CHAPTER 4.

LIMITED LIABILITY COMPANY ACT

ARRANGEMENT OF SECTIONS

Commencement: September 13, 1990
Source: P.L. 1990-91
P.L. 1996-14
P.L. 1997-56
P.L. 1998-65
P.L. 2000-14
P.L. 2005-29
P.L. 2009-32
P.L. 2014-31

DIVISION 1

PRELIMINARY; GENERAL

§1. Short title.

This Act may be cited as the Limited Liability Company Act of 1996. **[P.L. 1996-14, §1.]**

§2. Definitions.

As used in this Act unless the context otherwise requires:

(1) "bankruptcy" means an event that causes a person to cease to be a member as provided in section 21 of this Act;

(2) "certificate of formation" means the certificate referred to in section 9 of this Act, and the certificate as amended;

(3) "contribution" means any cash, property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services, which a person contributes to a limited liability company in his capacity as a member;

(4) "foreign limited liability company" means a limited liability company formed under the laws of any foreign country or other foreign jurisdiction and denominated as such under the laws of a foreign country or other foreign jurisdiction;

(5) "High Court" means the High Court of the Republic of the Marshall Islands;

(6) "knowledge" means a person's actual knowledge of a fact, rather than the person's

constructive knowledge of the fact;

(7) "limited liability company" and "domestic limited liability company" means a limited liability company formed under the laws of the Republic of the Marshall Islands and having one (1) or more members;

(8) "limited liability company agreement" means any agreement, written or oral, of the member or members as to the affairs of a limited liability company and the conduct of its business. A written limited liability company agreement or another written agreement or writing:

(a) may provide that a person shall be admitted as a member of a limited liability company, or shall become an assignee of a limited liability company interest or other rights or powers of a member to the extent assigned, and shall become bound by the limited liability company agreement:

(i) if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest) executes the limited liability company agreement or any other writing evidencing the intent of such person to become a member or assignee; or

(ii) without such execution, if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company 'interest) complies with the conditions for becoming a member or assignee as set forth in the limited liability company agreement or any other writing; and

(b) shall not be unenforceable by reason of its not having been signed by a person being admitted as a member or becoming an assignee as provided in subsection (a) of this section, or by reason of its having been signed by a representative as provided in this Act;

(9) "Limited liability company interest" means a member's share of the profits and losses of a limited liability company and a member's right to receive distributions of the limited liability company's assets;

(10) "liquidating trustee" means a person carrying out the winding up of a limited liability company;

(11) "manager" means a person who is named as a manager of a limited liability company in, or designated as a manager of a limited liability company pursuant to, a limited liability company agreement or similar instrument under which the limited liability company is formed;

(12) "member" means a person who has been admitted to a limited liability company as a member as provided in section 18 of this Act or in the case of a foreign limited liability company, in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is organized;

(13) "non-resident limited liability company" means either a domestic limited liability company or a foreign limited liability company not doing business in the Marshall Islands. "Not doing business in the Marshall Islands" will have the same meaning as found in the Marshall Islands Business Corporations Act (BCA), 52 MIRC Part I[1];

(14) "person" means a natural person, partnership (whether general or limited and whether domestic or foreign), limited liability company, foreign limited liability company, trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity;

(15) "personal representative" means, as to a natural person, the executer, administrator, guardian, conservator, or other legal representative thereof and, as to a person other than a natural person, the legal representative or successor thereof;

(16) "publicly traded limited liability company interest" means any limited liability company interest that is:

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1 [**Modified to reflect correct citation][Rev2003]**

(a) listed on a securities exchange; or

(b) authorized for quotation on an inter-dealer quotation system of a registered national securities association;

(17) "Registrar of Corporations" means the Registrar of domestic limited liability companies. The Registrar for resident limited liability companies is the Registrar of Corporations responsible for resident domestic and authorized foreign corporations. The Registrar of Corporations for non-resident domestic limited liability companies shall be the Trust Company of the Marshall Islands;

(18) "resident domestic limited liability company" means a domestic limited liability company doing business in the Marshall Islands. **[P.L. 1996-14, §2; amended byP.L. 1997-54, §2; amended by P.L. 1998-65, §2; amended by P.L. 2000-14, §2.]**

§3. Name set forth in certificate.

The name of each limited liability company as set forth in its certificate of formation:

(1) shall contain the words "Limited Liability Company" or the abbreviation "L.L.C.";

(2) may contain the name of a member or manager;

(3) shall be such as to distinguish it upon the records in the Office of the Registrar of Corporations from the name of any corporation, partnership, limited partnership, business trust, foreign maritime entity or limited liability company reserved, registered, formed or organized under the laws of the Republic of the Marshall Islands or qualified to do business or registered as a foreign corporation, foreign limited partnership or foreign limited liability company in the Republic of the Marshall Islands. **[P.L. 1996-14, §3.]**

§4. Reservation of name.

The exclusive right to the use of a name may be reserved by:

(1) any person intending to organize a limited liability company under this Act and to adopt that name;

(2) any domestic limited liability company or any foreign limited liability company registered in the Republic of the Marshall Islands which, in either case, proposes to change its name;

(3) any foreign limited liability company intending to register in the Republic of the Marshall Islands and adopt that name; and

(4) any person intending to organize a foreign limited company and intending to have it registered in the Republic of the Marshall Islands and adopt that name. **[P.L. 1996-14, §4.]**

§5. Service of process; registered agent.

(1) *Registered agent for service of process.*

(a) *Registered agent.* Every domestic limited liability company or foreign limited liability company authorized to do business in the Marshall Islands under the provision of section 50 of this Act shall designate a registered agent in the Marshall Islands upon whom process against such limited liability company or any notice or demand required or permitted by law to be served may be served. The agent for a limited liability company having a place of business in the Marshall Islands shall be a resident domestic corporation having a place of business in the Marshall Islands or a natural person, resident of and having a business address in the Marshall Islands. The registered agent for a domestic or foreign limited liability company not having a place of business in the Marshall Islands shall be the Trust Company of the Marshall Islands, Inc. A domestic limited liability company or an authorized foreign limited liability company which fails to maintain a registered agent shall be dissolved or its authority to do business or registration shall be revoked or its certificate canceled, as the case may be.

(b) *Manner of service.*

(i) *Domestic limited liability company.* Service of process on a domestic limited liability company may be made on the registered agent in the manner provided by law for the service of summons as if the registered agent were a defendant.

(ii) Non-resident domestic limited liability company.

(1) Service of process on a non-resident domestic limited liability company may be made on the registered agent in the manner provided by law for the service of summons as if the registered agent were a defendant; or

(2) Service of process may be sent to the registered agent via registered mail or courier as if the registered agent were a defendant.

(c) *Resignation by registered agent.* Any registered agent of a limited liability company may resign as such agent upon filing a written notice thereof with the Registrar of Corporations, provided however that the registered agent shall notify the limited liability company not less than thirty (30) days prior to such filing and resignation. The registered agent shall mail or cause to be mailed to the limited liability company at the last known address of the limited liability company, within or without the Marshall Islands or at the last known address of the person at whose request the limited liability company was formed, notice of the resignation of the agent. No designation of a new registered agent shall be accepted for filing until all charges owing to the former registered agent shall have been paid.

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

(e) *Termination of designation.* The designation of a registered agent shall terminate upon filing a notice of resignation provided that the registered agent certifies that the limited liability company was notified not less than thirty (30) days prior to such filing as provided by subsection (1)(c) of this section.

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

(g) *Liability of registered agent; dismissal of action against.* A registered agent for service of process acting pursuant to the provisions of this section shall not be liable for the actions or obligations of the limited liability company for whom it acts. The registered agent shall not be a party to any suit or action against the limited liability company or arising from the acts or obligations of the limited liability company. If the registered agent is named in any such action, the action shall be dismissed, without prejudice to the plaintiff to bring an action against the correct party.

(2) *Attorney-General as agent for service of process.*

(a) *When Attorney-General is agent for service.* Whenever a domestic limited liability

company or foreign limited liability company authorized to do business in the Marshall Islands fails to maintain a registered agent in the Marshall Islands, or whenever its registered agent cannot with reasonable diligence be found at his business address, then the Attorney-General shall be an agent of such limited liability company upon whom any process or notice or demand required or permitted by law to be served may be served.

(b) *Manner of service.* Service on the Attorney-General as agent of a domestic or foreign limited liability company authorized to do business shall be made by personally delivering to and leaving with him or his deputy or with any person authorized by the Attorney-General to receive such service, at the office of the Attorney-General in Majuro Atoll, duplicate copies of such process together with the statutory fee. The Attorney-General shall promptly send one of such copies by registered mail return receipt requested, to such limited liability company at the business address of its registered agent, or if there is no such office, the Attorney-General shall mail such copy, in the case of a resident domestic limited liability company, in care of any member named in its certificate of formation at his address stated therein, or in the case of a nonresident domestic limited liability company, at the address of the limited liability company without the Marshall Islands, or if none, at the last known address of a person at whose request the limited liability company authorized to do business, to such limited liability company at its address as stated in its application for authority to do business.

(3) *Service of process on foreign limited liability company not authorized to do business.*

(a) *Attorney-General as agent to receive service.* Every foreign limited liability company not authorized to do business which itself or through an agent does any business in the Marshall Islands or does any other act in the Marshall Islands which under section 51 of the Judiciary Act, 27 MIRC 2, confers jurisdiction on the Marshall Islands courts as to claims arising out of such act, is deemed to have designated the Attorney-General as its agent upon whom process against it may be served, in any action or special proceeding arising out of or in connection with the doing of such business or the doing of such other act. Such process may issue in any court in the Marshall Islands having jurisdiction of the subject matter.

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

(i) delivered personally without the Marshall Islands to such foreign limited liability company by a person and in the manner authorized to serve process by law of the jurisdiction in which service is made; or

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

(c) *Proof of service.* Proof of service shall be by affidavit of compliance with this section filed, together with the process, within thirty (30) days after such service with the clerk of the court in which the action or special proceeding is pending. If a copy of the process is mailed in accordance with this section, there shall be filed with the affidavit of compliance either the return receipt signed by such foreign limited liability company or other official proof of delivery or, if acceptance was refused, the original envelope with a notation by the postal authorities that acceptance was refused. If acceptance was refused, a copy of the process together with notice of the mailing by registered mail and refusal to accept

shall be promptly sent to such foreign corporation at the same address by ordinary mail and the affidavit of compliance shall so state. Service of process shall be complete ten (10) days after such papers are filed with the clerk of the court. The refusal to accept delivery of the registered mail or to sign the return receipt shall not affect the validity of the service and such foreign limited liability company refusing to accept such registered mail shall be charged with knowledge of the contents thereof.

(4) *Records and certificates of the Attorney-General.* The Attorney-General shall keep a record of each process served upon the Attorney-General under this division, including the date of service. It shall, upon request made within five *(5)* years of such service. issue a certificate under its seal certifying as to the receipt of the process by an authorized person, the date and place of such service, and the receipt of the statutory fee.

