NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
36TH CONSTITUTIONAL REGULAR SESSION, 2015

BILL NO.: 10

P.L. 2015-45

AN ACT

to create Part VI, under Association of Laws, Title 52 of the MIRC, in order to make comprehensive provision for the governance and operation of State-owned enterprises in the Republic of the Marshall Islands and to amend certain laws relating to State-owned enterprises.

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

PART VI

DIVISON 1 - PRELIMINARY

Section 1. Short title

This Act may be cited as the State-Owned Enterprises Act, 2015.

Section 2. Definitions

(1) In this Act:

(a) "articles", for a State-owned enterprise that is a corporation or an LLC, means the articles of incorporation, by-laws and similar documents for the corporation or an LLC;

(b) "board", of a State-owned enterprise, means the directors of the State-owned enterprise acting together;

(c) "Business Corporations Act" means 52 MIRC Part I;

(d) "Chairman", of a State-owned enterprise, means the director of the State-owned enterprise holding office as Chairman under subsection 18(5);

(e) "chief executive officer", of a State-owned enterprise, means the person for the time being holding or acting in the office of chief executive officer of the State-owned enterprise;

(f) "corporation" means a body corporate incorporated or organized under the Business Corporations Act;

(g) "CSO agreement" means an agreement referred to in section 15;

(h) "CSO proposal" means a proposal referred to in section 15;

(i) "Deputy Chairman", of a State-owned enterprise, means the director of the State-owned enterprise holding office as Deputy Chairman under subsection 18(5);

(j) "director" means:

(i) for a corporation or an LLC—a person who is a director of the corporation or the company for the purposes of the Business Corporations Act or the LLC Act;

(ii) for a body(not a corporation or an LLC) —a member of its council or governing body;

(k) "enabling law", for a State-owned enterprise incorporated by or under an Act, means the Act by or under which it is brought into existence (but not the Business Corporations Act or the LLC Act);

(l) "executive officer", of a body corporate, means:

(i) the chief executive officer of the body corporate (however described); and

(i) any other employee of the body corporate involved in the management of the body corporate;

(m) "financial year", for a State-owned enterprise, means a period that is a financial year for accounting purposes for the State-owned enterprise;

(n) "LLC" means a limited liability company under the LLC Act;

(o) "LLC Act" means the Limited Liability Companies Act 1996 (52 MIRC Part IV);

(p) "Minister" means the Minister to whom this Act is allocated;

(q) "primary objectives", for a State-owned enterprise, means the objectives set out in section 10;

(r) "principal business", of a State-owned enterprise, means the business or undertaking identified as the State-owned enterprise's principal business in:

(i) the written law incorporating the State-owned enterprise; or

(ii) the State-owned enterprise's articles; or

(iii) the regulations;

(s) "public official" means each of the following:

(i) a member of the Nitijela or a member of the Council of Iroij;

(ii) a Minister;

(iii) an employee of the Public Service;

(t) "share", in relation to a State-owned enterprise that is a corporation or a company, means a share in the capital of the State-owned enterprise;

(u) "State-owned enterprise" means a body listed in Schedule 1, so long as it is controlled by the Government;

(v) "subsidiary", of a State-owned enterprise, means:

(i) a corporation or LLC that is controlled by the State-owned enterprise; or

(ii) a joint venture or similar enterprise to which the State-owned enterprise is a party (whether incorporated or not).

(2) For this Act, a person (including, for this purpose only, the Government) controls a corporation or an LLC if the person:

(a) holds at least 50% of the shares of the corporation or LLC; or

(b) has the power to exercise, or control the exercise, of voting rights attached to, or has the power to dispose of, or control the disposition of, at least 50% of the shares of the corporation or LLC;

and in applying this definition, have regard to the practical effect, rather than the legal form, of the arrangements concerned.

(3) The Government controls a body corporate created by a written law in respect of which there are no shares if:

(a) the Government or a Minister has power to appoint a person to be a member or director of the body corporate; or

(b) the consent or approval of the Government or a Minister is needed for the appointment of a person to be a member or director of the body corporate; or

(c) the Government or a Minister otherwise has the capacity to determine the outcome of decisions about the body corporate's management or its financial and operating policies.

Section 3. Act binds Republic

(1) This Act binds the Government and the Republic of the Marshall Islands.

(2) This Act binds each State-owned enterprise.

Section 4. Relationship with Business Corporations Act and other laws

(1) This Act applies in addition to the Business Corporations Act, the LLC Act and any other written law (including, for a State-owned enterprise, its enabling law).

(2) If there is an inconsistency between a provision of this Act and a provision of the Business Corporations Act, the LLC Act or another written law, then, unless the written law expressly says to the contrary, the provision of this Act prevails.

(3) A reference in the enabling law for a State-owned enterprise to the Minister is to be read as a reference to the Minister for the purpose of this Act, not the enabling law.

