NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS

36th CONSTITUTIONAL REGULAR SESSION, 2015 BILL NO.: 65

P.L. 2015-40

AN ACT

to amend Title 52 of the Republic of the Marshall Islands Revised Code to allow for a corporation's bylaws to establish the number of shares which shall constitute a quorum at a meeting of shareholders and to develop the current accounting records requirement in the Business Corporations Act, Revised Partnership Act, Limited Partnership Act, and Limited Liability Company Act, in order to ensure that all business entities maintain accounting records is to a level of detail consistent with the international standard.

BE IT ENACTED BY THE NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS:

Section 1. **Short Title**

This Bill may be cited as the Associations Law (Consequential Amendment) Act, 2015.

Section 2. **Amendments to the Business Corporations Act**

(1) Section 70 of the Marshall Islands Business Corporations Act is hereby amended to read as follows:

§70. Quorum of shareholders.

(1) *Number constituting quorum.* Unless otherwise provided in the articles of incorporation or bylaws, 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.

(2) Section 80 of the Marshall Islands Business Corporations Act is hereby amended to read as follows:

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

(1) Accounting records. Every domestic corporation shall keep reliable and complete accounting records, to include correct and complete books and records of account. Accounting records must be sufficient or correctly explain all transactions, enable the financial position of the corporation to be determined with reasonable accuracy at any time, and allow financial statements to be prepared. Additionally, every domestic corporation shall keep underlying documentation for account records maintained pursuant to this subsection, such as, but not limited, invoices and contracts, which shall reflect all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; all sales purchases, and other transactions; and the assets and liabilities of the corporation. A resident domestic corporation shall keep all accounting records and underlying documentations as described in this subsection in the Republic.

(2) *Minutes.* Every domestic corporation 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 minutes in the Republic.

(3) *Records of shareholders*. Every domestic corporation shall keep an up-to-date 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 in the Republic.

(4) *Form 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.

(5) *Retention period.* All records required to be kept, retained, or maintained under this section shall be kept, retained, or maintained for a minimum of five (5) years.

(6) *Failure to maintain records.* Any person who knowingly or recklessly fails to keep, retain, or maintain records as required under this section shall be liable to a fine not exceeding $5,000, revocation of the corporation's articles of incorporation and dissolution, or both.

Section 3. **Amendment to the Revised Partnership Act**

(1) Section 37 of the Marshall Islands Revised Partnership Act is hereby amended to read as follows:

§ 37. Requirement for keeping accounting records, minutes, and records of partners; partner's rights and duties with respect to information.

(1) *Requirement for keeping accounting records, minutes, and records of partners*

(a) *Accounting records.* Every domestic partnership shall keep reliable and complete accounting records to include correct and complete books and records of account. Accounting records must be sufficient to correctly explain all transactions, enable the financial position of the partnership to be determined with reasonable accuracy at any time, and allow financial statements to be prepared. Additionally, every domestic partnership shall keep underlying documentation for accountings records maintained pursuant to this subsection, such as, but not limited to, invoices and contracts, which shall reflect all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; all sales, purchases, and other transaction; and the assets and liabilities of the partnership. A resident domestic partnership shall keep all accounting records and underlying documentation as described in this subsection in the Republic.

(b) *Minutes.* Every domestic partnership shall keep minutes of all meetings of partners and of actions taken on consent by partners. A resident domestic partnership shall keep such minutes in the Republic.

(c) *Records of partners.* Every domestic partnership shall keep an up-to-date record containing the names and addresses of all partners. A resident domestic partnership shall keep the records required to be maintained by this subsection in the Republic.

(d) *Form of records.* Any records maintained by a domestic partnership in the regular course of its business, including its record of partners, 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 domestic partnership shall convert any records so kept upon the request of any person entitled to inspect such records. 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.

(c) *Retention period.* All records required to be kept, retained, or maintained under this section shall be kept, retained, or maintained for a minimum of five (5) years.

(f) *Failure to maintain records.* Any person who knowingly or recklessly fails to keep, retain, and maintain records as required under this section shall be liable to a fine not exceeding $5,000, cancellation of the certificate of partnership, or both.

(2) *Partner's rights and duties with respect to information.*

(a) 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:

(i) true and full information regarding the status of the business and financial condition of the partnership;

(ii) promptly after becoming available, a copy of the partnership's financial statements or tax filings, if applicable, for each year;

(iii) a current list of the name and last known business, residence or mailing address of each partner;

(iv) 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;

(v) 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

(vi) 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.

(b) 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.

(c) 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.

(d) Any demand by a partner under this section shall be in writing and shall state the purpose of such demand.

(e) 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 (2)(a) 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 (2)(a) 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 (2)(a) 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 (2)(a) 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.

(f) 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.

Section 4. **Amendment to the Limited Partnership Act**

(1) Section 32 of the Marshall Islands Limited Partnership Act is hereby amended to read as follows:

§ 32. Requirement for keeping accounting records, minutes, and records of partners; access to and confidentiality of information.