(5) *Limitation on effect of Division.* Nothing contained in this division shall affect the validity of service of process on a corporation effected in any other manner permitted by law. **[P.L. 1996-14, §5.]**

§6. Nature of business permitted; powers.

(1) A limited liability company may carry on any lawful business, purpose or activity with the exception of the business of granting policies of insurance or assuming insurance risks, trust services or banking.

(2) A limited liability company shall possess and may exercise all the powers and privileges granted by this Act or by any other law or by its limited liability company agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the limited liability company. **[P.L. 1996-14, §6.]**

§7.Business transactions of member or manager with the limited liability company.

Except as provided in a limited liability company agreement, a member or manager may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume one or more specific obligations of, provide collateral for, and transact other business with a limited liability company and, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a member or manager. **[P.L. 1996-14, §7.]**

§8. Indemnification.

Subject to such standards and restrictions, if any, as are set forth in its limited liability company agreement, a limited liability company may, and shall have the power to, indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever. **[P.L. 1996-14, §8.]**

DIVISION 2.

FORMATION; CERTIFICATE OF FORMATION

§9. Certificate of formation.

(1) In order to form a limited liability company, one (1) or more authorized persons must execute a certificate of formation. The certificate of formation shall be filed in the Office of the Registrar of Corporations and set forth:

(a) the name of the limited liability company;

(b)the name and address of the registered agent for service of process required to be maintained by section 5 of this Act;

(c) if the limited liability company is to have a specific date of dissolution, the latest date on which the limited liability company is to dissolve but if no such time is set forth in the certificate of formation, then the limited liability company shall have perpetual existence; and

(d) any other matters the members determine to include therein.

(2) A limited liability company is formed at the time of the filing of the initial certificate of formation in the Office of the Registrar of Corporations or at any later date or time specified in the certificate of formation if, in either case, there has been substantial compliance with the requirements of this section. A limited liability company formed under this Act shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited liability company's certificate of formation.

(3) The filing of the certificate of formation in the Office of the Registrar of Corporations shall make it unnecessary to file any other documents under this section. **[P.L. 1996-14, §9.][Subsection (1)(c) is amended by P.L. 2009-32]**

§10. Amendment to certificate of formation.

(1) A certificate of formation is amended by filing a certificate of amendment thereto in the Office of the Registrar of Corporations. The certificate of amendment shall set forth:

(a) the name of the limited liability company and date of the original filing of the certificate of formation; and

(b) the amendment to the certificate of formation.

(2) A manager or, if there is no manager, then any member who becomes aware that any statement in a certificate of formation is false in any material respect, shall promptly amend the certificate of formation.

(3) A certificate of formation may be amended at any time for any proper purpose.

(4) Unless otherwise provided in this division or unless a later effective date or time (which shall be a date or time certain) is provided for in the certificate of amendment, a certificate of amendment shall be effective at the time of its filing with the Registrar of Corporations. **[P.L. 1996-14, §10.]**

§11. Cancellation of certificate.

A certificate of formation shall be canceled upon the dissolution and completion of winding up of a limited liability company, or at any other time that there are no members, or as provided in section 5 of this Act, or upon the filing of a certificate of merger or consolidation if the limited liability company is not the surviving or resulting entity in a merger or consolidation, or upon the conversion of a domestic limited liability company approved in accordance with section 80 of this Act. A certificate of cancellation shall be filed in the Office of the Registrar of Corporations to accomplish the cancellation of a certificate of formation upon the dissolution and the completion of winding up of a limited liability company or at any other time there are no members or upon the conversion of a domestic limited liability company approved in accordance with section 80 of this Act and shall set forth:

(1) the name of the limited liability company;

(2) the date of filing of its certificate of formation;

(3) the reason for filing a certificate of cancellation;

(4) the future effective date (which shall be a date or time certain) of cancellation if it is not to be effective upon the filing of the certificate;

(5) in the case of the conversion of a domestic limited liability company, the name of the entity to which the domestic limited liability company has been converted; and,

(6) any other information the person filing the certificate of cancellation determines. **[P.L. 1996-4, §11; amended by P.L. 1998-65, §11; amended by P.L. 2000-14, §11.]**

§12. Execution.

(1) Each certificate required by this Act to be filed in the Office of the Registrar of Corporations shall be executed by one or more authorized persons.

(2) Unless otherwise provided in a limited liability company agreement, any person may sign any certificate or amendment thereof or enter into a limited liability company agreement or amendment thereof by an agent, including an attorney-in-fact. An authorization, including a power

of attorney, to sign any certificate or amendment thereof or to enter into a limited liability company agreement or amendment thereof need not be in writing, need not be sworn to, verified or acknowledged, and need not be filed in the Office of the Registrar of Corporations, but if in writing, must be retained by the limited liability company.

(3) The execution of a certificate by an authorized person constitutes an oath or affirmation, under the penalties of perjury that, to the best of the authorized person's knowledge and belief, the facts stated therein are true. **[P.L. 1996-14, §12.]**

§13. Execution, amendment or cancellation by judicial order.

(1) If a person required to execute a certificate required by this Act fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the High Court of the Republic to direct the execution of the certificate. If the Court finds that the execution of the certificate is proper and that any person so designated has failed or refused to execute the certificate, it shall order the Registrar of Corporations to record an appropriate certificate.

(2) If a person required to execute a limited liability company agreement or amendment thereof fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the High Court of the Republic to direct the execution of the limited liability company agreement or amendment thereof. If the Court finds that the limited liability company agreement or amendment thereof should be executed and that any person required to execute the limited liability company agreement or amendment thereof has failed or refused to do so, it shall enter an order granting appropriate relief. **[P.L. 1996-14, §13.]**

§14. Filing.

(1) The original signed copy of the certificate of formation and of any certificates of amendment, correction, amendment of a certificate of merger or consolidation, termination of a merger or consolidation or cancellation (or of any judicial decree of amendment or cancellation), and of any certificate of merger or consolidation, any restated certificate, any certificate of conversion to limited liability company, any certificate of transfer, and of any certificate of limited liability company domestication shall be delivered to the Registrar of Corporations. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Any signature on any certificate authorized to be filed with the Registrar of Corporations under any provision of this Act may be a facsimile. Unless the Registrar of Corporations finds that any certificate does not conform to law, upon receipt of all filing fees required by law he shall:

(a) certify that the certificate of formation, the certificate of amendment, the certificate of correction, the certificate of amendment of a certificate of merger or consolidation, the certificate of cancellation (or of any judicial decree of amendment or cancellation), the certificate of merger or consolidation, the restated certificate, the certificate of conversion to limited liability company, the certificate of transfer, or the certificate of limited liability domestication has been filed in the Registrar's office by endorsing upon the original certificate the word "Filed". This endorsement is conclusive of the date of its filing in the absence of actual fraud;

(b) file and index the endorsed certificate; and,

(c) prepare and return to the person who filed it or his representative a copy of the original signed instrument, similarly endorsed, and shall certify such copy as a true copy of the original signed instrument.

(2) Upon the filing of a certificate of amendment (or judicial decree of amendment) a certificate of correction or restated certificate in the Office of the Registrar of Corporations, or upon the future effective date or time of a certificate of amendment (or judicial decree thereof) or restated certificate, as provided for therein, the certificate of formation shall be amended or restated as set forth therein. Upon the filing of a certificate of cancellation (or a judicial decree thereof), or a certificate of merger or consolidation which acts as a certificate of cancellation, or upon the future effective date or time of a certificate of cancellation (or a judicial decree thereof) or of a certificate

of merger or consolidation which acts as a certificate of cancellation, or a certificate of transfer as provided for therein, the certificate of formation is canceled. Upon the filing of a certificate of limited liability company domestication or upon the future effective date or time of a certificate of limited liability company domestication, the entity filing the certificate of limited liability company domestication is domesticated as a limited liability company with the effect provided in section 76 of this Act. Upon the filing of a certificate of conversion to limited liability company or upon the future effective date or time of a certificate of conversion to limited liability company, the entity filing the certificate of conversion to limited liability company is converted to a limited liability company with the effect provided in section 78 of this Act. Upon the filing of a certificate of amendment of a certificate of merger or consolidation, the certificate of merger or consolidation in the certificate of amendment of a certificate of merger or consolidation is amended. Upon the filing of a certificate of termination of a merger or consolidation, the certificate of merger or consolidation identified in the certificate of termination of a merger or consolidation is terminated.

(3) A fee as set forth in section 68 of this Act, shall be paid at the time of the filing of a certificate of formation, a certificate of amendment, a certificate of correction, a certificate of amendment of a certificate of merger or consolidation, a certificate of termination of a merger or consolidation, a certificate of cancellation, a certificate of merger or consolidation, a restated certificate, a certificate of conversion to limited liability company, a certificate of transfer, or a certificate of limited liability domestication.

(4) A fee as set forth in section 68 of this Act shall be paid for a certified copy of any document on file as provided for by this division.

(5) *Correction of filed instruments.* Any instrument relating to a domestic or foreign limited liability company and filed with the Registrar of Corporations under this Act may be corrected with respect to any error apparent on the face or defect in the execution thereof by filing with the Registrar of Corporations a certificate of correction, executed and acknowledged in the manner required for the original instrument. The certificate of correction shall specify the error or defect to be corrected and shall set forth the portion of the instrument in correct form. The corrected instrument when filed shall be effective as of the date the original instrument was filed. In lieu of filing a certificate of correction, a certificate may be corrected by filing with the Registrar of Corporations a corrected certificate which shall be executed and filed as if the corrected certificate were the certificate being corrected, and a fee equal to the fee payable to the Registrar of Corporations if the certificate being corrected were then being filed shall be paid and collected by the Registrar of Corporations for use of the Marshall Islands in connection with the filing of the corrected certificate. The corrected certificate shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected and shall set forth the entire certificate in corrected form. A certificate corrected in accordance with this section shall be effective as of the date the original certificate was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons the certificate as corrected shall be effective from the filing date. **[P.L. 1996-14, §14: amended by P.L. 2000-14, §14.]**

§15. Notice.

The fact that a certificate of formation is on file in the Office of the Registrar of Corporations is notice that the entity formed in connection with the filing of the certificate of formation is a limited liability company formed under the laws of the Republic of the Marshall Islands and is notice for all other facts set forth therein which are required to be set forth in a certificate of formation by sections 9(l)(a), (b), (c) and (d) of this division. **[P.L. 1996-14, §15.]**

§16. Restated certificate.

(1) A limited liability company may, whenever desired, integrate into a single instrument all of the provisions of its certificate of formation which are then in effect and operative as a result of there having theretofore been filed with the Registrar of Corporations one or more certificates or other instruments pursuant to any of the sections referred to in this Act and it may at the same time

also further amend its certificate of formation by adopting a restated certificate of formation.