DIVISION 2—FORMATION, OWNERSHIP AND POWERS OF STATE-OWNED ENTERPRISES

Section 5. Formation of State-owned enterprises

(1) A State-owned enterprise may be incorporated by an Act.

(2) The Minister, or a person authorized by the Minister in writing, may incorporate a corporation under the Business Corporations Act or a limited liability company under the LLC Act, with a view to the corporation or company becoming a State-owned enterprise.

(3) If a corporation or company is incorporated as mentioned in subsection (2), the Minister may, by notice pursuant to the Administrative Procedures Act, amend Schedule 1 to include the name of the corporation or company.

(4) If a State-owned enterprise ceases to be controlled by the Government, the Minister must, as soon as practicable, by notice pursuant to the Administrative Procedures Act, amend Schedule 1 to omit the name of the enterprise.

Section 6. Determination of assets and liabilities etc transferred to new State-owned enterprises

(1) If a State-owned enterprise (a "new enterprise") is incorporated, whether by an Act or as mentioned in subsection 5(2), the Minister may, with the approval of the Cabinet, determine in writing that specified assets and liabilities of the Republic, or of another State-owned enterprise, vest in the new enterprise on the date specified in the determination.

(2) The Minister may make more than one (1) determination under this section in respect of a new enterprise.

(3) A determination under this section has effect to vest the assets and liabilities concerned in the new enterprise, as set out in the determination, without the need for any further assurance.

(4) All registrars and other persons responsible for registers of ownership of assets or of liabilities must give effect to a determination under this section on application by the new enterprise.

Section 7. Powers of Minister

(1) Subject to this Act, for each State-owned enterprise that is a corporation or a company, the Minister, in his or her capacity as Minister, may exercise all the powers and rights that shareholders have in relation to the State-owned enterprise under the law or the State-owned enterprise's articles.

(2) The Minister must not exercise any of the following powers without the prior approval of the Cabinet:

(a) a power to appoint a director to, consent to the appointment of a director to or remove a director from, a State-owned enterprise;

(b) a power to amend the articles of a State-owned enterprise;

(c) a power to sell, otherwise dispose of or create an interest in shares of a State-owned enterprise;

(d) a power to start the dissolution of a State-owned enterprise or the merger of a State-owned enterprise with another body corporate;

(3) Despite the Business Corporations Act and the LLC Act:

(a) the members of a State-owned enterprise pass a resolution for the purposes of the State-owned enterprise's articles or any written law by the Minister recording the terms of the resolution in a document and signing the document; and

(b) any requirement of a written law that the resolution be lodged with a body or officer is satisfied by lodging the signed document; and

(c) any requirement of the State-owned enterprise's articles or any written law for the giving of notice of the resolution does not apply.

Section 8. Shares not transferable etc without prior Cabinet approval

(1) A share in or other security of a State-owned enterprise cannot be assigned or transferred without the prior approval of the Cabinet.

(2) A security interest (as defined in the Secured Transactions Act of 2007) cannot be created in a share in or other security of a State-owned enterprise.

(3) A security interest (as defined in the Secured Transactions Act of 2007) cannot be created in property of a State-owned enterprise unless:

(a) it is created in the ordinary course of the State-owned enterprise's ordinary business; or

(b) the Minister agrees in writing.

(4) A share in or other security of a State-owned enterprise cannot be the subject of a trust unless the Minister agrees in writing.

(5) This section applies only to shares and securities of State-owned enterprises that are owned by the Republic or the Government.

Section 9. Powers of State-owned enterprises

Subject to any limitation or restriction in this or another Act, or in the articles of the State-owned enterprise, a State-owned enterprise has the legal capacity and powers of an individual, and the powers of a body corporate, both in and outside the Republic of Marshall Islands.

DIVISION 3 —COMMERCIAL OBJECTIVES AND PLANNING

Section 10. Primary objectives of State-owned enterprises

(1) The primary objectives of each State-owned enterprise are:

(a) to be a successful business and, to this end, to be at least as profitable and efficient as comparable businesses; and

(b) to maximize the net worth of the public investment in the State-owned enterprise.

(2) Each State-owned enterprise must conduct its business and operations with a view to achieving its primary objectives.

(3) Non-compliance with subsection (2) does not affect the validity or enforceability of a contract or other transaction.

Section 11. Statements of corporate intent

(1) The board of each State-owned enterprise must develop and adopt a statement of corporate intent by the start of each financial year. The statement of corporate intent must cover the financial year and provide indicative financial and operational information in respect of the next 2 financial years.

(2) A board must not adopt a statement of corporate intent unless:

(a) it has given the Minister a draft of the statement, no later than 2 months before the start of the financial year to which the statement relates; and

(b) it has taken into account any comments made by the Minister in relation to the draft statement.

