TITLE 52 – ASSOCIATIONS LAW
CHAPTER 1 - BUSINESS CORPORATIONS ACT

Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

BUSINESS CORPORATIONS ACT 1990

Arrangement of Sections

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TITLE 52 – ASSOCIATIONS LAW
CHAPTER 1 - BUSINESS CORPORATIONS ACT

Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

BUSINESS CORPORATIONS ACT 1990

AN ACT that is Part I of the Associations Law.

Commencement:			*September 13, 1990*
Source:			*P.L. 1990-91*
Amended By:	*P.L. 1990-93*	*P.L. 1991-129*	*P.L. 1997-34*
P.L. 1997-52	*P.L. 1998-73*	*P.L. 2000-18*	*P.L. 2005-27*
P.L. 2006-52	*P.L. 2009-15*	*P.L. 2010-35*	*P.L. 2014-31*

DIVISION 1 - GENERAL PROVISIONS

§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, 1990. **[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 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 provisions 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 or more corporations as partners shall be governed by the Revised Partnership Act (52 MIRC Part II).

(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. **[Part II]** P.L. 1990-91, §1.3; reference to "Act" in the parenthetical note was changed to "Part" for clarity]**[New subsection (5) added by P.L. 2005-27.]**

§4. Registrars of Corporations; establishment and duties.

(1) There are herewith established two 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.][subsection (1) amended by P.L. 2005-27]**

§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 provisions of this section unless otherwise expressly provided by 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) Acknowledgments. Whenever any provision of this Act requires an instrument to be acknowledged such requirement is satisfied by either:

(a) The formal acknowledgment by the person or one 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 acknowledgment 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 therefor 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 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 (10) 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 amounts 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, adding new section 10A.]**

§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 (48 MIRC, Chapter 1), 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 nonresident 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.

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, arbitrative 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 the 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.

(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 of 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 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 principle 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.

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 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 (l)(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 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.

Each Registrar of Corporations shall keep an 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

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 at 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 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 hooks 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 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 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 provisions 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 by-laws 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 so to do.

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

(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 or more classes or one 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 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 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 the 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, or 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 transferrable 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 not 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 therefor 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 or 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 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;

(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 certificates are issued.

(7) Lost, stolen or destroyed stock certificate, issuance of new certificate or uncertificated shares. A corporation may issue a new certificate of stock 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 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. 1990-1, §5.13.]**

DIVISION 6 - DIRECTORS AND MANAGEMENT

§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. 1900- 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.

(1) 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.

(2) 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

(3) 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.][Subsection (3) inserted by P.L. 2010-35; renumbered to consistent with the codification].**

§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.][subsection (1) amended by P.L. 2005-27]**

§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 of 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 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 communications 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. 1990-1, §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 or more of its directors, or between a corporation and any other corporation, firm, association or other entity in which one 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 a manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing contained in this section 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 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, §6.1, 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 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.

(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 by-laws. 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 otherwise specifically provided in this Act. If the annual meeting for election of directors is not held on the date designated therefor, 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 therefor, 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 by 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 by 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 a 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. 1990-1, §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 therefor 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 becomes revocable, in a case provided for in subsections (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 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 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, 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 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 of 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 of 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 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 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 interdealer quotation system.**[P.L. 1990-91, §7.15.][P.L. 2006-52.]**

§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 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 or 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 (US$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.

(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) 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.

(4) Retention period. All accounts, documents, and records required to be kept, retained, or maintained under this Section shall be kept, retained, or maintained for a minimum of five (5) years.

(5) Failure to maintain records. Any person who knowingly or recklessly fails to keep, retain, or maintain accounts, document, or records as required under this Act shall be liable to a fine not exceeding $5,000, or revocation of the operation's articles of incorporation and dissolution, or both. **[P.L. 1990-91, §8.1; amended by P.L. 2000-18, §80.][Amended by P.L. 2014-31 by adding subsections 4 and 5 to this Section]**

§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 corporation 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 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.

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 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 verity 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 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 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) 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) 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) 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 incorporators, 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) 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) 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, §2(e).]**

DIVISION 10 - MERGER OR CONSOLIDATION

§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 consolidations.

(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 (two) 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 cash 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 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 law 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 therefor. 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.]**

§l00. 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 share 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.][Paragraph (c) amended by P.L. 2009-15]**

§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 or 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 to 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.

(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 a dissolution, no meeting of shareholders shall 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 were outstanding and entitled to vote upon a 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 the shares of the corporation which were 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 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 a 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; amended by P.L. 2000-18, §102.][New subsection (7) added by P.L. 2005-27.]**

§103. Judicial dissolution.

A shareholders' meeting to consider adoption of a resolution to institute a special proceeding on any of the grounds specified below, may be called, 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 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 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; amended by P.L. 2000-18, §104; subsection (1) amended by P.L. 2005-27, §2(g).]**

§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 the 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 domestic 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 (4) 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 counterclaim.

(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 barred 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.

(1) Authorizations 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 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. 1990-9l, §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 5) .

(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 Advisors' Board Act, 1987, in subsection (1) was changed to reflect that Act was repealed and reference was made to the current Act governing licensing of foreign entities.][See footnote 1 below]**

§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 by 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, an 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.

(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; and

(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 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 1l9(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 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 the 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.

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.][Paragraph (a) amended by P.L. 2005-27, §2(h).]**

§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(l) 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 subsections (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 any 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 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 in the Republic 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-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.][Subsections(1), (5) and (6) amended by P.L. 2005-27, §(i).]**

§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 sub-section (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.

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. 1991-129, §2, adding new section.]**

DIVISION 16 - MISCELLANEOUS

§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 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 partnership interests 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 interests 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 is 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 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 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 will 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][(2)(c) amended by P.L. 2005-27, §2(j).]**