(1) *Requirement for keeping accounting records, minutes, and records of partners.*

(a) *Accounting Records.* Every domestic limited partnership shall keep reliable and complete accounting records, to include correct and complete books and records of account. Accounting records must be sufficient to correctly explain all transactions, enable the financial position of the limited partnership to be determined with reasonable accuracy at any time, and allow financial statements to be prepared. Additionally, every domestic limited partnership shall keep underlying documentation for accounting records maintained pursuant to this subsection, such as, but not limited to, invoices and contracts, which shall reflect all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; all sales, purchases, and other transactions; and the assets and liabilities of the limited partnership. A resident domestic limited partnership shall keep all accounting records and underlying, documentation as described in this subsection in the Republic.

(b) *Minutes.* Every domestic limited partnership shall keep minutes of all meetings of partners and of actions taken on consent by partners. A resident domestic limited partnership shall keep such minutes in the Republic.

(c) *Records of partners.* Every domestic limited partnership shall keep an up-to-date record containing the names and addresses of all partners. A resident domestic

limited partnership shall keep the records required to be maintained by this subsection in the Republic.

(d) *Form of records.* Any records maintained by a limited partnership in the regular course of its business, including its record of partners, 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 limited partnership shall so convert any records so kept upon the request of any person entitled to inspect such records. 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.

(e) *Retention period.* All records required to be kept, retained, or maintained under this section shall be kept, retained, or maintained for a minimum of five (5) years.

(f) *Failure to maintain records.* Any person who knowingly or recklessly fails to keep, retain, and maintain records as required under this section shall be liable to a fine not exceeding $5,000, cancellation of the certificate of limited partnership, or both.

(2) *Access to and confidentiality of information.*

(a) 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:

(i) true and full information regarding the status of the business and financial condition of the limited partnership;

(ii) promptly after becoming available, a copy of the limited partnership's financial statements or income tax returns, if applicable, for each year;

(iii) a current list of the name and last known business, residence or mailing address of each partner;

(iv) 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;

(v) 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

(vi) other information regarding the affairs of the limited partnership as is just and reasonable.

(b) 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.

(c) 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.

(d) Any demand under this section shall be in writing and shall state the purpose of such demand.

(e) 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 (2)(a) 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 (2)(a) 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 (2)(a) 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 (2)(a) 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.

(f) 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.

Section 5. **Amendment to the Limited Liability Company Act**

(1) Section 22 of the Marshall Islands Limited Liability Company Act is hereby amended to read as follows:

§ 22. Requirement for keeping accounting records, minutes, and records of members; access to and confidentiality of information.

(1) *Requirement for accounting records, minutes, and records of members.*

(a) *Accounting records.* Every domestic limited liability company shall keep reliable and complete accounting records, to include correct and complete books and records of account. Accounting records must be sufficient to correctly explain all transactions, enable the financial position of the limited liability company to be determined with reasonable accuracy at any time, and allow financial statements to be prepared. Additionally, every domestic limited liability company shall keep underlying documentation for accounting records maintained pursuant to this subsection, such as, but not limited to, invoices and contracts, which shall reflect all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; all sales, purchases, and other transactions; and the assets and liabilities of the limited liability company. A resident domestic limited liability company shall keep all accounting records and underlying documentation as described in this subsection in the Republic.

(b) *Minutes.* Every domestic limited liability company shall keep minutes of all meetings of members, of actions taken on consent by members, of all meetings of the managers, and of actions taken on consent by managers. A resident domestic limited liability company shall keep such minutes in the Republic.

(c) *Records of members.* Every domestic limited liability company shall keep an up-to-date record containing the names and addresses of all members. A resident domestic limited liability company shall keep the records required to be maintained by this subsection in the Republic.

(d) *Form of records.* Any records maintained by a limited liability company in the regular course of its business, including its record of members, 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 limited liability company shall so convert any records so kept upon the request of any person entitled to inspect such records. 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.

(e) *Retention period.* All records required to be kept, retained, or maintained under this section shall be kept, retained, or maintained for a minimum of five (5) years.

(f) *Failure to maintain records.* Any person who knowingly or recklessly fails to keep, retain, and maintain records as required under this section shall be liable to a fine not exceeding $5,000, cancellation of the certificate of formation, or both.

(2) *Access to and confidentiality of information.*

(a) 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:

(i) true and full information regarding the status of the business and financial condition of the limited liability company;

(ii) a current list of the name and last known business, residence or mailing address of each member and manager;

(iii) 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;

(iv) 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

(v) other information regarding the affairs of the limited liability company as is just and reasonable.

(b) Each manager shall have the right to examine all of the information described in subsection (a) of this section for a purpose reasonably related to his position as a manager.

(c) 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.

(d) 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.

(e) Any demand by a member under this section shall be in writing and shall state the purpose of such demand.

(f) Any action to enforce any right arising under this section shall be brought in the High Court of the Republic.

Section 6. **Effective Date**

This Bill, and all Acts contained herein, shall take effect in accordance with the Constitution and the Rules of Procedures of the Nitijela.

CERTIFICATE

I hereby certify:

1. That Nitijela Bill No: 65 was passed by the Nitijela of the Republic of the Marshall Islands on the 7th day of January, 2015; and

2. That I am satisfied that Nitijela Bill No: 65 was passed in accordance with the relevant provisions of the Constitution of the Republic of the Marshall Islands and the Rules of Procedures of the Nitijela.

I hereby place my signature before the Clerk this 30th day of January, 2015.

Attest:

Hon. Donald F. Capelle
Speaker
Nitijela of the Marshall Islands

Tarjo Arelong
Clerk
Nitijela of the Marshall Islands