(2) If a restated certificate of formation merely restates and integrates but does not further amend the initial certificate of formation, as theretofore amended or supplemented by any instrument that was executed and filed pursuant to any of the sections in this Act, it shall be specifically designated in its heading as a "Restated Certificate of Formation" together with such other words as the limited liability company may deem appropriate and shall be executed by an authorized person and filed as provided in section 14 of this division in the Office of the Registrar of Corporations. If a restated certificate restates and integrates and also further amends in any respect the certificate of formation, as theretofore amended or supplemented, it shall be specifically designated in its heading as an "Amended and Restated Certificate of Formation" together with such other words as the limited liability company may deem appropriate and shall be executed by at least one authorized person, and filed as provided in section 14 of this division in the Office of the Registrar of Corporations.

(3) A restated certificate of formation shall state, either in its heading or in an introductory paragraph. the limited liability company's present name, and, if it has been changed. the name under which it was originally filed, and the date of filing of its original certificate of formation with the Registrar of Corporations. and the future effective date or time (which shall be a date or time certain) of the restated certificate. A restated certificate shall also state that it was duly executed and is being filed in accordance with this section. If a restated certificate only restates and integrates and does not further amend a limited liability company's certificate of formation as theretofore amended or supplemented and there is no discrepancy between those provisions and the restated certificate, it shall state that fact as well.

(4) Upon the filing of a restated certificate of formation with the Registrar of Corporations, or upon the future effective date or time of a restated certificate of formation as provided for therein, the initial certificate of formation, as theretofore amended or supplemented, shall be superseded; thenceforth, the restated certificate of formation, including any further amendment or changes made thereby, shall be subject to any other provision of this division, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

(5) Any amendment or change effected in connection with the restatement and integration of the certificate of formation shall be subject to any other provision of this division, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change. **[P.L. 1996-14, §16.]**

§17. Merger and consolidation.

(1) As used in this section, "other business entity" means a corporation, trust, or any other unincorporated business, including a partnership (whether general or limited), and a foreign limited liability company, but excluding a domestic limited liability company.

(2) Pursuant to an agreement of merger or consolidation, one or more domestic limited liability companies may merge or consolidate with or into one or more domestic limited liability companies or one or more other business entities formed or organized under the laws of the Republic of the Marshall Islands or any foreign country or other foreign jurisdiction or any combination thereof, with such domestic limited liability company or other business entity as the agreement shall provide being the surviving or resulting domestic limited liability company or other business entity. Unless otherwise provided in the limited liability company agreement, a merger or consolidation shall be approved by each domestic limited liability company which is to merge or consolidate by the members or, if there is more than one (1) class or group of members, then by each class or group of members, in either case, by members who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members or by the members in each class or group, as appropriate. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic limited liability company or other business entity which is a constituent party to the merger or consolidation may be

exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting domestic limited liability company or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a domestic limited liability company or other business entity which is not the surviving or resulting limited liability company or other business entity in the merger or consolidation. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

(3) If a domestic limited liability company is merging or consolidating under this section, the domestic limited liability company or other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation executed by one or more authorized persons on behalf of the domestic limited liability company when it is the surviving or resulting entity in the Office of the Registrar of Corporations. The certificate of merger or consolidation shall state:

(a) the name and jurisdiction of formation or organization of each of the domestic limited liability companies or other business entities which is to merge or consolidate;

(b) that an agreement of merger or consolidation has been approved and executed by each of the domestic limited liability companies and other business entities which is to merge or consolidate;

(c) the name of the surviving or resulting domestic limited liability company and ther business entity;

(d) the future effective date or time (which shall be a date or time certain) of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;

(e) that the agreement of merger or consolidation is on file at a place of businessof the surviving or resulting domestic limited liability company or other business entity, and shall state the address thereof:

(f) that a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting domestic limited liability company or any person holding an interest in any other business entity which is to merge or consolidate; and

(g) if the surviving or resulting entity is not a domestic limited liability company, or

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a corporation or limited partnership or partnership organized under the laws of the Republic of the Marshall Islands, a statement that such surviving or resulting other business entity agrees that it may be served with process in the Republic of the Marshall Islands in any

action, suit or proceeding for the enforcement of any obligation of any domestic limited liability company which is to merge or consolidate, irrevocably appointing the Attorney-General as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the Attorney-General. In the event of service hereunder upon the Attorney-General, the procedures set forth in section 60(3) of this Act shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Attorney-General with the address specified in the certificate of merger or consolidation provided for in this section and any other address which the plaintiff may elect to furnish, together with copies of such process as required by the Attorney-General, and the Attorney-General shall notify such surviving or resulting other business entity at all such addresses furnished by the plaintiff in accordance with the procedures set forth in section 60(3) of this Act.

(4) Unless a future effective date or time is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing in the Office of the Registrar of Corporations of a certificate of merger or consolidation. If a certificate of merger or consolidation provides for a future effective date or time and if an agreement of merger or consolidation, is amended to change the future effective date or time, or if an agreement of merger or consolidation permits a certificate of merger or consolidation to be amended to change the future effective date or time without an amendment to the agreement of merger or consolidation, or if an agreement of merger or consolidation is amended to change any other matter described in the certificate of merger or consolidation so as to make the certificate of merger or consolidation false in any material respect, as permitted by subsection (2) of this section prior to the future effective date or time, the certificate of merger or consolidation shall be amended by the filing of a certificate of amendment of a certificate of merger or consolidation which shall identify the certificate of merger or consolidation and the agreement of merger or consolidation, if applicable, which has been amended and shall state that the agreement of merger or consolidation if applicable, has been amended and shall set forth the amendment to the certificate of merger or consolidation. If a certificate of merger or consolidation provides for a future effective date or time, and if an agreement of merger or consolidation is terminated as permitted by subsection (2) of this section prior to the future effective date or time, the certificate of merger or consolidation shall be terminated by the filing of a certificate of termination of a merger or consolidation which shall identify the certificate of merger or consolidation and the agreement of merger or consolidation which has been terminated and shall state that the agreement of merger or consolidation has been terminated.

(5) A certificate of merger or consolidation shall act as a certificate of cancellation for a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation. Whenever this section requires the filing of a certificate of merger or consolidation, such requirement shall be deemed satisfied by the filing of an agreement of merger of consolidation containing the information required by this section to be set forth in the certificate of merger or consolidation.

(6) An agreement of merger or consolidation approved in accordance with subsection (3)(b) of this section may:

(a) effect any amendment to the limited liability company agreement; or

(b) effect the adoption of a new limited liability company agreement, for a limited liability company if it is the surviving or resulting limited liability company in the merger or consolidation.

Any amendment to a limited liability company agreement or adoption of a new limited liability company agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any

other means provided for in a limited liability company agreement or other agreement or as otherwise permitted by law, including that the limited liability company agreement of any constituent limited liability company to the merger or consolidation (including a limited liability company formed for the purpose of consummating a merger or consolidation) shall be the limited liability company agreement of the surviving or resulting limited liability company.

(7) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the Republic of the Marshall Islands, all of the rights, privileges and powers of each of the domestic limited liability companies and other business entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of said domestic limited liability companies and other business entities, as well as all other things and causes of action belonging to each of such domestic limited liability companies and other business entities, shall be vested in the surviving or resulting domestic limited liability company or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited liability company or other business entity, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a domestic limited liability company, including a domestic limited liability company, which is not the surviving or resulting entity in the merger or consolidation, shall not require such domestic limited liability company to wind up its affairs under section 48 of this Act or pay its liabilities and distribute its assets under section 49 of this Act. **[P.L. 1996-14, §17; amended by P.L. 2000-14, §17.][(Subsection (2) amended by P.L. 2005-29.]**

DIVISION 3:

MEMBERS

§18. Admission of members.

(1) In connection with the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company upon the later to occur of:

(a) the formation of the limited liability company; or

(b) the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, when the person's admission is reflected in the records of the limited liability company.

(2) After the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company:

(a) in the case of a person acquiring a limited liability company interest directly from the limited liability company, at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company; or

(b) in the case of an assignee of a limited liability company interest, as provided in section 44(1) of this Act and at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, when any such person's permitted admission is reflected in the records of the limited liability company; or

(c) unless otherwise provided in an agreement of merger or consolidation, in the case of a person acquiring a limited liability company interest in a surviving or resulting limited liability company pursuant to a merger or consolidation approved in accordance with section 17(2) of this Act, at the time provided in and upon compliance with the limited liability company agreement of the surviving or resulting limited liability company.

(3) In connection with the domestication of a non-Marshallese entity (as defined in Section 76 of this Act) as a limited liability company in the Marshall Islands in accordance with section 76 of this Act or the conversion of another entity (as defined in section 78 of this Act) to a domestic limited liability company in accordance with section 78 of this Act, a person is admitted as a member of the limited liability company at the time provided in and upon compliance with the limited liability company agreement.

(4) A person may be admitted to a limited liability company as a member of the limited liability company and may receive a limited liability company interest in the liability company without making a contribution or being obligated to make a contribution to the limited liability company. Unless otherwise provided in a limited liability company agreement, a person may be admitted to a limited liability company as a member of the limited liability company without acquiring a limited liability company interest in the limited liability company. Unless otherwise provided in a limited liability company agreement, a person may be admitted as the sole member of a limited liability company without making a contribution or being obligated to make a contribution to the limited liability company or without acquiring a limited liability company interest in the limited liability company. **[P.L. 1996-14, 18; amended by P.L. 2000-14, §18.]**

§19. Classes and voting.

(1) A limited liability company agreement may provide for classes or groups of members having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members having such relative rights,

powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.

(2) A limited liability company agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers, on any matter. Voting by members may be on a per capita, number, financial interest, class, group or any other basis.

(3) A limited liability company agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(4) Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on by members, the members may take such action without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting. Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on by members, the members may vote in person or by proxy. **[P.L. 1996-14, §19; amended by P.L. 2000-14, §19.]**

§20. Liability to third parties.

(1) Except as otherwise provided by this Act, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company; and no member or manager of a limited liability company shall be obligated personally for any such debt, obligation or liability of the limited liability

company solely by reason of being a member or acting as a manager of the limited liability company.

(2) Notwithstanding the provisions of subsection (1) of this section, under a limited liability company agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations and liabilities of the limited liability company. **[P.L. 1996-14, §20: amended by P.L. 2000-14, §20.]**

§21. Events of bankruptcy.