(3) A State-owned enterprise's statement of corporate intent for a financial year must include the following matters:

(a) a description of the principal business of the State-owned enterprise;

(b) a statement of the commercial objectives of the State-owned enterprise, demonstrating how those objectives are consistent with the primary objectives;

(c) a description of the nature and scope of the activities that the State-owned enterprise intends to undertake;

(d) a summary of the strategies that the State-owned enterprise will adopt to achieve its commercial objectives and the primary objective; and

(e) a statement or summary of the targets or benchmarks to be used to measure the State-owned enterprise's performance (including in respect of revenue, net profit after tax and return on equity) against its commercial objectives and the primary objective;

(f) a statement of any current and anticipated borrowing by the State-owned enterprise or a subsidiary of the State-owned enterprise;

(g) a statement of the accounting policies to be applied by the State-owned enterprise in its financial records and reports;

(h) a summary indicative balance sheet and profit and loss statement for the group consisting of the State-owned enterprise and its subsidiaries, reflecting the directors' expectations for the financial year;

(i) a statement of the proposed dividend and distribution policy of the State-owned enterprise;

(j) a description of any applicable CSO agreement and the impact of that agreement on the financial returns expected to be achieved by the State-owned enterprise during the period to which the statement relates;

(k) a description of the kind of information to be provided to the Minister, including under section 6; and

(l) any other matter that the Minister directs be included in the statement.

(4) If the State-owned enterprise has a subsidiary, the statement of corporate intent must include corresponding information about the operations of the subsidiary, and the operations of the group comprising the State-owned enterprise and all its subsidiaries.

(5) Without limiting paragraph (3)(l), the Minister may require that a statement of corporate intent for a State-owned enterprise or a subsidiary of a State-owned enterprise include specified provision for:

(a) complying with an obligation arising from any international agreement or arrangement binding on the Republic of the Marshall Islands; or

(b) to implement any policy of the Cabinet in relation to international relations,

but the Minister must consult the board of the State-owned enterprise before giving the direction.

(6) A State-owned enterprise may amend its statement of corporate intent for a financial year at any time during the year, but must give the Minister a draft of the amendment at least 2 months before it is adopted, and take into account any comments made by the Minister in relation to the proposed amendment.

(7) A State-owned enterprise must give the Minister a copy of its statement of corporate intent, and of any amendment to its statement of corporate intent, within 14 days after the board adopts or makes it.

(8) The Minister must table in the Nitijela a copy of each statement of corporate intent, and each amendment to a statement of corporate intent, within 15 sitting days after the Minister receives it.

(9) Each State-owned enterprise and each subsidiary of a State-owned enterprise must strive to give effect to, and act consistently with, its current statement of corporate intent.

Section 12. Business plans

(1) The board of each State-owned enterprise must develop and adopt a business plan by the start of each financial year. The business plan must cover the financial year.

(2) A board must not adopt a business plan unless:

(a) it has given the Minister a draft of the plan, no later than 3 months before the start of the financial year to which the statement relates; and

(b) it has taken into account any comments made by the Minister in relation to the draft plan.

(3) A draft business plan must contain information on the operations, future strategic direction and financial projections of the State-owned enterprise sufficient to enable the Minister to form a view that the business plan demonstrates that the State-owned enterprise will achieve the primary objectives.

(4) If the State-owned enterprise has a subsidiary, the business plan must include information about the operations of the subsidiary, and the operations of the group comprising the State-owned enterprise and all its subsidiaries.

(5) A State-owned enterprise must give the Minister a copy of its business plan within 14 days after the board adopts it.

Section 13. Subsidiaries

(1) A State-owned enterprise must not incorporate a subsidiary without the approval of the Minister.

(2) A State-owned enterprise must not be party to an agreement to form a joint venture without the approval of the Minister.

(3) The articles of a subsidiary of a State-owned enterprise must not be inconsistent with this Act or the State-owned enterprise's articles.

(4) A State-owned enterprise must not be party to an agreement in relation to a joint venture that is inconsistent with this Act or the State-owned enterprise's articles.

(5) Despite any provision in the articles of a subsidiary of a State-owned enterprise, a director of the subsidiary may be removed from office by the State-owned enterprise at any time.

(6) A subsidiary of a State-owned enterprise must provide the State-owned enterprise with:

(a) all information and documents as are necessary or desirable to enable the State-owned enterprise to comply with its obligations under this Act in relation to the subsidiary; and

(b) any other information that the State-owned enterprise request in writing.

Section 14. Certain activities require Minister's approval

A State-owned enterprise must not do any of the following without the Minister's approval:

(a) incur a liability (the "relevant liability") such that the total value of the State-owned enterprise's liabilities (including the relevant liability) would exceed 50% of the net value of the State-owned enterprise's assets as set out in the most recent audited accounts of the State-owned enterprise;

(b) make an investment, or 2 or more related investments, of an amount that would or would in total exceed 50% of the net value of the State-owned enterprise's assets as set out in the most recent audited accounts of the State-owned enterprise;

(c) make an investment (of any amount) outside the Republic of the Marshall Islands;

(d) anything prescribed by regulations for the purposes of this section.

