

# **TITLE 5**

## **ASSOCIATIONS LAW**

1976 LIBERIAN CODES OF LAWS REVISED



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**PART I.**  
**BUSINESS CORPORATIONS**  
**AND**  
**LIMITED LIABILITY COMPANIES**



## CHAPTER 1.

# GENERAL PROVISIONS

- §1.1. Short Title.
- §1.2. Definitions.
- §1.3. Application of Business Corporation Act.
- §1.4. Form of instruments; filing.
- §1.5. Certificates or certified copies as evidence.
- §1.6. Fees on filing articles of incorporation and other documents.
- §1.7. Annual registration fee.
- §1.8. Waiver of notice.
- §1.9. Notice to shareholders of bearer shares.
- §1.10. Regulations.
- §1.11. Records.
- §1.12. Immunity from liability and suit.

### §1.1. Short Title.

Part I of this Title shall be known as the “Business Corporation Act”. References in Part I to this Act mean the Business Corporation Act.

### §1.2. Definitions.

As used in this Act, unless the context otherwise requires, the term:

- (a) “*Articles of incorporation*” includes (i) the original articles of incorporation or any other instrument filed or issued under any statute to form a domestic or foreign corporation, amended, supplemented, corrected or restated by articles of amendment, merger, or consolidation or other instruments filed or issued under any statute; or (ii) a special act or charter creating a domestic or foreign corporation, as amended, supplemented or restated.
- (b) “*Board*” means board of directors.
- (c) “*Corporation*” or “*domestic corporation*” means a corporation for profit which either:
  - (i) Has the authority to issue shares, and which is formed:
    - (aa) Under this Act, or exists on the effective date of this Act and theretofore was formed under any other general statute or by any special act of the

Republic of Liberia; or

- (bb) In Liberia or elsewhere as another entity and reregistered under the provisions of this Act and is deemed to have been formed under this Act; or
  - (cc) Under the laws of a foreign jurisdiction and re-domiciled into Liberia and is deemed to have been formed under this Act; or
- (ii) Has no authority to issue shares (hereinafter referred to as a “non-share corporation”), and which is formed:
- (aa) Under this Act, or exists on the effective date of this Act and theretofore was formed under any other general statute or by any special act of the Republic of Liberia; or
  - (bb) In Liberia or elsewhere as another entity and reregistered under the provisions of this Act and is deemed to have been formed under this Act; or
  - (cc) Under the laws of a foreign jurisdiction and re-domiciled into Liberia and is deemed to have been formed under this Act.
- (d) “**Foreign corporation**” means a corporation for profit formed under laws of a foreign jurisdiction. “Authorized” when used with respect to a foreign corporation means having authority under Chapter 12 (Foreign Corporations) to do business in Liberia.
- (e) “**Hybrid corporation**” means a corporation for profit which under its constitution has the power to issue shares but also has non-shareholding members, formed under this Act or formed in Liberia or elsewhere as another entity and reregistered under the provisions of this Act and deemed to have been formed under this Act; or formed under the laws of a foreign jurisdiction and re-domiciled into Liberia and deemed to have been formed under this Act.
- (f) “**Insolvent**” means being unable to pay debts as they become due in the usual course of the debtor’s business.
- (g) “**In writing**” and “**written**” shall be interpreted in accordance with Chapter 13 of Title 14 (Electronic Transactions Law).
- (h) “**Minister of Foreign Affairs**” means the Minister of Foreign Affairs and any deputy or assistant in the Ministry of Foreign Affairs exercising a function assigned to him, and “Minister” shall, in the absence of an indication to the contrary, be assumed to be a reference to the Minister of Foreign Affairs as so defined.
- (i) “**Non-resident domestic corporation**” means a domestic corporation not doing business in Liberia.
- (j) “**Re-domiciled**” means re-domiciled into Liberia from another jurisdiction, or re-

domiciled out of Liberia to another jurisdiction, as the context requires, and “**Re-domiciliation**” shall be similarly construed.

- (k) “**Registrar**” means the Minister of Foreign Affairs, and “**Deputy Registrar**” means the person or persons appointed by the Minister of Foreign Affairs to be in Liberia or outside of Liberia responsible for:
  - (i) The receipt and filing of all instruments required or permitted to be filed by this Title;
  - (ii) The issuing of all certificates, certified copies or other documents required or permitted to be issued by this Title; and
  - (iii) The maintenance of all records, registers and indices required by this Title to be maintained,

in respect of which the Deputy Registrar has been so appointed, that is to say, as the case may be:

- (iv) Resident domestic corporations, whether or not for profit, foreign corporations seeking to conduct or conducting business in Liberia, resident limited liability companies, partnerships and limited partnerships; or
- (v) Nonresident corporations, whether or not for profit, nonresident limited liability companies, partnerships and limited partnerships, foreign maritime entities, registered trusts, foundations and registered business companies,

and any reference in this Title to “Registrar” shall, in relation to the delivery, deposit and filing of instruments, the issuing of certificates and certified copies and other documents and the keeping of registers, records and indices, be taken to be a reference to the Deputy Registrar also, and any reference to the Deputy Registrar in connection with the delivery, deposit and filing of instruments and the keeping of indices in respect of matters falling within paragraph (v) shall be a reference to the person appointed by the Government of the Republic of Liberia to aid the Registrar in the administration of the Corporate Program of the Republic of Liberia.

- (l) “**Resident domestic corporation**” means a domestic corporation doing business in Liberia.
- (m) “**Signature**” and “**signed**” shall be interpreted in accordance with Chapter 13 of Title 14 (Electronic Transactions Law).
- (n) “**Treasury shares**” means shares which have been issued, have been subsequently acquired, and are retained uncanceled by the corporation.

*Prior legislation: 1976 Liberian Code of Laws Revised, Chapter 1, §1.2; amended effective June 19, 2002*

### §1.3. Application of Business Corporation Act.

1. *To domestic and foreign corporations in general.* The Business Corporation Act applies to every resident and non-resident domestic corporation and to every foreign corporation authorized to do business or doing business in Liberia; but the provisions of this Act shall not alter or amend the articles of incorporation of any domestic corporation in existence on the effective date of this Title, whether established by incorporation or created by special act. Any domestic corporation created prior to the effective date of this Act may at any time subject itself to the provisions of this Act by amending its articles of incorporation in accordance with the manner prescribed by Chapter 9.

2. *Banking and insurance corporations.* A corporation to which the Banking Law or Insurance Law is applicable shall also be subject to the Business Corporation Act, but the Banking Law or Insurance Law, as the case may be, shall prevail over any conflicting provisions of the Business Corporation Act.

3. *Causes of action, liability or penalty.* This Act shall not affect any cause of action, liability, penalty, or action or special proceeding which on the effective date of this Title is accrued, existing, incurred or pending, but the same may be asserted, enforced, prosecuted, or defended as if this Act had not been enacted.

4. *Authorized to issue shares or not so authorized or both.* A corporation formed under this Act, or reregistered or re-domiciled and deemed to be formed under this Act, may be:

- (a) A corporation authorized to issue shares; or
- (b) A corporation not authorized to issue shares but having members (in this Title referred to as a “non-share corporation”); or
- (c) A corporation authorized to issue shares and having members who are not shareholders (in this Title referred to as “a hybrid corporation”),

and, except where provision is specifically made for the position of members of non-share corporations or hybrid corporations, where in any provision of this Title there is reference to:

- (i) Shareholders, shares and voting rights, those provisions shall be applied *mutatis mutandis* in respect of a non-share corporation or a hybrid corporation to members, membership interests and members’ voting rights;
- (ii) Directors, those provisions shall be applied *mutatis mutandis* in respect of a non-share corporation or a hybrid corporation to members of the governing body, or, where the corporation is managed by the members, to the members.

5. *Joint Ventures.* Any business venture carried on by two or more corporations as partners shall be governed by the Partnership Law (Part III of this Title).

6. *Regulation of a corporation not doing business in Liberia.* A nonresident domestic corporation not doing business in Liberia as defined in section 12.1.2 and by this Act is not required

to register with and shall not be regulated by the Ministry of Commerce and Industry or the Ministry of Transport or any similar regulatory agency and shall not be subject to any enactment intended to regulate the conduct of business in Liberia.

*Prior legislation:* 1956 Code 4:47, 48; L. 1950-51, ch. XXXIII, §1; Lib. Corp. L., 1948, §§47, 48; 1976 Liberian Code of Laws Revised, Chapter 1, §1.3; amended effective June 19, 2002

**§1.4. Form of instruments; filing.**

1. *General Requirement.* Whenever any provision of this Act requires any instrument to be filed with the Registrar or the Deputy Registrar such instrument shall comply with the provisions of this section unless otherwise expressly provided by statute.

2. *Language.* Every instrument shall be in the English language:

Provided that:

- (a) The corporate name may be in another language if written in English letters or characters;
- (b) An instrument not in the English language may be filed if it is accompanied by a translation, duly attested to be a true translation, into the English language;
- (c) Where an instrument is in the English language there may be filed and recorded a translation into another language, duly attested to be a true translation, attached to it and forming part of the instrument,

and in the event there is found to be any difference in the content or the meaning of the instrument in the English language and in another language filed under paragraph (b) or (c) the instrument in the English language shall prevail.

3. *Execution.* All instruments shall be signed by:

- (a) Two officers, unless there is only one person appointed as an officer or the same person is appointed to be each officer of the corporation, in which case, by that one person; or
- (b) A duly authorized attorney in fact or in law,

and where any officer is not a natural person the instruments shall be signed by the person or persons who are the authorized signatories of that legal person.

4. *Domestic acknowledgments.* Whenever any provision of this Act requires an instrument to be acknowledged, such requirement means in the case of the execution of an instrument within Liberia that:

- (a) The person signing the instrument shall acknowledge that it is his act and deed or that it is the act and deed of the corporation, as the case may be, and

- (b) The instrument shall be acknowledged before a notary public or other person authorized to take acknowledgments, who shall attest that he knows the person making the acknowledgment to be the person who executed the instrument.

5. *Foreign acknowledgments.* In the case of the execution of an instrument outside of Liberia, an acknowledgment shall mean:

- (a) The person signing the instrument shall acknowledge that it is his act and deed or that it is the act and deed of the corporation, as the case may be; and
- (b) The instrument shall be acknowledged before a notary public or any other person authorized to take acknowledgments according to the laws of the place of execution, or a consul or vice-consul of the Republic of Liberia or other Liberian governmental official, including a Deputy Commissioner and a Special Agent appointed under Title 21 of the Laws of the Republic of Liberia, authorized to take acknowledgments or, in their absence, a consular official of another government having diplomatic relations with the Republic of Liberia, and such notary, person, consul or vice-consul shall attest that he knows the person making the acknowledgment to be the person who executed the instrument; and
- (c) When the acknowledgment shall be taken by a notary public or any other person authorized to take acknowledgments, except a Liberian governmental official or foreign consular official, the signature of such person who has authority shall be attested to by a consul or vice-consul of the Republic of Liberia or, in his absence, by a consular official of another government having diplomatic relations with the Republic of Liberia.

6. *Filing.* Whenever any provision of this Act requires any instrument to be filed with the Minister of Foreign Affairs, such requirement means that:

- (a) The original instrument, signed and acknowledged, together with a duplicate signed copy, shall be delivered to the office of the Registrar or the Deputy Registrar accompanied by a receipt showing payment to the Minister of Finance of all fees required to be paid in connection with the filing of the instrument;
- (b) Upon delivery of the original signed and acknowledged instrument with the required receipt and an exact signed and acknowledged copy, the Registrar or the Deputy Registrar shall certify that the instrument has been filed as required by this Act by endorsing the word "Filed" and the date of filing on the original;
- (c) The Registrar or the Deputy Registrar shall compare the duplicate signed and acknowledged copy with the original signed and acknowledged instrument, and if he finds that the text is identical, shall affix on the duplicate copy the same endorsement of filing as he affixed on the original. The said duplicate copy, as endorsed, shall be returned to the corporation. The endorsement constitutes the certificate of the Minister that the document is a true copy of the instrument filed in the office of the Minister of Foreign Affairs and that it was filed as of the date stated in the endorsement.



- (d) Except as provided in this paragraph, any instrument filed in accordance with paragraph (b) shall be effective as of the filing date stated thereon. Any instrument may provide that it is not to become effective until a specified time subsequent to the time it is filed, but such time shall not be later than a time on the ninetieth day after the date of its filing. If any instrument filed in accordance with this section provides for a future effective date or time and if the transaction is terminated or its terms are amended to change the future effective date or time prior to the future effective date or time, the instrument shall be terminated or amended by the filing, prior to the future effective date or time set forth in such instrument, of a certificate of termination or amendment of the original instrument, executed in accordance with section 1.3 which shall identify the instrument which has been terminated or amended and shall state that the instrument has been terminated or the manner in which it has been amended. If another section of this Title specifically prescribes a manner of executing, acknowledging or filing a specified instrument or a time when such instrument shall become effective which differs from the corresponding provisions of this section, then the provisions of such other section shall prevail.

7. *Correction of filed instruments.* Whenever any instrument authorized to be filed with the Registrar or the Deputy Registrar under any provision of this Title has been so filed and is an inaccurate record of the action therein referred to, or was defectively or erroneously executed, sealed or acknowledged, the instrument may be corrected by filing with the Registrar or the Deputy Registrar a certificate of correction of the instrument which shall be executed, acknowledged and filed in accordance with this section. The certificate of correction shall specify the inaccuracy or defect to be corrected and shall set forth the portion of the instrument in corrected form. In lieu of filing a certificate of correction the instrument may be corrected by filing with the Registrar or the Deputy Registrar a corrected instrument which shall be executed, acknowledged and filed in accordance with this section. The corrected instrument shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected, and shall set forth the entire instrument in corrected form. An instrument corrected in accordance with this section shall be effective as of the date the original instrument was filed except as to those persons who are substantially and adversely affected by the correction and as to those persons the instrument as corrected shall be effective from the filing date. Notwithstanding that any instrument authorized to be filed with the Registrar or the Deputy Registrar under this Title is when filed inaccurate, defectively or erroneously executed, sealed or acknowledged, or otherwise defective in any respect, the Minister of Foreign Affairs and the Registrar or the Deputy Registrar shall have no liability to any person for the preclearance for filing, the acceptance for filing or the filing and indexing of such instrument by the Minister of Foreign Affairs, the Registrar or the Deputy Registrar.

8. *Documents created, transmitted, signed or stored electronically.* The requirements of this Act in respect of filing and of the form of documents and duplicates and of the transmission, signature and sealing of such documents may be satisfied by instruments electronically created and existing, transmitted, signed and sealed, and duplicates thereof, created, held, transmitted, signed or sealed, as the case may be, in accordance with Chapter 13 of Title 14 (Electronic Transactions Law).

9. *Notarization and acknowledgment.* Section 11 of Chapter 13 of Title 14 (Electronic Transactions Law) shall apply to any requirement in this Act that a document be acknowledged,

notarized or under oath.

*10. Minister of Foreign Affairs and Registrar.* Where in this Act, other than in Chapter 12, or in any Act in which reference is made to this section, reference is made to the Minister of Foreign Affairs in respect of the filing of any document or instrument, the acknowledgement or execution thereof or action subsequent to filing, there is no requirement for reference to the Registrar also and reference to the Minister shall mean and be construed to mean a reference to the Registrar, and shall not require that specific reference be made to the Registrar.

*11. Power to vary.* The Registrar or the Deputy Registrar may by notice vary the requirements of this section in respect of execution, acknowledgement and filing but only to the extent that the burden of such requirement is reduced.

*Prior legislation:* 1976 Liberian Code of Laws Revised, Chapter 1, §1.4; amended effective June 19, 2002

### **§1.5. Certificates or certified copies as evidence.**

*1. Form and transmission of certificates.* Any certificate to be issued by the Registrar in accordance with the provisions of this Act may be created, exist, be transmitted, signed or sealed, as the case may be, electronically in accordance with Chapter 13 of Title 14 (Electronic Transactions Law) and all copies of documents filed in the office of the Registrar or the Deputy Registrar in accordance with the provisions of this Act and, where appropriate, of Chapter 13 of Title 14 (Electronic Transactions Law) with respect to the status etc. of documents electronically generated, held, signed or sealed, may be reproduced by him on paper or electronically for the purposes of certification by him in accordance with that Law.

*2. Status of certificates etc..* All certificates issued by the Registrar or the Deputy Registrar in accordance with the provisions of this Act and all copies of documents filed in accordance with the provisions of this Act shall, when certified by him, be taken and received in all courts, public offices and official bodies as *prima facie* evidence of the facts therein stated and of the execution of such instruments.

*Prior legislation:* 1956 Code 4:46; Lib. Corp. L., 1948, §46; 1976 Liberian Code of Laws Revised, Chapter 1, §1.5; amended effective June 19, 2002

### **§1.6 Fees on filing articles of incorporation and other documents.**

*1. Articles of incorporation.* On filing articles of incorporation a fee in the following amounts shall be paid to the Minister of Finance and a receipt therefor shall accompany the documents presented for filing:

US\$ 2.00 for each US\$ 1,000 of par value stock authorized up to and including US\$ 125,000.

US\$ 0.50 for each US\$ 1,000 of par value stock authorized in excess of US\$ 125,000 and not in excess of US\$ 1,000,000.

US\$ 0.25 for each US\$ 1,000 of par value stock authorized in excess of US\$ 1,000,000 and not in excess of US\$ 2,000,000.

US\$ 0.10 for each US\$ 1,000 of par value stock authorized in excess of US\$ 2,000,000.

US\$ 0.20 for each share of stock without nominal or par value authorized up to and including twelve hundred and fifty shares.

US\$ 0.05 for each share of stock without nominal or par value authorized in excess of twelve hundred and fifty and not in excess of ten thousand shares.

US\$ 0.0025 for each share of stock without nominal or par value authorized in excess of ten thousand and not in excess of twenty thousand shares.

US\$ 0.001 for each share of stock without nominal or par value authorized in excess of twenty thousand shares.

In no case shall less than US\$ 100.00 be paid on filing articles of incorporation.

2. *Increasing authorized number of shares; articles of merger or consolidation.* On filing with the Registrar or the Deputy Registrar an amendment of articles of incorporation increasing the authorized number of shares or articles of merger or consolidation of two or more domestic corporations, a fee shall be paid computed in accordance with the schedule stated in paragraph 1 on the basis of the number of shares provided for in the articles of amendment or articles of merger or consolidation, except that all fees paid by the corporation with respect to the shares authorized prior to such amendment or merger or consolidation shall be deducted from the amount to be paid, but in no case shall the amount be less than US\$ 10.00.

3. *Articles of dissolution; articles of amendment; articles of merger or consolidation into foreign corporation.* On filing with the Registrar or the Deputy Registrar an amendment of articles of incorporation other than an amendment increasing the authorized number of shares, or articles of dissolution, or articles of merger or consolidation into a foreign corporation or any other document for which a certificate is issued under this Act, a fee of US\$ 10.00 shall be paid to the Minister of Finance.

4. *Other fees.* Fees for certifying copies of documents and for filing, recording or indexing papers shall be determined and published by the Registrar or the Deputy Registrar from time to time.

*Prior legislation:* 1956 Code 4:43; Lib. Corp. L., 1948, §43; 1976 Liberian Code of Laws Revised, Chapter 1, §1.6; amended effective June 19, 2002

### **§1.7. Annual registration fee.**

1. *Annual Registration fee.* Every domestic corporation, reregistered corporation or re-domiciled corporation and every foreign corporation authorized to do business in Liberia shall pay to the Minister of Finance an annual registration fee of US\$ 150.00, (\$150.00), which fee shall be:

- (a) Due and payable on the anniversary date of the existence of the corporation or of the registration, as the case may be;
- (b) A preferred debt in the case of insolvency.

2. *Failure to pay annual fee when due; status of corporation.* A corporation that neglects, refuses or fails to pay the annual fee when due shall cease to be in goodstanding unless such fee is paid in full, and, prior to the date at which the provisions of section 11.3 apply to such corporation, a corporation that has ceased to be in goodstanding by reason of such neglect, refusal or failure shall be restored to and have the status of a corporation in goodstanding upon the payment of the annual fee for each year for which such corporation neglected, refused or failed to pay an annual fee.

3. *Corporation not in goodstanding.* Notwithstanding that a corporation is not in goodstanding, it shall remain a corporation formed under this Act, but the Registrar or the Deputy Registrar shall not accept for filing any certificate required or permitted by this Act and no certificate of goodstanding shall be issued with respect to such corporation, unless or until such corporation shall have been restored to and have the status of a corporation in goodstanding.

4. *No access to courts if not in goodstanding.* A corporation that has ceased to be in goodstanding by reason of its neglect, refusal or failure to pay an annual fee may not maintain any action, suit or proceeding in any court until such corporation has been restored to and has the status of a corporation in goodstanding and no action, suit or proceeding may be maintained in any court by any successor or assignee of such corporation, or on any right, claim or demand arising on the transaction of business by such corporation, after it has ceased to be in goodstanding until such corporation has paid any annual fee then due and payable:

Provided that the neglect, refusal or failure of a corporation to pay an annual fee shall not impair the validity on any contract, deed, mortgage, security interest, lien or act of such corporation or prevent such corporation from defending any action, suit or proceeding with any court.

5. *No liability of shareholders, etc..* A shareholder, director or officer of a corporation is not liable for the debts, obligations or liabilities of such corporation solely by reason of the neglect, refusal or failure of such corporation to pay an annual fee or by reason of such corporation ceasing to be in goodstanding.

*Prior legislation:* L. 1959-60, ch. IX; 1956 Code 4:48; Lib. Corp. L., 1948, §48. Amended eff. September 15, 1987; 1976 Liberian Code of Laws Revised, Chapter 1, §1.7; amended effective June 19, 2002

### **§1.8. Waiver of notice.**

Whenever any notice is required to be given to any shareholder or director or bondholder of a corporation or to any other person under the provisions of this Act or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

**§1.9. Notice to shareholders of bearer shares.**

Any notice or information required to be given to shareholders of bearer shares shall be provided in the manner designated in the corporation's articles of incorporation or, in the absence of such designation or if the notice can no longer be provided as stated therein, the notice shall be published in a publication of general circulation in Liberia or in a place where the corporation has a place of business. Any notice requiring a shareholder to take action in order to secure a right or privilege shall be published in time to allow a reasonable opportunity for such action to be taken.

**§1.10. Regulations.**

The Registrar may make such Regulations not inconsistent with the provisions of this Title as may be in his opinion necessary for the purpose of giving effect to this Title and those Regulations to the extent that they are not so inconsistent, shall have the effect and force of law.

*Prior legislation:* 1956 Code 4:48; Lib. Corp. L., 1948, §48; 1976 Liberian Code of Laws Revised, Chapter 1, §1.10; amended effective June 19,2002

**§1.11. Records.**

There shall be maintained at the office of the Minister of Foreign Affairs in Monrovia and at an office of the Deputy Registrar as a public record an index of corporations registered under this Title together with a register of all documents required by this Title to be filed.

*Effective:* June 19, 2002

**§1.12. Immunity from liability and suit.**

In the performance of their duties, the Registrar or the Deputy Registrar and any person acting on their behalves for the administration of the provisions of this Act, or any Regulation promulgated pursuant thereto, or in the performance of any services pursuant to this Act, their employees, and agents wherever located, shall have full immunity from liability 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, or any other law or rule applicable to the performance of any of their said duties; and any such suit brought against any of the foregoing shall be dismissed, without prejudice to the plaintiff to bring an action against the correct party.

*Effective:* June 19, 2002



## **CHAPTER 2.**

# **CORPORATE PURPOSES AND POWERS**

- §2.1. Purposes.
- §2.2. General powers.
- §2.3. Guarantee authorized by shareholders.
- §2.4. Defense of *ultra vires*.
- §2.5. Effect of incorporation; corporation as proper party to action.
- §2.6. Liability of directors, officers shareholders and members.

### **§2.1. Purposes.**

Corporations may be organized under this Act for any lawful business purpose or purposes.

### **§2.2. General Powers.**

Every corporation, subject to any limitations provided in this Act or any other statute of Liberia or its articles of incorporation, shall have power in furtherance of its corporate purposes irrespective of corporate benefit:

- (a) To have perpetual duration.
- (b) To sue and be sued in all courts of competent jurisdiction in the Republic of Liberia and to participate in actions and proceedings, whether judicial, administrative, arbitral or otherwise, in like cases as natural persons.
- (c) To have a corporate seal, and to alter such seal at pleasure, and to use it by causing it or a facsimile to be affixed or impressed or reproduced in any other manner.
- (d) To purchase, receive, take by grant, gift, devise, bequest, or otherwise, lease or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.
- (e) To sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, or create a security interest in, all or any of its property, or any interest therein, wherever situated.
- (f) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer, or otherwise dispose of, mortgage, and pledge, bonds and other obligations, shares, or other securities or interests issued by others, whether engaged in similar or different business, governmental, or other activities.

- (g) To make contracts, give guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property or any interest therein, wherever situated.
- (h) To lend money, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.
- (i) To do business, carry on its operations, and have offices and exercise the powers granted by this Chapter in any jurisdiction within or without the Republic of Liberia.
- (j) To elect or appoint officers, employees and other agents of the corporation, define their duties; fix their compensation, and the compensation of directors, and to indemnify corporate personnel.
- (k) To adopt, amend or repeal bylaws relating to the business of the corporation, the conduct of its affairs, its rights or powers or the rights or powers of its shareholders, directors or officers.
- (l) To make donations for the public welfare or for charitable, educational, scientific, civic or similar purposes.
- (m) To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans and other incentive plans for any or all of its directors, officers and employees.
- (n) To purchase, receive, take, or otherwise acquire, own, hold, sell, lend, exchange, transfer or otherwise dispose of, pledge, use and otherwise deal in and with its own shares.
- (o) To be a promoter, incorporator, partner, member, associate, or manager of any partnership, corporation, joint venture, trust or other enterprise.
- (p) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is formed.
- (q) To de-register and reregister as another entity in accordance with the provisions of Chapter 10.
- (r) To re-domicile in accordance with the provisions of Chapter 10 to a jurisdiction, other than a jurisdiction precluded by the legislation of that jurisdiction from accepting a corporation by re-domiciliation or a jurisdiction excluded by the provisions of any relevant statute or regulations of Liberia or by the articles of the corporation.

*Prior legislation:* 1956 Code 4:5; Lib. Corp. L., 1948, §5; 1976 Liberian Code of Laws Revised; Chapter 2, §2.2; amended effective June 19, 2002.



**§2.3. Guarantee authorized by shareholders.**

A guarantee may be given by a corporation, although not in furtherance of its corporate purposes, when authorized at a meeting of shareholders by vote of the holders of a majority of all outstanding shares entitled to vote thereon. If authorized by a like vote, such guarantee may be secured by a mortgage or pledge of, or the creation of a security interest in, all or any part of the corporate property, or any interest therein, wherever situated.

**§2.4. Defense of *ultra vires*.**

No act of a corporation and no transfer of real or personal property to or by a corporation, otherwise lawful, shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such transfer, but such lack of capacity or power may be asserted:

- (a) In an action by a shareholder against the corporation to enjoin the doing of any act or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made under any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the action and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, such compensation as may be equitable for the loss or damage sustained by any of them from the action of the court in setting aside and enjoining the performance of such contract; provided that anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained;
- (b) In an action by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a derivative suit against the incumbent or former officers or directors of the corporation for loss or damage due to their unauthorized act;
- (c) In a proceeding by the Minister of Justice, as provided in the Civil Procedure Law, to dissolve the corporation, or to enjoin it from the doing of unauthorized business.