A person ceases to be a member of a limited liability company upon the happening of any of the following events:

(1) Unless otherwise provided in a limited liability company agreement, or with the written consent of all members, a member:

(a) makes an assignment for the benefit of creditors;

(b) files a voluntary petition in bankruptcy;

(c) is adjudged bankrupt or insolvent, or has entered against him an order for relief, in any bankruptcy or insolvency proceeding;

(d) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;

(e) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature;

(f) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of his properties; or

(2) Unless otherwise provided in a limited liability company agreement, or with the written consent of all members, one hundred and twenty (120) days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within ninety (90) days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of his properties, the appointment is not vacated or stayed, or within ninety (90) days after the expiration of any such stay, the appointment is not vacated. **[P.L. 1996-14, §21.]**

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

(1) *Requirement for keeping of books of accounts, minutes, and records.*

(a) *Books of accounts and minutes.* Every domestic limited liability company shall keep correct and complete books and records of accounts and shall keep minutes of all meetings of members, of actions taken on consent by members, of all meetings of the managers, and of actions taken on consent by managers. A resident domestic limited liability company shall keep such books and records in the Republic.

(b) *Records of members.* Every domestic limited liability company shall keep a record containing the names and addresses of all members. A resident domestic limited liability company shall keep records required to be maintained by this subsection at the office of the limited liability company in the Republic or at the office of its agent in the Republic.

(c) *Forms of records.* Any records maintained by a limited liability company in the regular course of its business, including its records of members, books of accounts, and minute book, may be kept on, or be in the form of punch cards, magnetic tape, photographs, microphotograph, or any other information storage device, provided that the records so kept can be converted into clearly legible written form within a reasonable time. Any limited liability company shall so convert any records so kept upon the request of any person entitled to inspect such records. When record 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.

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

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

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

(a) Each member of a limited liability company has the right, subject to such reasonable standards (including standards governing what information and documents are to be furnished at what time and location and at whose expense) as may be set forth in a limited liability company agreement or otherwise established by the manager or, if there is no manager, then by the members, to obtain from the limited liability company from time to time upon reasonable demand for any purpose reasonably related to the member's interest as a member of the limited liability company:

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

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

(iii) a copy of any written limited liability company agreement and certificate of formation and amendments thereto, together with executed copies of any written powers of attorney pursuant to which the limited liability company agreement and any certificate and all amendments thereto have been executed;

(iv) true and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future, and the date on which each became a member; and

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

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

(c) The manager of a limited liability company shall have the right to keep confidential from the members, for each period of time as the manager deems reasonable, any information which the manager reasonably believes to be in the nature of trade secrets or other information the disclosure of which the manager in good faith believes is not in the best interest of the limited liability company or could damage the limited liability company or its business or which the limited liability company is required by law or by agreement with a third party to keep confidential.

(d) A limited liability company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

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

(f) Any action to enforce any right arising under this section shall be brought in the High Court of the Republic. **[P.L. 1996-14, §22.][Amended by P.L. 2014-31]**

§23. Remedies for breach of limited liability company agreement by member.

A limited liability company agreement may provide that:

(1) a member who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specific consequences; and

(2) at the time or upon the happening of events specified in the limited liability company agreement, a member shall be subject to specified penalties or specified consequences. **[P.L. 1996-14,**

§23.]

DIVISION 4.

MANAGERS

§24. Admission of managers.

A person may be named or designated as a manager of the limited liability company as provided in section 2(11) of this Act. **[P.L. 1996-14, §24.][Further amended by P.L. 2005-29]**

§25. Management of limited liability company.

Unless otherwise provided in a limited liability company agreement, the management of a limited liability company shall be vested in its members in proportions to the then current percentage or other interest of members in the profits of the limited liability company owned by all of the members, the decision of members owning more than fifty percent (50%) of the said percentage of other interest in the profits controlling; provided, however, that if a limited liability company agreement provides for the management, in whole or in part, of a limited liability company by a manager, the management of the limited liability company, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the limited liability company agreement. The manager shall also hold the offices and have the responsibilities accorded to him by the members and set forth in a limited liability company agreement. Subject to section 35 of this Act, a manager shall cease to be a manager as provided in a limited liability company agreement. **[P.L. 1996-14, §25; amended by P.L. 2000-14, §25.]**

§26. Contributions by a manager.

A manager of a limited liability company may make contributions to the limited liability company and share in the profits and losses of, and in distributions from, the limited liability company as a member. A person who is both a manager and a member has the rights and powers, and is subject to the restrictions and liabilities, of a manager and, except as provided in a limited liability company agreement, also has the rights and powers, and is subject to the restrictions and liabilities, or a member to the extent of his participating in the limited liability company as a member. **[P.L. 1996-14, §26.]**

§27. Classes and voting.

(1) A limited liability company agreement may provide for classes or groups of managers having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of managers having such relative rights, powers and duties senior to existing classes and groups of managers. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.

(2) A limited liability company agreement may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter. Voting by managers may be on a per capita, number, financial interest, class, group or any other basis.

(3) A limited liability company agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the

establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(4) Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on by managers, the managers may take such action without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the managers having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting. Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on by managers, the managers may vote in person or by proxy. **[P.L. 1996-14, §27; amended by P.L. 2000-14, §27.]**

§28. Remedies for breach of limited liability company agreement by manager.

A limited liability company agreement may provide

(1) a manager who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specified consequences; and

(2) at the time or upon the happening of events specified in the limited liability company agreement, a manager shall be subject to specified penalties or specified consequences. **[P.L. 1996-14.]**

§29. Reliance on reports and information by member or manager.

A member or manager of a limited liability company shall be fully protected in relying in good faith upon the records of the limited liability company and upon such information, opinions, reports or statements presented to the limited liability company by any of its other managers, members, officers, employees, or committees of the limited liability company, or by any other person as to matters the member or manager reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the limited liability company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the limited liability company or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid. **[P.L. 1996-14, §29.]**

DIVISION 5.

FINANCE

§30. Form of contribution.

The contribution of a member to a limited liability company may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services. **[P.L. 1996-14, §30.]**

§31. Liability for contribution.

(1) Except as provided in a limited liability company agreement, a member is obligated to a limited liability company to perform any promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or any other reason. If a member does not make the required contribution of property or services, he is obligated at the option of the limited liability company to contribute cash equal to that portion of the agreed value (as stated in the records of the limited liability company) of the contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against such member under the limited liability company agreement or applicable law.

(2) Unless otherwise provided in a limited liability company agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this Act may be compromised only by consent of all the members. Notwithstanding the compromise,

a creditor of a limited liability company who extends credit, after the entering into of a limited liability company agreement or an amendment thereto which, in either case, reflects the obligation, and before the amendment thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return. A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company prior to the time the call occurs.

(3) A limited liability company agreement may provide that the interest of any member who fails to make any contribution that he is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest to that of non-defaulting members, a forced sale of his limited liability company interest, forfeiture of his limited liability company interest, the lending by other members of the amount necessary to meet his commitment, a fixing of the value of his limited liability company interest by appraisal or by formula and redemption or sale of his limited liability company interest at such value, or other penalty or consequence. **[P.L. 1996-14, §31.]**

32. Allocation of profits and losses.

The profits and losses of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, profits and losses shall be allocated on the basis of the agreed value (as stated in the records of the limited liability company) of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned. **[P.L. 1996-14, §32.]**

§33. Allocation of distributions.

Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, distributions shall be made on the basis of the agreed value (as stated in the records of the limited liability company) of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned. **[P.L. 1996-14, §33.]**

DIVISION 6.

DISTRIBUTIONS AND RESIGNATION

§34. Interim distribution.

Except as provided in this Act, to the extent and at the times or upon the happening of the events specified in a limited liability company agreement, a member is entitled to receive from a limited liability company contributions before his resignation from the limited liability company and before the dissolution and winding up thereof. **[P.L. 1996-14, §34.]**

§35. Resignation of manager.

A manager may resign as a manager of a limited liability company at the time or upon the happening of events specified in a limited liability company agreement and in accordance with the limited liability company agreement. A limited liability company agreement may provide that a manager shall not have the right to resign as a manager of a limited liability company.

Notwithstanding that a limited liability company agreement provides that a manager does not have the right to resign as a manager of a limited liability company, a manager may resign as a manager of a limited liability company at any time by giving written notice to the members and other managers. If the resignation of a manager violates a limited liability company agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the limited liability company agreement and offset the damages against the amount otherwise distributable to the resigning manager. **[P.L. 1996-14, §35; amended by P.L. 2000-14, §35.]**

§36. Resignation of member.

A member may resign from a limited liability company at the time or upon the happening of events specified in a limited liability company agreement and in accordance with the limited liability company agreement. If a limited liability company agreement does not specify the time or the events upon the happening of which a member may resign or a definite time for the dissolution and winding up of a limited liability company, a member may resign upon not less than six (6) months prior written notice to the limited liability company at its registered office as set forth in the certificate of formation filed in the Office of the Registrar of Corporations and to each member and manager at each member's and manager's address as set forth on the records of the limited liability company. Notwithstanding anything to the contrary set forth in this division, a limited liability company agreement may provide that a member may not resign from a limited liability company or assign his limited liability company interest prior to the dissolution and winding up of the limited liability company. **[P.L. 1996-14, §36.]**

§37. Distribution upon resignation.

Except as otherwise provided in this division, a member who resigns or otherwise ceases for any reason to be a member is entitled to receive on the terms and conditions provided in a limited liability company agreement any distribution to which such member is entitled under the limited liability company agreement, and if not otherwise provided in the limited liability company agreement, such member is entitled to receive, within a reasonable time after the date on which such member resigned or otherwise ceased to be a member, the fair value of such member's interest in the limited liability company as of the date on which such member resigned or otherwise ceased to be a member based upon such member's right to share in distributions from the limited liability company. **[P.L. 1996-14, §37; amended by P.L. 2000-14, §37.]**

§38. Distribution in kind.

Except as provided in a limited liability company agreement, a member, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Except as provided in a limited liability company agreement, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited liability company. **[P.L. 1996-14, §38.]**

§39. Right to distribution.

Subject to sections 40 and 49 of this Act, and unless otherwise provided in a limited liability company agreement, at the time a member becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of a limited liability company with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company. **[P.L. 1996-14, §39.]**

§40. Limitations on distribution.

(1) A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability.

(2) A member who receives a distribution in violation of subsection (1) of this section, and who knew at the time of the distribution that the distribution violated subsection (1) of this section, shall be liable to the limited liability company for the amount of the distribution. A member who receives a distribution in violation of subsection (1) of this section, and who did not know at the time of the distribution that the distribution violated subsection (1) of this section, shall not be liable for the amount of the distribution. Subject to subsection (3) of this section, this subsection (2) shall not affect any obligation or liability of a member under a limited liability company agreement or other applicable law for the amount of a distribution.

(3) Unless otherwise agreed, a member who receives a distribution from a limited liability company shall have no liability under this Act or other applicable law for the amount of the distribution after the expiration of three (3) years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of the said three (3) year period and an adjudication of liability against such member is made in the said action. **[P.L. 1996-14, §40.]**

DIVISION 7.

ASSIGNMENT OF LIMITED LIABILITY COMPANY INTERESTS

§41. Nature of limited liability company interest.