Section 15. Provision of community services by State-owned enterprises

(1) The Minister may, with the approval of the Cabinet, give a State-owned enterprise a written proposal (a "CSO proposal") that the State-owned enterprise:

(a) provide a specified service, or perform specified activities; or

(b) cease providing a specified service, or cease performing specified activities.

(2) The State-owned enterprise must, within 1 month after receiving a CSO proposal, give the Minister a notice:

(a) agreeing to give effect to the proposal; or

(b) stating that giving effect to the proposal would be inconsistent with the primary objectives of the State-owned enterprise, and setting out why.

(3) If the State-owned enterprise gives the Minister a notice under paragraph (2)(b), the Minister and the State-owned enterprise must enter into good faith negotiations with a view to agreeing arrangements under which the State-owned enterprise can give

effect to the CSO proposal without acting inconsistently with its primary objectives (a "CSO agreement"). The arrangements may include the provision of funding or other resources by the Government to the State-owned enterprise.

(4) A CSO agreement must:

(a) if it provides for the State-owned enterprise to provide goods or services:

(i) specify the goods or services, including any particular quantities; and

(ii) include an estimate of the total cost to the State-owned enterprise of providing the goods or services, and an estimate of the revenues to be received by the State-owned enterprise for doing so, each on an annual basis; and

(iii) specify how the performance of the State-owned enterprise in providing the goods or services will be monitored and assessed; and

(b) specify the funding and other resources to be provided by the Government under the agreement.

(5) A CSO agreement may include any other provision, not inconsistent with this Act, agreed between the Minister and the State-owned enterprise.

(6) A CSO agreement must not be inconsistent with the Procurement Code (Act) 1988 (44 MIRC Chapter 1).

(7) A CSO agreement is not effective unless it is in writing and has been approved by the Cabinet.

(8) Money payable by the Government under a CSO agreement is payable out of funds appropriated by the Nitijela for the purpose.

(9) Subject to subsection (8), the Government and the State-owned enterprise must comply with their obligations under a CSO agreement.

(10) To avoid doubt, if a State-owned enterprise gives the Minister a notice under paragraph (2)(b) in respect of a CSO proposal, the State-owned enterprise is not required to give effect to the proposal unless a CSO agreement in respect of the proposal is in effect.

DIVISION 4—GOVERNANCE OF STATE-OWNED ENTERPRISES

Section 16. Articles of State-owned enterprises

Any provisions of the articles of a State-owned enterprise that are inconsistent with this Act or the regulations are void to the extent of the inconsistency.

Section 17. State-owned enterprises to be governed by boards of directors.

There is to be, for each State-owned enterprise, a board consisting of at least 3, but not more than 7, directors, appointed by the Minister under this Act.

Section 18. Directors—appointment and qualifications

(1) Subject to this section, the Minister may appoint a person to be a director of a State-owned enterprise if satisfied that the appointment will assist the State-owned enterprise to conduct its principal business and achieve its primary objectives.

(2) The Minister is not to appoint a person to be a director of a State-owned enterprise unless the Minister has no reason to believe that the person is not a fit and proper person to be a director of the State-owned enterprise.

(3) The Minister may appoint a public official to be a director of a State-owned enterprise but only for a term that ends before the end of 3 years after this Act takes effect. The Minister may not do this if the appointment would result in more than 1 public official holding office as a director of the State-owned enterprise.

(4) The Minister must not appoint an employee of the Public Service to be a director of a State-owned enterprise if the employee is employed in the department or ministry of the Public Service with policy or operational responsibility for the principal business of the State-owned enterprise.

(5) The Minister is to appoint 1 of the directors of a State-owned enterprise to be Chairman of the Board of the State-owned enterprise. The directors must appoint 1of their number to be the Deputy Chairman. A public official cannot be appointed under this subsection.

(6) Anything done by or in relation to a person purporting to act under an appointment as director of a State-owned enterprise is not invalid merely because:

(a) the occasion for the appointment had not arisen; or

(b) there was a defect or irregularity in connection with the appointment; or

(c) the appointment had ceased to have effect; or

(d) the occasion to act had not arisen or had ceased.

Section 19. Period of office for directors

(1) A director of a State-owned enterprise holds office for:

(a) 3 years from the date of his or her appointment; or

(b) if a shorter period is specified in the instrument of appointment—that shorter period;

but may be reappointed in accordance with this Act.

(2) A director of a State-owned enterprise may resign office by giving a written resignation to the Minister.

(3) A director of a State-owned enterprise ceases to hold office immediately if he or she:

(a) is convicted or found guilty of an offence punishable by imprisonment of 12 months or more;

(b) is convicted or found guilty of an offence involving dishonesty; or

(c) is, in any jurisdiction, disqualified from acting as a director of a body corporate under a law relating to companies.

(4) A director of a State-owned enterprise ceases to hold office immediately if he or she becomes a public official. This subsection comes into effect at the end of 3 years after the other provisions of this Act take effect.

(5) The Minister may, at any time, by written instrument, remove a director of a State-owned enterprise from office for any reason.