**§2.5. Effect of incorporation; corporation as proper party to action**

A corporation is a legal entity, considered in law as a fictional person distinct from its shareholders or members, and with separate rights and liabilities. The corporation is a proper plaintiff in a suit to assert a legal right of the corporation and a proper defendant in a suit to assert a legal right against the corporation; and the naming of a shareholder, member, director, officer or employee of the corporation as a party to a suit in Liberia to represent the corporation is subject to a motion to dismiss if such party is the sole party to sue or defend, or subject to a motion for misjoinder if such party is joined with another party who is a proper party and has been joined only to represent the corporation.

**§2.6. Liability of directors, officers, shareholders and members.**

Unless otherwise provided by law, the directors, officers, shareholders and members of a domestic corporation shall not be liable for corporate debts and obligations; provided that this provision shall not eliminate or limit the liability of a director for:

- (a) Any breach of the director's duty of loyalty to the corporation or its shareholders or members;
- (b) Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- (c) Any transaction from which the director derived an improper personal benefit.

This provision shall not eliminate or limit the liability of a director, officer, shareholder or member for any act or omission occurring prior to the date when it became effective. All references in this section to a director shall also be deemed to refer to a member of the governing body of a non-share corporation, and to such other person or persons, if any, who, pursuant to a provision of the articles of incorporation or registration under this Title exercise or perform any of the powers or duties in relation to a corporation otherwise conferred or imposed upon the board of directors by this Title.

*Prior legislation:* 1976 Liberian Code of Laws Revised; Chapter 2, §2.6; amended effective June 19, 2002.

## CHAPTER 3.

# SERVICE OF PROCESS; REGISTERED AGENT

- §3.1. Registered agent for service of process.
- §3.2. Minister of Foreign Affairs as agent for service of process.
- §3.3. Service of process on foreign corporation not authorized to do business.
- §3.4. Records and certificates of Ministry of Foreign Affairs.
- §3.5. Limitation on effect of Chapter.

### **§3.1. Registered agent for service of process.**

#### 1. *Registered Agent.*

- (a) Every domestic corporation or foreign corporation authorized to do business in Liberia or foreign maritime entity registered under the provisions of section 13.1 shall designate a registered agent in Liberia upon whom process against such corporation or foreign maritime entity or any notice or demand required or permitted by law to be served may be served. The registered agent for a corporation having a place of business in Liberia shall be a resident domestic corporation having a place of business in Liberia or a natural person, resident of and having a business address in Liberia. The registered agent for a domestic or foreign corporation not having a place of business in Liberia or for a foreign maritime entity shall be a domestic bank or trust company with a paid in capital of not less than US\$50,000, which is authorized by the Legislature of the Republic to act as registered agent for such corporation or foreign maritime entity.
- (b) Effective as of January 1, 2000, as a prerequisite for such domestic bank or trust company to act as a registered agent, it shall additionally be required to apply for and obtain a license from the Minister of Foreign Affairs authorizing it to act as a registered agent and it must also specifically be authorized by written contract with the Liberian Government to act as a registered agent.
- (c) A domestic corporation or a foreign corporation authorized to do business in Liberia, or foreign maritime entity which fails to maintain a registered agent shall be dissolved or its authority to do business or registration shall be revoked, as the case may be, in accordance with section 11.3, 12.7 or 13.4.
- (d) In cases where the registered agent of a domestic corporation or foreign corporation authorized to do business in Liberia or of a foreign maritime entity fails to meet the

requirements of this section 3.1, the goodstanding of such corporation or entity for which such registered agent is acting shall not be affected and the provisions of section 3.1(c) above shall be suspended so long as the annual registration fees of such corporation or entity are not outstanding and at the time such annual fees were paid they were paid to an entity which then qualified to serve as a registered agent.

- (e) In cases where a registered agent fails to meet the requirements of this section 3.1, the domestic corporation or foreign corporation authorized to do business in Liberia or foreign maritime entity for which such registered agent is acting shall, notwithstanding any contrary provisions of this Act, not be required to amend its articles of incorporation or other constituent documents to designate a new registered agent, and such designation may be made in accordance with procedures approved by the Registrar which may include the waiver of the provisions of section 1.4.
- (f) Whenever a registered agent is no longer qualified to serve as a registered agent under this section 3.1, the Registrar may appoint any other entity qualified to serve as a registered agent pursuant to this section until such corporation or foreign maritime entity appoints a new registered agent qualified under this section.

The provisions of section 3.1 shall apply to all corporations incorporated under the Liberian Corporation Law of 1948.

2. *Manner of service.* Service of process on a registered agent may be made in the manner provided by law for the service of summons as if the registered agent were a defendant.

3. *Resignation by registered agent.* Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Registrar or the Deputy Registrar, who shall cause a copy thereof to be sent by registered mail to the corporation at the address of the office of the corporation within or without Liberia, or, if none, at the last known address of a person at whose request the corporation was formed. No designation of a new registered agent shall be accepted for filing unless all charges owing to the former agent shall have been paid.

4. *Making, revoking or changing designation by corporation.* A designation of a registered agent under this section may be made, revoked, or changed by filing an appropriate notification with the Registrar or the Deputy Registrar.

5. *Termination of designation.* The designation of a registered agent shall terminate 30 days after the filing with the Registrar or the Deputy Registrar, of a notice of resignation or sooner if a successor agent is designated.

6. *Notification by registered agent to corporation.* A registered agent, when served with process, notice or demand for the corporation which he represents, shall transmit the same to the corporation by personal notification or in the following manner: Upon receipt of the process, notice or demand, the registered agent shall cause a copy of such paper to be mailed to the corporation named therein at its last known address. Such mailing shall be by registered mail. As soon thereafter as possible if process was issued in Liberia, the registered agent may file with the clerk of the Liberian court issuing the process or with the agency of the Liberian 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.

7. *Immunity from liability of registered agent.* The registered agent (and any affiliate of any entity acting as registered agent) and any agent, shareholder, member, director, officer, and employee of either such registered agent or such affiliate shall not directly or indirectly be liable for or subject to any liability of any kind, including legal claims, causes of action, suits, debts, counterclaims, sums of money, losses, demands, costs and expenses with respect to their acts or failures to act in the good faith conduct of the registered agent's duties or because of the acts of the corporation, registered business company, limited liability company, trust, partnership, limited partnership, foreign maritime entity, foundation and other business associations, or other entity for which the registered agent serves as registered agent.

*Prior legislation:* 1977 Code 5; Part I, ch. 3, §3.1; L. 1965-66; ch. ; 1956 Code 4:44; L. 1950-51, ch. XXIII, §1; Lib. Corp. L. 1948, §44; 1976 Liberian Code of Laws Revised, Chapter 3, §3.1, amended effective November 26, 1999; June 19, 2002.

### **§3.2. Minister of Foreign Affairs as agent for service of process.**

1. *When Minister of Foreign Affairs is agent for service.* Whenever a domestic corporation or foreign corporation authorized to do business in Liberia or a foreign maritime entity registered under section 13.1 or a corporation which has de-registered upon reregistration as another legal entity or re-domiciled out of Liberia fails to maintain a registered agent in Liberia, or whenever its registered agent cannot with reasonable diligence be found at his business address, then the Minister of Foreign Affairs shall be an agent of such corporation upon whom any process or notice or demand required or permitted by law to be served may be served in respect of actions arising out of the time that the entity was registered in Liberia.

2. *Manner of service.* Service on the Minister of Foreign Affairs as agent of a domestic or foreign corporation authorized to do business or on a foreign maritime trust or foreign maritime corporation registered under section 13.1 or a corporation which has de-registered upon reregistration as another legal entity or re-domiciled out of Liberia, shall be made by personally delivering to and leaving with him or his deputy or with any person authorized by the Minister of Foreign Affairs to receive such service, at the office of the Ministry of Foreign Affairs in the City of Monrovia, duplicate copies of such process together with the statutory fee. The Minister of Foreign Affairs shall promptly send one of such copies by registered mail return receipt requested, to such corporation at the business address of its registered agent, or if there is no such office, then the Minister of Foreign Affairs shall mail such copy, in the case of a resident domestic corporation, in care of any director named in its articles of incorporation at his address stated therein, or in the case of a domestic corporation not having a place of business in Liberia, at the address of the corporation without Liberia, or if none, at the last known address of a person at whose request the corporation was formed; or, in the case of a foreign corporation authorized to do business, to such corporation at its address as stated in its application for authority to do business, or, in the case of a foreign maritime

entity registered under section 13.1, to its principal place of business, or in the case of a corporation which has de-registered upon reregistration as another legal entity or re-domiciled out of Liberia, to the address of record entered in the record of reregistration or re-domiciliation in respect of that corporation.

1976 Liberian Code of Laws Revised, Chapter 3, §3.1, amended effective June 19, 2002

### **§3.3. Service of process on foreign corporation not authorized to do business.**

1. *Minister of Foreign Affairs as agent to receive service.* Every foreign corporation not authorized to do business or not registered under section 13.1 which itself or through an agent does any business in Liberia or does any other act in Liberia which under section 3.2 of the Civil Procedure Law confers jurisdiction on Liberian courts as to claims arising out of such act, is deemed to have designated the Minister of Foreign Affairs 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 Liberia having jurisdiction of the subject matter.

2. *Manner of service.* Service of such process upon the Minister of Foreign Affairs shall be made by personally delivering to and leaving with him or his deputy, or with any person authorized by the Minister of Foreign Affairs to receive such service, at the office of the Ministry of Foreign Affairs in the City of Monrovia, a copy of such process together with the statutory fee. Such service shall be sufficient if a copy of the process is:

- (a) Delivered personally without Liberia to such foreign corporation by a person and in the manner authorized to serve process by law of the jurisdiction in which service is made; or
- (b) Sent by or on behalf of the plaintiff to such foreign corporation by registered mail at the post office address specified for the purpose of mailing process, on file in the Ministry of Foreign Affairs in the jurisdiction of its incorporation or with any official or body performing the equivalent function thereof, or if no such address is there specified, to its registered agent or other office there specified, or if no such office is specified, to the last address of such foreign corporation known to the plaintiff.

3. *Proof of service.* Proof of service shall be by affidavit of compliance with this section filed, together with the process, within thirty days after such service with the clerk of the court in which the action or special proceeding is pending. If a copy of the process is mailed in accordance with this section, there shall be filed with the affidavit of compliance either the return receipt signed by such foreign corporation or other official proof of delivery or, if acceptance was refused, the original envelope with a notation by the postal authorities that acceptance was refused. If acceptance was refused, a copy of the process together with notice of the mailing by registered mail and refusal to accept shall be promptly sent to such foreign corporation at the same address by ordinary mail and the affidavit of compliance shall so state. Service of process shall be complete ten days after such papers are filed with the clerk of the court. The refusal to accept delivery of the registered mail or to sign the return receipt shall not affect the validity of the service and such foreign corporation refusing to accept such registered mail shall be charged with knowledge of the contents thereof.

**§3.4. Records and certificates of Ministry of Foreign Affairs.**

The Ministry of Foreign Affairs shall keep a record of each process served upon the Minister of Foreign Affairs under this Chapter, including the date of service. It shall, upon request made within five 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.

**§3.5. Limitation and effect of Chapter.**

Nothing contained in this Chapter shall affect the validity of service of process on a corporation effected in any other manner permitted by law.





## CHAPTER 4.

# FORMATION OF CORPORATIONS; CORPORATE NAMES

- §4.1. Incorporators.
- §4.2. Corporate name.
- §4.3. Index of names of corporations.
- §4.4. Contents of articles of incorporation.
- §4.5. Powers and rights of bondholders.
- §4.6. Execution and filing of articles of incorporation.
- §4.7. Effect of filing articles of incorporation.
- §4.8. Organization meeting.
- §4.9. Bylaws.
- §4.10. Emergency bylaws.

### **§4.1. Incorporators.**

Any person, partnership, association or corporation, singly or jointly with others, and without regard to his or their residence, domicile, or jurisdiction of incorporation, may incorporate or organize a corporation under this Act.

### **§4.2. Corporate name.**

1. *General requirements.* Except as otherwise provided in paragraph 2 of this section, the name of a domestic or authorized foreign corporation:

- (a) Shall contain the word “corporation,” “incorporated,” “company,” or “limited” or an abbreviation of one of those words or, except where the corporation establishes a place of business in Liberia or seeks authorization to do business in Liberia, include as part of its name such words or words, abbreviations, suffix, or prefix of like import of foreign countries or jurisdictions as will clearly indicate that it is a body corporate with separate legal personality as distinguished from a natural person:

Provided, however, that the Registrar or the Deputy Registrar may waive such requirement (unless he determines that the proposed name is, or might otherwise appear to be, that of a natural person) where he is satisfied that the name is the business name of the entity denominated in accordance with the standards of the economic activity in which the entity is or will be engaged;

- (b) Shall not be the same as the name of a corporation of any type or kind, as such name appears on the index of names of existing domestic and authorized foreign corporations and other legal entities kept by the Registrar or the Deputy Registrar or a name so similar to any such name as to tend to confuse or deceive except where the legal entity in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar or the Deputy Registrar requires;
- (c) Shall not contain a word, the use of which by the corporation would in the opinion of the Registrar or the Deputy Registrar:
  - (i) Constitute a criminal offense; or
  - (ii) Be offensive or undesirable;
- (d) Shall not contain the words “Chamber of Commerce”, “Building Society”, “Bank” or “Insurance”, or words of similar connotation or a translation of those words, unless the corporation is authorized to use the words by virtue of a license granted by the Government of the Republic of Liberia or under any other relevant Law of the Republic of Liberia;
- (e) Shall not contain words which in the opinion of the Registrar or the Deputy Registrar suggest, or are calculated to suggest, the patronage of the Government of the Republic of Liberia or any Ministry thereof;
- (f) Shall not contain words specified by the Registrar or the Deputy Registrar for this purpose, except with his consent;

and in determining for the purposes of this section whether one name is the same as another, there are to be disregarded:

- (i) The definite article, where it is the first word of the name;
- (ii) The following words and expressions where they appear at the end of a name, that is to say:
  - “Company” or “and company” or
  - “Corporation” or “and corporation” or
  - “Company limited” or “and company limited” or
  - “Corporation limited” or “and corporation limited” or
  - “Limited”,
 or a translation of into, or words with an equivalent meaning in, another language;

- (iii) Abbreviations of any of those words or expressions where they appear before or at the end of the name; and
- (iv) Type and case of letters, accents, spaces between letters and punctuation marks;

and “and” and “&” are to be taken as the same.

The Registrar or the Deputy Registrar may specify by notice words or expressions for the registration of which as or as part of a corporate name his approval is required under paragraph (f) of this section, and may make different provisions for different cases or classes of case and may make such transitional provisions and savings as he thinks appropriate.

2. *Limitations on scope of requirement.* The provisions of paragraph 1 of this section shall not:

- (a) Require any corporation, existing or authorized to do business on the effective date of this Title, or in the case of subparagraphs (c) to (f) of that paragraph, existing or authorized to do business on the effective date of those subparagraphs, to add to, modify or otherwise change its corporate name;
- (b) Prevent a corporation with which another corporation, domestic or foreign, is merged, or which is formed by the reorganization or consolidation of one or more domestic or foreign corporations, or upon a sale, lease or other disposition to or exchange with, a domestic corporation of all or substantially all the assets of another domestic corporation, including its name, from having the same name as any of such corporations if at the time such other corporation was existing under the laws of Liberia or was authorized to do business in Liberia.

3. *Power to require corporation to change name.* Where a corporation has been incorporated by a name which:

- (a) Is the same as or, in the opinion of the Registrar or the Deputy Registrar, too like a name appearing at the time of registration in the index of names; or
- (b) Is the same as or, in the opinion of the Registrar or the Deputy Registrar too like the name which should have appeared in that index at that time,

the Registrar or the Deputy Registrar may, within twelve months of the time of incorporation, in writing direct the corporation to change its name within such period as he may specify. The provisions of this section apply in determining whether the name is the same as or too like another.

4. *Misleading information.* If it appears to the Registrar or the Deputy Registrar that misleading information has been given for the purpose of incorporation with a particular name, or that undertakings or assurances have been given for that purpose and have not been fulfilled, he may within five years of the date of its incorporation with that name in writing direct the corporation to change its name within such period as he may specify, and where a direction has been given under paragraph 3 or this paragraph the Registrar or the Deputy Registrar may by a further direction in

writing extend the period within which the corporation has to change its name at any time before the end of that period.

*Prior legislation:* L. 1961-62, ch. XLVII, §1(4:2(a)); 1956 Code 4:2(a); Lib. Corp. L. 1948, §2(a); 1976 Liberian Code of Laws Revised, Chapter 4, §4.2, amended effective June 19, 2002.

#### **§4.3. Index of names of corporations.**

The Registrar or the Deputy Registrar shall keep an alphabetical index of all names of all existing domestic corporations, re-domiciled corporations, de-registered corporations, registered business companies, limited liability companies, foundations, registered trusts, partnerships and limited partnerships, and any other legal entities from time to time existing under this Title, and foreign maritime entities registered under section 13.1, and foreign corporations authorized to do business in Liberia. Such index shall be in addition to the index required to be kept by the Registrar or the Deputy Registrar under section 1.11.

*Prior legislation:* 1976 Liberian Code of Laws Revised, Chapter 4, §4.3, amended effective June 19, 2002.

#### **§4.4. Contents of articles of incorporation.**

The articles of incorporation shall set forth:

- (a) The name of the corporation.
- (b) The duration of the corporation if other than perpetual.
- (c) The purpose or purposes for which the corporation is organized. It shall be sufficient to state, either alone or with other businesses or purposes, that the purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under this Act, and by such statement all lawful acts and activities shall be within the purposes of the corporation, except for express limitations, if any.
- (d) The registered address of the corporation in Liberia and the name and address of its registered agent.
- (e) The aggregate number of shares which the corporation shall have the authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each class or that such shares are to be without par value.
- (f) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class.
- (g) The number of shares to be issued as registered shares and as bearer shares and that, in the case of a corporation formed on or after June 19 2002, unless otherwise provided, registered shares may be exchanged for bearer shares and bearer shares for registered

shares and in the case of a corporation formed before that date whether registered shares may be exchanged for bearer shares and bearer shares for registered shares.

- (h) If bearer shares are authorized to be issued, the manner in which any required notice shall be given to shareholders of bearer shares.
- (i) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series.
- (j) The number of directors constituting the initial board of directors and if the initial directors are to be named in the articles of incorporation, the names and addresses of the persons who are to serve as directors until the first annual meeting of the shareholders or until their successors shall be elected and qualify.
- (k) The name and address of each incorporator.
- (l) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the affairs of the corporation, including the designation of initial directors, subscription of shares by the incorporators, and any provision restricting the transfer of shares or providing for greater quorum or voting requirements with respect to shareholders or directors than are otherwise prescribed in this Act, and any provision which under this Act is required or permitted to be set forth in the bylaws.
- (m) If the corporation is precluded from de-registering and reregistering as another entity or re-domiciling to another jurisdiction, and any steps in excess of or in variation to the provisions of this Act in respect of de-registration, reregistration and re-domiciliation and any restrictions as to the form of entity as which the corporation may de-registered and reregistered or the jurisdiction to which it may re-domicile.

The provisions of paragraphs (e) to (i) shall not apply to corporations that are not to have authority to issue shares. In the case of such corporations, the fact that they are not to have authority to issue shares shall be stated in the articles. The conditions of membership of such corporations shall likewise be stated in the articles or the articles may provide that the conditions of membership shall be stated in the bylaws. It is not necessary to enumerate in the articles of incorporation the general corporate powers stated in section 2.2.

*Prior legislation:* L. 1961-62, ch. XLVII, §1 (14:2); 1956 Code 4:22; Lib. Corp. L., 1948, §2; 1976 Liberian Code of Laws Revised, Chapter 4, §4.4, amended effective June 19, 2002.

#### **§4.5. Powers and rights of bondholders.**

The articles of incorporation may confer upon the holders of any bonds, debentures, or other

obligations issued or to be issued by the corporation, whether secured by mortgage or otherwise or unsecured, any one or more of the following powers and rights:

- (a) The power to vote on the election of directors, or other matters specified in the articles;
- (b) The right of inspection of books of account, minutes, and other corporate records;
- (c) Any other rights to information concerning the financial condition of the corporation which its shareholders have or may have.

#### **§4.6. Execution and filing of articles of incorporation.**

Articles of incorporation shall be signed and acknowledged by each incorporator and filed with the Registrar or the Deputy Registrar in conformity with the provisions of section 1.4. On filing the original copy of the articles of incorporation, the Registrar or the Deputy Registrar shall indicate thereon whether the corporation is a resident domestic corporation or a nonresident domestic corporation.

*Prior legislation:* 1956 Code 4:2, 3; L. 1950-51, ch. XXXIII, §1; Lib. Corp. L., 1948, §3; 1976 Liberian Code of Laws Revised, Chapter 4, §4.6, amended effective June 19, 2002.

#### **§4.7. Effect of filing articles of incorporation.**

The corporate existence begins upon filing the articles of incorporation effective as of the filing date stated thereon. The endorsement by Registrar or the Deputy Registrar, as required by section 1.4, shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Act.

*Prior legislation:* 1956 Code 4:3; L. 1950-51, ch. XXXIII, §1; Lib. Corp. L., 1948, §3; 1976 Liberian Code of Laws Revised, Chapter 4, §4.7, amended effective June 19, 2002.

#### **§4.8. Organization meeting.**

1. *Meeting.* After the filing of the articles of incorporation an organization meeting or meetings of the corporation, shall be held either within or without Liberia for the purpose of electing directors, appointing officers, adopting bylaws and doing such acts to perfect the organization of the corporation as are deemed appropriate and transacting such other business as may come before the meeting or meetings.

2. *Attendees.* The organization meeting or meetings may be held by:

- (a) The original directors, if named in the articles of incorporation; or
- (b) The incorporator or incorporators, in person or by proxy, whether or not they are subscribers; or

- (c) If the articles of incorporation state that the incorporators or others have subscribed to shares, by such subscribers; or
- (d) If the subscriptions have been transferred, by the transferee of subscription rights.

3. *Written consent.* Any action permitted to be taken at the organization meeting may be taken without a meeting if each director, incorporator, subscriber or transferee consents to and signs an instrument setting forth the action so taken.

*Prior legislation:* 1976 Liberian Code of Laws Revised, Chapter 4, §4.8, amended effective June 19, 2002.

#### **§4.9. Bylaws.**

1. *Power to make by-laws.* The original or other bylaws of a corporation may be adopted, amended or repealed by the incorporators, by the initial directors if they were named in the articles of incorporation, or, before a corporation has received any payment for any of its shares, by its board of directors. After a corporation has received any payment for any of its shares, the power to adopt, amend or repeal bylaws shall be in the shareholders entitled to vote, or, in the case of a non-share corporation, in its members entitled to vote; provided however, any corporation may, in the articles of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors or, in the case of a non-share corporation, upon its governing body by whatever name designated. The fact that such power has been so conferred upon the directors or governing body, as the case may be, shall not divest the shareholders or members of the power, nor limit their power to adopt, amend or repeal bylaws.

2. *Scope.* The bylaws may contain any provision, not inconsistent with the law or the articles of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its shareholders, members, directors, officers or employees.

*Prior legislation:* L. 1961-62, ch. XLVII, & 2(4: 24(a)); 1956 Code 4: 25; Lib. Corp. L., 1948, §25; 1976 Liberian Code of Laws Revised, Chapter 4, §4.9, amended effective June 19, 2002.

#### **§4.10. Emergency bylaws.**

1. *Emergency bylaws and other powers in emergency.* The board of directors of any corporation may adopt emergency bylaws, subject to repeal or change by action of the shareholders, which shall notwithstanding any different provision elsewhere in this Chapter or in the articles of incorporation or bylaws, be operative during any emergency resulting from an attack on the Republic of Liberia or on a locality in which the corporation conducts its business or customarily holds meetings of its board of directors or its shareholders, or during any nuclear or atomic disaster, or during the existence of any catastrophe, or other similar emergency condition, as a result of which a quorum of the board of directors or a standing committee thereof cannot readily be convened for action. The emergency bylaws may make any provision that may be practical and necessary for the circumstances of the emergency, including provisions that:

- (a) A meeting of the board of directors or a committee thereof may be called by any officer or director in such manner and under such conditions as shall be prescribed in the emergency bylaws;
- (b) The director or directors in attendance at the meeting, or any greater number fixed by the emergency bylaws, shall constitute a quorum; and
- (c) The officers or other persons designated on a list approved by the board of directors before the emergency, all in such order of priority and subject to such conditions and for such period of time (not longer than reasonably necessary after the termination of the emergency) as may be provided in the emergency bylaws or in the resolution approving the list, shall, to the extent required to provide a quorum at any meeting of the board of directors, be deemed directors for such meeting.

2. *Powers of directors.* The board of directors, either before or during any such emergency, may:

- (a) Provide, and from time to time modify, lines of succession in the event that during such emergency any or all officers or agents of the corporation shall for any reason be rendered incapable of discharging their duties;
- (b) Effective in the emergency, change the head office or designate several alternative head offices or regional offices, or authorize the officers so to do.

3. *Liability of Directors.* No officer, director or employee acting in accordance with any emergency bylaws shall be liable except for willful misconduct.

4. *Normal bylaws.* To the extent not inconsistent with any emergency bylaws so adopted, the bylaws of the corporation shall remain in effect during any emergency and upon its termination the emergency bylaws shall cease to be operative.

5. *Notices.* Unless otherwise provided in emergency bylaws, notice of any meeting of the board of directors during such an emergency may be given only to such of the directors as it may be feasible to reach at the time and by such means as may be feasible at the time, including publication or radio.

6. *Quorum.* To the extent required to constitute a quorum at any meeting of the board of directors during such an emergency, the officers of the corporation who are present shall, unless otherwise provided in emergency bylaws, be deemed, in order of rank and within the same rank in order of seniority, directors for such meeting.

7. *Non-exclusive.* Nothing contained in this section shall be deemed exclusive of any other provisions for emergency powers consistent with other sections of this Chapter which have been or may be adopted by corporations created under this Chapter.

*Effective:* June 19, 2002.



## CHAPTER 5.

# CORPORATE FINANCE

- §5.1. Classes and series of shares.
- §5.2. Restrictions on transfer of shares.
- §5.3. Subscriptions for shares.
- §5.4. Consideration for shares.
- §5.5. Payment for shares.
- §5.6. Compensation for formation, reorganization and financing.
- §5.7. Determination of stated capital.
- §5.8. Form and content of certificates.
- §5.9. Dividends in cash, stock or other property.
- §5.10. Share dividends.
- §5.11. Purchase or redemption by corporation of its own shares.
- §5.12. Reacquired shares.
- §5.13. Reduction of stated capital by action of the board.
- §5.14. Situs of ownership of shares.

### **§5.1. Classes and series of shares.**

1. *Power to issue.* Every corporation except a non-share corporation shall have power to issue the number of shares stated in its articles of incorporation. Such shares may be of one or more classes or one or more series within any class thereof, any or all of which classes may be of shares with par value or shares without par value, and may be registered or bearer shares, with such voting powers, full or limited, or without voting powers and in such series and with such designations, preferences and relative, participating, optional or special rights and qualifications, limitations or restrictions thereon as shall be stated in the articles of incorporation or in the resolution providing for the issue of such shares adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the articles of incorporation.

2. *Convertible shares.* The articles of incorporation or the resolution providing for the issue of shares adopted by the board of directors may provide that shares of any class of shares or of any series of shares within any class thereof shall be convertible into the shares of one or more other classes of shares or series except into shares of a class or series having rights or preferences as to dividends or distribution of assets upon liquidation which are prior or superior in rank to those of the shares being converted.

3. *Redeemable shares.* A corporation may provide in its articles of incorporation for one or more classes or series of shares which are redeemable, in whole or in part, at the option of the corporation at such price or prices, within such period and under such conditions as are stated in the

articles of incorporation or in the resolution providing for the issue of such shares adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the articles of incorporation.

