(2) of this Act. The persons winding up the affairs of a series shall provide for the claims and obligations of the series as provided in section 49(2) of this Act and distribute the assets of the series as provided in section 49(1) of this Act. Actions taken in accordance with this subsection shall not affect the liability of members and shall not impose liability on a liquidating trustee.

(12) On application by or for a member or manager associated with a series established in accordance with subsection (2) of this section, the High Court may decree termination of such series whenever it is not reasonably practicable to carry on the business of the series in conformity with a limited liability company agreement.

(13) If a foreign limited liability company that is registering to do business in the Marshall Islands in accordance with section 51 of this Act is governed by a limited liability company agreement that establishes or provides for the establishment of designated series of members, managers, or limited liability company interests having separate rights, powers or duties with respect to specified property or obligations of the foreign limited liability company or profits and losses associated with specified property or obligations, that fact shall be so stated on the application for registration as a foreign limited liability company. In addition, the foreign limited liability company shall state on such application whether

the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series, if any, shall be enforceable against the assets of such series only, and not against the assets of the foreign limited liability company generally or any other series thereof, and unless otherwise provided in the limited liability company agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the foreign limited liability company generally or any other series thereof shall be enforceable against the assets of such series. *[P.L. 2000-14, § 79, adding new section; amended by P.L. 2005-29, § 79.]*

§ 80. Conversion of a domestic limited liability company to other entities.

A domestic limited liability company may convert to a corporation, trust, a general partnership or a limited partnership organized, formed or created under the laws of the Marshall Islands, upon the authorization of such conversion in accordance with this section. If the limited liability company agreement specifies the manner of authorizing a conversion of the limited liability company, the conversion shall be authorized as specified in the limited liability company agreement. If the limited liability company agreement does not specify the manner of authorizing a conversion of the limited liability company, and does not prohibit a conversion of the limited liability company, the conversion shall be authorized in the same manner as is specified in the limited liability company agreement for authorizing a merger or consolidation that involves the limited liability company as a constituent party to the merger or consolidation. If the limited liability company agreement does not specify the manner of authorizing a conversion of the limited liability company or a merger or consolidation that involves the limited liability company as a constituent party and does not prohibit a conversion of the limited liability company, the conversion shall be authorized by the approval of the members or, if there is more than one (1) class or group of members, then by each class or group of members, in either case, by members who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members or by the members in each class or group as appropriate. *[P.L. 2000-14, § 80, adding new section; amended by P.L. 2000-19, § 80.]*

§ 81. Delegation of rights and powers to manage.

Unless otherwise provided in the limited liability company agreement, a member or manager of a limited liability company has the power and authority to delegate to one (1) or more other persons the member's or manager's, as the case may be, rights and powers to

manage and control the business and affairs of the limited liability company, including to delegate to agents, officers and employees of a member or manager of the limited liability company, and to delegate by a management agreement or another agreement with or otherwise to, other persons. Unless otherwise provided in the limited liability company agreement, such delegation by a member or manager of a limited liability company shall not cause the member or manager to cease to be a member or manager, as the case may be, of the limited liability company. *[P.L. 2000-14, § 81, adding new section.]*

§ 82. Defense of usury not available.

No obligation of a member or manager of a limited liability company to the limited liability company arising under the limited liability company agreement or a separate agreement or writing, and no note, instrument or other writing evidencing any such obligation of a member or manager shall be subject to the defense of usury, and no member or manager shall interpose the defense of usury with respect to any such obligation in any action. *[P.L. 2000-14, § 82, adding new section.]*

§ 83. RESERVED.