(6) The Minister must table in the Nitijela notice of each appointment of a director of a State-owned enterprise, and of a director ceasing to hold office as a director of a State-owned enterprise. The notice must be tabled within 15 sitting days after the event to which it relates occurs.

Section 20. General duties of directors, etc

(1) A director of a State-owned enterprise, or of a subsidiary of a State-owned enterprise, has the following duties, in addition to his or her other duties—

(a) to act honestly in all matters related to his or her functions;

(b) to exercise his or her powers, and discharge his or her duties, in good faith and for a proper purpose;

(c) to exercise his or her powers, and discharge his or her duties, with the degree of care and diligence that a reasonable person in the director's position would exercise;

(d) to comply with the State-owned enterprise's code of conduct.

(2) Without limiting paragraph (1)(b), in exercising his or her powers, and discharging his or her duties, a director of a State-owned enterprise must take reasonable steps to ensure that:

(a) the State-owned enterprise complies with section 10; and

(b) the State-owned enterprise, and each subsidiary of the State-owned enterprise, complies with applicable law and its articles.

(3) A director of a State-owned enterprise contravenes this subsection if:

(a) the State-owned enterprise, or a subsidiary of the State-owned enterprise, incurs a debt; and

(b) either:

(i) the State-owned enterprise or subsidiary is not able to pay all its debts as and when they fall due; or

(ii) incurring the debt creates or is likely to create a substantial risk that the State-owned enterprise or subsidiary will not be able to pay all its debts as and when they become due.

(4) If a director of a State-owned enterprise contravenes subsection (3), the director is jointly and severally liable, with the State-owned enterprise or subsidiary, for the payment of the debt unless he or she establishes that:

(a) the debt was incurred without his or her express or implied authority or consent; or

(b) at the time when the debt was incurred, the director, after due inquiry, did not have reasonable cause to suspect that paragraph (3)(b) applied.

(5) A director or employee of a State-owned enterprise, or of a subsidiary of a State-owned enterprise, must not:

(a) improperly use his or her position; or

(b) without limiting paragraph (a)—improperly use information that he or she has because of his or her position;

to gain an advantage for himself or herself, or for someone else, cause a detriment to the State-owned enterprise's or subsidiary's ability to perform its functions or cause a detriment to another person. This duty continues after the person ceases to be a director or employee.

(6) If a person contravenes, or is involved in a contravention of, this section, the State-owned enterprise or subsidiary is entitled to recover compensation from the person for any loss suffered by the State-owned enterprise or subsidiary because of the contravention.

(7) In this section:

"advantage" and "detriment" are not limited to financial advantage or detriment.

Section 21. Directors' indemnities

(1) A State-owned enterprise must not:

(a) exempt a director of the State-owned enterprise from a liability owed to it as a director of the State-owned enterprise; or

(b) indemnify a director in respect of a liability owed to it, or to a subsidiary of it, as such a director; or

(c) except as permitted by subsection (3)—indemnify a director in respect of a liability owed to a person other than the State-owned enterprise or a subsidiary of the State-owned enterprise.

(2) A subsidiary of a State-owned enterprise must not:

(a) exempt a director of the subsidiary from a liability owed to it as a director of the subsidiary; or

(b) indemnify a director of the subsidiary in respect of a liability owed to it, to another subsidiary of the State-owned enterprise or to the State-owned enterprise, as such a director; or

(c) indemnify a director of the State-owned enterprise, or of another subsidiary of the State-owned enterprise, in respect of a liability owed to it, to another subsidiary of the State-owned enterprise or to the State-owned enterprise, as such a director; or

(d) except as permitted by subsection (3)—indemnify a director in respect of a liability owed to a person other than the State-owned enterprise or a subsidiary of the State-owned enterprise.

(3) A State-owned enterprise or a subsidiary of a State-owned enterprise may, with the written approval of the Minister, indemnify a director of the State-owned enterprise or subsidiary in respect of the director's liability to a person other than the State-owned enterprise or a subsidiary of the State-owned enterprise if (but only if):

(a) the liability arose out of an act or omission of the director acting in that capacity; and

(b) the act or omission was done in good faith and with due care.

(4) This section extends to the executive officers of a State-owned enterprise.

Section 22. Remuneration and other terms of appointment

A director of a State-owned enterprise:

(a) is entitled to be paid, by the State-owned enterprise, remuneration and allowances determined in writing by the Minister; and

(b) holds office on terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Section 23. Board meetings

(1) The directors of a State-owned enterprise must hold meetings at least once every 2 months, and at such other times as they consider necessary for the efficient conduct of the State-owned enterprise's business.

(2) At a board meeting, a majority of the directors are a quorum.

(3) Subject to this Act and to any contrary provision in the State-owned enterprise's articles:

(a) the Chairman is to preside at all meetings of the board;

(b) if the Chairman is not present at a meeting—the Deputy Chairman is to preside;

(c) if neither the Chairman nor the Deputy Chairman is present—the directors present at the meeting must appoint a director who is present to preside.