4. *Fractional shares.* A corporation may issue fractional shares.

5. *Shares provided for by resolution of board.* Before any corporation shall issue any shares of any class or of any series of any class of which the voting powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations, or restrictions thereof, if any, have not been set forth in the articles of incorporation, but are provided for in a resolution adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the articles of incorporation, a statement setting forth a copy of such resolution and the number of shares of the class or series to be issued shall be executed, acknowledged, and filed in accordance with section 1.4. Upon the filing of such statement, the resolution establishing and designating the class or series and fixing the relative rights and preferences thereof shall become effective and shall constitute an amendment of the articles of incorporation.

*Prior legislation:* 1956 Code 4:5; Lib. Corp. L., 1948, §6; 1976 Liberian Code of Laws Revised, Chapter 5, §5.1, amended effective June 19, 2002.

## **§5.2. Restrictions on transfer of shares.**

1. *In general.* A restriction on the transfer of shares of a corporation may be imposed either by the articles of incorporation or by the bylaws or by an agreement among any number of shareholders or among such holders and the corporation. No restriction so imposed shall be binding with respect to shares issued prior to the adoption of the restriction unless the holders of the shares are parties to an agreement or voted in favor of the restriction. Any restriction which absolutely prohibits the transfer of shares shall be null.

2. *Restrictions.* Without limiting the provisions of subsection 1, restrictions on the transfer of shares which are permissible include those which:

- (a) Obligate the holder of the restricted shares to offer to the corporation or to any other holders of securities of the corporation or to any person or to any combination of the foregoing, a prior opportunity, to be exercised within a reasonable time, to acquire the restricted shares; or
- (b) Obligate the corporation or any holder of shares of the corporation or any other person or any combination of the foregoing, to purchase at a specified price the shares which are the subject of an agreement respecting the purchase and sale of the restricted securities;
- (c) Require the corporation or the holders of the shares to consent to any proposed transfer of the restricted shares or to approve the proposed transferee of the restricted shares;
- (d) Prohibit the transfer of the restricted shares to designated persons or classes of persons, and such designation is not manifestly unreasonable; or

- (e) Impose any other restriction on the transfer of the shares for the purpose of maintaining an advantage presently enjoyed by the corporation or of accomplishing the business purpose of the corporation.

3. *Annotation.* Any transfer restriction adopted under this section shall be conspicuously noted on the face or the back of the stock certificate.

*Prior legislation:* 1956 Code 4:15; Lib. Corp. L., 1948, §15; 1976 Liberian Code of Laws Revised, Chapter 5, §5.2, amended effective June 19, 2002.

### **§5.3. Subscriptions for shares.**

1. *Irrevocability of subscription for six months.* A subscription for shares of a corporation to be organized shall be irrevocable for a period of six months from its date unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers consent to the revocation of such subscription.

2. *Writing required.* A subscription, whether made before or after the formation of a corporation, shall not be enforceable unless in writing and signed by the subscriber.

3. *Time of payment calls.* Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the class or as to all shares of the same series, as the case may be.

4. *Default in payment; penalties.* In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The bylaws may prescribe a penalty for failure to pay installments or calls that may become due, but no penalty resulting in a forfeiture of a subscription, or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of thirty days after written demand has been made therefor. If mailed, such written demand shall be deemed to be made when sent by registered mail addressed to the subscriber at his last post office address known to the corporation. In the event of the sale of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on such shares shall be paid to the delinquent subscriber or to his legal representative. If no prospective purchaser offers a cash price sufficient to pay the full balance owed by the delinquent subscriber plus the expenses incidental to such sale, the shares subscribed for shall be cancelled and restored to the status of authorized but unissued shares and all previous payments thereon shall be forfeited to the corporation and transferred to surplus.

5. *Transfer of subscriptions.* Subscriptions for shares are transferable unless otherwise provided in a subscription agreement.

*Prior legislation:* 1956 Code 4:10; Lib. Corp. L., 1948, §10; 1976 Liberian code of Laws Revised, Chapter 5, §5.3, amended effective June 19, 2002.

#### **§5.4. Consideration for shares.**

1. *Quality of consideration.* Consideration for the issue of shares shall consist of money or other property, tangible or intangible, or labor or services actually received by or performed for the corporation or for its benefit or in its formation or reorganization, or a combination thereof in such manner or such form as the board of directors shall determine. In the absence of fraud in the transaction, the judgment of the board or shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

2. *Amount of consideration for shares with par value.* Shares with par value may be issued for such consideration, not less than the par value thereof, as is fixed from time to time by the board.

3. *Amount of consideration for shares without par value.* Shares without par value may be issued for such consideration as is fixed from time to time by the board unless the articles of incorporation reserve to the shareholders the right to fix the consideration. If such right is reserved as to any shares, a vote of the shareholders shall either fix the consideration to be received for the shares or authorize the board to fix such consideration.

4. *Disposition of treasury shares.* Treasury shares may be disposed of by a corporation on such terms and conditions as are fixed from time to time by the board.

5. *Consideration for share dividends.* That part of the surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be consideration for the issuance of such shares.

*Prior legislation:* 1956 Code 47; Lib. Corp. L., 1948, §§7,8; 1976 Liberian code of Laws Revised, Chapter 5, §5.4, amended effective June 19, 2002.

#### **§5.5. Payment for shares.**

1. *Shares fully paid and non-assessable.* Shares issued shall be deemed to be fully paid and non-assessable shares, if:

- (a) The entire amount of such consideration has been received by the corporation in the form determined in accordance with section 5.4; or
- (b) Not less than the amount of the consideration determined to be capital pursuant to section 5.7 has been received by the corporation in such form and the corporation has received a binding obligation of the subscriber or purchaser to pay the balance of the subscription or purchase price:

Provided, however, nothing contained herein shall prevent the board of directors from issuing partly paid shares under section 5.5.2.

2. *Partly paid shares.* Any corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each certificate issued to represent any such partly paid shares, or upon the books and

records of the corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

3. *Liability of shareholder or subscriber for shares not paid in full.* When the whole of the consideration payable for shares of a corporation has not been paid in, and the assets shall be insufficient to satisfy the claims of its creditors, each holder of, or subscriber for, such shares shall be bound to pay on each share held or subscribed for by such holder or subscriber the sum necessary to complete the amount of the unpaid balance of the consideration for which such shares were issued, or are to be issued, by the corporation. Any person becoming an assignee or transferee of shares, or of a subscription for shares, in good faith and without knowledge or notice that the full consideration therefor has not been paid, shall not be personally liable for any unpaid portion of such consideration, but the transferor shall remain liable therefor. No person holding shares in any corporation as collateral security shall be personally liable as a shareholder, but the person pledging such shares shall be considered the holder thereof and shall be so liable. No executor, administrator, guardian, trustee or other fiduciary shall be personally liable as a shareholder, but the estate or funds held by such executor, administrator, guardian, trustee or other fiduciary in such fiduciary capacity shall be liable. No liability under this section shall be asserted more than six years after the issuance of the shares or after the date of the subscription upon which the assessment is sought.

4. *Payment for shares not paid in full.* The capital of a corporation shall be paid for in such amounts and at such times as the directors may require. The directors may, from time to time, demand payment, in respect of each share not fully paid, of such sum of money as the necessities of the business may, in the judgment of the board of directors, require, not exceeding in the whole the balance remaining unpaid on partly paid shares, and such sum so demanded shall be paid to the corporation at such times and by such installments as the directors shall direct. The directors shall give written notice of the time and place of such payments, which notice shall be given at least thirty days before the time for such payment, to each holder of, or subscriber for, shares which are not fully paid, at such holder's or subscriber's last known address.

5. *Failure to pay for shares; remedies.* When any shareholder fails to pay any installment or call upon such shareholder's shares which may have been properly demanded by the directors, at the time when such payment is due, the directors may collect the amount of any such installment or call, or any balance thereof, remaining unpaid, from the shareholder by an action at law, or they shall sell such part of the shares of such delinquent shareholder as will pay all demands then due from such shareholder with interest and all incidental expenses, and shall transfer the shares so sold to the purchaser, who shall be entitled to a certificate therefor. Notice of the sale and of the sum due on each share shall be sent by the corporation to such delinquent shareholder, at such shareholder's last known address, at least twenty days before such sale. If no purchaser can be had to pay the amount due on the shareholding, and if the amount is not collected by an action at law, the shareholding and the amount previously paid in by the delinquent shareholder on the shares shall be forfeited to the corporation.

*Prior legislation:* 1956 Code 4:7, 9, 10, 11, 12; Lib. Corp. L. 1948, §§ 7, 9, 10, 11, 12; 1976 Liberian code of Laws Revised, Chapter 5, §5.5, amended effective June 19, 2002.

## **§5.6. Compensation for formation, reorganization and financing.**

The reasonable charges and expenses of formation or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares may be paid or allowed by the corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not fully paid or assessable.

## **§5.7. Determination of stated capital.**

1. *On shares with par value.* Upon issue by a corporation of shares with a par value not in excess of the authorized shares, the consideration received therefor shall constitute stated capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute surplus.

2. *On shares without par value.* Upon issue by a corporation of shares without par value not in excess of the authorized shares, the entire consideration received therefor shall constitute stated capital unless the board within a period of sixty days after issue allocates to surplus a portion, but not all, of the consideration received for such shares. No such allocation shall be made of any portion of the consideration received for shares without par value having a preference in the assets of the corporation upon involuntary liquidation except all or part of the amount, if any, of such consideration in excess of such preference, nor shall such allocation be made of any portion of the consideration for the issue of shares without par value which is fixed by the shareholders pursuant to a right reserved in the articles of incorporation, unless such allocation is authorized by vote of the shareholders.

3. *Increase by transfer from surplus.* The stated capital of a corporation may be increased from time to time by resolution of the board transferring all or part of surplus of the corporation to stated capital.

*Prior legislation:* 1956 Code 4:18; Lib. Corp. L., 1948, §18.

## **§5.8. Form and content of certificates.**

1. *Signature and seal.* Subject to section 5.8.5, the shares of a corporation shall be represented by certificates signed by two officers of the corporation, unless there is only one person appointed as an officer or the same person is appointed to be each officer of the corporation, in which case by that one person, and where the officer is not a natural person the instruments shall be signed by the person or persons who are the authorized signatories of that legal person, and may be sealed with the seal of the corporation, if any, or a facsimile thereof. The signatures of the officers upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent or registered by a registrar other than the corporation itself or its employees. In case any officer who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of issue.

2. *Registered or bearer shares.* Shares may be issued either in registered form or in bearer

form provided that the articles of incorporation prescribe the manner in which any required notice is to be given to shareholders of bearer shares in conformity with section 1.9. The transfer of bearer shares shall be by delivery of the certificates. Except in the case of a corporation formed prior to June 19, 2002, in which case only where the articles of incorporation so provided, on request of a shareholder of a corporation which has both bearer shares and registered shares his bearer shares shall be exchanged for registered shares or his registered shares exchanged for bearer shares, except where the articles of incorporation provide otherwise.

3. *Statement regarding class and series.* Each certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full statement of the designation, relative rights, preferences and limitations of the shares of each class authorized to be issued, and, if the corporation is authorized to issue any class of preferred shares in series, the designation, relative rights, preferences and limitations of each such series, so far as the same have been fixed, and the authority of the board to designate and fix the relative rights, preferences and limitations of other series.

4. *Other statements on certificate.* Each certificate representing shares shall when issued state upon the face thereof:

- (a) That the corporation is formed under the laws of Liberia;
- (b) The name of the person or persons to whom issued, if a registered share;
- (c) The number and class of shares, and the designation of the series, if any, which such certificate represents;
- (d) The par value of each share represented by such certificate, or a statement that the shares are without par value; and
- (e) If the share does not entitle the holder to vote, that it is non-voting, or if the right to vote exists only under certain circumstances, that the right to vote is limited.

5. *Uncertificated shares.* The board of directors of a corporation may provide by resolution or resolutions that some or all of any or all classes or series of its shares shall be uncertificated shares, that is to say shares which:

- (a) Are not represented by an instrument;
- (b) The transfer of which is registered upon books maintained for that purpose by or on behalf of the corporation issuing the shares;
- (c) Are of a type commonly dealt in upon securities exchanges or markets;

and:

- (d) Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation;

(e) Notwithstanding the adoption of such a resolution by the board of directors:

(i) Every holder of shares represented by certificates; and

(ii) Upon request, every holder of uncertificated shares,

shall be entitled to have a certificate, signed by, or in the name of, the corporation by two officers of the corporation, unless there is only one person appointed as an officer or the same person is appointed to be each officer of the corporation, in which case by that one person, and where the officer is not a natural person the instruments shall be signed by the person or persons who are the authorized signatories of that legal person, representing the number of shares registered in certificate form.

6. *Uncertificated shares and lost, stolen or destroyed share certificates; issuance of certificate or new certificate.* Where the directors of a corporation are satisfied as to the facts alleged, a corporation may issue a certificate in respect of uncertificated shares or a new certificate in place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and, in respect of a new certificate, the corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

7. *Judicial proceedings to compel issuance of certificate in respect of shares previously uncertificated or a new certificate in replacement of certificate lost, stolen or destroyed.* If a corporation refuses to issue:

(a) A certificate in respect of shares previously uncertificated; or

(b) A new share certificate in place of a certificate theretofore issued by it, or by any corporation of which it is the lawful successor, alleged to have been lost, stolen or destroyed,

the owner of the shares previously uncertificated, or of the lost, stolen or destroyed certificate, or such owner's legal representative, may apply to the court for an order requiring the corporation to show cause why it should not issue a certificate in respect of shares previously uncertificated or a new certificate in replacement of the certificate lost, stolen or destroyed. Such application shall be by way of a complaint, which shall state:

(c) The name of the corporation; and

(d) In the case of uncertificated shares, the number of shares represented thereby and to whom issued; or

(e) In the case of a certificate lost, stolen or damaged:

(i) The number and date of the certificate, if known or ascertainable by the plaintiff;



- (ii) The number of shares represented thereby and to whom issued; and
- (iii) A statement of the circumstances attending such loss, theft or destruction,

and thereupon the court shall make an order requiring the corporation to show cause at a time and place therein designated, why it should not issue a certificate in respect of the shares previously uncertificated, or a new certificate in replacement of the one described in the complaint, as the case may be. A copy of the complaint and order shall be served upon the corporation at least five days before the time designated in the order. If, upon hearing the matter, the court is satisfied that the plaintiff is the lawful owner of the number of shares, or any part thereof, described in the complaint, and that the shares were uncertificated or that the certificate therefor has been lost, stolen or destroyed, and no sufficient cause has been shown why a certificate in respect of the shares previously uncertificated or a new certificate in replacement for the one lost, stolen or destroyed should not be issued, it shall make an order requiring the corporation to issue and deliver to the plaintiff a certificate in respect of the shares previously uncertificated or a new certificate in replacement for the one lost, stolen or destroyed. In its order the court shall direct that, prior to the issuance and delivery to the plaintiff of such certificate in respect of shares previously uncertificated or a new certificate in replacement of the one lost, stolen or damaged, the plaintiff give the corporation a bond in such form and with such security as to the court appears sufficient to indemnify the corporation against any claim that may be made against it on account of the issuance of such certificate in respect of shares previously uncertificated or the alleged loss, theft or destruction of a certificate or the issuance of a new certificate in replacement of the certificate lost, stolen or damaged. No corporation which has issued a certificate pursuant to an order of the court entered hereunder shall be liable in an amount in excess of the amount specified in such bond.

*Prior legislation:* 1956 Code 4:12, 13; Lib. Corp. L., 1948, §§ 12, 13; 1976 Liberian code of Laws Revised, Chapter 5, §5.8, amended effective June 19, 2002.

#### **§5.9. Dividends in cash, stock or other property.**

1. *General limitation.* A corporation may declare and pay dividends in cash, stock or other property on its outstanding shares, except when currently the corporation is insolvent or would thereby be made insolvent or when the declaration or payment would be contrary to any restrictions contained in the articles of incorporation. Dividends may be declared and paid out of surplus only; but in case there is no surplus, dividends may be declared or paid out of the net profits for the fiscal year in which the dividend is declared and for the preceding fiscal year.

2. *Corporations engaged in exploitation of wasting assets.* A corporation engaged in the exploitation of natural resources or other wasting assets, including patents, or formed primarily for the liquidation of specific assets, may declare and pay dividends regardless of any surplus from the net profits derived from the liquidation or exploitation of such assets without making any deduction for the depletion of such assets resulting from lapse of time, consumption, liquidation or exploitation of such assets if the net assets remaining after such dividends are sufficient to cover the liquidation preferences of shares having such preferences in involuntary liquidation.

*Prior legislation:* 1956 Code 4:20; Lib. Corp. L., 1948, §20.

## **§5.10. Share dividends.**

1. *Restrictions on distribution.* A corporation may make pro rata distribution of its authorized but unissued shares to holders of any class or series of its outstanding shares subject to the following conditions:

- (a) If a distribution of shares having a par value is made, such shares shall be issued at not less than the par value thereof and there shall be transferred to stated capital at the time of such distribution an amount of surplus equal to the aggregate par value of such shares;
- (b) If a distribution of shares without par value is made, the amount of stated capital to be represented by each such share shall be fixed by the board, unless the articles of incorporation reserved to the shareholders the right to fix the consideration for the issue of such shares; and there shall be transferred to stated capital at the time of such distribution an amount of surplus equal to the aggregate stated capital represented by such shares.

2. *Payment out of unrealized appreciation prohibited.* Unrealized appreciation of assets, if any, shall not be included in the computation of surplus available for a share dividend.

3. *Notice to shareholders.* Upon the payment of a dividend payable in shares, notice shall be given to the shareholders of the amount per share transferred from surplus.

4. *Authorized by shareholders.* No dividend payable in shares of any class shall be paid unless the share dividend is specifically authorized by the vote of two-thirds of the shares of each class that might be adversely affected by such a share dividend.

5. *Split-ups.* A split-up or division of the issued shares of any class into a greater number of shares of the same class without increasing the stated capital of the corporation shall not be construed to be a share dividend within the meaning of this section.

*Prior legislation:* 1956 Code 4:20 (2d sent.); Lib. Corp. L., 1948, §20 (2d sent.).

## **§5.11. Purchase or redemption by corporation of its own shares.**

1. *Purchase or redemption out of surplus.* A corporation, subject to any restrictions contained in its articles of incorporation, may purchase its own shares or redeem its redeemable shares out of surplus except when currently the corporation is insolvent or would thereby be made insolvent.

2. *Purchase out of stated capital.* A corporation may purchase its own shares out of stated capital except when currently the corporation is insolvent or would thereby be made insolvent, if the purchase is made for the purpose of:

- (a) Eliminating fractions of shares;

- (b) Collecting or compromising indebtedness to the corporation; or
- (c) Paying dissenting shareholders entitled to receive payment for their shares under sections 9.7 or 10.7.

3. *Redemption out of stated capital.* A corporation, subject to any restrictions contained in its articles of incorporation, may redeem or purchase its redeemable shares out of stated capital except when currently the corporation is insolvent or would thereby be made insolvent and except when such redemption or purchase would reduce net assets below the stated capital remaining after giving effect to the cancellation of such redeemable shares.

4. *Purchase price of redeemable shares.* When its redeemable shares are purchased by a corporation within the period of redeemability, the purchase price thereof shall not exceed the applicable redemption price stated in the articles of incorporation. Upon a call for redemption, the amount payable by the corporation for shares having a cumulative preference on dividends may include the stated redemption price plus accrued dividends to the next dividend date following the date of redemption of such shares.

*Prior legislation:* 1956 Code 4:5(e); Lib. Corp. L., 1948, §5(e).

#### **§5.12. Reacquired shares.**

1. *When shares required to be cancelled.* Shares that have been issued and have been purchased, redeemed or otherwise reacquired by a corporation shall be cancelled if they are reacquired out of stated capital, or if they are converted shares, or if the articles of incorporation require that such shares be cancelled upon reacquisition.

2. *Shares not required to be cancelled.* Any shares reacquired by the corporation and not required to be cancelled may be either retained as treasury shares or cancelled by the board at the time of reacquisition or at any time thereafter.

3. *Disposition of treasury shares.* Neither the retention of reacquired shares as treasury shares, nor their subsequent distribution to shareholders or disposition for a consideration shall change the stated capital. Treasury shares may be disposed of for such consideration as the directors may fix. When treasury shares are disposed of for a consideration, the surplus shall be increased by the full amount of the consideration received.

4. *Reduction of stated capital on reacquisition of shares.* When reacquired shares other than converted shares are cancelled, the stated capital of the corporation shall be reduced by the amount of stated capital then represented by the shares so cancelled. The amount by which stated capital has been reduced by cancellation of reacquired shares during a stated period of time shall be disclosed in the next financial statement covering such period that is furnished by the corporation to all its shareholders, or, if practicable, in the first notice of dividend or share distribution that is furnished to the holders of each class or series of its shares between the end of the period and the next such financial statement, and in any event to all its shareholders within six months of the date of the reduction of capital.

5. *Cancelled shares; eliminated shares.* Shares cancelled under this section shall be restored to the status of authorized but unissued shares, except that if the articles of incorporation prohibit the reissue of any shares required or permitted to be cancelled under this section, the board shall approve and deliver to the Registrar or the Deputy Registrar articles of amendment under section 9.5 eliminating such shares from the number of authorized shares.

*Prior legislation:* 1976 Liberian code of Laws Revised, Chapter 5, §5.12, amended effective June 19, 2002.

### **§5.13. Reduction of stated capital by action of the board.**

1. *When the board may reduce capital.* Except as otherwise provided in the articles of incorporation, the board may at any time reduce the stated capital of a corporation by eliminating from stated capital amounts previously transferred by the board from surplus to stated capital and not allocated to any designated class or series of shares, or by eliminating any amount of stated capital represented by issued shares having a par value to the extent that the stated capital exceeds the aggregate par value of such shares, or by reducing the amount of stated capital represented by issued shares without par value. If, however, the consideration for the issue of shares without par value was fixed by the shareholders under section 5.4.3, the board shall not reduce the stated capital represented by such shares except to the extent, if any, that the board was authorized by the shareholders to allocate any portion of such consideration to surplus.

2. *Limitation on amount of reduction.* No reduction of stated capital shall be made under this section unless after such reduction the stated capital exceeds the aggregate preferential amounts payable upon involuntary liquidation upon all issued shares having preferential rights in the assets plus the par value of all other issued shares with par value.

3. *Notice to shareholders.* When a reduction of stated capital has been effected under this section, the amount of such reduction shall be disclosed in the next financial statement covering the period in which such reduction is made that is furnished by the corporation to all its shareholders, or, if practicable, in the first notice of dividend or share distribution that is furnished to the holders of each class or series of its shares between the date of such reduction and the next such financial statement, and in any event to all its shareholders within six months of the date of such reduction.

*Prior legislation:* 1956 Code 4:19; Lib. Corp. L., 1948, §19.

### **§5.14. Situs of ownership of shares.**

For all purposes of title, action, attachment, garnishment and jurisdiction of all courts, but not for the purpose of taxation, the situs of the ownership of the capital shares of all corporations existing under this Title, whether organized under this Chapter or otherwise, shall be regarded as in Liberia.

*Effective:* June 19, 2002

## **CHAPTER 6.**

### **DIRECTORS AND MANAGEMENT.**

- §6.1. Management of business of corporation.
- §6.2. Qualifications of directors.
- §6.3. Number of directors.
- §6.4. Election and term of directors.
- §6.5. Class of directors.
- §6.6. Newly created directorships and vacancies.
- §6.7. Removal of directors.
- §6.8. Quorum; action by the board.
- §6.9. Meetings of the board.
- §6.10. Executive and other committees.
- §6.11. Director conflicts of interest.
- §6.12. Loans to directors.
- §6.13. Indemnification of directors and officers.
- §6.14. Standard of care to be observed by directors and officers.
- §6.15. Officers.
- §6.16. Removal of officers

#### **§6.1. Management of business of corporation.**

Subject to limitations of the articles of incorporation and of this Act as to action which shall be authorized or approved by the shareholders, all corporate powers shall be exercised by or under authority of, and the business and affairs of every corporation shall be managed by, a board of directors.

*Prior legislation:* L. 1961-62, ch. XLVII, §2(4:25(2)); 1956 Code 4:25; Lib. Corp. L. 1948, §25.

#### **§6.2. Qualifications of directors.**

The articles of incorporation may prescribe special qualifications for directors. Unless otherwise provided in the articles of incorporation, directors may be of any nationality and need not be residents of Liberia or shareholders of the corporation. Unless otherwise required by any statutory or administrative provision or under the terms of any license to conduct business or by the articles of incorporation, directors may be corporations or other legal entities.

*Prior legislation:* L. 1961-62, ch. XLVIII, §2(4:25(c)); 1956 Code 4:25; Lib. Corp. L. 1948, §25; 1976 Liberian Code of Laws Revised, Chapter 6, §6.2, amended effective June 19, 2002

### **§6.3. Number of directors.**

1. *Number required.* The number of directors constituting the board shall be not less than one, and may be fixed by the articles of incorporation, by the bylaws, by the shareholders, or by action of the board under the specific provisions of a bylaw. If not otherwise fixed under this paragraph, the number of directors shall be one.

2. *Increase or decrease.* The number of directors may be increased or decreased by amendment of the bylaws, by the shareholders, or by action of the board under the specific provisions of a bylaw, subject to the following limitations:

- (a) If the board is authorized by the bylaws to change the number of directors, whether by amending the bylaws or by taking action under the specific provisions of a bylaw, such amendment or action shall require the vote of a majority of the entire board; and
- (b) No decrease shall shorten the term of any incumbent director.

*Prior legislation:* L. 1961-62, ch. XLVII, §2(4:25(b)); 1956 Code 4:25; Lib. Corp. L., 1948, §25; 1976 Liberian Code of Laws Revised, Chapter 6, §6.3, amended effective June 19, 2002

### **§6.4. Election and term of directors.**

1. *Manner and term.* At each annual meeting of shareholders, directors shall be elected to hold office until the next annual meeting except as authorized by section 6.5. The articles of incorporation may provide for the election of one or more directors by the holders of the shares of any class or series.

2. *Tenure.* Each director shall hold office until the expiration of the term for which he is elected, and until his successor has been elected and qualified, or until he resigns.

*Prior legislation:* 1956 Code 4:27; Lib. Corp. L., 1948, §27; 1976 Liberian Code of Laws Revised, Chapter 6, §6.4, amended effective June 19, 2002

### **§6.5. Class of directors.**

1. *Generally.* The articles of incorporation may provide that the directors be divided into two or more classes and that each class of directors serve for such term as is specified in the articles of incorporation.

2. *Class of shareholders may have special rights of election.* The articles of incorporation may confer upon holders of any class or series of shares the right to elect one or more directors who shall serve for such term, and have such voting powers as shall be stated in the articles of incorporation. The terms of office and voting powers of the directors elected in the manner so provided in the articles of incorporation may be greater than or less than those of any other director or class of directors. If the articles of incorporation provide that directors elected by the holders of a class or series of shares shall have more or less than one vote per director on any matter, every reference in this Title to a majority or other proportion of directors shall refer to a majority or other proportion of

the votes of such directors.

*Prior legislation:* 1956 Code 4:27; Lib. Corp. L., 1948, §27; 1976 Liberian Code of Laws Revised, Chapter 6, §6.5, amended effective June 19, 2002

#### **§6.6. Newly created directorships and vacancies.**

1. *How vacancies filled in general.* Newly created directorships resulting from an increase in the number of directors and vacancies occurring in the board for any reason except the removal of directors without cause may be filled by vote of a majority of the directors then in office, although less than a quorum exists, unless the articles of incorporation or the bylaws provide that such newly created directorships or vacancies shall be filled by vote of the shareholders.