A limited liability company interest is personal property. A member has no interest in specific limited liability company property. **[P.L. 1996-14, §41.]**

§42. Assignment of limited liability company interest.

(1) A limited liability company interest is assignable in whole or in part except as provided in a limited liability company agreement. The assignee of a member's limited liability company interest shall have no right to participate in the management of the business and affairs of a limited liability company except as provided in the limited liability company agreement and upon:

(a) the approval of all of the members of the limited liability company other than the member assigning his limited liability company interest; or

(b) compliance with any procedure provided for in the limited liability company agreement.

(2) Unless otherwise provided in a limited liability company agreement:

(a) an assignment entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and

(b) a member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of his limited liability company interest. Unless otherwise provided in a limited liability company agreement, the pledge of, or granting of a security interest, lien or other encumbrance in or against, any or all of the limited liability company interest of a member shall not cause the member to cease to be a member or to have the power to exercise any rights or powers of a member.

(3) A limited liability company agreement may provide that a member's interest in a limited

liability company may be evidenced by a certificate of limited liability company interest issued by the limited liability company.

(4) Unless otherwise provided in a limited liability company agreement and except to the extent assumed by agreement, until an assignee of a limited liability company interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

(5) Unless otherwise provided in the limited liability company agreement, a limited liability company may acquire, by purchase, redemption or otherwise, any limited liability company interest or other interest of a member or manager in the limited liability company. Unless otherwise provided in the limited liability company agreement, any such interest so acquired by the limited liability company shall be deemed canceled. **[P.L. 1996-14, §42; amended by P.L. 1998-65, §42; amended by P.L. 2000-14, §42.]**

§43. Rights of judgment creditor.

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the limited liability company interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the limited liability company interest. This Act does not deprive any member of the benefit of any exemption laws applicable to the member's limited liability company interest. Notwithstanding any other law, the remedies provided by this section shall be the sole remedies available to any creditor of a member's interest. **[P.L. 1996-14, §43.][Further amended by P.L. 2005-29.]**

§44. Right of assignee to become member.

(1) An assignee of a limited liability company interest may become a member as provided in a limited liability company agreement and upon:

(a) the approval of all of the members of the limited liability company other than the ember assigning his limited liability company interest; or

(b) compliance with any procedure provided for in the limited liability company agreement.

(2) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under a limited liability company agreement and this Act. Notwithstanding the foregoing, unless otherwise provided in a limited liability company agreement, an assignee who becomes a member is liable for the obligations of his assignor to make contributions as provided in section 31 of this Act, but shall not be liable for the obligations of his assignor under Division 6 of this Act. However, the assignee is not obligated for liabilities, including the obligations of his assignor to make contributions as provided in section 31 of this Act, unknown to the assignee at the time he became a member and which could not be ascertained from a limited liability company agreement.

(3) Whether or not an assignee of a limited liability company interest becomes a member, the assignor is not released from his liability to a limited liability company under Divisions 5 and 6 of this Act. **[P.L. 1996-14, §44.]**

§45. Powers of estate **of deceased or incompetent member.**

If a member who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the member's executor, administrator, guardian, conservator or the member's personal representative may exercise all of the member's rights for the purpose of settling his estate or administering his property, including any power under a limited liability company agreement of an assignee to become a member. If a member is a corporation, trust or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor or personal representative. **[P.L. 1996-14. §45; amended**

by P.L. 2000-14, §45.]

DIVISION 8:

DISSOLUTION

§46. Dissolution

(1) A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

(a) at the time specified in the certificate of formation; or

(b) upon the happening of events specified in a limited liability company agreement; or

(c) the written consent of all members; or, if there is more than one (1) class or group of members, then by each class or group of members, in either case, by members who own more than two-thirds (2/3) of the then current percentage or other interest in the profits of the limited liability company owned by all of the members or by the members in each class or group, as appropriate; or

(d) the entry of a decree of judicial dissolution under section 47 of this division.

(2) Upon dissolution, a certificate of cancellation shall be filed in accordance to section 11 of this Act.

(3) Dissolution on failure to pay annual registration fee or appoint or maintain registered agent.

(a) *Procedure for Dissolution.* On failure of a limited liability company to pay the annual registration fee or to maintain a registered agent for a period of one (1) year, the Registrar of Corporations on or about the first day of November of each year or on such other date as shall be determined by regulation, shall cause a notification to be sent to the limited liability company through its last recorded registered agent that its certificate of formation will be revoked unless within ninety (90) days of the date of the notice, payment of the annual registration fee has been received or a registered agent has been appointed, as the case may be. On the expiration of the ninety (90) day period, the Registrar of Corporations, in the event the limited liability company has not remedied its default, shall issue a proclamation declaring that the certificate of formation has been revoked and the limited liability company dissolved as of the date started in the proclamation. The proclamation of the Registrar of Corporations shall be filed in his office and he shall mark on the record of the certificate of formation named the proclamation the date of revocation and dissolution, and shall give notice to the last recorded registered agent. Thereupon the affairs of the corporation shall be wound up in accordance with the procedures provided in section 48 of the division.

(b) *Erroneous dissolution.* Whenever it is established to the satisfaction of the Registrar of Corporations that the certificate of formation was erroneously revoked by the Registrar of Corporations, he may restore the limited liability company to full existence by publishing and filing in his office a proclamation to that effect.

(c) *Reinstatement of Dissolved Limited Liability Company.* Whenever the certificate of formation of a limited liability company has been revoked by the Registrar of Corporations pursuant to subsection (3) of this section, the limited liability company may request that the Registrar of Corporations reinstate its certificate of formation. After being satisfied that all statutory arrears to the Republic of the Marshall Islands have been paid, that the limited liability company has again retained a qualified registered agent and paid any arrears to the same, the limited liability company may be restored to full existence in the same manner and with the same effect as provided by subsection (3) of this section. Requests for reinstatement may not be submitted after three (3) years from the date of the proclamation which revoked the certificate of formation.

(4) Unless otherwise provided in a limited liability company agreement, the death, retirement, resignation, expulsion, bankruptcy or dissolution of any member or the occurrence of any other event that terminates the continued membership of any member shall not cause the limited liability company to be dissolved or its affairs to be wound up, and upon the occurrence of any such event, the limited liability company shall be continued without dissolution, unless within ninety (90) days following the occurrence of such event, members of the limited liability company or, if there is more than one (1) class or group of members, then each class or group of members, in either case, by members who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the limited liability company owned by all of the members or by the members in each class or group, as appropriate, agree in writing to dissolve the limited liability company. **[P.L. 1996-14, §46; amended by P.L. 1998-65, §46; amended by P.L. 2000-14, §46.][subsection (1) amended by P.L. 2009-32; original subsection (d) deleted]**

§47. Judicial dissolution.

On application by or for a member or manager, the High Court of the Republic may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with a limited liability company agreement. **[P.L. 1996-14, §47.]**

§48. Winding up.

(1) Unless otherwise provided in a limited liability company agreement, a manager who has not wrongfully dissolved a limited liability company or, if none, the members or a person approved by the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by members who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the limited liability company owned by all of the members or by the members in each class or group, as appropriate, may wind up the limited liability company's affairs; but the High Court of the Republic, upon cause shown, may wind up the limited liability company's affairs upon application of any member or manager, the member's or manager's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee.

(2) Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in section 11 of this Act, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company, all without affecting the liability of members and managers and without imposing liability on a liquidating trustee. **[P.L. 199614, §48: amended by P.L. 2000-14, §48.]**

§49. Distribution of assets.

(1) Upon the winding up of a limited liability company, the assets shall be distributed as follows:

(a) to creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members under sections 34 or 37 of this Act;

(b) unless otherwise provided in a limited liability company agreement, to members and former members in satisfaction of liabilities for distributions under section 34 or 37 of this Act; and

(c) unless otherwise provided in a limited liability company agreement, to members first for the return of their contributions and second respecting their limited liability company

interests, in the proportions in which the members share in distributions.

(2) A limited liability company which has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or un-matured claims and obligations, known to the limited liability company and all claims and obligations which are known to the limited liability company but for which the identity of the claimant is unknown. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available therefor. Unless otherwise provided in a limited liability company agreement, any remaining assets shall be distributed as provided in this Act. Any liquidating trustee winding up a limited liability company's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved limited liability company by reason of such person's actions in winding up the limited liability company. **[P.L. 1996-14, §49.]**

DIVISION 9.

FOREIGN LIMITED LIABILITY COMPANIES

§50. Law governing.

(1) Subject to the Constitution and laws of the Republic of the Marshall Islands:

(a) the laws of the jurisdiction or country under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members and managers;

(b) a foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of the Republic of the Marshall Islands and can function in the same fashion as a resident domestic limited liability company; and

(c) a foreign limited liability company shall be subject to section 5 of this Act. **[P.L. 1996-14, §50.]**

§51. Registration required; application.

(1) Before doing business in the Republic of the Marshall Islands, a foreign limited liability company shall register with the Registrar of Corporations. In order to register, a foreign limited liability company shall submit to the Registrar of Corporations:

(a) a copy executed by an authorized person of an application for registration as a foreign limited liability company, setting forth:

(i) the name of the foreign limited liability company and, if different, the name under which it proposes to register and do business in the Republic of the Marshall Islands;

(ii) the state, territory, possession or other jurisdiction or country where formed, and the date of its formation and a statement from an authorized person that, as of the date of filing, the foreign limited liability company validly exists as a limited liability company under the laws of the jurisdiction of its formation;

(iii) the nature of the business or purposes to be conducted or promoted in the Republic of the Marshall Islands;

(iv) the name and address of the registered agent for service of process required to be maintained by section 53(2) of this division;

(v) a statement that the Attorney- General is appointed the agent of the foreign limited liability company for service of process under the circumstances set forth in section 60 of this division; and

(vi) the date on which the foreign limited liability company first did, or

intends to do, business in the Republic of the Marshall Islands;

(b) a fee as set forth in section 68 of this Act shall be paid;

(c) a person shall not be deemed to be doing business in the Republic of the Marshall Islands solely by reason of being a member or manager of a domestic limited liability company or a foreign limited liability company. **[P.L. 1996-14, §51.]**

§52. Issuance of registration.

(i) If the Registrar of Corporations finds that an application for registration conforms to law and all requisite fees have been paid, he shall:

(a) certify that the application has been filed in this office by endorsing upon the original application the word "Filed." This endorsement is conclusive of the date of its filing in the absence of actual fraud;

(b) file and index the endorsed application.

(2) The duplicate of the application, similarly endorsed, shall be returned to the person who filed the application or his representative.

(3) The filing of the application with the Registrar of Corporations shall make it unnecessary to file any other documents under this section. **[P.L. 1996-14, §52.]**

§53. Name; registered agent.