(4) A question arising at a board meeting is to be determined by a majority of the votes of the directors present and voting.

(5) The person chairing a board meeting has a deliberative vote and, if necessary, a casting vote.

(6) If:

(a) the board of a State-owned enterprise has determined—

(i) that resolutions may be passed in accordance with this subsection; and

(ii) the method by which directors are to indicate agreement with a resolution proposed to be passed in accordance with this subsection; and

(b) without meeting, a majority of the directors indicate agreement with a resolution in accordance with that method; and

(c) either:

(i) all the directors had been given reasonable notice of the resolution (including its terms); or

(ii) reasonable efforts had been to made to give that notice;

the resolution is taken to have been passed at a meeting of the board on the date on which the last director indicated his or her agreement.

(7) Paragraph (6)(b) does not apply in relation to a director who would have been prevented by subsection 24(2) from deliberating on the resolution if the resolution had been put to a meeting of the board.

(8) Subject to this Act, the directors of a State-owned enterprise may regulate proceedings at board meetings as they consider appropriate.

(9) The board of a State-owned enterprise must keep written minutes of all its meetings, and of all meetings of committees of the board.

Section 24. Disclosure of interests

(1) Each director of a State-owned enterprise or a subsidiary of a State-owned enterprise must disclose in writing to each other director of the State-owned enterprise or subsidiary all interests that director has that could conflict with the proper performance of the functions of his or her office. The disclosure must be given as soon as practicable after the director becomes aware of the interest.

(2) A director of a State-owned enterprise or a subsidiary of a State-owned enterprise who has an interest in relation to a particular matter that could conflict with the

proper performance of the functions of his or her office must not perform those functions unless—

(a) the director has complied with subsection (1) in relation to the interest; and

(b) each of the other directors of the State-owned enterprise or subsidiary has consented to the director performing those functions in relation to the matter despite the possible conflict of interest.

(3) For subsections (1) and (2), it does not matter whether an interest is direct, indirect, pecuniary or non-pecuniary, and it does not matter when the interest was acquired.

(4) For the purposes of this section, if:

(a) a related party of a director has an interest; and

(b) if the director had the interest, it could conflict with the proper performance of the functions of his or her office;

the director is taken to have the interest, and this section applies accordingly.

(5) In subsection (4):

"related party" of a director means any of the following:

(a) a spouse, child or parent of the director;

(b) a corporation or company(other than the State-owned enterprise) of which the director is a director or executive officer, and a subsidiary of such a corporation or company;

(c) a corporation or company of which a spouse, child or parent of the director is a director or executive officer;

(d) if the director, or a spouse, child or parent of the director, owns, or controls the exercise of votes attached to, more than the percentage prescribed by the

regulations of shares of a corporation or company—the corporation or company;

(e) if the director and another person are parties to a contract, arrangement or understanding, whether formal or informal, written or not and whether or not enforceable:

(i) to acquire, hold, sell or otherwise deal in shares or other securities in concert; or

(ii) to exercise voting rights in a specified body corporate in concert;

the other party to the contract, arrangement or understanding.

(6) A State-owned enterprise must take reasonable steps to ensure that its employees make proper and adequate disclosure of their interests.

(7) A State-owned enterprise must record, and maintain a register of, all disclosures under this section.

Section 25. Board committees

(1) The board of a State-owned enterprise must establish the committees of the board specified in the regulations, with the functions specified in the regulations. It may also establish other committees, with specified functions, as it thinks appropriate.

(2) A committee may include a person who is not a director, but each committee of a State-owned enterprise must include at least 1director of the State-owned enterprise.

(2) A committee may determine its own procedures, but must comply with any direction of the board and the procedures must otherwise be consistent with the procedures of the board and this Act.

Section 26. Staff etc

A State-owned enterprise may, on terms its board thinks fit:

(a) employ staff;

(b) engage other persons to advise it or provide services for it; and

(c) make arrangements with the Public Service Commissioner for the services of employees of the Public Service to be made available to it on terms agreed by its board.

Section 27. Chief executive officers

(1) Each State-owned enterprise must, after consultation with the Minister, appoint a staff member to be its chief executive officer.

(2) The chief executive officer of a State-owned enterprise is, under the board of the State-owned enterprise, to manage the affairs of the State-owned enterprise.

(3) The contract of employment of the chief executive officer of a State-owned enterprise must:

(a) provide for a specified proportion of the chief executive officer's remuneration to be payable, or that the chief executive officer will be entitled to some other specified benefit, only if:

(i) the chief executive officer achieves specified performance criteria; and

(ii) the State-owned enterprise achieves specified commercial outcomes; and

(b) include provision for reviews (at least annually) of the chief executive officer's performance.

Section 28. Codes of conduct

(1) The board of a State-owned enterprise must formulate a code of conduct for the State-owned enterprise, and must review the code and its operation at least once every 3 years.