2. *Vacancies on removal without cause.* Unless the articles of incorporation or the specific provisions of a bylaw adopted by the shareholders provide that the board shall fill vacancies occurring in the board by reason of the removal of directors without cause, such vacancies may be filled only by vote of the shareholders.

3. *Term.* A director elected to fill a vacancy shall be elected to hold office for the unexpired term of his predecessor.

*Prior legislation:* 1956 Code 4:27; Lib. Corp. L., 1948, §27.

#### **§6.7. Removal of directors.**

1. *Removal for cause.* Any or all of the directors may be removed for cause by vote of the shareholders. The articles of incorporation or the specific provisions of a bylaw may provide for such removal by action of the board, except in the case of any director elected by cumulative voting, or by the holders of the shares of any class or series when so entitled by the provisions of the articles of incorporation.

2. *Without cause.* If the articles of incorporation or the bylaws so provide, any or all of the directors may be removed without cause by vote of the shareholders.

3. *Limitations on removal.* The removal of directors, with or without cause, as provided in paragraphs 1 and 2 is subject to the following:

- (a) In the case of a corporation having cumulative voting, no director may be removed when the votes cast against his removal would be sufficient to elect him if voted cumulatively at an election at which the same total number of votes were cast and the entire board, or the entire class of directors of which he is a member, were then being elected; and
- (b) When by the provisions of the articles of incorporation the holders of the shares of any class or series, or holders of bonds, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the

holders of the shares of that class or series, or the holders of such bonds, voting as a class.

**§6.8. Quorum: action by the board.**

1. *Quorum defined.* Unless a greater proportion is required by the articles of incorporation, a majority of the entire board, present in person or by proxy at a meeting duly assembled, shall constitute a quorum for the transaction of business or of any specified item of business, except that the articles of incorporation or the bylaws may fix the quorum at less than a majority of the entire board.

2. *Vote at meeting as action by board.* The vote of the majority of the directors present in person or by proxy at a meeting at which a quorum is present shall be the act of the board unless the articles of incorporation require the vote of a greater number.

3. *Proxies and attorney.* Unless otherwise provided in the articles of incorporation or the bylaws, any director may be represented and vote at a meeting or consent to an action without a meeting by proxy or proxies given to another person, whether or not a director, appointed by instrument in writing, howsoever communicated. The articles of incorporation may contain restrictions, prohibitions or limitations upon the grant or use of proxies by directors. A director may attend a meeting, or consent to an action without a meeting, by his attorney.

4. *Action without meeting.* Unless otherwise restricted by the articles of incorporation or bylaws, any action required or permitted to be taken at any meeting of the board of directors or of any committee thereof may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing and the writing or writings are filed with the minutes of the proceedings of the board or committee.

5. *Participation by conference telephone, etc..* Unless restricted by the articles of incorporation or bylaws, members of the board or any committee thereof may participate in a meeting of such board or committee by means of conference telephone or similar communication equipment which permits all persons participating in the meeting to simultaneously communicate with each other, and participation in a meeting pursuant to this paragraph shall constitute presence in person at such meeting.

6. *Greater requirement as to quorum and vote of directors.* The articles of incorporation may contain provisions specifying either or both of the following:

- (a) That the proportion of directors that shall constitute a quorum for the transaction of business or of any specified item of business shall be greater than the proportion prescribed by paragraph 1 in the absence of such provision;
- (b) That the proportion of votes of directors that shall be necessary for the transaction of business or of any specified item of business shall be greater than the proportion prescribed by paragraph 2 in the absence of such provision.

7. *Amendment of articles with regard to quorum or votes of directors.* An amendment of the articles of incorporation which adds a provision permitted by paragraph 6, or which changes or



strikes out such a provision, shall be authorized at a meeting of shareholders by vote of the holders of two-thirds of all outstanding shares entitled to vote thereon, or of such greater proportion of shares, or class or series of shares, as may be provided specifically in the articles of incorporation for adding, changing, or striking out a provision permitted by paragraph 6.

8. *Non-share corporations.* The articles of incorporation of a non-share corporation may provide that the business and affairs of the corporation shall be managed in a manner different from that provided in this section. Except as may be otherwise provided by the articles of incorporation, this section shall apply to such a corporation, and when so applied, all references to the board of directors, to members thereof, and to shareholders shall be deemed to refer to the governing body of the corporation, the members thereof and the members of the corporation, respectively.

*Prior legislation:* L. 1961-62, ch. XLVII, 32(4:25(d)-(g)); 1956 Code 4:25; Lib. Corp. L., 1948, §25; 1976 Liberian Code of Laws Revised, Chapter 6, §6.8, amended effective June 19, 2002

### **§6.9. Meetings of the board.**

1. *Time and place.* Meetings of the board, regular or special, may be held at any place within or without the Republic, unless otherwise provided by the articles of incorporation or the bylaws. The time and place for holding meetings of the board may be fixed by or under the bylaws, or if not so fixed, by the board.

2. *Notice of meetings.* Unless otherwise provided by the bylaws, regular meetings of the board may be held without notice if the time and place of such meetings are fixed by the bylaws or the board. Special meetings of the board may be called in the manner provided in the bylaws and shall be held upon notice to the directors. The bylaws may prescribe what shall constitute notice of meeting of the board. A notice or waiver of notice need not specify the purpose of any regular or special meeting of the board, unless required by the bylaws.

3. *Waiver of notice.* Notice of a meeting need not be given to any director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting the lack of notice.

*Prior legislation:* L. 1961-62, ch. XLVII, §2 (4:25(d)-(g)); 1956 Code 4:25; Lib. Corp. L., 1948, §25.

### **§6.10. Executive and other committees.**

1. *Appointment and powers of committees.* If the articles of incorporation or the bylaws so provide, the board, by resolution adopted by a majority vote of the entire board, may designate from among its members an executive committee and other committees, each of which to the extent provided in the resolution or in the articles of incorporation or bylaws of the corporation, shall have and may exercise all the authority of the board of directors, but no such committee shall have the authority as to the following matters:

- (a) The submission to shareholders of any action that requires shareholders' authorization under this Title;

- (b) The filling of vacancies in the board of directors or in a committee;
- (c) The fixing of compensation of the directors for serving on the board or on any committee;
- (d) The amendment or repeal of the bylaws, or the adoption of new bylaws;
- (e) The amendment or repeal of any resolution of the board which by its terms shall not be so amendable or repealable.

2. *Tenure; effect of committee on duty of directors.* Each such committee shall serve at the pleasure of the board. The designation of any such committee and the delegation thereto of authority shall not alone relieve any director of his duty to the corporation under section 6.14.

*Prior legislation:* 1956 Code 4:26; Lib. Corp. L., 1948, §26.

### **§6.11. Director conflicts of interest.**

1. *Effect of personal financial interest or common directorship.* No contract or other transaction between a corporation and one or more of its directors, or between a corporation and any other corporation, firm, association or other entity in which one or more of its directors are directors or officers, or have a substantial financial interest, shall be either void or voidable for this reason alone or by reason alone that such director or directors are present at the meeting of the board, or of a committee thereof, which approves such contract or transaction, or that his or their votes are counted for such purpose:

- (a) If the material facts as to such director's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the board or committee, and the board or committee approves such contract or transaction by a vote sufficient for such purpose without counting the vote of such interested director or, if the votes of the disinterested directors are insufficient to constitute an act of the board as defined in section 6.8, by unanimous vote of the disinterested directors; or
- (b) If the material facts as to such director's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the shareholders entitled to vote thereon, and such contract or transaction is approved by vote of such shareholders.

2. *Determining quorum.* Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board or of a committee which approves such contract or transaction.

3. *Additional restrictions on transactions with directors.* The articles of incorporation may contain additional restrictions on contracts or transactions between a corporation and its directors and may provide that contracts or transactions in violation of such restrictions shall be void or

voidable by the corporation.

4. *Compensation of board.* Unless otherwise provided in the articles of incorporation or the bylaws, the board shall have authority to fix the compensation of directors for services in any capacity.

#### **§6.12. Loans to directors.**

Unless restricted by the articles of incorporation or the bylaws, a corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiary, including any officer or employee who is a director of the corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest, and may be unsecured, or secured in such manner as the board of directors shall approve, including, without limitation, a pledge of shares of the corporation. Nothing in this section shall be deemed to deny, limit or restrict the powers of guaranty or warranty of any corporation at common law or under any statute.

*Prior legislation:* 1976 Liberian Code of Laws Revised, Chapter 6, §6.12, amended effective June 19, 2002

#### **§6.13. Indemnification of directors and officers.**

1. *Actions not by or in right of the corporation.* A corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of no contest, or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

2. *Actions by or in right of the corporation.* A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure judgment in its favor by reason of the fact that he is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or nor opposed to the best interests of the corporation

and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

3. *When director or officer successful.* To the extent that a director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in paragraphs 1 or 2, or in the defense of a claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

4. *Payment of expenses in advance.* Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid in advance of the final disposition of such action, suit or proceeding as authorized by the board of directors in the specific case upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation as authorized in this section.

5. *Insurance.* A corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director or officer of the corporation or is or was serving at the request of the corporation as a director or officer against any liability asserted against him and incurred by him in such capacity whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

6. *Other rights of indemnification unaffected.* The indemnification and advancement of expenses provided by, or granted pursuant to, this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

7. *Continuation of indemnification.* The indemnification and advancement of expenses provided by, or granted pursuant to, this section shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administration of such persons.

*Prior legislation:* L. 1961-62, ch. XLVII, & (14:2(j)); 1956 Code 4:2(k); Lib. Corp. L., 1948, §2(k); 1976 Liberian Code of Laws Revised, Chapter 6, §6.13, amended effective June 19, 2002

#### **§6.14. Standard of care to be observed by directors and officers.**

Directors and officers shall discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions. A member of the board of directors, or a member of any committee designated by the board of directors, shall, in the performance of such member's duties, be fully protected in relying in good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of the corporation's officers or

employees, or committees of the board of directors, or by any other person as to matters the member 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 corporation.

*Prior legislation:* 1976 Liberian Code of Laws Revised, Chapter 6, §6.14, amended effective June 19, 2002

### **§6.15. Officers.**

1. *Appointment.* Every corporation shall have such officers with such titles and duties as shall be stated in the articles of incorporation or the bylaws or in a resolution of the board of directors which is not inconsistent with the bylaws and as may be necessary to enable it to sign instruments and share certificates which comply with provisions of this Act in respect of the signing of instruments and certificates. One of the officers shall have the duty to record the proceedings of the meetings of the shareholders and directors in a book to be kept for that purpose and otherwise acting as the secretary of the corporation.

2. *Election by shareholders.* The articles of incorporation or the bylaws may provide that all officers or that specified officers shall be elected by the shareholders instead of by the board.

3. *Terms.* Unless otherwise provided in the articles of incorporation or bylaws, all officers shall be elected or appointed to hold office until the meeting of the board following the next annual meeting of shareholders, or in the case of officers elected by the shareholders, until the next annual meeting of the shareholders.

4. *Tenure.* Each officer shall hold office for the term for which he is elected or appointed, and until his successor has been elected or appointed and qualified, or until he resigns.

5. *Same person for more than one office.* Any two or more offices may be held by the same person unless the articles of incorporation or bylaws otherwise provide.

6. *Security for performance.* The board may require any officer to give security for the faithful performance of his duties. The corporation may secure the fidelity of any or all of its officers or agents by bond or otherwise.

7. *Duties.* All officer as between themselves and the corporation shall have such authority and perform such duties with respect to the management of the corporation as may be provided in the bylaws or, to the extent not so provided, by the board.

8. *Status, nationality and residence.* Unless otherwise required by any statutory or administrative provision or under the terms of any license to conduct business or by the articles of incorporation, officers may be persons, individual or legal, of any nationality and need not be residents of Liberia.

9. *Failure to elect or appoint officers not to affect status of corporation.* A failure to elect or appoint officers shall not dissolve or otherwise affect the corporation.

*Prior legislation:* 1956 Code 4:28; Lib. Corp. L., 1948, §28; 1976 Liberian Code of Laws Revised, Chapter 6, §6.15, amended effective June 19, 2002

**§6.16. Removal of officers.**

1. *Method of removal.* Any officer elected or appointed by the board may be removed by the board with or without cause except as otherwise provided in the articles of incorporation or the bylaws. An officer elected by the shareholders may be removed, with or without cause, only by vote of the shareholders, but his authority to act as an officer may be suspended by the board for cause.

2. *Effect of removal without cause.* The removal of an officer without cause shall be without prejudice to his contract rights, if any. The election or appointment of an officer shall not of itself create contract rights.

## CHAPTER 7.

# SHAREHOLDERS

- §7.1. Meetings of shareholders.
- §7.2. Notice of meetings of shareholders.
- §7.3. Waiver of notice.
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- §7.5. Fixing record date.
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- §7.7. Quorum of shareholders.
- §7.8. Vote of shareholders required.
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- §7.10. List of shareholders at meetings.
- §7.11. Qualification of voters.
- §7.12. Voting trusts.
- §7.13. Agreements among shareholders as to voting.
- §7.14. Conduct of shareholders' meetings.
- §7.15. Preemptive rights.
- §7.16. Shareholders' derivative actions.
- §7.17. Voting rights of members of corporations; quorum; proxies.

### **§7.1. Meetings of shareholders.**

1. *Place of meeting.* Meetings of shareholders may be held at such place, either within or without Liberia, as may be designated in the bylaws.

2. *Time of meeting; business.* Unless directors are elected by written consent in lieu of an annual meeting as permitted by this paragraph, an annual meeting of shareholders shall be held for the election of directors on a date and at a time designated by or in the manner provided in the bylaws. Shareholders may, unless the articles of incorporation otherwise provide, act by written consent to elect directors: Provided, however, that, if such consent is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action. Any other proper business may be transacted at the annual meeting.

3. *Failure to hold meeting.* A failure to hold the annual meeting at the designated time or to elect a sufficient number of directors to conduct the business of the corporation shall not affect otherwise valid corporate acts or cause a dissolution of the corporation except as may be otherwise specifically provided in this Act. If the annual meeting for election of directors is not held on the

date designated therefor, the directors shall cause the meeting to be held as soon thereafter as convenient. If there is a failure to hold the annual meeting for a period of ninety days after the date designated therefor, or if no date has been designated for a period of thirteen months after the organization of the corporation or after its last annual meeting, holders of not less than ten percent of the shares entitled to vote in an election of directors may, in writing, demand the call of a special meeting specifying the time thereof, which shall not be less than two nor more than three months from the date of such call. An officer fulfilling the role of secretary of the corporation upon receiving the written demand shall promptly give notice of such meeting, or if he fails to do so within five business days thereafter, any shareholder signing such demand may give such notice. The shares of the corporation represented at such a meeting, either in person or by proxy or attorney, and entitled to vote thereat, shall constitute a quorum, notwithstanding any provision of the articles of incorporation or bylaws to the contrary.

4. *Special meetings.* Special meetings of the shareholders may be called by the board of directors or by such person or persons as may be authorized by the articles of incorporation or by the bylaws. At any such special meeting only such business as is related to the purpose or purposes set forth in the notice required by section 7.2 shall be transacted.

5. *Ballots.* The articles of incorporation or the bylaws may provide that elections of directors shall be by written ballot.

*Prior legislation:* 1956 Code 4:21, 27; Lib. Corp. L., 1948, §§21, 27; 1976 Liberian code of Laws Revised, Chapter 7, §7.1, amended effective June 19, 2002.

## **§7.2. Notice of meetings of shareholders.**

1. *Requirement.* Whenever under the provisions of this Title shareholders are required or permitted to take any action at a meeting, written notice shall state the place, date and hour of the meeting and, unless it is the annual meeting, indicate that it is being issued by or at the direction of the person or persons calling the meeting. Notice of a special meeting shall also state the purpose for which the meeting is called.

2. *Manner of giving notice to registered shareholders.* A copy of the notice of any meeting shall be given personally or sent by mail, telegraph, cablegram, telex or teleprinter or other electronic means of communication, not less than fifteen nor more than sixty days before the date of the meeting, to each registered shareholder entitled to vote at such meeting. If mailed, such notice is given when deposited in the mail, directed to the shareholder at his address as it appears on the record of shareholders, or, if he shall have filed with the person fulfilling the role of secretary of the corporation a written request that notices to him be mailed to some other address, then directed to him at such other address.

3. *Manner of giving notice to bearer shareholders.* Notice of any meeting shall be given to shareholders of bearer shares in accordance with the provisions of section 1.9. The notice shall include a statement of the conditions under which shareholders may attend the meeting and exercise the right to vote.

4. *Adjournments.* When a meeting is adjourned to another time or place, it shall not be necessary,



unless the meeting was adjourned for lack of a quorum or unless the bylaws require otherwise, to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and at the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. However, if after the adjournment the board fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record on the new record date entitled to notice under paragraph 1.

*Prior legislation:* 1956 Code 4:21; Lib. Corp. L., 1948, §21; 1976 Liberian code of Laws Revised, Chapter 7, §7.2, amended effective June 19, 2002.

### **§7.3. Waiver of notice.**

Notice of meeting need not be given to any shareholder who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any shareholder at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by him.

*Prior legislation:* 1956 Code 4:21; Lib. Corp. L., 1948, §21

### **§7.4. Action by shareholders without a meeting.**

1. *Action without meeting of shareholders.* Unless otherwise provided in the articles of incorporation or in the bylaws, any action required by this Title to be taken at any annual or special meeting of shareholders of a corporation, or any action which may be taken at any annual or special meeting of such shareholders, may be taken 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 holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded.

2. *Action without meeting of members.* Unless otherwise provided in the articles of incorporation or in the bylaws, any action required by this Title to be taken at a meeting of the members of a non-share corporation, or any action which may be taken at any meeting of the members of a non-share corporation, may be taken 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 members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members having a right to vote thereon were present and voted and shall be delivered to the corporation by delivery to an officer or agent of the corporation having custody of the book in which proceedings of meetings of members are recorded.

3. *Action without meeting of shareholders or members.* Unless otherwise provided in the articles of incorporation or in the bylaws, any action required by this Title to be taken at a meeting of the shareholders and members of a hybrid corporation, or any action which may be taken at any meeting of the shareholders and members of a hybrid corporation, may be taken 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 shareholders and members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shareholders and members having a right to vote thereon were present and voted, and shall be delivered to the corporation by delivery to an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders or members are recorded.

4. *Form and timing of consent.* For the purposes of this section every written consent shall bear the date of signature of each shareholder or member who signs the consent, and no written consent shall be effective to take the corporate action referred to therein unless, within sixty days of the earliest dated consent delivered in the manner required by this section to the corporation, written consents signed by a sufficient number of holders or members to take action are delivered to the corporation by delivery to an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders or members are recorded.

5. *Notice and certificates.* Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those shareholders or members who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of shareholders or members to take the action were delivered to the corporation as provided in section 7.5. In the event that the action which is consented to is such as would have required the filing of a certificate under any other section of this Title, if such action had been voted on by shareholders or by members at a meeting thereof, the certificate filed under such other section shall state, in lieu of any statement required by such section concerning any vote of shareholders or members, that written consent has been given in accordance with this section.

6. *Participation by conference telephone, etc..* Unless restricted by the articles of incorporation or bylaws, shareholders and members may participate in shareholders' or members' meeting by means of conference telephone or similar communication equipment by means of which all persons participating in the meeting can simultaneously communicate with each other, and participation in a meeting pursuant to this paragraph shall constitute presence in person at such meeting.

*Prior legislation:* 1976 Liberian code of Laws Revised, Chapter 7, §7.4, amended effective June 19, 2002.

#### **§7.5. Fixing record date.**

1. *Record date for notice of or voting at a meeting.* In order that the corporation may determine the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, the board of directors may fix, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which record date shall not be more than sixty nor less than ten days before the date of such meeting. If no record date is fixed by the board of directors, the record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of shareholders of record entitled to notice of or to vote at a meeting of shareholders shall apply to any adjournment of the

meeting: Provided, however, that the board of directors may fix a new record date for the adjourned meeting.

2. *Record date for consent to action without a meeting.* In order that the corporation may determine the shareholders entitled to consent to corporate action in writing without a meeting, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors, the record date for determining shareholders entitled to consent to corporate action in writing without a meeting, when no prior action by the board of directors is required by this Title, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. If no record date has been fixed by the board of directors and prior action by the board of directors is required by this Title, the record date for determining shareholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the board of directors adopts the resolution taking such prior action.

3. *Record date for participation in dividend, etc..* In order that the corporation may determine the shareholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the shareholders entitled to exercise any rights in respect of any change, conversion or exchange of shares, or for the purpose of any other lawful action, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty days prior to such action. If no record date is fixed, the record date for determining shareholders for any such purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

*Prior legislation:* 1956 Code 4:22; Lib. Corp. L., 1948, §22; 1976 Liberian code of Laws Revised, Chapter 7, §7.5, amended effective June 19, 2002.

#### **§7.6. Proxies.**

1. *Voting by proxy authorized.* Every shareholder entitled to vote at a meeting of shareholders or to express consent or dissent without a meeting may authorize another person to act for him by proxy.

2. *Signing; period of validity; revocability.* Every proxy must be signed by the shareholder or his attorney-in-fact. No proxy shall be valid after the expiration of eleven months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the shareholder executing it, except as otherwise provided in this section.

3. *Revocation by death or incompetence of shareholder.* The authority of the holder of a proxy to act shall not be revoked by the death or incompetence of the shareholder who executed the proxy unless, before the authority is exercised, written notice of an adjudication of such death or of such incompetence is received by the corporate officer responsible for maintaining the list of shareholders.

4. *Issue of proxy by record holder.* Except when other provisions shall have been made by written agreement between the parties, the record holder of shares which are held by a pledgee as security or which belong to another, upon demand therefor and payment of necessary expenses thereof, shall issue to the pledgee or to such owner of such shares a proxy to vote or take other action thereon.

5. *Sale of vote forbidden.* A shareholder shall not sell his vote, or issue a proxy to vote to any person for any sum of money or anything of value, except as authorized in this section and sections 7.11 and 7.12 of this Title.

6. *When proxy is irrevocable.* A proxy which is entitled "irrevocable proxy" and which states that it is irrevocable, is irrevocable if and as long as it is coupled with an interest sufficient to support an irrevocable power, including when it is held by any of the following or a nominee of any of the following:

- (a) A pledgee;
- (b) A person who has purchased or agreed to purchase the shares;
- (c) A creditor of the corporation who extends or continues credit to the corporation in consideration of the proxy if the proxy states that it was given in consideration of such extension or continuation of credit, the amount thereof, and the name of the person extending or continuing credit;
- (d) A person who has contracted to perform services as an officer of the corporation, if a proxy is required by the contract of employment, if the proxy states that it was given in consideration of such contract of employment, the name of the employee and the period of employment contracted for;
- (e) A person designated by or under an agreement under section 7.13.

7. *When proxy stated to be irrevocable becomes revocable.* Notwithstanding a provision in a proxy stating that it is irrevocable, the proxy becomes revocable after:

- (a) The pledge is redeemed;
- (b) The debt of the corporation is paid;
- (c) The period of employment provided for in the contract of employment has terminated;
- (d) The agreement under section 7.13 has been terminated,

and becomes revocable, in a case provided for in subparagraphs (c) and (d) of paragraph 6 of this section, at the end of the period, if any, specified therein as the period during which it is irrevocable, or three years after the date of the proxy, whichever period is less, unless the period of irrevocability is renewed from time to time by the execution of a new irrevocable proxy as provided in this section. This paragraph does not affect the duration of a proxy under paragraph 2.

8. *Purchaser without knowledge of irrevocable proxy.* A proxy may be revoked, notwithstanding a provision making it irrevocable, by a purchaser of shares without knowledge of the existence of the provision unless the existence of the proxy and its irrevocability is noted conspicuously on the face or back of the certificate representing such shares.

*Prior legislation:* 1956 Code 4:23; Lib, Corp. L., 1948, §23; 1976 Liberian code of Laws Revised, Chapter 7, §7.6, amended effective June 19, 2002.

#### **§7.7. Quorum of shareholders.**

1. *Number constituting quorum.* Unless otherwise provided in the articles of incorporation, a majority of shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no event shall a quorum consist of fewer than one-third of the shares entitled to vote at a meeting.

2. *Withdrawal of shareholders after quorum present.* When a quorum is once present to organize a meeting, it is not broken by the subsequent withdrawal of any shareholders.

3. *Adjournment by less than quorum.* The shareholders present may adjourn the meeting despite the absence of a quorum.

#### **§7.8. Vote of shareholders required.**

1. *Election of directors.* Directors shall, except as otherwise required by this Act or by the articles of incorporation as permitted by this Act, be elected by a plurality of the votes cast at a meeting of shareholders by the holders of shares entitled to vote in the election.

2. *Cumulative voting.* The articles of incorporation of any corporation may provide that in all elections of directors of such corporation each shareholder shall be entitled to as many votes as shall equal the number of votes which, except for such provisions as to cumulative voting, he would be entitled to cast for the election of directors with respect to his shares multiplied by the number of directors to be elected, and that he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two or more of them, as he may see fit. This right, when exercised, shall be termed cumulative voting.

3. *Action other than election of directors.* Whenever any corporate action, other than the election of directors, is to be taken under this Act by vote of the shareholders, it shall, except as otherwise required or permitted by this Act or by the articles of incorporation as permitted by this Act, be authorized by a majority of the votes cast at a meeting of shareholders by the holders of shares entitled to vote thereon.

*Prior legislation:* 1956 Code 4:24, 27; Lib. Corp. L., 1948, §§24, 27; 1976 Liberian code of Laws Revised, Chapter 7, §7.8, amended effective June 19, 2002.

#### **§7.9. Greater requirement as to quorum and vote of shareholders.**

1. *Greater requirement permitted.* The articles of incorporation may contain provisions

specifying either or both of the following:

- (a) That the proportion of shares, or the proportion of shares of any class or series thereof, the holders of which shall be present in person or by proxy at any meeting of shareholders in order to constitute a quorum for the transaction of any business or of any specified item of business, including amendments to the articles of incorporation, shall be greater than the proportion prescribed by this Act in the absence of such provision;
- (b) That the proportion of votes of the holders of shares, or of the holders of shares of any class or series thereof, that shall be necessary at any meeting of shareholders for the transaction of any business or of any specified item of business, including amendments to the articles of incorporation, shall be greater than the proportion prescribed by this Act in the absence of such provision.

2. *Amendment of articles.* An amendment of the articles of incorporation which adds a provision permitted by this section or which changes or strikes out such a provision, shall be authorized at a meeting of shareholders by vote of the holders of two-thirds of all outstanding shares entitled to vote thereon, or of such greater proportion of shares, or class or series of shares, as may be provided specifically in the articles of incorporation for adding, changing, or striking out a provision permitted by this section.

*Prior legislation:* 1976 Liberian code of Laws Revised, Chapter 7, §7.9, amended effective June 19, 2002.

#### **§7.10. List of shareholders at meetings.**

A list of registered shareholders as of the record date, and of holders of bearer shares who as of the record date have qualified for voting, certified by the corporate officer responsible for its preparation by a transfer agent, shall be produced at any meeting of shareholders upon request of any shareholder at the meeting or prior thereto. If the right to vote at any meeting is challenged, the inspector of election, or person presiding thereat, shall require such list of shareholders to be produced as evidence of the right of the persons challenged to vote at such meeting, and all persons who appear from such list to be shareholders entitled to vote thereat may vote at such meeting.

*Prior legislation:* 1956 Code 4:22 (2nd par.); Lib. Corp. L., 1948, §22 (2nd par.).