(1) A foreign limited liability company may register with the Registrar of Corporations under any name (whether or not it is the name under which it is registered in the jurisdiction of its formation) that includes the words "Limited Liability Company" or the abbreviation "L.L.C." and that could be registered as a domestic limited liability company; provided, however, that a foreign limited liability company may register under any name which is not such as to distinguish it upon the records in the Office of the Registrar of Corporations from the name of any domestic or foreign corporation, trust, limited liability company or limited partnership or partnership or foreign maritime entity reserved, registered or organized under the laws of the Republic of the Marshall Islands with the written consent of the other corporation, business trust, limited liability company or limited partnership, which written consent shall be filed with the Registrar of Corporations.

(2) Each foreign limited liability company shall have and maintain in the Republic of the Marshall Islands a registered agent for service of process on the foreign limited liability company. The provisions as set forth in section 5 of this Act apply. **[P.L. 1996-14, §53; amended by P.L. 2000-14, §53.]**

§54. Amendments to application.

If any statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application false in any respect, the foreign limited liability company shall promptly file in the Office of the Registrar of Corporations a certificate, executed by an authorized person, correcting such statement, together with a fee as set forth in section 68 of this Act. **[P.L. 1996-14, §54.]**

§55. Cancellation of registration.

A foreign limited liability company may cancel its registration by filing with the Registrar of Corporations a certificate of cancellation, executed by an authorized person, together with a fee as set forth in section 68 of this Act. A cancellation does not terminate the authority of the Registrar of Corporations to accept service of process on the foreign limited liability company with respect to causes of action arising out of the doing of business in the Republic of the Marshall Islands. **[P.L. 1996-14, §55.]**

§56. Doing business without registration.

(1) A foreign limited liability company doing business in the Republic of the Marshall Islands

may not maintain any action, suit or proceeding in the Republic of the Marshall Islands until it has registered in the Republic of the Marshall Islands, and has paid to the Republic of the Marshall Islands all fees and penalties for the years or parts thereof, during which it did business in the Republic of the Marshall Islands without having registered.

(2) The failure of a foreign limited liability company to register in the Republic of the Marshall Islands does not impair:

(a) the validity of any contract or act of the foreign limited liability company;

(b) the right of any other party to the contract to maintain any action, suit or proceeding on the contract; or

(c) prevent the foreign limited liability company from defending any action, suit or proceeding in any court of the Republic of the Marshall Islands.

(3) A member or a manager of a foreign limited liability company is not liable for the obligations of the foreign limited liability company solely by reason of the limited liability company's having done business in the Republic of the Marshall Islands without registration.

(4) Any foreign limited liability company doing business in the Republic of the Marshall Islands without first having registered shall be fined and shall pay to the Registrar of Corporations two hundred dollars (U.S. $200) for each year or part thereof during which the foreign limited liability company failed to register in the Republic of the Marshall Islands. **[P.L. 1996-14, §56.]**

§57. Foreign limited liability companies doing business without having qualified; injunctions.

The High Court of the Republic shall have jurisdiction to enjoin any foreign limited liability company, or any agent thereof, from doing any business in the Republic of the Marshall Islands if such foreign limited liability company has failed to register under this Act or if such foreign limited liability company has secured a certificate of the Registrar of Corporations under section 52 of this division on the basis of false or misleading representations. The Attorney-General shall, upon his own motion or upon the relation of proper parties, proceed for this purpose by complaint. **[P.L. 1996-14, §57.]**

§58. Execution; liability.

Section 12(3) of this Act shall be applicable to foreign limited liability companies as if they were domestic limited liability companies. **[P.L. 1996-14, §58.]**

§59. Service of process on registered foreign limited liability companies.

The provisions as set forth in section 5 of this Act apply. **[P.L. 1996-14, §59.]**

§60. Service of process on unregistered foreign limited liability companies.

(1) Any foreign limited liability company which shall do business in the Republic of the Marshall Islands without having registered under section 51 of this division shall be deemed to have thereby appointed and constituted the Attorney-General of the Republic of the Marshall Islands its agent for the acceptance of legal process in any civil action, suit or proceeding against it in any court in the Republic of the Marshall Islands arising or growing out of any business done by it within the Republic of the Marshall Islands. The doing of business in the Republic of the Marshall Islands by such foreign limited liability company shall be a signification of the agreement of such foreign limited liability company that any such process when so served shall be of the same legal force and validity as if served upon an authorized manager or agent personally within the Republic of the Marshall Islands.

(2) Whenever the words "doing business,""the doing of business," or "business done in this country" by any such foreign limited liability company are used in this section, they shall mean the course or practice of carrying on any business activities in the Republic of the Marshall Islands, including, without limiting the generality of the foregoing, the solicitation of business or orders in

the Republic of the Marshall Islands.

(3) In the event of service upon the Attorney-General in accordance with subsection (1) of this section, the Registrar of Corporations shall forthwith notify the foreign limited liability company thereof by letter, certified mail, return receipt requested, directed to the foreign limited liability company at the address furnished to the Attorney-General by the plaintiff in such action, suit or proceeding. Such letter shall enclose a copy of the process and any other papers served upon the

Attorney-General. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Attorney-General that service is being made pursuant to this subsection and to pay to the Attorney-General a sum for the use of the Republic of the Marshall Islands, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Attorney-General shall maintain an alphabetical record of any such process setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon him, the return date thereof, and the day and hour when the service was made. The Attorney-General shall not be required to retain such information for a period longer than five (5) years from his receipt of the service of process. **[P.L. 1996-14, §60.]**

DIVISION 10.

DERIVATIVE ACTIONS

§61. Right to bring action.

A member or an assignee of a limited liability company interest may bring an action in the High Court of the Republic in the right of a limited liability company to recover a judgment in its favor if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed. **[P.L. 1996-14, §61; amended by P.L. 2000-14, §61.]**

§62. Proper Plaintiff

In a derivative action, the plaintiff must be a member or an assignee of a limited liability company interest at the time of bringing the action and:

(a) at the time of the transaction of which he complains; or

(b) his status as a member or an assignee of a limited liability company interest had devolved upon him by operation of law or pursuant to the terms of a limited liability company agreement from a person who was a member or an assignee of a limited liability company interest at the time of the transaction. **[P.L. 1996-14, §62.]**

§63. Complaint.

In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a manager or member or the reasons for not making the effort. **[P.L. 1996-14, §63.]**

§64. Expenses.

If a derivative action is successful, in whole or in part, as a result of a judgment, compromise or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from any recovery in any such action or from a limited liability company. **[P.L. 1996-14, §64.]**

DIVISION 11.

MISCELLANEOUS

§65. Construction and application of Act and limited liability company agreement.

(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this Act.

(2) It is the policy of this Act to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.

(3) To the extent that, at law or in equity, a member or manager has duties (including fiduciary duties) and liabilities relating thereto to a limited liability company or to another member or manager:

(a) any such member or manager acting under a limited liability company agreement shall not be liable to the limited liability company or to any such other member or manager for the member's or manager's good faith reliance on the provisions of the limited liability company agreement; and

(b) the member's or manager's duties and liabilities may be expanded or restricted by provisions in a limited liability company agreement.

(4) Unless the context otherwise requires, as used herein, the singular shall include the plural and the plural may refer to only the singular. The use of any gender shall be applicable to all genders. The captions contained herein are for purposes of convenience only and shall not control or affect the construction of this Act. **[P.L. 1996 -14, §65.]**

§66. Severability.

If any provision of this Act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end, the provisions of this Act are severable. **[P.L. 1996-14, §66.]**

§67. Cases not provided for in this Act.

In any case not provided for in this Act, the rules of law and equity, including the law merchant, shall govern. **[P.L. 1996-14, §67.]**

§68. Filing fees.

The applicable filing fees for all filed documentation shall be according to a fee schedule determined and amendable by the Registrar of Corporations. **[P.L. 1996-14, §68.]**

§69. Reserved power of the Republic of the Marshall Islands to alter or repeal Act.

All provisions of this Act may be altered from time to time or repealed by legislation or regulation and all rights of members and managers are subject to this reservation. **[P.L. 1996-14, §69.]**

§70. Annual fees associated with limited liability companies.

(1) Every domestic limited liability company and every foreign limited liability company registered to do business in the Republic of the Marshall Islands shall pay an annual fee.

(2) The annual fee shall be due and payable on the anniversary day of the filing of a certificate of formation. The Registrar of Corporations shall receive the annual fee.

(3) Government fees shall be the same as those outlined in Division 1 of the Business Corporations Act and non-resident domestic limited liability companies shall be exempt from all forms of taxation as provided in section 12 of the Business Corporations Act. **[P.L. 1996-14, §70.][Subsection (3) amended by P.L. 2005-29.]**

§71. Construction; adoption of Delaware limited liability company law.

This Act shall be applied and construed to make the laws of the Republic, with respect to the subject matter hereof, uniform with the laws of the State of Delaware in the United States of America. Insofar as it does not conflict with any other provision of this Act, or the decisions of the

High and Supreme Courts of the Republic of the Marshall Islands which shall take precedence, the non-statutory law of the State of Delaware is hereby adopted as the law of the Republic. This section shall not apply to resident domestic limited liability companies. **[P.L. 1997-35, §71, adding new section.]**

§72. Immunity from liability and suit.

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

The immunity provided by this section shall only apply to those acts or omissions of agents and/or employees of the entities described in this section, done by them in the course and scope of the Republic of the Marshall Islands Limited Liability Companies Program. **[P.L. 1997-32, §72, adding new section.]**

§73. Contested matters relating to managers; contested votes.

(1) Upon application of a member or manager, the High Court may hear and determine the validity of any admission, election, appointment, removal or resignation of a manager of a limited liability company, and the right of any person to become or continue to be a manager of a limited liability company, and, in case the right to serve as a manager is claimed by more than one (1) person, may determine the person or persons entitled to serve as managers; and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the limited liability company relating to the issue. In any such application, the limited liability company shall be named as a party and service of copies of the application upon the registered agent of the limited liability company shall be deemed to be service upon the limited liability company and upon the person or persons whose right to serve as a manager is contested and upon the person or persons, if any, claiming to be a manager or claiming the right to be a manager, and the registered agent shall forward immediately a copy of the application to the limited liability company and to the person or persons whose right to serve as a manager is contested and to the person or persons, if any, claiming to be a manager or the right to be a manager, in a postpaid, sealed, registered letter addressed to such limited liability company and such person or persons at their post-office addresses last known to the registered agent or furnished to the registered agent by the applicant member or manager. The High Court may make such order respecting further or other notice of such application as it deems proper under these circumstances.