(2) A code of conduct must:

(a) be consistent with this Act and other written laws; and

(b) make provision for at least the following matters:

(i) standards of conduct of directors and employees;

(ii) actively promoting ethical behavior and encouraging reporting of unlawful or unethical behavior;

(iii) the circumstances in which directors and employees may accept gifts and other benefits, including reporting and recording them;

(d) the use by directors and employees of the State-owned enterprise's resources, including phones, cars and other property;

(e) business travel, including its relationship to personal travel;

(f) conflicts of interests, including procedures for identifying, reporting and resolving them;

(g) managing breaches of the code, including monitoring compliance and reporting breaches;

(h) the use and disclosure of information by directors and employees;

(i) reducing or eliminating improper influence on directors and employees in carrying out their functions as directors and employees of the State-owned enterprise;

(j) trading in and ownership of securities or other financial instruments by directors and employees.

(3) Each director of the State-owned enterprise, and each employee of the State-owned enterprise, must comply with the code of conduct as it applies to him or her. Failure to comply with the code is not an offence.

DIVISION 5—FINANCES OF AND REPORTS BY STATE-OWNED ENTERPRISES

Section 29. Acquisition of shares etc in State-owned enterprises

(1) The Minister may, with the approval of the Cabinet, acquire on behalf of the Republic shares in or other securities of a state-owned enterprise.

(2) Money payable by the Government for the acquisition of shares in a State-owned enterprise (whether in connection with its incorporation or otherwise) is payable out of funds appropriated by the Nitijela for the purpose.

Section 30. Government credit support for State-owned enterprises

The Minister may, with the approval of the Cabinet, give a guarantee or other credit support in respect of a liability of a State-owned enterprise.

Section 31. Financial records

(1) Each State-owned enterprise, and each subsidiary of a State-owned enterprise, must keep written financial records that:

(a) correctly record and explain its transactions and financial position and performance; and

(b) will enable true and fair financial reports about itself to be prepared and audited;

and must keep them for at least 7 years after the date of the transactions to which they relate.

(2) The records are to be kept in English, and at the State-owned enterprise's principal place of business. They may be kept electronically, but must be able to be converted into hard copy.

Section 32. Financial statements

(1) The board of a State-owned enterprise must prepare, for each financial year, a financial statement for the group consisting of the State-owned enterprise and each subsidiary of the State-owned enterprise.

(2) A financial statement must consist of:

(a) balance sheets, profit and loss accounts and other financial statements for the year, as required by and consistent with, applicable accounting standards;

(b) notes to the financial statements, as required by applicable accounting standards; and

(c) a declaration by the directors whether, in their opinion:

(i) there are reasonable grounds to believe that the State-owned enterprise and its subsidiaries will be able to pay their debts as and when they become due and payable; and

(ii) the financial statement and notes are in accordance with this Act.

(3) The financial statements and the notes together must include all information necessary to ensure that the financial report gives a true and fair view of the financial position and performance of the State-owned enterprise and the group consisting of the State-owned enterprise and its subsidiaries.

(4) In this section, "subsidiary" does not include a joint venture.

Section 33. Audits of State-owned enterprises

(1) The Auditor-General is, by this section, appointed to be perform all auditor functions, and provide all auditing services, for each State-owned enterprise and each subsidiary of a State-owned enterprise.

(2) Subsection (1) does not prevent the Auditor-General from engaging an appropriately qualified person to assist in the conduct of an audit of a State-owned enterprise or a subsidiary of a State-owned enterprise.

(3) For the purposes of subsection (1), the Auditor-General, and persons assisting the Auditor-General, have a right of access at all reasonable times to the books and financial records of a State-owned enterprise and of any subsidiary to a State-owned enterprise.

(4) A director or staff member of a State-owned enterprise or of any subsidiary to a State-owned enterprise must comply with any reasonable direction given to him or her by a person conducting an audit of the enterprise or subsidiary to:

(a) answer a question; or

(b) provide information, explanations or other assistance;

in connection with an audit of the enterprise or subsidiary being conducted by the Auditor-General.

(5) In this section, "subsidiary" does not include a joint venture.

Section 34. Annual reports and other reports by State-owned enterprises

(1) No later than 2 months after the end of the first half of each financial year, each State-owned enterprise must submit to the Minister a report of the operations of the State-owned enterprise during that half-year. The report must include:

(a) a report of the extent to which the State-owned enterprise and its subsidiaries have achieved the outcomes specified in the applicable statement of corporate intent; and

(b) any other matter that the Minister has directed the State-owned enterprise to include in the report.

(2) No later than 3 months after the end of a financial year, each State-owned enterprise must submit to the Minister a report of the operations of the State-owned enterprise and its subsidiaries during that financial year. The report must include audited financial statements required by this Act for the financial year, together with an audit report as required by applicable auditing and accounting standards.