#### **§7.11. Qualification of voters.**

1. *Right of shareholder.* Every registered shareholder as of the record date and every holder of bearer shares who, as of the record date, has qualified for voting, shall be entitled at every meeting of shareholders to one vote for every share standing in his name, unless otherwise provided in the articles of incorporation. Persons holding shares in a fiduciary capacity shall be entitled to vote the shares so held.

2. *Treasury shares.* Treasury shares are not shares entitled to vote or to be counted in determining the total number of outstanding shares.

3. *Shares held by subsidiary corporation.* Shares of a parent corporation held by a subsidiary

corporation are not shares entitled to vote or to be counted in determining the total number of outstanding shares.

4. *Shares held by fiduciary.* Shares held by an administrator, executor, guardian, conservator, committee, or other fiduciary, except a trustee, may be voted by him, either in person or by proxy, without transfer of such shares into his name. Shares held by a trustee may be voted by him, either in person or by proxy, only after the shares have been transferred into his name as trustee or into the name of his nominee.

5. *Shares held by receiver.* Shares held by or under the control of a receiver may be voted by him without the transfer thereof into his name if authority so to do is contained in an order of the court by which such receiver was appointed.

6. *Pledged shares.* Persons whose shares are pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the corporation he has expressly empowered the pledgee to vote thereon, in which case only the pledgee or his proxy or attorney may represent such shares and vote thereon. This provision shall not be deemed to invalidate any irrevocable proxy which is otherwise not illegal.

7. *Shares in the name of another corporation.* Shares standing in the name of another domestic or foreign corporation of any type or kind may be voted by such officer, agent or proxy as the bylaws of such corporation may provide, or, in the absence of such provision, as the board of such corporation may determine.

8. *Limitations on right to vote.* The articles of incorporation, except as limited by section 5.1, may provide, either absolutely or conditionally, that the holder of any designated class or series of shares shall not be entitled to vote, or it may otherwise limit or define the respective voting powers of the several classes or series of shares, and, except as otherwise provided in this Act, such provisions of such articles shall prevail, according to their tenor, in all elections and in all proceedings, over the provisions of this Act which authorize any action by the shareholders.

*Prior legislation:* Par. 1: 1956 Code 4:22; Lib. Cap L., 1948, §22; Par. 2: 1956 Code 4:5(e); Lib. Corp. L., 1945, §4.5(e); 1976 Liberian code of Laws Revised, Chapter 7, §7.11, amended effective June 19, 2002.

## **§7.12. Voting trusts.**

1. *Voting trusts authorized.* Any shareholder, under an agreement in writing, may transfer his shares to a voting trustee for the purpose of conferring the right to vote thereon for a period not exceeding ten years upon the terms and conditions stated therein. The certificates for shares so transferred shall be surrendered and cancelled and new certificates therefor issued to such trustee stating that they are issued under such agreement, and in the entry of such ownership in the record of the corporation that fact shall also be noted, and such trustee may vote the shares so transferred during the term of such agreement. At the termination of the agreement, the shares surrendered shall be reissued to the owner in accordance with the terms of the trust agreement.

2. *Right of inspection by certificate holders.* The trustee shall keep available for inspection by holders of voting trust certificates at his office or at a place designated in such agreement or of

which the holders of voting trust certificates have been notified in writing, correct and complete books and records of account relating to the trust, and a record containing the names and addresses of all persons who are holders of voting trust certificates and the number and class of shares represented by the certificates held by them and the dates when they became the owners thereof. The record may be in written form or any other form capable of being converted into written form within a reasonable time.

3. *Records in office of corporation.* A duplicate of every such agreement shall be filed in the office of the corporation and it and the record of voting trust certificate holders shall be subject to the same right of inspection by a shareholder of record or a holder of a voting trust certificate, in person or by agent or attorney, as are the records of the corporation under section 8.2 of this Title. The shareholder or holder of a voting trust certificate shall be entitled to the remedies provided in section 8.5 of this Title.

4. *Extension agreements.* At any time within six months before the expiration of such voting trust agreement as originally fixed or as extended one or more times under this paragraph, one or more holders of voting trust certificates may, by agreement in writing, extend the duration of such voting trust agreement, nominating the same or a substitute trustee, for an additional period not exceeding ten years. Such extension agreement shall not affect the rights or obligations of persons not parties thereto and shall in every respect comply with and be subject to all the provisions of this section applicable to the original voting trust agreement.

5. *Power of trustee to vote.* The voting trustee or trustees may vote the shares so issued or transferred during the period specified in the agreement. Shares standing in the name of the voting trustee or trustees may be voted either in person or by proxy, and in voting the shares, the voting trustee or trustees shall incur no responsibility as shareholder, trustee or otherwise, except for their own individual malfeasance. In any case where two or more persons are designated as voting trustees, and the right and method of voting any shares standing in their names at any meeting of the corporation are not fixed by the agreement appointing the trustees, the right to vote the shares and the manner of voting them at the meeting shall be determined by a majority of the trustees, or if they be equally divided as to the right and manner of voting the shares in any particular case, the vote of the shares in such case shall be divided equally among the trustees.

*Prior legislation:* 1956 Code 4:16; Lib. Corp. L., 1948, §16; 1976 Liberian code of Laws Revised, Chapter 7, §7.12, amended effective June 19, 2002.

### **§7.13. Agreements among shareholders as to voting.**

An agreement between two or more shareholders, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the shares held by them shall be voted as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon by them.

### **§7.14. Conduct of shareholders' meetings.**

1. *Selection of inspectors.* Unless otherwise provided in the bylaws, the board, in advance of any shareholders' meeting, may appoint one or more inspectors to act at the meeting or any



adjournment thereof. If inspectors are not so appointed, the person presiding at a shareholders' meeting may, and on the request of any shareholder entitled to vote thereat shall, appoint one or more inspectors. In case any person appointed fails to appear or act, the vacancy may be filled by appointment made by the board in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, before entering upon the discharge of his duties, shall take an oath faithfully to execute the duties of inspector at such meeting.

2. *Duties of inspectors.* Unless otherwise provided in the bylaws, the inspectors shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots, or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the results, and do such acts as are proper to conduct the election or vote with fairness to all shareholders entitled to vote thereat. Unless waived by vote of the shareholders, the inspectors shall make a report in writing of any challenge, question or matter determined by them and execute a sworn certificate of any fact found by them. Any report or certificate made by them shall be prima facie evidence of the facts stated and of the vote as certified by them.

#### **§7.15. Preemptive rights.**

1. *When shares are subject to preemptive rights.* Except as otherwise provided in the articles of incorporation or in this section, in the event of:

- (a) The proposed issuance by the corporation of shares, whether or not of the same class as those previously held, which would adversely affect the voting rights or rights to current and liquidating dividends of such holders, or
- (b) The proposed issuance by the corporation of securities convertible into or carrying an option to purchase shares referred to in subparagraph (a) of this paragraph, or
- (c) The granting by the corporation of any options or rights to purchase shares or securities referred to in subparagraph (a) or (b) of this paragraph,

the holders of shares of any class shall have the right, during a reasonable time and on reasonable terms, to be determined by the board, to purchase such shares or other securities, as nearly as practicable, in such proportion as would, if such preemptive right were exercised, preserve the relative rights to current and liquidating dividends and voting rights of such holders and at a price or prices no less favorable than the price at which such shares, securities, options or rights are to be offered to other holders. The holders of shares entitled to the preemptive right, and the number of shares for which they have a preemptive right, shall be determined by fixing a record date in accordance with section 7.5 (Fixing record date).

2. *When shares are not subject to preemptive rights.* Except as otherwise provided in the articles of incorporation, shareholders shall have no preemptive right to purchase:

- (a) Shares or other securities issued to effect a merger or consolidation; or

- (b) Shares or other securities issued or optioned to directors, officers, or employees of the corporation as an incentive to service or continued service with the corporation pursuant to an authorization given by the shareholders, and by the vote of the holders of the shares entitled to exercise preemptive rights with respect to such shares; or
- (c) Shares issued to satisfy conversion or option rights previously granted by the corporation; or
- (d) Treasury shares; or
- (e) Shares or securities which are part of the shares or securities of the corporation authorized in the original articles of incorporation and are issued, sold or optioned within two years from the date of filing such articles.

3. *Notice to shareholders of rights.* The holders of shares entitled to the preemptive right shall be given prompt notice setting forth the period within which and the terms and conditions upon which such shareholders may exercise their preemptive right. Such notice shall be given personally or by mail at least fifteen days prior to the expiration of the period during which the right may be exercised.

*Prior legislation:* 1956 Code 4:17; Lib. Corp. L., §17.

#### **§7.16. Shareholders' derivative actions.**

1. *Right to bring action.* An action may be brought in the right of a corporation to procure a judgment in its favor, by a holder of shares or of voting trust certificates of the corporation or of a beneficial interest in such shares or certificates.

2. *Ownership requirement.* In any such action, it shall be made to appear that the plaintiff is such a holder at the time of bringing the action and that he was such a holder at the time of the transaction of which he complains, or that his shares or his interest therein devolved upon him by operation of law.

3. *Effort by plaintiff to secure action by board.* In any such action in Liberia, the complaint shall set forth with particularity the efforts of the plaintiff to secure the initiation of such action by the board or the reasons for not making such effort.

4. *Settlement of action.* Such action in Liberia shall not be discontinued, compromised or settled, without the approval of the court having jurisdiction of the action. If the court in Liberia shall determine that the interests of the shareholders or any class thereof will be substantially affected by such discontinuance, compromise, or settlement, the court, in its discretion, may direct that notice, by publication or otherwise, shall be given to the shareholders or class thereof whose interests it determines will be so affected; if notice is so directed to be given, the court may determine which one or more of the parties to the action shall bear the expense of giving such notice, in such amount as the court shall determine and find to be reasonable in the circumstances, and the amount of such expense shall be awarded as special costs of the action and recoverable in the same manner as statutory taxable costs.

5. *Disposition of proceeds.* If the action in Liberia on behalf of the corporation was successful, in whole or in part, or if anything was received by the plaintiff or a claimant as the result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff or claimant reasonable expenses, including reasonable attorney's fees, and shall direct him to account to the corporation for the remainder of the proceeds so received by him.

6. *Security for expenses.* In any action in Liberia authorized by this section, if the plaintiff holds less than five percent of any class of the outstanding shares or holds voting trust certificates or beneficial interest in shares representing less than five percent of any class of such shares, then unless the shares, voting trust certificates or beneficial interest of such plaintiff has a fair value in excess of fifty thousand dollars, the corporation in whose right such action is brought shall be entitled at any stage of the proceedings before final judgment to require the plaintiff to give security for the reasonable expenses, including attorney's fees, which may be incurred by it in connection with such an action, in such amount as the court having jurisdiction of such action shall determine upon the termination of such action. The amount of such security may thereafter from time to time be increased or decreased in the discretion of the court having jurisdiction of such action upon showing that the security provided has or may become inadequate or excessive.

#### **§7.17. Voting rights of members of corporations; quorum; proxies.**

1. *Application of Chapter to members.* Except as specified in this Chapter, the provisions of this Chapter shall apply in respect of a non-share corporation having members or a hybrid corporation having members and shareholders, as the case may be, *mutatis mutandis* to members as to shareholders.

2. *Voting rights.* Except as otherwise provided in the articles of incorporation of a non-share corporation or of a hybrid corporation, each member shall be entitled at every meeting of members to one vote in person or by proxy.

3. *Quorum.* Unless otherwise provided in this Chapter, the articles of incorporation or bylaws, a non-share corporation or a hybrid corporation may specify the number of members having voting power who shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business. In the absence of such specification in the articles of incorporation or bylaws of a non-share corporation or of a hybrid corporation:

- (a) In all matters other than the election of the governing body of such corporation, the affirmative vote of a majority of such members present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the members, unless the vote of a greater number is required by this Chapter; and
- (b) Members of the governing body to be elected by members shall be elected by a plurality of the votes of the members of the corporation present in person or represented by proxy at the meeting and entitled to vote thereon.

4. *Failure to hold meeting.* If the election of the governing body of such corporation shall not

be held on the day designated, the governing body shall cause the election to be held as soon thereafter as convenient and the provisions of section 7.1 shall apply with the substitution of governing body for references therein to directors and the substitution of members for references therein to shares.

*Effective: June 19, 2002*

## **CHAPTER 8.**

# **CORPORATE RECORDS AND REPORTS**

- §8.1. Requirement for keeping books of account, minutes and records of shareholders
- §8.2. Shareholders' right to inspect books and records.
- §8.3. Directors' right of inspection.
- §8.4. Definition of "shareholder".
- §8.5. Enforcement of right of inspection.
- §8.6. Annual report.

### **§8.1. Requirement for keeping books of account, minutes and records of shareholders.**

1. *Books of account and minutes.* Every domestic corporation shall keep correct and complete books and records of account and shall keep minutes of all meetings of shareholders, of actions taken on consent by shareholders, of all meetings of the board of directors, of actions taken on consent by directors and of meetings of the executive committee, if any. A domestic corporation having its principal place of business in Liberia shall keep such books and records in Liberia.

2. *Records of shareholders.* Every domestic corporation shall keep a record containing the names and addresses of all registered shareholders, including the holders of uncertificated shares, the number and class of shares held by each and the dates when they respectively became the owners of record thereof, notwithstanding that the recordation may have the effect of taking account of a trust or constructive trust. In addition, any such corporation which issues bearer shares shall maintain a record of all certificates issued in bearer form, including the number, class and dates of issuance of such certificates. A domestic corporation having its principal place of business in Liberia shall keep the records required to be maintained by this paragraph at the office of the corporation in Liberia or at the office of its transfer agent or registrar in Liberia.

3. *Form of records.* Any of the forgoing books, minutes or records may be in written form or in any other form capable of being converted into written form within a reasonable time and section 1.4.8 shall apply.

*Prior legislation:* 1956 Code 4:45; Lib. Corp. L., 1948, §45; 1976 Liberian Codes of Laws Revised, Chapter 8, §8.1, amended effective June 19, 2002.

### **§8.2. Shareholders' right to inspect books and records.**

1. *Right stated.* Any shareholder, in person or by attorney or other agent, shall, upon written

demand under oath stating the purpose thereof, have the right during the usual hours of business to inspect, for any proper purpose the corporation's share register, a list of its shareholders, and its other books and records, and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a shareholder. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the shareholder. The demand under oath shall be directed to the corporation at its principal place of business.

2. *Effect of refusal of right* If the corporation, or an officer or agent thereof, refuses to permit an inspection sought by a shareholder or attorney or other agent acting for the shareholder pursuant to paragraph 1 or does not reply to the demand within five business days after the demand has been made, the shareholder may apply to the court for an order to compel such inspection.

3. *Ground for refusal of right.* Any inspection authorized by paragraph 1 may be denied to a shareholder or other person who within five years sold or offered for sale a list of shareholders of a corporation or aided or abetted any person in procuring for sale any such list of shareholders or who seeks such inspection for a purpose which is not in the interest of a business other than the business of the corporation or who refuses to furnish an affidavit attesting to his right to inspect under this section.

4. *Limitation of right forbidden.* The right of inspection stated by this section may not be limited in the articles or bylaws.

*Prior legislation:* 1976 Liberian Codes of Laws Revised, Chapter 8, §8.2, amended effective June 19, 2002.

### **§8.3. Directors' right of inspection.**

1. *Right stated.* Any director (including a member of the governing body of a non-share corporation and a hybrid corporation), in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's share register, a list of its shareholders, and its other books and records, and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a director. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the director. The demand under oath shall be directed to the corporation at its principal place of business. In the case of authorized foreign corporations this right extends only to such books, records, documents and properties of such corporation as are kept or located in the Republic of Liberia.

2. *Effect of refusal of right.* If the corporation, or an officer or agent thereof, refuses to permit an inspection sought by a director or attorney or other agent acting for the director pursuant to paragraph 1 or does not reply to the demand within five business days after the demand has been made, the shareholder may apply to the court for an order to compel such inspection.

3. *Limitation of right forbidden.* The right of inspection stated by this section may not be limited in the articles or bylaws.

*Prior legislation:* 1976 Liberian Codes of Laws Revised, Chapter 8, §8.3, amended effective June 19, 2002.

#### **§8.4. Definition of “shareholder”.**

As used in this Chapter, “shareholder” means a shareholder of record of shares in a corporation and also a member of a non-share corporation or a shareholder or a member of a hybrid corporation as reflected on the records of that corporation. As used in this Chapter, the term “list of shareholders” includes lists of members of a non-share corporation and of a hybrid corporation.

*Prior legislation:* 1976 Liberian Codes of Laws Revised, Chapter 8, §8.4, amended effective June 19, 2002.

#### **§8.5. Enforcement of right of inspection.**

1. *Application to court.* If the corporation, or an officer or agent thereof, refuses to permit an inspection sought by a shareholder or director or attorney or other agent acting for the shareholder or director pursuant section 8.2 or 8.3 or does not reply to the demand within five business days after the demand has been made, the shareholder or director may apply to the court for an order to compel such inspection. The court is hereby vested with exclusive jurisdiction to determine whether or not the person seeking inspection is entitled to the inspection sought. The court may order the corporation to permit the shareholder or director to inspect the corporation’s share register, an existing list of shareholders, and its other books and records, and to make copies or extracts therefrom; or the court may order the corporation to furnish to the shareholder or director a list of its shareholders as of a specific date on condition that the shareholder or director first pay to the corporation the reasonable cost of obtaining and furnishing such list and on such other conditions as the court deems appropriate.

2. *Qualification to be established by shareholder or director.* Where the shareholder or director seeks to inspect the corporation’s books and records, other than its share register or list of shareholders, such shareholder or director shall first establish:

- (a) That such shareholder or director has complied with this Chapter respecting the form and manner of making demand for inspection of such documents; and
- (b) That the inspection such shareholder or director seeks is for a proper purpose,

and where the shareholder or director seeks to inspect the corporation’s share register or list of shareholders and such shareholder or director has complied with this Chapter respecting the form and manner of making demand for inspection of such documents, the burden of proof shall be upon the corporation to establish that the inspection such shareholder or director seeks is for an improper purpose. The court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other or further relief as the court may deem just and proper.

*Prior legislation:* 1976 Liberian Codes of Laws Revised, Chapter 8, §8.5, amended effective June 19, 2002.

**§8.6. Annual report.**

Upon the written request of any person who shall have been a shareholder of record for at least six months immediately preceding his request, or of any person holding, or thereunto authorized in writing by the holders of, at least five percent of any class of the outstanding shares, the corporation shall give or mail to such shareholder an annual balance sheet and profit and loss statement for the preceding fiscal year, and, if any interim balance sheet or profit and loss statement has been distributed to its shareholders or otherwise made available to the public, the most recent such interim balance sheet or profit and loss statement. The corporation shall be allowed a reasonable time to prepare such annual balance sheet and profit and loss statement.



## **CHAPTER 9.**

# **AMENDMENTS OF ARTICLES OF INCORPORATION**

- §9.1. Right to amend articles of incorporation.
- §9.2. Reduction of stated capital by amendment.
- §9.3. Procedure for amendment.
- §9.4. Class voting on amendments.
- §9.5. Articles of amendment.
- §9.6. Effectiveness of amendment.
- §9.7. Right of dissenting shareholders to payment.
- §9.8. Restated articles of incorporation.

### **§9.1. Right to amend articles of incorporation.**

A corporation may amend its articles of incorporation from time to time in any and as many respects as may be desired, provided such amendment contains only such provisions as might lawfully be contained in the original articles of incorporation filed at the time of making such amendment.

*Prior legislation:* 1956 Code 4:4 (1st par.); Lib. Corp. L., 1948, §4

### **§9.2. Reduction of stated capital by amendment.**

Reduction of stated capital which is not authorized by action of the board may be effected by an amendment of the articles of incorporation, but no reduction of stated capital shall be made by amendment unless after such reduction the stated capital exceeds the aggregate preferential amount payable upon involuntary liquidation upon all issued shares having preferential rights in assets plus the par value of all other issued shares with par value.

*Prior legislation:* 1956 Code 4:19; Lib. Corp. L., 1948, §19.

### **§9.3. Procedure for amendment.**

*I. General method of amending.* Amendment of the articles of incorporation may be authorized by vote of the holders of a majority of all outstanding shares entitled to vote thereon at a meeting of shareholders or by written consent in accordance with section 7.4 of all shareholders entitled to vote thereon.

2. *Certain amendments may be approved by board.* Alternatively, any one or more of the following amendments may be approved by the board:

- (a) To specify or change the location of the office or registered address of the corporation;
- (b) To make, revoke or change the designation of a registered agent, or to specify or change the address of its registered agent.

3. *Amendment by incorporators.* Before a corporation has received any payment for any of its shares, it may amend its articles of incorporation at any time or times, in any and as many respects as may be desired, subject to section 9.1. The amendment of articles of incorporation authorized by this paragraph shall be adopted by a majority of the incorporators, if directors were not named in the original articles of incorporation or have not yet been elected, or, if directors were named in the original articles of incorporation or have been elected and have qualified, by a majority of the directors. A certificate setting forth the amendment and certifying that the corporation has not received any payment for any of its shares and that the amendment has been duly adopted in accordance with this section shall be executed, acknowledged and filed in accordance with section 1.4 and for this purpose an incorporator shall be deemed to be an officer of the corporation. Upon such filing, the corporation's articles of incorporation shall be deemed to be amended accordingly as of the date on which the original articles of incorporation became effective, except as to those persons who are substantially and adversely affected by the amendment and as to those persons the amendment shall be effective from the filing date.

4. *Amendment by subscribers.* The articles of incorporation may be amended by consent in writing of the holders of all outstanding subscription rights to shares of the corporation provided that such holders verify that no shares have been issued.

5. *Other provisions for amendment unaffected.* This section shall not alter the vote required under any other section for the adoption of an amendment referred to therein, nor alter the authority of the board to authorize amendments under any other section.

6. *Requirement in articles in excess of statutory requirement.* Whenever the articles of incorporation shall require for action by the board of directors, by the holders of any class or series of shares or by the holders of any other securities having voting power, the vote of a greater number or proportion than is required by any section of this Title, the provision of the articles of incorporation requiring such greater vote shall not be altered, amended or repealed except by such greater vote.

7. *Non-share corporation and hybrid corporation.* If the corporation is a non-share corporation or a hybrid corporation, the governing body thereof shall adopt a resolution setting forth the amendment proposed and declaring its advisability. If a majority of all the members of the governing body shall vote in favor of such amendment, a certificate thereof shall be executed, acknowledged and filed and shall become effective in accordance with section 1.4. The articles of incorporation of any such corporation to which this paragraph applies may contain a provision requiring any amendment thereto to be approved by a specified number or percentage of the members or of any specified class of members of such corporation, in which event such proposed amendment shall be submitted to the members or to any specified class of members of such corporation in the same manner, so far as applicable, as is provided in this section for an amendment to the articles of

incorporation of a corporation authorized to issue shares; and in the event of the adoption thereof by such members, a certificate evidencing such amendment shall be executed, acknowledged and filed and shall become effective in accordance with section 1.4.

8. *Abandonment of proposed amendment.* The resolution authorizing a proposed amendment to the articles of incorporation may provide that at any time prior to the effectiveness of the filing of the amendment with the Registrar or the Deputy Registrar, notwithstanding authorization of the proposed amendment by the shareholders of the corporation or by the members of a non-share corporation or of a hybrid corporation, the board of directors or governing body may abandon such proposed amendment without further action by the shareholders or members.

*Prior legislation:* 1956 Code 4:4 (3rd par.); Lib. Corp. L., 1948, §4; 1976 Liberian Code of Laws Revised, Chapter 9, §9.3, amended effective June 19, 2002.

#### **§9.4. Class voting on amendments.**

Notwithstanding any provisions in the articles of incorporation, the holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, and in addition to the authorization of an amendment by vote of the holders of a majority of all outstanding shares entitled to vote thereon, the amendment shall be authorized by vote of the holders of a majority of all outstanding shares of the class if the amendment would increase or decrease the aggregate number of authorized shares of such class, increase or decrease the par value of the shares of such class, or alter or change the powers, preferences or special rights of the shares of such class so as to affect them adversely. If any proposed amendment would alter or change the powers, preferences, or special rights of one or more series of any class so as to affect them adversely, but shall not so affect the entire class, then only the shares of the series so affected by the amendment shall be considered a separate class for the purposes of this section.

*Prior legislation:* 1956 Code 4:4 (2nd par.) (c); Lib. Corp. L., 1948, §4 (3rd par.) (c).

#### **§9.5. Articles of amendment.**

The articles of amendment shall be executed for the corporation by two officers of the corporation, unless there is only one person appointed as an officer or the same person is appointed to be each officer of the corporation, in which case by that one person, and where that person is not a natural person, the instruments shall be signed by the person or persons who are the authorized signatories of that legal person, and acknowledged in accordance with provisions of section 1.4 and 1.5, and shall set forth:

- (a) The name of the corporation;
- (b) The date its articles of incorporation were filed;
- (c) Each section affected thereby;
- (d) If any such amendment provides for a change in or elimination of issued shares and, if the manner in which the same shall be effected is not set forth in the articles of

amendment, then a statement of the manner in which the same shall be effected shall be included in or annexed to the articles of amendment or furnished without cost to any shareholder who requests a copy of such statement;

- (e) If any amendment reduces stated capital, then a statement of the manner in which the same is effected and the amounts from which and to which stated capital is reduced;
- (f) The manner in which the amendment of the articles of incorporation was authorized.

The articles of amendment shall be filed with the Registrar or the Deputy Registrar in accordance with the provisions of section 1.4.

*Prior legislation:* 1956 Code 4:4 (par. 2); Lib. Corp. L., 1948, §4 (par. 2); 1976 Liberian Code of Laws Revised, Chapter 9, §9.5, amended effective June 19, 2002.

#### **§9.6. Effectiveness of amendment.**

1. *Time when effective.* Upon filing of the articles of amendment with the Registrar or the Deputy Registrar, the amendment shall become effective as of the filing date stated thereon and the articles of incorporation shall be deemed to be amended accordingly.

2. *Limitations on effect of amendment.* No amendment shall affect any existing cause of action in favor of or against the corporation, or any pending suit to which it shall be a party, or the existing rights of persons other than shareholders; and in the event the corporation name shall be changed, no suit brought by or against the corporation under its former name shall abate for that reason.

*Prior legislation:* 1976 Liberian Code of Laws Revised, Chapter 9, §9.6, amended effective June 19, 2002.

#### **§9.7. Right of dissenting shareholders to payment.**

A holder of any adversely affected shares who does not vote on or consent in writing to an amendment in the articles of incorporation shall, subject to and by complying with the provisions of section 10.8, have the right to dissent and to receive payment for such shares, if the articles of amendment (a) alter or abolish any preferential right of any outstanding shares having preferences; or (b) create, alter, or abolish any provision or right in respect of the redemption of any outstanding shares; or (c) alter or abolish any preemptive right of such holder to acquire shares or other securities; or (d) exclude or limit the right of such holder to vote on any matter, except as such right may be limited by the voting rights given to new shares then being authorized of any existing or new class.

#### **§9.8. Restated articles of incorporation.**

1. *Procedure for integrating document.* At any time after its articles of incorporation have been amended, a corporation may by action of its board, without necessity of vote of the shareholders, cause to be prepared a document entitled “Restated Articles,” which will integrate into one document its original articles of incorporation (or articles of consolidation) and all amendments thereto, including those affected by articles of merger.

2. *Required statement of no change.* The restated articles shall also set forth that this document purports merely to restate but not to change the provisions of the original articles of incorporation as amended and that there is no discrepancy between the said provisions and the provisions of the restated articles.

3. *Execution and filing.* The restated articles shall be executed and filed as provided in section 9.5.

4. *Effect of restated articles.* A copy of the restated articles filed with the Registrar or the Deputy Registrar as provided in section 1.4 shall be presumed, until otherwise shown, to be the full and true articles of the corporation as in effect on the date filed.

