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P.L. 2015-45

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1 AN ACT

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

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

8 PART VI

9 DIVISION 1 - PRELIMINARY

10 **Section 1. Short title**

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

12 **Section 2. Definitions**

13 (1) In this Act:

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

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

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

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

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

- 1 (f) “corporation” means a body corporate incorporated or organized under the  
 2 Business Corporations Act;
- 3 (g) “CSO agreement” means an agreement referred to in section 15;
- 4 (h) “CSO proposal” means a proposal referred to in section 15;
- 5 (i) “Deputy Chairman”, of a State-owned enterprise, means the director of the  
 6 State-owned enterprise holding office as Deputy Chairman under subsection  
 7 18(5);
- 8 (j) “director” means:
- 9 (i) for a corporation or an LLC—a person who is a director of the  
 10 corporation or the company for the purposes of the Business  
 11 Corporations Act or the LLC Act;
- 12 (ii) for a body(not a corporation or an LLC) —a member of its council or  
 13 governing body;
- 14 (k) “enabling law”, for a State-owned enterprise incorporated by or under an Act,  
 15 means the Act by or under which it is brought into existence (but not the  
 16 Business Corporations Act or the LLC Act);
- 17 (l) “executive officer”, of a body corporate, means:
- 18 (i) the chief executive officer of the body corporate (however described);  
 19 and
- 20 (i) any other employee of the body corporate involved in the management  
 21 of the body corporate;
- 22 (m) “financial year”, for a State-owned enterprise, means a period that is a  
 23 financial year for accounting purposes for the State-owned enterprise;
- 24 (n) “LLC” means a limited liability company under the LLC Act;

1 (o) “LLC Act” means the Limited Liability Companies Act 1996 (52 MIRC Part  
2 IV);

3 (p) “Minister” means the Minister to whom this Act is allocated;

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

6 (r) “principal business”, of a State-owned enterprise, means the business or  
7 undertaking identified as the State-owned enterprise’s principal business in:

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

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

10 (iii) the regulations;

11 (s) “public official” means each of the following:

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

13 (ii) a Minister;

14 (iii) an employee of the Public Service;

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

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

19 (v) “subsidiary”, of a State-owned enterprise, means:

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

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

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

- 1 (a) holds at least 50% of the shares of the corporation or LLC; or  
2 (b) has the power to exercise, or control the exercise, of voting rights attached to,  
3 or has the power to dispose of, or control the disposition of, at least 50% of the  
4 shares of the corporation or LLC;  
5 and in applying this definition, have regard to the practical effect, rather than the  
6 legal form, of the arrangements concerned.

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

- 9 (a) the Government or a Minister has power to appoint a person to be a member or  
10 director of the body corporate; or  
11 (b) the consent or approval of the Government or a Minister is needed for the  
12 appointment of a person to be a member or director of the body corporate; or  
13 (c) the Government or a Minister otherwise has the capacity to determine the  
14 outcome of decisions about the body corporate's management or its financial  
15 and operating policies.

16 **Section 3. Act binds Republic**

- 17 (1) This Act binds the Government and the Republic of the Marshall Islands.  
18 (2) This Act binds each State-owned enterprise.

19 **Section 4. Relationship with Business Corporations Act and other laws**

- 20 (1) This Act applies in addition to the Business Corporations Act, the LLC Act and any  
21 other written law (including, for a State-owned enterprise, its enabling law).  
22 (2) If there is an inconsistency between a provision of this Act and a provision of the  
23 Business Corporations Act, the LLC Act or another written law, then, unless the  
24 written law expressly says to the contrary, the provision of this Act prevails.

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

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

**Section 5. Formation of State-owned enterprises**

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

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

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

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

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

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

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

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

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

9 **Section 7. Powers of Minister**

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

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

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

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

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

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

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

- 1           (a) the members of a State-owned enterprise pass a resolution for the purposes of  
2           the State-owned enterprise's articles or any written law by the Minister  
3           recording the terms of the resolution in a document and signing the document;  
4           and  
5           (b) any requirement of a written law that the resolution be lodged with a body or  
6           officer is satisfied by lodging the signed document; and  
7           (c) any requirement of the State-owned enterprise's articles or any written law for  
8           the giving of notice of the resolution does not apply.

9    **Section 8. Shares not transferable etc without prior Cabinet approval**

- 10 (1) A share in or other security of a State-owned enterprise cannot be assigned or  
11 transferred without the prior approval of the Cabinet.
- 12 (2) A security interest (as defined in the Secured Transactions Act of 2007) cannot be  
13 created in a share in or other security of a State-owned enterprise.
- 14 (3) A security interest (as defined in the Secured Transactions Act of 2007) cannot be  
15 created in property of a State-owned enterprise unless:  
16       (a) it is created in the ordinary course of the State-owned enterprise's ordinary  
17       business; or  
18       (b) the Minister agrees in writing.
- 19 (4) A share in or other security of a State-owned enterprise cannot be the subject of a  
20 trust unless the Minister agrees in writing.
- 21 (5) This section applies only to shares and securities of State-owned enterprises that are  
22 owned by the Republic or the Government.