(3) A report under subsection (2) must contain such information as is necessary to enable an informed assessment of the operations of the State-owned enterprise and its subsidiaries during the financial year to which it relates. Without limiting this, a report must include the following:

(a) a review of operations during the year of the entity reported on and the results of those operations;

(b) a report of the extent to which the State-owned enterprise and its subsidiaries have achieved the outcomes specified in the applicable statement of corporate intent;

(c) a statement of the dividend or distribution paid or to be paid to the Government in respect of the financial year;

(d) details of any CSO agreement applicable during the financial year, and the revenue received by or payable to the State-owned enterprise in respect of the agreement;

(d) details of any significant changes in the State-owned enterprise's affairs during the financial year;

(e) details of any matter or circumstance that has arisen since the end of the financial year that has significantly affected, or may significantly affect the State-owned enterprise's operations in future financial years;

(f) any other matter that the Minister has directed the State-owned enterprise to include in the report.

(4) A report under subsection (2) may omit material that, in the reasonable opinion of the board of the State-owned enterprise, is likely to result in unreasonable prejudice to the commercial interests of the State-owned enterprise or a subsidiary of the State-owned enterprise. If material is omitted, the report must say so.

(5) The Minister must table in the Nitijela a copy of each report under subsection (2) within 15 sitting after the Minister receives the report.

(6) Each State-owned enterprise must cause to be published in 1 or more newspapers generally circulating in the Republic a summary of each annual report, including a statement showing actual performance against targets set in the relevant statement of corporate intent. The summary must be in English and Marshallese. The summary must be published no later than 1 month after the report is submitted to the Minister.

DIVISION 6—MISCELLANEOUS

Section 35. Status of State-owned enterprises

Unless and to the extent that the Cabinet determines, or this or another law expressly provides:

(a) a State-owned enterprise, and the subsidiaries of a state-owned enterprise, do not represent, and cannot bind, the Government or the Republic; and

(b) a liability of a State-owned enterprise, or of a subsidiary of a State-owned enterprise, is not a liability of the Government or the Republic.

Section 36. Disclosure

(1) The Minister may give a written direction to a State-owned enterprise to disclose to the public or to a person or persons specified in the direction (which may include the

Minister) specified information or documents relating to the affairs of the State-owned enterprise or a subsidiary of the State-owned enterprise.

(2) The Minister must consult the board of the State-owned enterprise before giving such a direction, and must take into account, in deciding whether to give the direction, any matter raised by the board.

(3) Unless the direction says to the contrary, the State-owned enterprise may impose reasonable conditions on the person specified in the direction, including conditions restricting further disclosure of the information or documents.

(4) A direction under subsection (1) must not extend to information relating to an individual if the individual can be identified using the information.

(5) Compliance with a direction under subsection (1) does not give rise to any civil or criminal liability.

Section 37. Delegations

(1) The board of a State-owned enterprise may, subject to this section, by resolution, delegate to any director, the chief executive officer, any staff member or any subsidiary of the State-owned enterprise any of its powers and functions, but not this power of delegation.

(2) The chief executive officer of a State-owned enterprise may, by instrument in writing, delegate to any staff member of the State-owned enterprise all or any of the chief executive officer's powers and functions, but not this power of delegation.

(3) A delegation may be subject to conditions specified in the resolution or instrument of delegation.

(4) A delegated power or function must be exercised or performed in accordance with the resolution or instrument of delegation.

(5) A delegation may be varied or revoked at will and does not prevent the board or the chief executive officer from exercising the delegated power or performing the delegated function.

Section 38. Transition

(1) Each director of a State-owned enterprise in office on the date on which this Act takes effect continues in office, subject to this Act, until the end of his or her term of office.

(2) Each chief executive officer of a State-owned enterprise in office on the date on which this Act takes effect continues in office, subject to this Act and to his or her contract of employment, until the end of his or her term of office.

Section 39. Regulations

The Minister may, with the consent of Cabinet, make Regulations for the proper and efficient administration of this Act pursuant to the Administrative Procedures Act.

Section 40. Effective date

This Act takes effect on the date of its certification, in accordance with the Constitution of the Republic of the Marshall Islands and the Rules of Procedures of the Nitijela.

SCHEDULE 1

STATE-OWNED ENTERPRISES

(section 2(u))

Air Marshall Islands, Inc.

Kwajaleing Atoll Joint Utility Resources Inc

P.L. 2015-45

Majuro Atoll Waste Corporation
Majuro Resort
Majuro Water and Sewer Company
Marshall Islands Development Bank
Marshall Islands Ports Authority
Marshall Islands Shipping Corporation
Marshalls Energy Company, Inc
National Telecommunication Authority
Tobolar Copra Processing Authority

CERTIFICATE

I hereby certify:

1. That Nitijela Bill No.10 was passed by the Nitijela of the Republic of the Marshall Islands on the 24th day of September, 2015; and

2. That I am satisfied that Nitijela Bill No.10 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 19th day of October 2015.

P.L. 2015-45

Attest:

Hon. Donald F. Capelle	**Lena Tiobech**
Speaker	Clerk
Nitijela of the Marshall Island	Nitijela of the Marshall Islands