5. *Other method of integrating.* A corporation may also integrate its articles of incorporation and amendments thereto by the procedure provided in this Chapter for amending the articles of incorporation.

*Prior legislation:* 1976 Liberian Code of Laws Revised, Chapter 9, §9.8, amended effective June 19, 2002.



## CHAPTER 10.

# MERGER OR CONSOLIDATION

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- §10.8. Procedure to enforce shareholder's right to receive payment for shares.
- §10.9. Power of corporation to re-domicile into Liberia.
- §10.10. Power of corporation to re-domicile out of Liberia.
- §10.11. Reregistration of corporation as non-share corporation.
- §10.12. Reregistration of non-share corporation as share corporation.
- §10.13. Reregistration of another entity as a corporation.
- §10.14. De-registration and reregistration of corporation as another entity.

### §10.1. Definitions.

Whenever used in this Chapter:

- (a) “**Merger**” means a procedure whereby any two or more corporations or other entities merge into a single corporation or entity, which is any one of the constituent corporations or entities;
- (b) “**Consolidation**” means a procedure whereby any two or more corporations or other entities consolidate into a new corporation or entity formed by the consolidation;

(c) “*Constituent corporation*” or “*constituent entity*” means an existing corporation or entity that is participating in the merger or consolidation with one or more other corporations or entities;

(d) “*Surviving corporation*” or “*surviving entity*” means the constituent corporation or entity into which one or more other constituent corporations or entities are merged.

(e) “*Consolidated corporation*” or “*consolidated entity*” means the new corporation or entity into which two or more constituent corporations or entities are consolidated.

*Prior legislation: 1976 Liberian Code of Laws Revised, Chapter 10, §10.1, amended effective June 19, 2002.*

## **§10.2. Merger or consolidation of domestic corporations.**

1. *Power stated.* Two or more domestic corporations may merge or consolidate as provided in this section and section 10.3, and section 10.4 shall apply.

2. *Plan of merger or consolidation.* The board of each domestic corporation proposing to participate in a merger or consolidation under this section shall approve a plan of merger or consolidation setting forth:

(a) The name of each constituent corporation, and if the name of any of them has been changed, the name under which it was formed; and the name of the surviving corporation, or the name, or the method of determining it, of the consolidated corporation;

(b) As to each constituent corporation, the designation and number of outstanding shares of each class and series, specifying the classes and series entitled to vote and further specifying each class and series, if any, entitled to vote as a class;

(c) The terms and conditions of the proposed merger or consolidation, including the manner and basis of converting the shares of each constituent corporation into shares, bonds or other securities of the surviving or consolidated corporation, or the cash or other consideration to be paid or delivered in exchange for shares of each constituent corporation, or combination thereof;

(d) In case of merger, a statement of any amendment in the articles of incorporation of the surviving corporation to be effected by such merger; in case of consolidation, all statements required to be included in articles of incorporation for a corporation formed under this Act, except statements as to facts not available at the time the plan of consolidation is approved by the board;

(e) Such other provisions with respect to the proposed merger or consolidation as the board considers necessary or desirable.

3. *Authorization by shareholders.* Subject to paragraph 6 and section 10.3, the board of each constituent corporation, upon approving such plan of merger or consolidation, shall submit such



plan to a vote of shareholders of each such corporation in accordance with the following:

- (a) Notice of the meeting, accompanied by a copy of the plan of merger or consolidation, shall be given to each shareholder of record, whether or not entitled to vote;
- (b) The plan of merger or consolidation shall be authorized at a meeting of shareholders or in accordance with section 7.4 by vote of the holders of a majority of outstanding shares entitled to vote thereon, unless any class of shares of any such corporation is entitled to vote thereon as a class, in which event, as to such corporation, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of a majority of the shares of each class entitled to vote thereon as a class and of the total shares entitled to vote thereon. The shareholders of the outstanding shares of a class shall be entitled to vote as a class if the plan of merger or consolidation contains any provisions which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class.

4. *Articles of merger or consolidation.* After approval of the plan of merger or consolidation by the board and, if required by this section, by the shareholders of each constituent corporation, the articles of merger or consolidation shall be executed in duplicate by each corporation by two officers of each corporation, unless there is only one person appointed as an officer or the same person is appointed to be each officer of the corporation, in which case by that one person, and where that person is not a natural person, the instruments shall be signed by the person or persons who are the authorized signatories of that legal person, and verified by one of the officers of each corporation signing such articles, and shall set forth:

- (a) The plan of merger or consolidation, and, in case of consolidation, any statement required to be included in articles of incorporation for a corporation formed under this Act but which was omitted under paragraph 2 (d);
- (b) The date when the articles of incorporation of each constituent corporation were filed with the Registrar or the Deputy Registrar;
- (c) The manner in which the merger or consolidation was authorized with respect to each constituent corporation.

5. *Filing of articles of merger or consolidation.* The surviving or consolidated corporation shall deliver duplicate originals of the articles of merger or articles of consolidation to the Registrar and the Deputy Registrar and the articles shall be filed in accordance with section 1.4.

6. *No authorization by shareholders required.* Notwithstanding the requirements of paragraph 3, unless required by the articles of incorporation, no vote of shareholders of a constituent corporation surviving a merger shall be necessary to authorize a merger or consolidation if:

- (a) The plan of merger does not amend in any respect the articles of incorporation of such constituent corporation; and
- (b) Each share of such constituent corporation outstanding immediately prior to the effective

date of the merger is to be an identical outstanding or treasury share of the surviving corporation after the effective date of the merger; and

- (c) Either no shares of the surviving corporation and no shares, securities or obligations convertible into such shares are to be issued or delivered under the plan of merger, or the authorized unissued shares or the treasury shares of the surviving corporation to be issued or delivered under the plan of merger plus those initially issuable upon conversion of any other shares, securities or obligations to be issued or delivered under such plan do not exceed twenty percent of the shares of such constituent corporation outstanding immediately prior to the effective date of the merger; or
- (d) No shares of such corporation shall have been issued prior to the adoption by the board of directors of the resolution approving the plan of merger or consolidation.

7. *Officer to certify merger plan and file.* If a plan of merger is adopted by the constituent corporation surviving the merger, by action of its board of directors and without any vote of its shareholders pursuant to paragraph 6, an officer of that corporation shall certify on the plan that the plan has been adopted pursuant to that section and:

- (a) If it has been adopted pursuant to paragraph 6(a), (b) and (c), that the conditions therein specified have been satisfied; or
- (b) If it has been adopted pursuant to paragraph 6(d), that no shares of such corporation were issued prior to the adoption by the board of directors of the resolution approving the plan of merger or consolidation,

and the plan adopted and certified in accordance with paragraph 6 and these provisions shall then be filed and shall become effective in accordance with section 1.4, and such filing shall constitute a representation by the person who executes the plan that the facts so certified remain true immediately prior to such filing.

8. *Certificate of merger or consolidation.* In lieu of filing the plan of merger or consolidation required by paragraph 5, the surviving or consolidated corporation may file a certificate of merger or consolidation, executed in accordance with section 1.4, which states:

- (a) The name and jurisdiction of incorporation of each of the constituent corporations; and
- (b) That a plan of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with this section; and
- (c) The name of the surviving or consolidated corporation; and
- (d) In the case of a merger, such amendments or changes in the articles of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the articles of incorporation of

the surviving corporation shall be the articles of incorporation; or

- (e) In the case of a consolidation, that the articles of incorporation of the consolidated corporation shall be as set forth in an attachment to the certificate; and
- (f) That the executed plan of consolidation or merger is on file at an office of the surviving corporation; and
- (g) That a copy of the plan of consolidation or merger will be furnished by the surviving corporation, on request and without cost, to any shareholder of any constituent corporation.

9. *Shareholders entitled to consider plan where directors' approval terminated.* The terms of a plan of merger or consolidation may require that the plan be submitted to the shareholders whether or not the board of directors determines at any time subsequent to declaring approval that the plan is no longer advisable and recommends that the shareholders reject it.

10. *Plan may be conditional.* Any of the terms of the plan of merger or consolidation may be made dependent upon facts ascertainable outside of such plan, provided that the manner in which such facts shall operate upon the terms of the plan is clearly and expressly set forth in the plan of merger or consolidation. The term "facts", as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

11. *Plan of merger or consolidation may be terminated.* Any plan of merger or consolidation may contain a provision that at any time prior to the time that the articles of merger or consolidation or the certificate of merger or consolidation filed with Registrar or the Deputy Registrar become effective in accordance with section 1.4 the plan may be terminated by the board of directors of any constituent corporation notwithstanding approval of the plan by the shareholders of all or any of the constituent corporations, and in the event the plan of merger or consolidation is terminated after the filing of articles of merger or the certificate of merger or consolidation with Registrar or the Deputy Registrar but before the plan has become effective, a certificate of termination of merger or consolidation shall be filed in accordance with section 1.4.

12. *Plan of merger or consolidation may be amended.* Any plan of merger or consolidation may contain a provision that the boards of directors of the constituent corporations may amend the plan at any time prior to the time that the articles of amendment or the certificate of merger or consolidation filed with the Registrar or the Deputy Registrar becomes effective in accordance with section 1.4, provided that an amendment made subsequent to the adoption of the plan by the shareholders of any constituent corporation shall not alter or change:

- (a) The amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such constituent corporation;
- (b) Any term of the articles of incorporation of the surviving corporation to be effected by the merger or consolidation; or

- (c) Any of the terms and conditions of the plan if such alteration or change would adversely affect the holders of any class or series thereof of such constituent corporation,

and in the event the plan of merger or consolidation is amended after the filing of the articles of amendment or the certificate of merger or consolidation with the Registrar or the Deputy Registrar but before the plan has become effective, a certificate of amendment of merger or consolidation shall be filed in accordance with section 1.4.

*13. Liability of shareholder of former corporation.* The personal liability, if any, of any shareholder in a constituent corporation existing at the time of such merger or consolidation shall not thereby be extinguished, shall remain personal to such shareholder and shall not become the liability of any subsequent transferee of any share in such surviving or consolidated corporation or of any other shareholder of such surviving or consolidated corporation.

*Prior legislation:* 1956 Code 4:31, 32, 33; Lib. Corp. L., 1948 §§ 31, 32, 33; 1976 Liberian Code of Laws Revised, Chapter 10, §10.2, amended effective June 19, 2002.

### **§10.3. Merger of subsidiary corporations.**

*1. Without approval of shareholders authorized.* Any domestic corporation owning at least ninety percent of the outstanding shares of each class of another domestic corporation or corporations may merge such other corporation or corporations into itself without the authorization of the shareholders of any such corporation. Its board shall approve a plan of merger, setting forth:

- (a) The name of each subsidiary corporation to be merged and the name of the surviving corporation, and if the name of any of them has been changed, the name under which it was formed;
- (b) The designation and number of outstanding shares of each class of each subsidiary corporation to be merged and the number of such shares of each class owned by the surviving corporation;
- (c) The terms and conditions of the proposed merger, including the manner and basis of converting the shares of each subsidiary corporation to be merged not owned by the surviving corporation, into shares, bonds or other securities of the surviving corporation, or the cash or other consideration to be paid or delivered in exchange for shares at each subsidiary corporation, or a combination thereof;
- (d) Such other provisions with respect to the proposed merger as the board considers necessary or desirable.

*2. Plan of merger.* A copy of such plan of merger or an outline of the material features thereof shall be delivered, personally or by mail, to all shareholders of record of each subsidiary corporation to be merged not owned by the surviving corporation, unless the giving of such copy or outline has been waived by such shareholders.

3. *Filing of articles of merger.* The surviving corporation shall deliver duplicate originals of the articles of merger to the Registrar or the Deputy Registrar. The articles shall set forth:

- (a) The plan of merger;
- (b) The date when the articles of incorporation of each constituent corporation were filed with the Registrar or the Deputy Registrar;
- (c) If the surviving corporation does not own all the shares of each subsidiary corporation to be merged, either the date of the giving to shareholders of record of each such subsidiary corporation not owned by the surviving corporation of a copy of the plan of merger or an outline of the material features thereof, or a statement that the giving of such copy or outline has been waived, if such is the case.

The articles of merger shall be filed with the Registrar or the Deputy Registrar in accordance with the provisions of section 1.4.

4. *Application of section 10.2.* Section 10.2.8 and sections 10.2.10 to 10.2.13 shall apply to a merger under this section.

*Prior legislation:* 1956 Code 4:34; Lib. Corp. L., 1948, §34; 1976 Liberian Code of Laws Revised, Chapter 10, §10.3, amended effective June 19, 2002.

#### **§10.4. Effect of merger or consolidation.**

1. *When effective.* Upon the filing of the articles of merger or consolidation or the certificate of merger or consolidation with the Registrar or the Deputy Registrar or on such date subsequent thereto, not to exceed ninety days, as shall be set forth in such articles, the merger or consolidation shall be effective.

2. *Effects stated.* When such merger or consolidation has been effected:

- (a) Such surviving or consolidated corporation shall thereafter consistently with its articles of incorporation as altered or established by the merger or consolidation, possess all the rights, privileges, immunities, powers and purposes of each of the constituent corporations;
- (b) All the property, real and personal, including subscriptions to shares, causes of action and every other asset of each of the constituent corporations, shall vest in such surviving or consolidated corporation without further act or deed;
- (c) The surviving or consolidated corporation shall assume and be liable for all the liabilities, obligations and penalties of each of the constituent corporations. No liability or obligation due or to become due, claim or demand for any cause existing against any such corporation, or any shareholder, officer or director thereof, shall be released or impaired by such merger or consolidation. No action or proceeding, whether civil or criminal, then pending by or against any such constituent corporation, or any

shareholder, officer or director thereof, shall abate or be discontinued by such merger or consolidation, but may be enforced, prosecuted, settled or compromised as if such merger or consolidation had not occurred, or such surviving or consolidated corporation may be substituted in such action or special proceeding in place of any constituent corporation;

- (d) In the case of a merger, the articles of incorporation of the surviving corporation shall be automatically amended to the extent, if any, that changes in its articles of incorporation are set forth in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in articles of incorporation of a corporation formed under this Act, shall be its articles of incorporation;
- (e) Unless otherwise provided in the articles of merger or consolidation, a constituent corporation which is not the surviving corporation or the consolidated corporation, ceases to exist and is dissolved.

*Prior legislation:* 1956 Code 4:32, 36; Lib. Corp. L., 1948, §§32, 36; 1976 Liberian Code of Laws Revised, Chapter 10, §10.4, amended effective June 19, 2002.

#### **§10.5. Merger or consolidation of domestic and foreign corporations.**

1. *Method.* One or more foreign corporations and one or more domestic corporations may be merged or consolidated with each other in the following manner, if such merger or consolidation is permitted by the laws of the jurisdiction under which each such foreign corporation is organized:

- (a) Each domestic corporation shall comply with the provisions of this Act with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the jurisdiction under which it is organized;
- (b) If the surviving or consolidated corporation is to be governed by the laws of any jurisdiction other than Liberia, it shall comply with the provisions of this Act with respect to foreign corporations if it is to transact business in Liberia, and in every case it shall file with the Registrar or the Deputy Registrar:
  - (i) An irrevocable notice of consent that it may be served with process in Liberia in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or consolidated corporation;
  - (ii) An irrevocable appointment of the Minister of Foreign Affairs as its agent to accept service of process in any such proceeding;
  - (iii) An undertaking that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled

under the provisions of this Act with respect to the rights of dissenting shareholders; and

- (iv) Notice executed in accordance with section 1.4 by an officer of the surviving or consolidated corporation that the merger or consolidation is effective in the other jurisdiction and specifying the competent authority in that jurisdiction.

2. *Effect.* The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations if the surviving or consolidated corporation is to be governed by the laws of Liberia. If the surviving or consolidated corporation is to be governed by the laws of any jurisdiction other than Liberia, the effect of such merger or consolidation shall be the same as in the case of merger or consolidation of domestic corporations except insofar as the laws of such other jurisdiction provide otherwise.

3. *Effective date.* The effective date of a merger or consolidation in cases where the surviving or consolidated corporation is to be governed by the laws of any jurisdiction other than Liberia shall be determined by the filing requirements and laws of such other jurisdiction.

4. *Merger of subsidiary corporation.* The procedure for the merger of a subsidiary corporation or corporations under section 10.3 shall be available where either a subsidiary corporation or the corporation owning at least ninety percent of the outstanding shares of each class of a subsidiary is a foreign corporation, and such merger is permitted by the laws of the jurisdiction under which such foreign corporation is incorporated.

*Prior legislation:* 1976 Liberian Code of Laws Revised, Chapter 10, §10.5, amended effective June 19, 2002.

#### **§10.5A. Merger or consolidation of Liberian non-share corporations.**

1. *Power to merge or consolidate.* Two or more Liberian non-share corporations, whether or not organized for profit, may merge into a single non-share corporation, which may be any one of the constituent non-share corporations, or they may consolidate into a new non-share corporation, whether or not organized for profit, formed by the consolidation, pursuant to a plan of merger or consolidation, as the case may be, complying and approved in accordance with this section.

2. *Plan of merger or consolidation.* The governing body of each non-share corporation proposing to participate in a merger or consolidation under this section shall approve a plan of merger or consolidation setting forth:

- (a) The name of each constituent non-share corporation, and if the name of any of them has been changed, the name under which it was formed; and the name of the surviving non-share corporation, or the name, or the method of determining it, of the consolidated non-share corporation;
- (b) As to each constituent non-share corporation, the designation and number of members of each class, if any, specifying the classes entitled to vote and further specifying each class, if any, entitled to vote as a class;

- (c) The terms and conditions of the proposed merger or consolidation, including the manner and basis of converting the membership of each constituent non-share corporation into membership of the surviving or consolidated non-share corporation, or the cash or other consideration to be paid or delivered in exchange for member interests of each constituent non-share corporation, or combination thereof;
- (d) In case of merger, a statement of any amendment in the articles of incorporation of the surviving non-share corporation to be effected by such merger; in case of consolidation, all statements required to be included in articles of incorporation for a non-share corporation formed under this Act, except statements as to facts not available at the time the plan of consolidation is approved by the governing body;
- (e) Such other provisions with respect to the proposed merger or consolidation as the governing body considers necessary or desirable.

3. *Authorization by members.* The governing body of each constituent non-share corporation, upon approving such plan of merger or consolidation, shall submit such plan to a vote of members of each such non-share corporation in accordance with the following:

- (a) Notice of the meeting, accompanied by a copy of the plan of merger or consolidation, shall be given to the members of each constituent non-share corporation who have the right to vote for the election of the members of the governing body of their non-share corporation;
- (b) The plan of merger or consolidation shall be authorized at a meeting of members or in accordance with section 7.4 by vote of a majority of members entitled to vote for the election of the members of the governing body of their non-share corporation, unless any class of members of any such non-share corporation is entitled to vote thereon as a class, in which event, as to such corporation, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of a majority of the members of each class entitled to vote thereon as a class and of all the members entitled to vote thereon. The members of a class shall be entitled to vote as a class if the plan of merger or consolidation contains any provisions which, if contained in a proposed amendment to articles of incorporation, would entitle such class of members to vote as a class.

4. *Articles of merger or consolidation.* After approval of the plan of merger or consolidation by the governing body, and, unless not required by any provision of this section, by the members of each constituent non-share corporation, the articles of merger or consolidation shall be executed in duplicate by each non-share corporation by two members of the governing body appointed or elected as officers of each non-share corporation, unless there is only one person appointed as an officer or the same person is appointed to be each officer of the non-share corporation, in which case by that one person, and where that person is not a natural person, the instruments shall be signed by the person or persons who are the authorized signatories of that legal person, and verified by one of the officers of each non-share corporation signing such articles, and shall set forth:

- (a) The plan of merger or consolidation, and, in case of consolidation, any statement



required to be included in articles of incorporation for a non-share corporation formed under this Act but which was omitted under paragraph 2(d);

- (b) The date when the articles of incorporation of each constituent non-share corporation were filed with the Registrar or the Deputy Registrar;
- (c) The manner in which the merger or consolidation was authorized with respect to each constituent non-share corporation.

5. *Filing of articles of merger or consolidation.* The surviving or consolidated non-share corporation shall deliver duplicate originals of the articles of merger or consolidation to the Registrar or the Deputy Registrar and the articles shall be filed in accordance with section 1.4.

6. *No authorization by members required.* Notwithstanding the requirements of paragraph 3, unless required by the articles of incorporation, no vote of members of a constituent non-share corporation surviving the merger shall be necessary to authorize a merger if:

- (a) The plan of merger does not amend in any respect the articles of incorporation of such constituent non-share corporation; and
- (b) Each membership interest of such constituent non-share corporation existing immediately prior to the effective date of the merger is to be an identical interest of the surviving non-share corporation after the effective date of the merger.

7. *Procedure where no members with right to vote.* If under the articles of incorporation of any one or more of the constituent non-share corporations, there shall be no members who have the right to vote for the election of the members of the governing body of the corporation other than the members of that body themselves:

- (a) The plan prepared as provided in paragraph 2 shall be submitted to the members of the governing body of such non-share corporation or corporations, at a meeting thereof or in accordance with section 7.4;
- (b) If at the meeting or in accordance with section 7.4 two thirds of the total number of members of the governing body shall vote for the adoption of the plan, that fact shall be certified on the plan in the same manner as is provided in the case of the approval of the plan by the vote of the members of a non-share corporation and thereafter the same procedure shall be followed to consummate the merger or consolidation.

8. *Certificate of merger or consolidation.* In lieu of filing the plan of merger or consolidation required by paragraph 3, the surviving or consolidated non-share corporation may file a certificate of merger or consolidation, executed in accordance with section 1.4, which states:

- (a) The name of each of the constituent non-share corporations;
- (b) That a plan of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent non-share corporations in accordance

with this section;

- (c) The name of the surviving or consolidated non-share corporation;
- (d) In the case of a merger, such amendments or changes in the articles of incorporation of the surviving non-share corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the articles of incorporation of the surviving non-share corporation shall be the articles of incorporation;
- (e) In the case of a consolidation, that the articles of incorporation of the consolidated non-share corporation shall be as set forth in an attachment to the certificate;
- (f) That the executed plan of consolidation or merger is on file at an office of the surviving non-share corporation; and
- (g) That a copy of the plan of consolidation or merger will be furnished by the surviving non-share corporation, on request and without cost, to any member of any constituent non-share corporation.

9. *Members entitled to consider plan where governing body's approval terminated.* The terms of a plan of merger or consolidation may require that the plan be submitted to the members whether or not the governing body determines at any time subsequent to declaring approval that the plan is no longer advisable and recommends that the members reject it.

10. *Plan may be conditional.* Any of the terms of the plan of merger or consolidation may be made dependent upon facts ascertainable outside of such plan, provided that the manner in which such facts shall operate upon the terms of the plan is clearly and expressly set forth in the plan of merger or consolidation. The term "facts," as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the non-share corporation.

11. *Plan of merger or consolidation may be terminated.* Any plan of merger or consolidation may contain a provision that at any time prior to the time that the articles of merger or consolidation or the certificate of merger or consolidation filed with the Registrar or the Deputy Registrar become effective in accordance with section 1.4 the plan may be terminated by the governing body of any constituent non-share corporation notwithstanding approval of the plan by the members of all or any of the constituent non-share corporations and in the event the plan of merger or consolidation is terminated after the filing of articles of merger or the certificate of merger or consolidation with the Registrar or the Deputy Registrar but before the plan has become effective, a certificate of termination of merger or consolidation shall be filed in accordance with section 1.4.

12. *Plan of merger or consolidation may be amended.* Any plan of merger or consolidation may contain a provision that the governing bodies of the constituent non-share corporations may amend the plan at any time prior to the time that the articles of amendment or the certificate of merger or consolidation filed with the Registrar or the Deputy Registrar becomes effective in accordance with section 1.4, provided that an amendment made subsequent to the adoption of the plan by the members of any constituent non-share corporation shall not alter or change:

- (a) The membership interests to be received in exchange for or on conversion of all or any of the membership interests of such constituent non-share corporation;
- (b) Any term of the articles of incorporation of the surviving non-share corporation to be effected by the merger or consolidation; or
- (c) Any of the terms and conditions of the plan if such alteration or change would adversely affect the members of any class of such constituent non-share corporation,

and in the event the plan of merger or consolidation is amended after the filing of the articles of amendment or the certificate of merger or consolidation with the Registrar or the Deputy Registrar but before the plan has become effective, a certificate of amendment of merger or consolidation shall be filed in accordance with section 1.4.

*13. Application of section 10.4.* The provisions of section 10.4 shall apply with the substitution of members and membership interests for shareholders and shares, and members of the governing body for directors.

*14. Liability of member of former non-share corporation.* The personal liability, if any, of any member in a constituent non-share corporation existing at the time of such merger or consolidation shall not thereby be extinguished, shall remain personal to such member and shall not become the liability of any subsequent transferee of any membership in such surviving or consolidated non-share corporation or of any other member of such surviving or consolidated non-share corporation.

*Effective:* June 19, 2002.

#### **§10.5B. Merger or consolidation of Liberian and foreign non-share corporations.**

*1. Power to merge or consolidate.* One or more Liberian non-share corporations may merge or consolidate with one or more other non-share corporations of any other jurisdiction if the laws of such other jurisdiction permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction. The constituent non-share corporations may merge into a single non-share corporation, which may be any one of the constituent non-share corporations, or they may consolidate into a new non-share corporation formed by the consolidation, which may be a non-share corporation of the jurisdiction of incorporation of any one of the constituent non-share corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section.

*2. Method.* Each Liberian non-share corporation shall comply with the provisions of this Act with respect to the merger or consolidation, as the case may be, of Liberian non-share corporations and each foreign non-share corporation shall comply with the applicable laws of the jurisdiction under which it is organized.

*3. Additional filing where surviving or consolidated non-share corporation governed by laws of another jurisdiction.* If the surviving or consolidated non-share corporation is to be governed by the laws of any jurisdiction other than Liberia, it shall comply with the provisions of this Act with

respect to foreign corporations if it is to transact business in Liberia, and in every case it shall file with the Minister of Foreign Affairs:

- (a) An irrevocable notice of consent that it may be served with process in Liberia in any proceeding for the enforcement of any obligation of any Liberian non-share corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting member of any such Liberian non-share corporation against the surviving or consolidated non-share corporation;
- (b) An irrevocable appointment of the Minister of Foreign Affairs as its agent to accept service of process in any such proceeding;
- (c) An undertaking that it will promptly pay to the dissenting member of any such Liberian non-share corporation the amount, if any, to which they shall be entitled under the provisions of this Act or the plan of merger; and
- (d) Notice executed in accordance with section 1.4 by an officer of the surviving or consolidated non-share corporation that the merger or consolidation is effective in the other jurisdiction and specifying the competent authority in that jurisdiction.

4. *Effect.* The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of Liberian non-share corporations if the surviving or consolidated non-share corporation is to be governed by the laws of Liberia. If the surviving or consolidated non-share corporation is to be governed by the laws of any jurisdiction other than Liberia, the effect of such merger or consolidation shall be the same as in the case of merger or consolidation of Liberian non-share corporations except insofar as the laws of such other jurisdiction provide otherwise.

5. *Effective date.* The effective date of a merger or consolidation in cases where the surviving or consolidated non-share corporation is to be governed by the laws of any jurisdiction other than Liberia shall be determined by the filing requirements and laws of such other jurisdiction.

6. *Liability of member of former non-share corporation.* The personal liability, if any, of any member in a constituent non-share corporation existing at the time of such merger or consolidation shall not thereby be extinguished, shall remain personal to such member and shall not become the liability of any subsequent transferee of any membership in such surviving or consolidated non-share corporation or of any other member of such surviving or non-share consolidated corporation.