1 **Section 9. Powers of State-owned enterprises**

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

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 7 **DIVISION 3 —COMMERCIAL OBJECTIVES AND PLANNING**

8 **Section 10. Primary objectives of State-owned enterprises**

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

- 10 (a) to be a successful business and, to this end, to be at least as profitable and
- 11 efficient as comparable businesses; and
- 12 (b) to maximize the net worth of the public investment in the State-owned
- 13 enterprise.

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

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

18 **Section 11. Statements of corporate intent**

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

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



- 1 (a) it has given the Minister a draft of the statement, no later than 2 months before  
2 the start of the financial year to which the statement relates; and
- 3 (b) it has taken into account any comments made by the Minister in relation to the  
4 draft statement.
- 5 (3) A State-owned enterprise's statement of corporate intent for a financial year must  
6 include the following matters:
- 7 (a) a description of the principal business of the State-owned enterprise;
- 8 (b) a statement of the commercial objectives of the State-owned enterprise,  
9 demonstrating how those objectives are consistent with the primary objectives;
- 10 (c) a description of the nature and scope of the activities that the State-owned  
11 enterprise intends to undertake;
- 12 (d) a summary of the strategies that the State-owned enterprise will adopt to  
13 achieve its commercial objectives and the primary objective; and
- 14 (e) a statement or summary of the targets or benchmarks to be used to measure the  
15 State-owned enterprise's performance (including in respect of revenue, net  
16 profit after tax and return on equity) against its commercial objectives and the  
17 primary objective;
- 18 (f) a statement of any current and anticipated borrowing by the State-owned  
19 enterprise or a subsidiary of the State-owned enterprise;
- 20 (g) a statement of the accounting policies to be applied by the State-owned  
21 enterprise in its financial records and reports;
- 22 (h) a summary indicative balance sheet and profit and loss statement for the group  
23 consisting of the State-owned enterprise and its subsidiaries, reflecting the  
24 directors' expectations for the financial year;

- 1 (i) a statement of the proposed dividend and distribution policy of the State-
- 2 owned enterprise;
- 3 (j) a description of any applicable CSO agreement and the impact of that
- 4 agreement on the financial returns expected to be achieved by the State-owned
- 5 enterprise during the period to which the statement relates;
- 6 (k) a description of the kind of information to be provided to the Minister,
- 7 including under section 6; and
- 8 (l) any other matter that the Minister directs be included in the statement.
- 9 (4) If the State-owned enterprise has a subsidiary, the statement of corporate intent must
- 10 include corresponding information about the operations of the subsidiary, and the
- 11 operations of the group comprising the State-owned enterprise and all its
- 12 subsidiaries.
- 13 (5) Without limiting paragraph (3)(1), the Minister may require that a statement of
- 14 corporate intent for a State-owned enterprise or a subsidiary of a State-owned
- 15 enterprise include specified provision for:
- 16 (a) complying with an obligation arising from any international agreement or
- 17 arrangement binding on the Republic of the Marshall Islands; or
- 18 (b) to implement any policy of the Cabinet in relation to international relations,
- 19 but the Minister must consult the board of the State-owned enterprise before giving
- 20 the direction.
- 21 (6) A State-owned enterprise may amend its statement of corporate intent for a financial
- 22 year at any time during the year, but must give the Minister a draft of the
- 23 amendment at least 2 months before it is adopted, and take into account any
- 24 comments made by the Minister in relation to the proposed amendment.

- 1 (7) A State-owned enterprise must give the Minister a copy of its statement of corporate  
 2 intent, and of any amendment to its statement of corporate intent, within 14 days  
 3 after the board adopts or makes it.
- 4 (8) The Minister must table in the Nitijela a copy of each statement of corporate intent,  
 5 and each amendment to a statement of corporate intent, within 15 sitting days after  
 6 the Minister receives it.
- 7 (9) Each State-owned enterprise and each subsidiary of a State-owned enterprise  
 8 must strive to give effect to, and act consistently with, its current statement of  
 9 corporate intent.

10 **Section 12. Business plans**

- 11 (1) The board of each State-owned enterprise must develop and adopt a business plan by  
 12 the start of each financial year. The business plan must cover the financial year.
- 13 (2) A board must not adopt a business plan unless:
- 14 (a) it has given the Minister a draft of the plan, no later than 3 months before the  
 15 start of the financial year to which the statement relates; and
- 16 (b) it has taken into account any comments made by the Minister in relation to the  
 17 draft plan.
- 18 (3) A draft business plan must contain information on the operations, future strategic  
 19 direction and financial projections of the State-owned enterprise sufficient to enable  
 20 the Minister to form a view that the business plan demonstrates that the State-owned  
 21 enterprise will achieve the primary objectives.
- 22 (4) If the State-owned enterprise has a subsidiary, the business plan must include  
 23 information about the operations of the subsidiary, and the operations of the group  
 24 comprising the State-owned enterprise and all its subsidiaries.