(2) Upon application of a member or manager, the High Court may hear and determine the result of any vote of members or managers upon matters as to which the members or managers of the limited liability company, or any class or group of members or managers, have the right to vote pursuant to the limited liability company agreement or other agreement or this division (other than the admission, election, appointment, removal or resignation of managers). In any such application, the limited liability company shall be named as a party and service of the application upon the registered agent of the limited liability company shall be deemed to be service upon the limited liability company. and no other party need be joined in order for the High Court to adjudicate the result of the vote. The High Court may make such order respecting further or other notice of such application as it deems proper under the circumstances. **[P.L. 2000-14, §73, adding new section.]**

§74. Interpretation and enforcement of limited liability company agreement.

Any action to interpret, apply or enforce the provisions of a limited liability company agreement, or the duties, obligations or liabilities of a limited liability company to the members or managers of the limited liability company, or the duties, obligations or liabilities among members or managers and of members or managers to the limited liability company, or the rights or powers of, or restrictions on, the limited liability company, members or managers, may be brought in the High Court. **[P.L. 2000-14, §74, adding new section.]**

§75. Contractual appraisal rights.

A limited liability company agreement or an agreement of merger or consolidation may provide that contractual appraisal rights with respect to a limited liability company interest or another interest in a limited liability company shall be available for any class or group of members or limited liability company interests in connection with any amendment of a limited liability company agreement, any merger or consolidation in which the limited liability company is a constituent party to the merger or consolidation, or the sale of all or substantially all of the limited liability company's assets. The High Court shall have jurisdiction to hear and determine any matter relating to any such appraisal rights.**[P.L. 2000-14, §75, adding new section.]**

§76. Domestication of non-Marshall Islands entities.

(1) As used in this section, "non-Marshall Islands entity" means a foreign limited liability company (other than one formed under the laws of the Marshall Islands) or a corporation, a trust, or any other unincorporated business, including a partnership (whether general (including a registered limited liability partnership) or limited partnership (including a registered limited liability limited partnership)) formed, incorporated, created or that otherwise came into being under the laws of any foreign country or other foreign jurisdiction (other than the Marshall Islands).

(2) Any non-Marshall Islands entity may become domesticated as a limited liability company in the Marshall Islands by complying with subsection (7) of this section and filing in the office of the Registrar of Corporations in accordance with section 14 of this Act:

(a) a certificate of limited liability company domestication that has been executed by one (1) or more authorized persons in accordance with section 12 of this Act; and

(b) a certificate of formation that complies with section 9 of this Act and has been executed by one (1) or more authorized persons in accordance with section 12 of this Act.

(3) The certificate of limited liability company domestication shall state:

(a) the date on which and jurisdiction where the non-Marshall Islands entity was first formed, incorporated, created or otherwise came into being;

(b) the name of the non-Marshall Islands entity immediately prior to the filing of the certificate of limited liability company domestication;

(c) the name of the limited liability company as set forth in the certificate of formation filed in accordance with subsection (2) of this section;

(d) the future effective date or time (which shall be a date or time certain) of the domestication as a limited liability company if it is not to be effective upon the filing of the certificate of limited liability company domestication and the certificate of formation;

(e) the jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the non-Marshall Islands entity, or any other equivalent thereto under applicable law, immediately prior to the filing of the certificate of limited liability company domestication;

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

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

(h) that the transfer of domicile is made in good faith and will not serve to hinder,

delay or defraud existing members, managers, creditors, claimants or other parties in interest; and

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

(4) Upon the filing in the office of the Registrar of Corporations of the certificate of limited liability company domestication and the certificate of formation or upon the future effective date or time of the certificate of limited liability company domestication and the certificate of formation, the non-Marshall Islands entity shall be domesticated as a limited liability company in the Marshall Islands and the limited liability company shall thereafter be subject to all of the provisions of this division, except that notwithstanding section 9 of this Act, the existence of the limited liability company shall be deemed to have commenced on the date the non-Marshall Islands entity commenced its existence in the jurisdiction in which the non-Marshall Islands entity was first formed, incorporated, created or otherwise came into being.

(5) The domestication of any non-Marshall Islands entity as a limited liability company in the Marshall Islands shall not be deemed to affect any obligations or liabilities of the non-Marshall Islands entity incurred prior to its domestication as a limited liability company in the Marshall Islands, or the personal liability of any person therefor.

(6) The filing of a certificate of limited liability company domestication shall not affect the choice of law applicable to the non-Marshall Islands entity, except that from the effective date or time of the domestication, the law of the Marshall Islands, including the provisions of this division, shall apply to the non-Marshall Islands entity to the same extent as if the non-Marshall Islands entity had been formed as a limited liability company on that date.

(7) Prior to filing a certificate of limited liability company domestication with the Office of the Registrar of Corporations, the domestication shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-Marshall Islands entity and the conduct of its business or by applicable nonMarshall Islands law, as appropriate, and a limited liability company agreement shall be approved by the same authorization required to approve the domestication.

(8) When any domestication shall become effective under this section, for all purposes of the laws of the Marshall Islands, all of the rights, privileges and powers of the non-Marshall Islands entity that has been domesticated, and all property, real, personal and mixed, and all debts due to such non-Marshall Islands entity, as well as all other things and causes of action belonging to such non-Marshall Islands entity, shall be vested in the domestic limited liability company and shall thereafter be the property of the domestic limited liability company as they were of the non-Marshall Islands entity immediately prior to its domestication, and the title to any real property vested by deed or otherwise in such non-Marshall Islands entity shall not revert or be in any way impaired by reason of this division, but all rights of creditors and all liens upon any property of such non-Marshall Islands entity shall be preserved unimpaired and all debts, liabilities and duties of the non-Marshall Islands entity that has been domesticated shall thenceforth attach to the domestic limited liability company and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by the domestic limited liability company. **[P.L. 2000-14, §76, adding new section.][New paragraphs (f) (g) (h) and (i) added under subsection (3) and subsection (8) amended by P.L. 2005-29.]**

§77. Transfer of domestic limited liability companies.

(1) Upon compliance with this section, any limited liability company may transfer to or domesticate in any jurisdiction that permits the transfer to or domestication in such jurisdiction of a limited liability company.

(2) Unless otherwise provided in a limited liability company agreement, a transfer or domestication described in subsection (1) of this section shall be approved in writing by all of the managers and all of the members. If all of the managers and all of the members of the limited liability company or such other vote as may be stated in a limited liability company agreement shall

approve the transfer or domestication described in subsection (1) of this section, a certificate of transfer, executed in accordance with section 12 of this Act, shall be filed in the office of the Registrar of Corporations in accordance with section 14 of this Act. The certificate of transfer shall state:

(a) the name of the limited liability company and, if it has been changed, the name under which its certificate of formation was originally filed;

(b) the date of the filing of its original certificate of formation with the Registrar of Corporations;

(c) the jurisdiction to which the limited liability company shall be transferred or in which it shall be domesticated;

(d) the future effective date or time (which shall be a date or time certain) of the transfer or domestication to the jurisdiction specified in subsection (2)(c) of this section if it is not to be effective upon the filing of the certificate of transfer;

(e) that the transfer or domestication of the limited liability company has been approved in accordance with this section;

(f) that the existence of the limited liability company as a limited liability company of the Marshall Islands shall cease when the certificate of transfer becomes effective. The agreement of the limited liability company that it may be served with process in the Marshall Islands in any action, suit or proceeding for enforcement of any obligation of the limited liability company arising while it was a limited liability company of the Marshall Islands, and that it irrevocably appoints the Registrar of Corporations as its agent to accept service of process in any such action, suit or proceeding; and

(g) the address to which a copy of the process referred to in subsection (2)(f) of this section shall be mailed to it by the Registrar of Corporations. In the event of service hereunder upon the Registrar of Corporations, the procedures set forth in this Act shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Registrar of Corporations with the address specified in this subsection and any other address that the plaintiff may elect to furnish, together with copies of such process as required by the Registrar of Corporations, and the Registrar of Corporations shall notify the limited liability company that has transferred or domesticated out of the Marshall Islands at all such addresses furnished by the plaintiff in accordance with the procedures set forth in this Act.

(3) Upon the filing in the office of the Registrar of Corporations of the certificate of transfer or upon the future effective date or time of the certificate of transfer and payment to the Registrar of Corporations of all fees prescribed in this Act, the Registrar of Corporations shall certify that the limited liability company has filed all documents and paid all fees required by this division, and thereupon the limited liability company shall cease to exist as a limited liability company of the Marshall Islands. Such certificate of the Registrar of Corporations shall be prima facie evidence of the transfer or domestication by such limited liability company out of the Marshall Islands.

(4) The transfer or domestication of a limited liability company out of the Marshall Islands in accordance with this section and the resulting cessation of its existence as a limited liability company of the Marshall Islands pursuant to a certificate of transfer shall not be deemed to affect any obligations or liabilities of the limited liability company incurred prior to such transfer or domestication or the personal liability of any person incurred prior to such transfer or domestication, nor shall it be deemed to affect the choice of law applicable to the limited liability company with respect to matters arising prior to such transfer or domestication. **[P.L. 2000-14, §77, adding new section.]**

§78. Conversion of other entities to a limited liability company.

(1) As used in this section, the term, "other entity" means a corporation, trust or association or any other unincorporated business, including a partnership (whether general or limited) of the Marshall Islands.

(2) Any other entity may convert to a domestic limited liability company by complying with subsection (8) of this section and filing in the office of the Registrar of Corporations in accordance with section 14 of this Act:

(a) a certificate of conversion to limited liability company that has been executed by one (1) or more authorized persons in accordance with section 12 of this Act; and

(b) a certificate of formation that complies with section 9 of this Act and has been executed by one (1) or more authorized persons in accordance with section 12 of this Act.

(3) The certificate of conversion to limited liability company shall state:

(a)the date on which the other entity was first created, formed or otherwise came into being;

(b) the name of the other entity immediately prior to the filing of the certificate of conversion to limited liability company;

(c) the name of the limited liability company as set forth in its certificate of formation filed in accordance with subsection (2) of this section; and

(d) the future effective date or time (which shall be a date or time certain) of the conversion to a limited liability company if it is not to be effective upon the filing of the certificate of conversion to limited liability company and the certificate of formation.

(4) Upon the filing in the office of the Registrar of Corporations of the certificate of conversion to limited liability company and the certificate of formation or upon the future effective date or time of the certificate of conversion to limited liability company and the certificate of formation, the other entity shall be converted into a domestic limited liability company and the limited liability company shall thereafter be subject to all of the provisions of this division, except that notwithstanding section 9 of this Act, the existence of the limited liability company shall be deemed to have commenced on the date the other entity commenced its existence.

(5) The conversion of any other entity into a domestic limited liability company shall not be deemed to affect any obligations or liabilities of the other entity incurred prior to its conversion to a domestic limited liability company or the personal liability of any person incurred prior to such conversion.