*Effective:* June 19, 2002.

#### **§10.5C. Merger or consolidation of Liberian corporations and Liberian non-share corporations.**

1. *Power to merge or consolidate.* One or more Liberian corporations authorized to issue shares, whether or not organized for profit, may merge or consolidate with one or more Liberian non-share corporations, whether or not organized for profit. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new corporation formed by the consolidation, pursuant to a plan of merger or consolidation, as the case may be, complying and approved in accordance with this section. The

surviving constituent corporation or the new corporation may be a corporation authorized to issue shares or a non-share corporation and may be organized for profit or not organized for profit.

2. *Method.* In the case of a constituent corporation:

- (a) Authorized to issue shares, the provisions of sections 10.2.2 to 10.2.4 shall apply;
- (b) Being a non-share corporation, the provisions of sections 10.5A.2 to 10.5A.4 and 10.5A.7 shall apply,

with the variation that the plan of merger or consolidation of each constituent corporation shall state:

- (c) The manner of converting the shares of the constituent corporation authorized to issue shares and the interests of the members of the constituent non-share corporation into shares or other securities of the surviving or consolidated corporation authorized to issue shares or membership interests of the surviving or consolidated non-share corporation, as the case may be;
- (d) If any shares of any constituent corporation authorized to issue shares or any membership interests of any constituent non-share corporation are not to be converted solely into shares or other securities of the surviving or consolidated corporation authorized to issue shares or membership interests of the surviving or consolidated non-share corporation, the cash or other consideration to be paid or delivered, in the case of a constituent corporation authorized to issue shares, in exchange for shares of that constituent corporation, and, in the case of a constituent non-share corporation, in exchange for membership interests of that constituent corporation.

3. *Relevant criteria for the purposes of plan of merger or consolidation.* For the purpose of the plan of merger or consolidation:

- (a) The interests of members of a constituent non-share corporation may be treated in various ways so as to convert such interests into interests of value, other than shares, voting or nonvoting, in the surviving or consolidated corporation authorized to issue shares, or into creditor interests or any other interests of value equivalent to their membership interests in their constituent non-share corporation;
- (b) The voting rights of members of a constituent non-share corporation need not be considered an element of value in measuring the reasonable equivalence of the value of the interests received in the surviving or consolidated corporation authorized to issue shares by members of a constituent non-share corporation;
- (c) The voting rights of shares in a constituent corporation authorized to issue shares need not be considered as an element of value in measuring the reasonable equivalence of the value of the interests in the surviving or consolidated non-share corporation received by shareholders of a constituent corporation authorized to issue shares;

- (d) The voting or nonvoting shares of a constituent corporation authorized to issue shares may be converted into voting or nonvoting regular, life, general, special or other type of membership, however designated, creditor interests or participating interests, in the surviving or consolidated non-share corporation.

4. *Application of sections 10.2 and 10.5A.* The provisions of sections 10.2.5 and 10.2.8 to 10.2.12 shall apply to constituent corporations and a surviving or consolidated corporation authorized to issue shares and the provisions of sections 10.5A.5 and 10.5A.8 to 10.5A.13 shall apply to constituent non-share corporations and a surviving or consolidated non-share corporation.

5. *Liability of shareholder or member of former corporation.* The personal liability, if any, of any shareholder or member in a constituent corporation existing at the time of such merger or consolidation shall not thereby be extinguished, shall remain personal to such shareholder or member and shall not become the liability of any subsequent transferee of any share or membership in such surviving or consolidated corporation or of any other shareholder or member of such surviving or consolidated corporation.

*Effective:* June 19, 2002.

**§10.5D. Merger or consolidation of Liberian and foreign corporations and Liberian and foreign non-share corporations.**

1. *Power to merge or consolidate.* One or more Liberian corporations, whether authorized to issue shares or not and whether or not organized for profit, may merge or consolidate with one or more other corporations organized in another jurisdiction, whether corporations authorized to issue shares or not and whether or not organized for profit, if the laws under which the other corporation or corporations are formed shall permit such a corporation of such jurisdiction to merge with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new corporation, which may be a corporation of the place of incorporation of any one of the constituent corporations, pursuant to a plan of merger or consolidation, as the case may be, complying and approved in accordance with this section. The surviving or consolidated corporation may be either a corporation authorized to issue shares or a non-share corporation and may be organized for profit or not for profit, as shall be specified in the plan of merger required by this section.

2. *Method to be followed by constituent Liberian corporations.* The method and procedure to be followed by the constituent Liberian corporations shall be that prescribed in this Chapter in respect of a constituent corporation which is authorized to issue shares or a non-share corporation merging or consolidating with one or more Liberian corporations which is authorized to issue shares or a non-share corporation, as the case may be.

3. *Method to be followed by constituent or consolidated foreign corporations.* Each constituent or consolidated foreign corporation shall comply with the applicable laws of the jurisdiction under which it is organized.

4. *Additional matters in respect of surviving or consolidated foreign corporations.* The plan of merger or consolidation shall set forth such other matters or provisions as shall then be required

to be set forth in articles of incorporation by the laws of the jurisdiction which are stated in the plan to be the laws which shall govern the surviving or consolidated corporation and that can be stated in the case of a merger or consolidation.

5. *Additional filing where surviving or consolidated corporation governed by laws of another jurisdiction.* If the surviving or consolidated corporation is to be governed by the laws of any jurisdiction other than Liberia, it shall comply with the provisions of this Act with respect to foreign corporations if it is to transact business in Liberia, and in every case it shall file with the Minister of Foreign Affairs:

- (a) An irrevocable notice of consent that it may be served with process in Liberia in any proceeding for the enforcement of any obligation of any Liberian corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder or member of any such Liberian corporation against the surviving or consolidated corporation;
- (b) An irrevocable appointment of the Minister of Foreign Affairs as its agent to accept service of process in any such proceeding;
- (c) An undertaking that it will promptly pay to the dissenting shareholder or member of any such Liberian corporation the amount, if any, to which they shall be entitled under the provisions of this Act or the plan of merger; and
- (d) Notice executed in accordance with section 1.4 by an officer of the surviving or consolidated corporation that the merger or consolidation is effective in the other jurisdiction and specifying the competent authority in that jurisdiction.

6. *Effect.* The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of Liberian corporations if the surviving or consolidated corporation is to be governed by the laws of Liberia. If the surviving or consolidated corporation is to be governed by the laws of any jurisdiction other than Liberia, the effect of such merger or consolidation shall be the same as in the case of merger or consolidation of Liberian corporations except insofar as the laws of such other jurisdiction provide otherwise.

7. *Effective date.* The effective date of a merger or consolidation in cases where the surviving or consolidated corporation is to be governed by the laws of any jurisdiction other than Liberia shall be determined by the filing requirements and laws of such other jurisdiction.

8. *Liability of shareholder or member of former corporation.* The personal liability, if any, of any shareholder or member in a constituent corporation existing at the time of such merger or consolidation shall not thereby be extinguished, shall remain personal to such shareholder or member and shall not become the liability of any subsequent transferee of any share or membership in such surviving or consolidated corporation or of any other shareholder or member of such surviving or consolidated corporation.

*Effective:* June 19, 2002.

**§10.5E. Merger or consolidation of Liberian corporation and limited partnership.**

1. *Power to merge or consolidate.* One or more Liberian corporations authorized to issue shares, or being a non-share corporation may merge or consolidate with one or more limited partnerships, formed under this Title, or in another jurisdiction, unless the laws of such other jurisdiction forbid such merger or consolidation. Such one or more constituent corporation or corporations and such one or more constituent limited partnerships may merge with or into a corporation, which may be any one of such corporations, or they may merge with or into a limited partnership, which may be any one of such limited partnerships, or they may consolidate into a new corporation or limited partnership formed by the consolidation, which shall be a Liberian corporation or a limited partnership formed under this Title or a limited partnership formed under the laws of another jurisdiction which permits such merger or consolidation, pursuant to a plan of merger or consolidation, as the case may be, complying and approved in accordance with this section.

2. *Method in respect of constituent Liberian corporations.* In the case of a constituent Liberian corporation:

- (a) Authorized to issue shares, the provisions of sections 10.2.2 to 10.2.4 shall apply;
- (b) Being a non-share corporation, the provisions of sections 10.5A.2 to 10.5A.4 and 10.5A.7 shall apply,

with the variation that the plan of merger or consolidation of each constituent Liberian corporation shall state:

- (c) The manner of converting the shares of the constituent corporation authorized to issue shares or the interests of the members of the constituent non-share corporation and the partnership interests of the constituent limited partnership into shares and other securities of the surviving or consolidated corporation authorized to issue shares, or membership interests of the surviving or consolidated non-share corporation, or partnership interests of the surviving or consolidated limited partnership, as the case may be;
- (d) If any shares of any constituent corporation authorized to issue shares or membership interests of any constituent non-share corporation or partnership interests of any constituent limited partnership are not to be converted solely into shares or other securities of the surviving or consolidated corporation authorized to issue shares, or membership interests of the surviving or consolidated non-share corporation, or partnership interests of the surviving or consolidated limited partnership, the cash or other consideration to be paid or delivered, in the case of a constituent corporation authorized to issue shares, in exchange for shares of that constituent corporation, and, in the case of a constituent non-share corporation, in exchange for membership interests, and, in the case of a constituent limited partnership, in exchange for partnership interests.

3. *Additional matters in respect of surviving or consolidated foreign limited partnerships.* The plan of merger or consolidation shall set forth such other matters or provisions as shall then be required to be set forth in limited partnership agreements by the laws of the jurisdiction which are stated in the plan to be the laws which shall govern a surviving or consolidated limited partnership



and that can be stated in the case of a merger or consolidation.

4. *Method in respect of constituent limited partnerships and surviving or consolidated limited partnerships formed under this Title.* The plan of merger or consolidation required by this section shall be adopted, approved, certified, executed and acknowledged by each constituent limited partnership formed under Chapter 31 in accordance with the limited partnership agreement and, in the case of a surviving or consolidated limited partnership formed under that Chapter, the requirements of that Chapter in respect of filing of a certificate shall be read to require the filing of a certificate in accordance with section 31.2, in the case of a surviving limited partnership, setting out the changes in the matters contained in the certificate as a result of the merger, and in the case of a consolidated limited partnership, filing as required by that section.

5. *Method to be followed by constituent or consolidated foreign limited partnerships.* Each constituent or consolidated foreign limited partnership shall comply with the applicable laws of the jurisdiction under which it is organized.

6. *Additional filing where surviving or consolidated limited partnership governed by laws of another jurisdiction.* If the surviving or consolidated limited partnership is to be governed by the laws of any jurisdiction other than Liberia, it shall comply with the provisions of this Title with respect to foreign entities if it is to transact business in Liberia, and in every case it shall file with the Minister of Foreign Affairs:

- (a) An irrevocable notice of consent that it may be served with process in Liberia in any proceeding for the enforcement of any obligation of any Liberian corporation or limited partnership formed under this Title which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder, member or partner of any such Liberian corporation or limited partnership against the surviving or consolidated limited partnership;
- (b) An irrevocable appointment of the Minister of Foreign Affairs as its agent to accept service of process in any such proceeding;
- (c) An undertaking that it will promptly pay to the dissenting shareholder, member or partner of any such Liberian corporation or limited partnership formed under this Title the amount, if any, to which they shall be entitled under the provisions of this Act or the plan of merger; and
- (d) Notice executed in accordance with section 1.4 by an officer of the surviving or consolidated limited partnership that the merger or consolidation is effective in the other jurisdiction and specifying the competent authority in that jurisdiction.

7. *Effect.* The effect of a merger or consolidation under this section and having one or more foreign constituent entities shall be the same as in the case of the merger or consolidation of Liberian corporations with limited partnerships formed under this Title if the surviving or consolidated corporation or limited partnership is to be governed by the laws of Liberia. If the surviving or consolidated limited partnership is to be governed by the laws of any jurisdiction other than Liberia, the effect of such merger or consolidation shall be the same as in the case of merger or consolidation

of Liberian corporations with limited partnerships formed under this Title except insofar as the laws of such other jurisdiction provide otherwise.

8. *Effective date.* The effective date of a merger or consolidation in cases where the surviving or consolidated limited partnership is to be governed by the laws of any jurisdiction other than Liberia shall be determined by the filing requirements and laws of such other jurisdiction.

9. *Application of sections 10.2 and 10.5A.* The provisions of sections 10.2.5 and 10.2.8 to 10.2.12 shall apply to constituent corporations and a surviving or consolidated corporation authorized to issue shares and the provisions of sections 10.5A.5 and 10.5A.8 to 10.5A.13 shall apply to constituent and a surviving or consolidated non-share corporation.

10. *Application of Chapter 31.* The provisions of Chapter 31 shall apply to a surviving or consolidated limited partnership.

11. *Liability of partner in former limited partnership.* The personal liability, if any, of any partner in a constituent limited partnership existing at the time of such merger or consolidation shall not thereby be extinguished, shall remain personal to such partner and shall not become the liability of any subsequent transferee of any share or membership interest or partnership interest in such surviving or consolidated corporation or limited partnership or of any other shareholder or member or partner of such surviving or consolidated corporation or limited partnership, as the case may be.

*Effective:* June 19, 2002.

#### **§10.5F. Merger or consolidation of Liberian corporation and limited liability company.**

1. *Power to merge or consolidate.* One or more Liberian corporations authorized to issue shares or being a non-share corporation may merge or consolidate with one or more limited liability companies, formed under Chapter 14, or in another jurisdiction, unless the laws of such other jurisdiction forbid such merger or consolidation. Such one or more Liberian corporation or corporations and such one or more limited liability companies may merge with or into a corporation, which may be any one of such corporations, or they may merge with or into a limited liability company, which may be any one of such limited liability companies, or they may consolidate into a new corporation authorized to issue shares or being a non-share corporation, or into a limited liability company, formed by the consolidation, which may be a Liberian corporation, or limited liability company formed under Chapter 14, or limited liability company formed in another jurisdiction which permits such merger or consolidation, pursuant to a plan of merger or consolidation, as the case may be, complying and approved in accordance with this section.

2. *Method in respect of constituent Liberian corporations.* In the case of a constituent Liberian corporation:

- (a) Authorized to issue shares, the provisions of sections 10.2.2 to 10.2.4 shall apply;
- (b) Being a non-share corporation, the provisions of sections 10.5A.2 to 10.5A.4 and 10.5A.7 shall apply,

with the variation that the plan of merger or consolidation of each constituent Liberian corporation shall state:

- (c) The manner of converting the shares of the constituent corporation authorized to issue shares or the interests of the members of the constituent non-share corporation and the limited liability company interests of the constituent limited liability company into shares or other securities of the surviving or consolidated corporation authorized to issue shares, or membership interests of the surviving or consolidated non-share corporation, or limited liability company interests of the surviving or consolidated limited liability company, as the case may be;
- (d) If any shares of any constituent corporation authorized to issue shares or membership interests of any constituent non-share corporation or limited liability company interests of any constituent limited liability company are not to be converted solely into shares or other securities of the surviving or consolidated corporation authorized to issue shares or membership interests of the surviving or consolidated non-share corporation or limited liability company interests of the surviving limited liability company, the cash or other consideration to be paid or delivered, in the case of a constituent corporation authorized to issue shares, in exchange for shares of that constituent corporation, and, in the case of a constituent non-share corporation, in exchange for membership interests and in the case of a constituent limited liability company, in exchange for limited liability company interests.

3. *Additional matters in respect of surviving or consolidated foreign limited liability companies.* The plan of merger or consolidation shall set forth such other matters or provisions as shall then be required to be set forth in limited liability company agreements by the laws of the jurisdiction which are stated in the plan to be the laws which shall govern a surviving or consolidated limited liability company and that can be stated in the case of a merger or consolidation.

4. *Method in respect of constituent limited liability companies and surviving or consolidated limited liability companies formed under Chapter 14.* The plan of merger or consolidation required by this section shall be adopted, approved, certified, executed and acknowledged by each constituent limited liability company formed under Chapter 14 in accordance with the limited liability company agreement and, in the case of a surviving or consolidated limited liability company formed under that Chapter, the requirements of that Chapter in respect of filing of a certificate shall be read to require the filing of a certificate in accordance with section 14.2.1, in the case of a surviving limited liability company setting out the changes in the matters contained in the certificate as a result of the merger, and in the case of a consolidated limited liability company, filing as required by that section.

5. *Method to be followed by constituent or consolidated foreign limited liability companies.* Each constituent or consolidated foreign limited liability company shall comply with the applicable laws of the jurisdiction under which it is organized.

6. *Additional filing where surviving or consolidated corporation or limited liability company governed by laws of another jurisdiction.* If the surviving or consolidated limited liability company is to be governed by the laws of any jurisdiction other than Liberia, it shall comply with the provisions of this Title with respect to foreign entities if it is to transact business in Liberia, and in every case

it shall file with the Minister of Foreign Affairs:

- (a) An irrevocable notice of consent that it may be served with process in Liberia in any proceeding for the enforcement of any obligation of any Liberian corporation or limited liability company formed under this Title which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder or member of any such Liberian corporation or member or manager of any limited liability company against the surviving or consolidated limited liability company;
- (b) An irrevocable appointment of the Minister of Foreign Affairs as its agent to accept service of process in any such proceeding;
- (c) An undertaking that it will promptly pay to the dissenting shareholder or member of any such Liberian corporation or member or manager of any limited liability company formed under this Title the amount, if any, to which they shall be entitled under the provisions of this Act or the plan of merger; and
- (d) Notice executed in accordance with section 1.4 by an officer of the surviving or consolidated limited liability company that the merger or consolidation is effective in the other jurisdiction and specifying the competent authority in that jurisdiction.

7. *Effect.* The effect of a merger or consolidation under this section and having one or more foreign constituent entities shall be the same as in the case of the merger or consolidation of Liberian corporations with limited liability companies formed under this Title if the surviving or consolidated corporation or the surviving or consolidated limited liability company is to be governed by the laws of Liberia. If the surviving or consolidated limited liability company is to be governed by the laws of any jurisdiction other than Liberia, the effect of such merger or consolidation shall be the same as in the case of merger or consolidation of Liberian corporations with limited liability companies formed under this Title except insofar as the laws of such other jurisdiction provide otherwise.

8. *Effective date.* The effective date of a merger or consolidation in cases where the surviving or consolidated limited liability company is to be governed by the laws of any jurisdiction other than Liberia shall be determined by the filing requirements and laws of such other jurisdiction.

9. *Application of sections 10.2 and 10.5A.* The provisions of sections 10.2.5 and 10.2.8 to 10.2.12 shall apply to constituent corporations and a surviving or consolidated corporation authorized to issue shares and the provisions of sections 10.5A.5 and 10.5A.8 to 10.5A.13 shall apply to constituent and a surviving or consolidated non-share corporation.

10. *Application of Chapter 14.* The provisions of Chapter 14 shall apply to a surviving or consolidated limited liability company.

11. *Liability of member or manager of former limited liability company.* The personal liability, if any, of any member or manager of a constituent limited liability company existing at the time of such merger or consolidation shall not thereby be extinguished, shall remain personal to such member or manager and shall not become the liability of any subsequent transferee of any share or membership in such surviving or consolidated corporation or of a membership or managership of such surviving

or consolidated limited liability company or of any other shareholder or member of such surviving or consolidated corporation or member or manager of such surviving or consolidated limited liability company, as the case may be.

*Effective:* June 19, 2002.

**§10.5G. Merger or consolidation of Liberian corporation and foundation.**

1. *Power to merge or consolidate.* One or more Liberian corporations authorized to issue shares, or a non-share corporation, may merge or consolidate with one or more private foundations registered under Chapter 60, or foundations established in another jurisdiction, unless the laws of such other jurisdiction forbid such merger or consolidation. Such one or more constituent corporation or corporations and such one or more constituent foundation or foundations may merge with or into a corporation, which may be any one of such corporations, or they may merge with or into a foundation, which may be any one of such foundations, or they may consolidate into a new corporation or foundation formed by the consolidation, which shall be a Liberian corporation or private foundation formed or registered under this Title or foundation formed under the laws of another jurisdiction which permits such merger or consolidation, pursuant to a plan of merger or consolidation, as the case may be, complying and approved in accordance with this section.

2. *Method in respect of constituent Liberian corporations.* In the case of a constituent Liberian corporation:

- (a) Authorized to issue shares, the provisions of sections 10.2.2 to 10.2.4 shall apply;
- (b) Being a non-share corporation, the provisions of sections 10.5A.2 to 10.5A.4 and 10.5A.7 shall apply,

with the variation that the plan of merger or consolidation of each constituent Liberian corporation shall state:

- (c) The manner of converting the shares of the constituent corporation authorized to issue shares or the interests of the members of the constituent non-share corporation and the assets of the constituent foundation into shares or other securities of the surviving or consolidated corporation authorized to issue shares, or membership interests of the surviving or consolidated non-share corporation, or assets of the surviving or consolidated foundation, as the case may be;
- (d) If any shares of any constituent corporation authorized to issue shares or membership interests of any constituent non-share corporation or assets of any constituent foundation are not to be converted solely into shares or other securities of the surviving or consolidated corporation authorized to issue shares, or membership interests of the surviving or consolidated non-share corporation, or assets of the surviving or consolidated foundation, the cash or other consideration to be paid or delivered, in the case of a constituent corporation authorized to issue shares, in exchange for shares of that constituent corporation, and, in the case of a constituent non-share corporation, in exchange for membership interests, and, in the case of a constituent foundation, in

exchange for assets.

3. *Additional matters in respect of surviving or consolidated foreign foundations.* The plan of merger or consolidation shall set forth such other matters or provisions as shall then be required to be set forth in memorandum of endowment and management articles of foundations by the laws of the jurisdiction which are stated in the plan to be the laws which shall govern a surviving or consolidated foundation and that can be stated in the case of a merger or consolidation.

4. *Method in respect of constituent private foundations and surviving or consolidated foundations formed under this Title.* The plan of merger or consolidation required by this section shall be adopted, approved, certified, executed and acknowledged by each constituent private foundation registered under Chapter 60 in accordance with the memorandum of endowment of the foundation and, in the case of a surviving or consolidated private foundation formed under that Chapter, the requirements of that Chapter in respect of registration shall be read to require the registration of an amendment to the memorandum of endowment in accordance with section 60.50, in the case of a surviving private foundation, setting out the changes in the matters contained in the memorandum as a result of the merger, and in the case of a consolidated private foundation, registration as required by that Chapter.

5. *Method to be followed by constituent and consolidated foreign foundations.* Each constituent or consolidated foreign foundation shall comply with the applicable laws of the jurisdiction under which it is organized.

6. *Additional filing where surviving or consolidated foundation governed by laws of another jurisdiction.* If the surviving or consolidated foundation is to be governed by the laws of any jurisdiction other than Liberia, it shall comply with the provisions of this Title with respect to foreign entities if it is to transact business in Liberia, and in every case it shall file with the Minister of Foreign Affairs:

- (a) An irrevocable notice of consent that it may be served with process in Liberia in any proceeding for the enforcement of any obligation of any Liberian corporation or private foundation formed under this Title which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder or member of any such Liberian corporation or donor, officer, member of supervisory board, or beneficiary of any such private foundation against the surviving or consolidated foundation;
- (b) An irrevocable appointment of the Minister of Foreign Affairs as its agent to accept service of process in any such proceeding;
- (c) An undertaking that it will promptly pay to the dissenting shareholder or member of any such Liberian corporation or donor, officer, member of supervisory board, or beneficiary of any such private foundation formed under this Title the amount, if any, to which they shall be entitled under the provisions of this Act or the plan of merger; and
- (d) Notice executed in accordance with section 1.4 by an officer of the surviving or

consolidated foundation that the merger or consolidation is effective in the other jurisdiction and specifying the competent authority in that jurisdiction.

7. *Effect.* The effect of a merger or consolidation under this section and having one or more foreign constituent entities shall be the same as in the case of the merger or consolidation of Liberian corporations with private foundations registered under this Title if the surviving or consolidated corporation or private foundation is to be governed by the laws of Liberia. If the surviving or consolidated foundation is to be governed by the laws of any jurisdiction other than Liberia, the effect of such merger or consolidation shall be the same as in the case of merger or consolidation of Liberian corporations with private foundations formed under this Title except insofar as the laws of such other jurisdiction provide otherwise.

8. *Effective date.* The effective date of a merger or consolidation in cases where the surviving or consolidated foundation is to be governed by the laws of any jurisdiction other than Liberia shall be determined by the filing requirements and laws of such other jurisdiction.

9. *Application of sections 10.2 and 10.5A.* The provisions of sections 10.2.5 and 10.2.8 to 10.2.12 shall apply to constituent corporations and a surviving or consolidated corporation authorized to issue shares and the provisions of sections 10.5A.5 and 10.5A.8 to 10.5A.13 shall apply to constituent and a surviving or consolidated non-share corporation.

10. *Application of Chapter 60.* The provisions of Chapter 60 shall apply to a surviving or consolidated private foundation.

11. *Liability of officer of former private foundation.* The personal liability, if any, of any officer in a constituent private foundation existing at the time of such merger or consolidation shall not thereby be extinguished, shall remain personal to such officer and shall not become the liability of any subsequent transferee of any share or membership interest or officership in such surviving or consolidated corporation or foundation or of any other shareholder or member or officer of such surviving or consolidated corporation or foundation, as the case may be.

*Effective:* June 19, 2002.

#### **§10.5H. Merger or consolidation of Liberian corporation and registered business company.**

1. *Power to merge or consolidate.* One or more Liberian corporations authorized to issue shares or being a non-share corporation may merge or consolidate with one or more registered business companies, registered under Chapter 70, or in another jurisdiction, unless the laws of such other jurisdiction forbid such merger or consolidation, and in this section references to a “registered business company” registered in another jurisdiction or to a “foreign registered business company” shall be taken to refer to an entity of like constitution and effect to a registered business company registered under Chapter 70. Such one or more Liberian corporation or corporations and such one or more registered business companies may merge with or into a corporation, which may be any one of such corporations, or they may merge with or into a registered business company, which may be any one of such registered business companies, or they may consolidate into a new corporation authorized to issue shares or being a non-share corporation, or into a registered business company, formed by the consolidation, which may be a Liberian corporation, or registered business company

formed under this Title, or a registered business company formed in another jurisdiction which permits such merger or consolidation, pursuant to a plan of merger or consolidation, as the case may be, complying and approved in accordance with this section.

2. *Method in respect of constituent Liberian corporations.* In the case of a constituent Liberian corporation:

- (a) Authorized to issue shares, the provisions of sections 10.2.2 to 10.2.4 shall apply;
- (b) Being a non-share corporation, the provisions of sections 10.5A.2 to 10.5A.4 and 10.5A.7 shall apply,

with the variation that the plan of merger or consolidation of each constituent Liberian corporation shall state:

- (c) The manner of converting the shares of the constituent corporation authorized to issue shares or the interests of the members of the constituent non-share corporation and the shares and membership interests of the constituent registered business company into shares or other securities of the surviving or consolidated corporation authorized to issue shares or membership interests of the surviving or consolidated non-share corporation or shares or membership interests of the surviving or consolidated registered business company, as the case may be;
- (d) If any shares of any constituent corporation authorized to issue shares or membership interests of any constituent non-share corporation or shares or membership interests of any constituent registered business company are not to be converted solely into shares or other securities of the surviving or consolidated corporation authorized to issue shares or membership interests of the surviving or consolidated non-share corporation or shares or other securities or membership interests of the surviving or consolidated registered business company, the cash or other consideration to be paid or delivered, in the case of a constituent corporation authorized to issue shares, in exchange for shares of that constituent corporation, and, in the case of a constituent non-share corporation, in exchange for membership interests and, in the case of a constituent registered business company, in exchange for shares or membership interests.