(6) When any conversion shall have become effective under this section, for all purposes of the laws of the Marshall Islands, all of the rights, privileges and powers of the other entity that has converted, and all property, real, personal and mixed, and all debts due to such other entity, as well as all other things and causes of action belonging to such other entity, shall be vested in the domestic limited liability company and shall thereafter be the property of the domestic limited liability company as they were of the other entity that has converted, and the title to any real property vested by deed or otherwise in such other entity shall not revert or be in any way impaired by reason of this division, but all rights of creditors and all liens upon any property of such entity shall be preserved unimpaired, and all debts, liabilities and duties of the other entity that has converted shall thenceforth attach to the domestic limited liability company and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

(7)Unless otherwise agreed, the converting other entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such other entity and shall constitute a continuation of the existence of the converting other entity in the form of a domestic limited liability company.

(8) Prior to filing a certificate of conversion to limited liability company with the office of the Registrar of Corporations, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business, and a limited liability company agreement shall be approved by the same authorization required to approve the conversion. **[P.L. 2000-14, §78, adding new section; amended by P.L. 2000-19, §78.][Subsection(6) amended by P.L. 2005-29]**

§79. Series of members, managers of limited liability company interest.

(1) A limited liability company agreement may establish or provide for the establishment of designated series of members, managers or limited liability company interests having separate rights, powers or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and, to the extent provided in the limited liability company agreement, any such series may have a separate business purpose or investment objective.

(2) Notwithstanding anything to the contrary set forth in this Act or under other applicable law, in the event that a limited liability company agreement creates one (1) or more series, and if separate and distinct records are maintained for any such series and the assets associated with any such series are held and accounted for separately from the other assets of the limited liability company, or any other series thereof, and if the limited liability company agreement so provides, and notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the certificate of formation of the limited liability company, then the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, and, unless otherwise provided in the limited liability company agreement none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of such series. The fact that a certificate of formation that contains the foregoing notice of the limitation on liabilities of a series is on file in the office of the Registrar of Corporations shall constitute notice of such limitation on liabilities of a series.

(3) Notwithstanding section 20 of this Act, under a limited liability company agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations and liabilities of one or more series.

(4) A limited liability company agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members or managers associated with the series having such relative rights, powers and duties as may from time to time be established. including rights. powers and duties senior to existing classes and groups of members or managers associated with the series. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or manager or class or group of members or managers, including an action to create under the provisions of the limited liability company agreement a class or group of the series of limited liability company interests that was not previously outstanding. A limited liability company agreement may provide that any member or class or group of members associated with a series shall have no voting rights.

(5) A limited liability company agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers by members or managers associated with a series may be on a per capita, number, financial interest, class, group or any other basis.

(6) Unless otherwise provided in a limited liability company agreement, the management of a series shall be vested in the members associated with such series in proportion to the then current percentage or other interest of members in the profits of the series owned by all of the members associated with such series, the decision of members owning more than fifty percent (50 %) of the said percentage or other interest in the profits controlling; provided, however, that if a limited liability company agreement provides for the management of the series, in whole or in part, by a manager, the management of the series, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the limited liability company agreement. The manager of

the series shall also hold the offices and have the responsibilities accorded to the manager as set forth in a limited liability company agreement. A series may have more than one (1) manager. Subject to section 35 of this Act, a manager shall cease to be a manager with respect to a series as provided in a limited liability company agreement. Except as otherwise provided in a limited liability company agreement, any event under this division or in a limited liability company agreement that causes a manager to cease to be a manager with respect to a series shall not, in itself, cause such manager to cease to be a manager of the limited liability company or with respect to any other series thereof.

(7) Notwithstanding section 39 of this Act, but subject to subsections (8) and (11) of this section, and unless otherwise provided in a limited liability company agreement, at the time a member associated with a series that has been established in accordance with subsection (2) of this section becomes entitled to receive a distribution with respect to such series, the member has the status of, and is entitled to all remedies available to, a creditor of the series, with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a series.

(8) Notwithstanding section 40(1) of this Act, a limited liability company may make a distribution with respect to a series that has been established in accordance with subsection (2) of this section; provided, that a limited liability company shall not make a distribution with respect to a series that has been established in accordance with subsection (2) of this section to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of such series, other than liabilities to members on account of their limited liability company interests with respect to such series and liabilities for which the recourse of creditors is limited to specified property of such series, exceed the fair value of the assets associated with such series, except that the fair value of property of the series that is subject to a liability for which the recourse of creditors is limited shall be included in the assets associated with such series only to the extent that the fair value of that property exceeds that liability. A member who receives a distribution in violation of

this subsection, and who knew at the time of the distribution that the distribution violated this subsection, shall be liable to a series for the amount of the distribution. A member who receives a distribution in violation of this subsection, and who did not know at the time of the distribution that the distribution violated this subsection, shall not be liable for the amount of the distribution. Subject to section 40(3) of this Act, which shall apply to any distribution made with respect to a series under this subsection, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

(9) Unless otherwise provided in the limited liability company agreement, a member shall cease to be associated with a series and to have the power to exercise any rights or powers of a member with respect to such series upon the assignment of all of the member's limited liability company interest with respect to such series. Except as otherwise provided in a limited liability company agreement, any event under this division or a limited liability company agreement that causes a member to cease to be associated with a series shall not, in itself, cause such member to cease to be associated with any other series or terminate the continued membership of a member in the limited liability company or cause the termination of the series, regardless of whether such member was the last remaining member associated with such series.

(10) Subject to section 46 of this Act, except to the extent otherwise provided in the limited liability company agreement, a series may be terminated and its affairs wound up without causing the dissolution of the limited liability company. The termination of a series established in accordance with subsection (2) of this section shall not affect the limitation on liabilities of such series provided by subsection (2) of this section. A series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under section 46 of this Act or otherwise upon the first to occur of the following:

(a) at the time specified in the limited liability company agreement;

(b) upon the happening of events specified in the limited liability company agreement;

(c) unless otherwise provided in the limited liability company agreement, upon the written consent of the members of the limited liability company associated with such series, or if there is more than one (1) class or group of members associated with such series, then by each class or group of members associated with such series, in either case, by members associated with such series who own more than two-thirds (2/3) of the then current percentage or other interest in the profits of the series of the limited liability company owned by all of the members associated with such series or by the members in each class or group of such series, as appropriate;

(d) at any time there are no members associated with the series; provided, that, unless otherwise provided in the limited liability company agreement, the series is not terminated and is not required to be wound up if, within ninety (90) days or such other period as is provided for in the limited liability company agreement after the occurrence of the event that terminated the continued membership of the last remaining member associated with the series, the personal representative of the last member associated with the series agrees in writing to continue the business of the series and to the admission of a personal representative of such member or its nominee or designee to the limited liability company as a member associated with the series, effective as of the occurrence of the event that terminated the continued membership of the last remaining member associated with the series; or

(e) the termination of such series under subsection (1) of this section.

(11) Notwithstanding section 48(1) of this Act, unless otherwise provided in the limited liability company agreement, a manager associated with a series who has not wrongfully terminated the series or, if none, the members associated with the series or a person approved by the members associated with the series or, if there is more than one class or group of members associated with the series, then by each class or group of members associated with the series, in either case, by members who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the series owned by all of the members associated with the series or by the members in each class or group associated with the series, as appropriate, may wind up the affairs of the series; but, if the series has been established in accordance with subsection (2) of this section, the High Court, upon cause shown, may wind up the affairs of the series upon application of any member associated with the series, the member's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee. The persons winding up the affairs of a series may, in the name of the limited liability company and for and on behalf of the limited liability company and such series, take all actions with respect to the series as are permitted under section 48(2) of this Act. The persons winding up the affairs of a series shall provide for the claims and obligations of the series as provided in section 49(2) of this Act and distribute the assets of the series as provided in section 49(1) of this Act. Actions taken in accordance with this subsection shall not affect the liability of members and shall not impose liability on a liquidating trustee.

(12) On application by or for a member or manager associated with a series established in accordance with subsection (2) of this section, the High Court may decree termination of such series whenever it is not reasonably practicable to carry on the business of the series in conformity with a limited liability company agreement.

(13) If a foreign limited liability company that is registering to do business in the Marshall Islands in accordance with section 51 of this Act is governed by a limited liability company agreement that establishes or provides for the establishment of designated series of members, managers, or limited liability company interests having separate rights. powers or duties with respect to specified property or obligations of the foreign limited liability company or profits and losses associated with specified property or obligations, that fact shall be so stated on the application for registration as a foreign limited liability company. In addition, the foreign limited liability company shall state on such application whether the debts, liabilities and obligations incurred, contracted for

or otherwise existing with respect to a particular series, if any, shall be enforceable against the assets of such series only, and not against the assets of the foreign limited liability company generally or any other series thereof, and unless otherwise provided in the limited liability company agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the foreign limited liability company generally or any other series thereof shall be enforceable against the assets of such series. **[P.L. 2000-14, §79, adding new section.][Subsection (9) amended by P.L. 2005-29.]**

§80. Conversion of a domestic limited liability company to other entities.

A domestic limited liability company may convert to a corporation, trust, a general partnership or a limited partnership organized, formed or created under the laws of the Marshall Islands, upon the authorization of such conversion in accordance with this section. If the limited liability company agreement specifies the manner of authorizing a conversion of the limited liability company, the conversion shall be authorized as specified in the limited liability company agreement. If the limited liability company agreement does not specify the manner of authorizing a conversion of the limited liability company, and does not prohibit a conversion of the limited liability company, the conversion shall be authorized in the same manner as is specified in the limited liability company agreement for authorizing a merger or consolidation that involves the limited liability company as a constituent party to the merger or consolidation. If the limited liability company agreement does not specify the manner of authorizing a conversion of the limited liability company or a merger or consolidation that involves the limited liability company as a constituent party and does not prohibit a conversion of the limited liability company, the conversion shall be authorized by the approval of the members or, if there is more than one (1) class or group of members, then by each class or group of members, in either case, by members who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members or by the members in each class or group as appropriate. **[P.L. 2000-14, §80, adding newsection; amended by P.L. 2000-19, §80.]**

§81. Delegation of rights and powers to manage.

Unless otherwise provided in the limited liability company agreement, a member or manager of a limited liability company has the power and authority to delegate to one (1) or more other persons the member's or manager's, as the case may be, rights and powers to manage and control the business and affairs of the limited liability company, including to delegate to agents, officers and employees of a member or manager of the limited liability company, and to delegate by a management agreement or another agreement with, or otherwise to, other persons. Unless otherwise provided in the limited liability company agreement, such delegation by a member or manager of a limited liability company shall not cause the member or manager to cease to be a member or manager, as the case may be, of the limited liability company.**[P.L. 2000-14, §81, adding new section.]**

§82. Defense of usury not available.

No obligation of a member or manager of a limited liability company to the limited liability company arising under the limited liability company agreement or a separate agreement or writing, and no note, instrument or other writing evidencing any such obligation of a member or manager shall be subject to the defense of usury, and no member or manager shall interpose the defense of usury with respect to any such obligation in any action. **[P.L. 2000-14, §82, adding new section.]**

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