3. *Additional matters in respect of surviving or consolidated foreign registered business companies.* The plan of merger or consolidation shall set forth such other matters or provisions as shall then be required to be set forth in memorandum and articles of incorporation by the laws of the jurisdiction which are stated in the plan to be the laws which shall govern a surviving or consolidated registered business company and that can be stated in the case of a merger or consolidation.

4. *Method in respect of constituent registered business companies and surviving or consolidated registered business companies formed under Chapter 70.* The plan of merger or consolidation required by this section shall be adopted, approved, certified, executed and acknowledged by each constituent registered business company formed under Chapter 70 in accordance with the memorandum and articles of incorporation and, in the case of a surviving or consolidated registered business company formed under that Chapter, the requirements of that Chapter in respect of amendment to the



memorandum shall be read to require compliance with section 70.7 and in respect of amendment to the articles to section 70.12, in the case of a surviving registered business company, setting out the changes in the matters contained in the memorandum and articles as a result of the merger, and in the case of a consolidated registered business company, as required by that Chapter.

5. *Method to be followed by constituent and consolidated foreign registered business companies.* Each constituent or consolidated foreign registered business company shall comply with the applicable laws of the jurisdiction under which it is organized.

6. *Additional filing where surviving or consolidated registered business company governed by laws of another jurisdiction.* If the surviving or consolidated registered business company is to be governed by the laws of any jurisdiction other than Liberia, it shall comply with the provisions of this Title with respect to foreign entities if it is to transact business in Liberia, and in every case it shall file with the Minister of Foreign Affairs:

- (a) An irrevocable notice of consent that it may be served with process in Liberia in any proceeding for the enforcement of any obligation of any Liberian corporation or registered business company formed under this Title which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder or member of any such Liberian corporation or shareholder or member of any registered business company against the surviving or consolidated registered business company;
- (b) An irrevocable appointment of the Minister of Foreign Affairs as its agent to accept service of process in any such proceeding;
- (c) An undertaking that it will promptly pay to the dissenting shareholder or member of any such Liberian corporation or shareholder or member of any registered business company formed under this Title the amount, if any, to which they shall be entitled under the provisions of this Act or the plan of merger; and
- (d) Notice executed in accordance with section 1.4 by an officer of the surviving or consolidated registered business company that the merger or consolidation is effective in the other jurisdiction and specifying the competent authority in that jurisdiction.

7. *Effect.* The effect of a merger or consolidation under this section and having one or more foreign constituent entities shall be the same as in the case of the merger or consolidation of Liberian corporations with registered business companies formed under this Title if the surviving or consolidated corporation or the surviving or consolidated registered business company is to be governed by the laws of Liberia. If the surviving or consolidated registered business company is to be governed by the laws of any jurisdiction other than Liberia, the effect of such merger or consolidation shall be the same as in the case of merger or consolidation of Liberian corporations with registered business companies formed under this Title except insofar as the laws of such other jurisdiction provide otherwise.

8. *Effective date.* The effective date of a merger or consolidation in cases where the surviving or consolidated registered business company is to be governed by the laws of any jurisdiction other

than Liberia shall be determined by the filing requirements and laws of such other jurisdiction.

9. *Application of sections 10.2 and 10.5A.* The provisions of sections 10.2.5 and 10.2.8 to 10.2.12 shall apply to constituent corporations and a surviving or consolidated corporation authorized to issue shares and the provisions of sections 10.5A.5 and 10.5A.8 to 10.5A.13 shall apply to constituent and a surviving or consolidated non-share corporation.

10. *Application of Chapter 70.* The provisions of Chapter 70 shall apply to a surviving or consolidated registered business company.

11. *Liability of shareholder or member of former limited liability company.* The personal liability, if any, of any shareholder or member of a constituent registered business company existing at the time of such merger or consolidation shall not thereby be extinguished, shall remain personal to such shareholder or member and shall not become the liability of any subsequent transferee of any share or membership in such surviving or consolidated corporation or shareholder or member or of any other shareholder or member of such surviving or consolidated corporation or registered business company, as the case may be.

*Effective:* June 19, 2002.

#### **§10.5J. Merger or consolidation of Liberian corporation and other associations.**

1. *Definitions.* In this section:

“**Association**” includes any association, trust or other entity having legal personality or registered as a legal entity under the laws of Liberia or elsewhere and whether formed by agreement or under statutory authority or otherwise, but does not include a corporation, by whatever name described, limited partnership, limited liability company, foundation or registered business company; and

“**Shareholder**” includes every member of such an association or holder of a share or person having present or future direct financial or beneficial interest therein.

2. *Power to merge or consolidate.* One or more Liberian corporations may merge or consolidate with one or more associations, except an association formed under the laws of a jurisdiction which forbids such merger or consolidation. Such corporation or corporations and such one or more associations may merge into a single corporation or association, which may be any one of such corporations or associations, or may consolidate into a new corporation or association established in Liberia or elsewhere, pursuant to a plan of merger or consolidation, as the case may be, complying with and approved in accordance with this section. The surviving or consolidated entity may be organized for profit or not organized for profit, and if the surviving or consolidated entity is a corporation, it may be a corporation authorized to issue shares or a non-share corporation.

3. *Method in respect of constituent Liberian corporations.* In the case of a constituent Liberian corporation:

(a) Authorized to issue shares, the provisions of sections 10.2.2 to 10.2.4 shall apply;

- (b) Being a non-share corporation, the provisions of sections 10.5A.2 to 10.5A.4 and 10.5A.7 shall apply,

with the variation that the plan of merger or consolidation of each constituent Liberian corporation shall state:

- (c) The manner of converting the shares of the constituent corporation authorized to issue shares or the interests of the members of the constituent non-share corporation and the shares, memberships or financial or beneficial interests in the constituent association into shares, or other securities of the surviving or consolidated corporation authorized to issue shares, or membership interests of the surviving or consolidated non-share corporation, or shares, memberships or financial or beneficial interests of the surviving or consolidated association, as the case may be;
- (d) If any shares of any constituent corporation authorized to issue shares or membership interests of any constituent non-share corporation or shares, memberships or financial or beneficial interests in any constituent association are not to be converted solely into shares or other securities of the surviving or consolidated corporation authorized to issue shares or membership interests of the surviving or consolidated non-share corporation or shares, memberships or financial or beneficial interests in the surviving association, the cash or other consideration to be paid or delivered, in the case of a constituent corporation authorized to issue shares, in exchange for shares of that constituent corporation, and, in the case of a constituent non-share corporation, in exchange for membership interests and, in the case of a constituent association, in exchange for shares, memberships or financial or beneficial interests in the association, as the case may be.

4. *Additional matters in respect of surviving or consolidated foreign associations.* The plan of merger or consolidation shall set forth such other matters or provisions as shall then be required to be set forth in instruments by which an association is organized in the laws of the jurisdiction which are stated in the plan to be the laws which shall govern a surviving or consolidated association and that can be stated in the case of a merger or consolidation.

5. *Method in respect of constituent associations and surviving or consolidated associations organized in Liberia.* The plan of merger or consolidation required by this section shall be adopted, approved, certified, executed and acknowledged by each constituent association organized or registered in Liberia and, in the case of a surviving or consolidated association organized or registered in Liberia filed by that association in accordance with the relevant statutory requirements.

6. *Method to be followed by constituent and surviving or consolidated foreign associations.* Each constituent and each surviving or consolidated foreign association shall comply with the applicable laws of the jurisdiction under which it is organized.

7. *Additional filing where surviving or consolidated association governed by laws of another jurisdiction.* If the surviving or consolidated association is to be governed by the laws of any jurisdiction other than Liberia, it shall comply with the provisions of this Title with respect to

foreign entities if it is to transact business in Liberia, and in every case it shall file with the Minister of Foreign Affairs:

- (a) An irrevocable notice of consent that it may be served with process in Liberia in any proceeding for the enforcement of any obligation of any Liberian corporation or association organized or registered in Liberia which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder, member of any such Liberian corporation or shareholder of any association against the surviving or consolidated association;
- (b) An irrevocable appointment of the Minister of Foreign Affairs as its agent to accept service of process in any such proceeding;
- (c) An undertaking that it will promptly pay to the dissenting shareholder or member of any such Liberian corporation or association organized or registered in Liberia the amount, if any, to which they shall be entitled under the provisions of this Act or the plan of merger; and
- (d) Notice executed in accordance with section 1.4 by an officer of the surviving or consolidated association that the merger or consolidation is effective in the other jurisdiction and specifying the competent authority in that jurisdiction.

8. *Effect.* The effect of a merger or consolidation under this section and having one or more foreign constituent entities shall be the same as in the case of the merger or consolidation of Liberian corporations with associations organized or registered in Liberia if the surviving or consolidated corporation or association is to be governed by the laws of Liberia. If the surviving or consolidated association is to be governed by the laws of any jurisdiction other than Liberia, the effect of such merger or consolidation shall be the same as in the case of merger or consolidation of Liberian corporations with associations organized or registered in Liberia except insofar as the laws of such other jurisdiction provide otherwise.

9. *Effective date.* The effective date of a merger or consolidation in cases where the surviving or consolidated association is to be governed by the laws of any jurisdiction other than Liberia shall be determined by the filing requirements and laws of such other jurisdiction.

10. *Application of sections 10.2 and 10.5A.* The provisions of sections 10.2.5 and 10.2.8 to 10.2.12 shall apply to constituent corporations and a surviving or consolidated corporation authorized to issue shares and the provisions of sections 10.5A.5 and 10.5A.8 to 10.5A.13 shall apply to constituent and a surviving or consolidated non-share corporation.

11. *Liability of shareholder of former association.* The personal liability, if any, of any shareholder of a constituent association existing at the time of such merger or consolidation shall not thereby be extinguished, shall remain personal to such shareholder and shall not become the liability of any subsequent transferee of any share or membership in such surviving or consolidated corporation or association or of any other shareholder or member of such surviving or consolidated corporation or association.

*Effective:* June 19, 2002.

### **§10.5K. Application of Chapter to hybrid corporations.**

1. *Application to hybrid of provisions in respect of corporation authorized to issue shares.* Where in this Chapter there is provision for merger or consolidation in respect of a corporation authorized to issue shares, whether the corporation is a constituent, surviving or consolidated corporation, the provision shall apply to a hybrid corporation with the modification that the provisions of this Chapter in respect of merger and consolidation applicable to a non-share corporation shall apply to members and membership interests in that hybrid corporation.

2. *Application to hybrid of provisions in respect of non-share corporation.* Where in this Chapter there is provision for merger or consolidation in respect of a non-share corporation, whether the corporation is a constituent, surviving or consolidated corporation, the provision shall apply to a hybrid corporation with the modification that the provisions of this Chapter in respect of merger and consolidation applicable to a corporation authorized to issue shares shall apply to shareholders and shares in that hybrid corporation.

*Effective:* June 19, 2002.

### **§10.6. Sale, lease, exchange or other disposition of assets.**

1. *Method of authorizing.* A sale, lease, exchange or other disposition of all or substantially all the assets of a corporation, if not made in the usual or regular course of the business actually conducted by such corporation, shall be authorized only in accordance with the following procedure:

- (a) The board shall approve the proposed sale, lease, exchange or other disposition and direct its submission to a vote of the shareholders.
- (b) Notice of meeting shall be given to each shareholder of record, whether or not entitled to vote.
- (c) At such meeting the shareholders may authorize such sale, lease, exchange or other disposition and may fix or may authorize the board to fix any or all terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the holders of two-thirds of the shares of the corporation entitled to vote thereon unless any class of shares is entitled to vote thereon as a class, in which event such authorization shall require the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon.

2. *Mortgage or pledge of corporate property.* The board may authorize any mortgage or pledge of, or the creation of a security interest in, all or any part of the corporate property, or any interest therein, wherever situated. Unless the articles of incorporation provide otherwise, no vote or consent of shareholders shall be required to authorize such action by the board.

*Prior legislation:* 1956 Code 4:30; Lib. Corp. L., 1948, §30.

### **§10.7. Right of dissenting shareholder to receive payment for shares.**

Any shareholder of a corporation shall have the right to dissent from any of the following corporate actions and receive payment of the fair value of his shares:

- (a) Any plan of merger or consolidation to which the corporation is a party;
- (b) Any sale or exchange of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution, but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within one year after the date of sale; or
- (c) Any re-domiciliation or de-registration and reregistration as another entity.

*Prior legislation:* 1956 Code 4:30; Lib. Corp. L., 1948, §§30, 32; 1976 Liberian Code of Laws Revised, Chapter 10, §10.7, amended effective June 19, 2002.

### **§10.8. Procedure to enforce shareholder's right to receive payment for shares.**

1. *Objection by shareholder to proposed corporate action.* A shareholder intending to enforce his rights under section 9.7 or 10.7 to receive payment for his shares if the proposed corporate action referred to therein is taken shall file with the corporation, before the meeting of shareholders at which the action is submitted to a vote, or at such meeting but before the vote, written objection to the action. The objection shall include a statement that he intends to demand payment for his shares if the action is taken. Such objection is not required from any shareholder to whom the corporation did not give notice of such meeting in accordance with this Act or where the proposed action is authorized by written consent of the shareholders without a meeting.

2. *Notice by corporation to shareholders of authorized action.* Within twenty days after the shareholders' authorization date, which term as used in this section means the date on which the shareholders' vote authorizing such action was taken, or the date on which such consent without a meeting was obtained from the requisite shareholders, the corporation shall give written notice of such authorization or consent by registered mail to each shareholder who filed written objection or from whom written objection was not required, excepting any who voted for or consented in writing to the proposed action.

3. *Notice by shareholder of election to dissent.* Within twenty days after the giving of notice to him, any shareholder to whom the corporation was required to give such notice and who elects to dissent shall file with the corporation a written notice of such election, stating his name and residence address, the number and classes of shares as to which he dissents, and a demand for payment of the fair value of his shares. Any shareholder who elects to dissent from a merger under section 10.3 shall file a written notice of such election to dissent within twenty days after the giving to him of a copy of the plan of merger or an outline of the material features thereof under section 10.3.

4. *Dissent as to fewer than all shares.* A shareholder may not dissent as to fewer than all the

shares, held by him of record, that he owns beneficially. A nominee or fiduciary may not dissent on behalf of any beneficial owner as to fewer than all the shares of such owner held of record by such nominee or fiduciary.

5. *Effect of filing notice of election to dissent.* Upon filing a notice of election to dissent, the shareholder shall cease to have any of the rights of a shareholder except the right to be paid the fair value of his shares.

6. *Offer by corporation or other surviving or consolidated entity, or by re-domiciled corporation or reregistered entity to dissenting shareholder to pay for shares.* Within seven days after the expiration of the period within which shareholders may file their notices of election to dissent, or within seven days after the proposed corporate action is consummated, whichever is later, the corporation or, in the case of a merger or consolidation, the surviving or consolidated corporation or other entity, or in the case of re-domiciliation, the re-domiciled corporation or in the case of de-registration the reregistered entity, shall make a written offer by registered mail to each shareholder who has filed such notice of election to pay for his shares at a specified price which the offering entity considers to be their fair value. If within thirty days after the making of such offer, the offering entity and any shareholder agree upon the price to be paid for his shares, payment therefor shall be made within thirty days after the making of such offer upon the surrender of the certificates representing such shares.

7. *Procedure on failure of corporation or other entity to pay dissenting shareholder.* The following procedures shall apply if the corporation or other entity fails to make such offer within such period of seven days, or if it makes the offer and any dissenting shareholder fails to agree with it within the period of thirty days thereafter upon the price to be paid for shares owned by such shareholder:

- (a) The corporation or other entity shall, within twenty days after the expiration of whichever is applicable of the two periods last mentioned, institute a special proceeding in the circuit court in the judicial circuit in Liberia in which the office of the corporation or other entity is located to determine the rights of dissenting shareholders and to fix the fair value of their shares. If, in the case of merger, consolidation, re-domiciliation or reregistration the offering entity is a foreign entity without an office in Liberia, such proceeding shall be brought in the country where the office of the domestic corporation, whose shares are to be valued, was located;
- (b) If the corporation or other entity fails to institute such proceedings within such period of twenty days, any dissenting shareholder may institute such proceeding for the same purpose not later than thirty days after the expiration of such twenty day period. If such proceeding is not instituted within such thirty day period, all dissenter's rights shall be lost unless the circuit court, for good cause shown, shall otherwise direct;
- (c) All dissenting shareholders, excepting those who, as provided in paragraph 6, have agreed with the corporation or other entity upon the price to be paid for their shares, shall be made parties to such proceeding, which shall have the effect of an action *quasi in rem* against their shares. The corporation or other entity shall serve a copy of the petition in such proceeding upon each dissenting shareholder in the manner provided

by law for the service of a summons;

- (d) The court shall determine whether each dissenting shareholder, as to whom the corporation or other entity requests the court to make such a determination, is entitled to receive payment for his shares. If the corporation or other entity does not request any such determination or if the court finds that any dissenting shareholder is so entitled, it shall proceed to fix the value of the shares, which, for the purposes of this section, shall be the fair value as of the close of business on the day prior to the shareholder's authorization date, excluding any appreciation or depreciation directly or indirectly induced by such corporate action or its proposal. The court may, if it so elects, appoint an appraiser to receive evidence and recommend a decision on the question of fair value;
- (e) The final order in the proceeding shall be entered against the corporation or other entity in favor of each dissenting shareholder who is a party to the proceeding and is entitled thereto for the value of his shares so determined. Within sixty days after the final determination of the proceeding, the corporation or other entity shall pay to each dissenting shareholder the amount found to be due him, upon surrender of the certificates representing his shares.

8. *Disposition of shares acquired by the corporation or other entity.* Shares acquired by the corporation or other entity upon the payment of the agreed value therefor or of the amount due under the final order, as provided in this section, shall become treasury shares or be cancelled except that, in the case of a merger, consolidation or reregistration, they may be held and disposed of as the plan of merger, consolidation or de-registration and reregistration may otherwise provide.

9. *Right to receive payment by dissenting shareholder as exclusive.* The enforcement by a shareholder of his right to receive payment for his shares in the manner provided herein shall exclude the enforcement by such shareholder of any right to which he might otherwise be entitled by virtue of share ownership, except that this section shall not exclude the right of such shareholder to bring or maintain an appropriate action to obtain relief on the ground that such corporate action will be or is illegal or fraudulent as to such shareholder.

10. *Application to non-share corporations.* The provisions of this section shall apply *mutatis mutandis* to non-share corporations with the substitution of members and membership interests for shareholders and shares.

*Prior legislation:* 1956 Code 4:41; Lib. Corp. L., 1948, §41; 1976 Liberian Code of Laws Revised, Chapter 10, §10.8, amended effective June 19, 2002.

### **§10.9. Power of corporation to re-domicile into Liberia.**

1. *Application of section.* This section shall apply to a corporation or other legal entity (in this section referred to as a "corporation") established outside Liberia which re-domiciles into Liberia as a Liberian corporation.

2. *Eligibility to apply to establish domicile in Liberia as a Liberian corporation.* A corporation



domiciled outside Liberia may, if permitted to do so by its constitution, apply to establish domicile in Liberia as a Liberian corporation.

3. *Filing requirements to establish domicile in Liberia as a Liberian corporation.* A corporation seeking to establish domicile in Liberia as a Liberian corporation shall file with the Registrar or the Deputy Registrar:

- (a) A certificate setting out:
  - (i) The name of the corporation, and, if the name has been changed, the name with which the corporation was established, and the name, if different, under which re-domiciliation as a Liberian corporation is sought;
  - (ii) The date of establishment of the corporation, and if registered, the date of registration;
  - (iii) The jurisdiction of establishment of the corporation;
  - (iv) The date on which it is proposed to re-domicile as a Liberian corporation;
  - (v) That the re-domiciliation has been approved in accordance with the relevant law and the constitution of the corporation;
  - (vi) Confirmation by the officers of the corporation that at the date of re-domiciliation as a Liberian corporation the corporation will have done in the jurisdiction in which it was established everything required by the relevant legislation of that jurisdiction preparatory to re-domiciliation in another jurisdiction and that the corporation will cease to be a corporation domiciled in that jurisdiction;
- (b) A copy of the resolution or other instrument of the corporation resolving to re-domicile as a Liberian corporation, approved in the manner prescribed by the constitution of the corporation, which shall specify:
  - (i) That the corporation shall be re-domiciled in Liberia as a Liberian corporation;
  - (ii) The proposed name of the Liberian corporation if different from the present name of the corporation;
  - (iii) Such other provisions with respect to the proposed re-domiciliation as a Liberian corporation as the governing body considers necessary or desirable;
- (c) Where the corporation is registered in the jurisdiction in which it is established, a certificate of goodstanding in respect of the corporation issued by the competent authority in that jurisdiction or other evidence to the satisfaction of the Registrar or the Deputy Registrar that the corporation is in compliance with registration requirements of that jurisdiction;

- (d) Evidence to the satisfaction of the Registrar or the Deputy Registrar that no proceedings for insolvency have been commenced against the corporation in the jurisdiction in which it is established;
- (e) Any amendments to the instrument constituting or defining the constitution of the corporation that are to take effect on the registration of the corporation as a Liberian corporation;
- (f) Articles of incorporation in accordance with section 4.4 of Chapter 4 of Part I of this Title which are to be the articles of incorporation of the Liberian corporation;
- (g) In the case of a public corporation if the corporation is quoted on a recognized exchange, evidence to the satisfaction of the Registrar or the Deputy Registrar of the consent of the regulatory body of that exchange to the re-domiciliation and for the purpose of this paragraph “recognized stock exchange” means a stock exchange recognized by the relevant authorities in the jurisdiction in which the corporation is established; and
- (h) The name and address of the registered agent in Liberia and the agent’s acceptance of the appointment,

and:

- (j) Where in this section there is reference to the jurisdiction in which the corporation is established, that reference shall, in respect of a corporation domiciled in a jurisdiction other than that in which it is established, be read to include a reference to the jurisdiction of domicile;
- (k) The provisions of sections 1.4.1 to 1.4.5 and 1.4.7 of Chapter 1 of Part I of this Title shall apply, with the variation that execution shall be by an officer or other person performing in relation to that corporation the function of an officer and duly authorized for this purpose.

4. *Name of corporation on re-domiciliation.* The provisions of section 4.2 of Chapter 4 of Part I of this Title shall apply in respect of the name in which a corporation may apply to re-domicile as a Liberian corporation.

5. *Re-domiciliation in Liberia.* The Registrar or the Deputy Registrar shall, if he is satisfied that the requirements of this Act in respect of re-domiciliation as a Liberian corporation have been met, certify that the corporation has established domicile in Liberia and has existence as the Liberian corporation specified in the documents supplied in compliance with paragraph 3, in accordance with those documents on the date of the issue of the certificate, or, in the case of a certificate to which paragraph 6 applies, on the specified date.

6. *Deferred date of re-domiciliation.* Notwithstanding section 1.4.6(d) of Chapter 1 of Part I of this Title, where, at the time of the making of an application under paragraph 3, the corporation applying for re-domiciliation as a Liberian corporation has specified a date (in this section referred to as “the specified date”) no later than 12 months after the date of the making of the application as

the date of re-domiciliation, the certificate issued by the Registrar or the Deputy Registrar shall show the specified date as the date of re-domiciliation.

7. *Status of a certificate of re-domiciliation.* A certificate given by the Registrar or the Deputy Registrar in accordance with paragraph 5 in respect of any re-domiciled corporation shall be:

- (a) Conclusive evidence that all the requirements of this Act in respect of that re-domiciliation, and matters precedent and incidental thereto, have been complied with and that the corporation is authorized to be so re-domiciled and is re-domiciled under the provisions of this section;
- (b) Valid for a period of 12 months from the date of the issue of the certificate or, in the case of a certificate to which paragraph 6 applies, from the specified date, unless endorsed in accordance with paragraph 9.

8. *Obligation to amend the instrument constituting or defining the constitution of the corporation.* If, at the time of the issue by the Registrar or the Deputy Registrar of the certificate of re-domiciliation in accordance with paragraph 5, any provisions of the instrument constituting or defining the constitution of the corporation do not, in any respect, accord with this Act:

- (a) The instrument constituting or defining the constitution of the corporation shall continue to govern the re-domiciled corporation until:
  - (i) The articles of incorporation complying with this Act are in effect; or
  - (ii) The expiration of a period of 12 months immediately following the date of the issue of that certificate or, in the case of a certificate to which paragraph 6 applies, the specified date,

whichever is the sooner;

- (b) Any provisions of the instrument constituting or defining the constitution of the corporation that are in any respect in conflict with this Act cease to govern the re-domiciled corporation when the articles of incorporation in accordance with this Act are in effect;
- (c) The re-domiciled corporation shall give effect to articles of incorporation as may be necessary to accord with this Act within a period of 12 months immediately following the date of the issue of the certificate or, in the case of a certificate to which paragraph 6 applies, from the specified date.

9. *Endorsement of certificate.* Where:

- (a) At the date of the issue of a certificate of re-domiciliation or at any time thereafter within a period of 12 months immediately following the date of the issue of that certificate; or

- (b) In the case of a certificate to which paragraph 6 applies, at the specified date or at any time thereafter within a period of 12 months immediately following that date,

the Registrar or the Deputy Registrar is satisfied that:

- (c) The re-domiciled corporation has ceased to be a corporation under the relevant provisions of the law in the jurisdiction in which it was established; and
- (d) The articles of incorporation, if any, accord in all respects with this Act and the objects of the re-domiciled corporation,

he may, on the application of the re-domiciled corporation to which the certificate has been issued endorse that certificate to the effect that the re-domiciled corporation is from the date of the endorsement to be deemed to be re-domiciled and in existence in Liberia under this Act and that shall be the effective date of re-domiciliation and the provisions of section 1.4.6 of Chapter 1 of Part I of this Title shall apply.

*10. Failure to complete re-domiciliation and registration.* If, by a date 12 months immediately following the date of the issue of a certificate in accordance with paragraph 5 or, in the case of a certificate to which paragraph 6 applies, following the specified date, the re-domiciled corporation has not satisfied the Registrar or the Deputy Registrar that:

- (a) It has ceased to be a corporation under the relevant provisions of the law in the jurisdiction in which it was established; and
- (b) The articles of incorporation, if any, accord in all respects with this Act and the objects of the corporation as a Liberian corporation,

the Registrar or the Deputy Registrar shall revoke the certificate issued under paragraph 5 and:

- (c) That certificate and any re-domiciliation under this section shall be of no further force or effect; and
- (d) The Registrar or the Deputy Registrar shall strike the re-domiciled corporation from the register.

*11. Effect of re-domiciliation.* With effect from the date of the issue of a certificate of re-domiciliation:

- (a) The Liberian corporation to which the certificate relates:
  - (i) Is a corporation re-domiciled and deemed to be incorporated in Liberia under this Act and having as its existence date the date on which it was established in another jurisdiction; and
  - (ii) Shall be a corporation incorporated in Liberia for the purpose of any other Law;

- (b) The articles of incorporation of the corporation as filed in accordance with paragraph 3(f) are the articles of the Liberian corporation;
- (c) The property of every description and the business of the corporation are vested in the Liberian corporation;
- (d) The Liberian corporation is liable for all of the claims, debts, liabilities and obligations of the corporation;
- (e) No conviction, judgment, ruling, order, debt, liability or obligation due or to become due and no cause existing against the corporation or against any officer or agent thereof is thereby released or impaired;
- (f) No proceedings whether civil or criminal pending at the time of the issue by the Registrar or the Deputy Registrar of the certificate of re-domiciliation by or against the corporation or against any officer or agent thereof are thereby abated or discontinued, but the proceedings may be enforced, prosecuted, settled or compromised by or against the Liberian corporation or against the officer or agent thereof, as the case may be;
- (g) Unless otherwise provided in the resolution of re-domiciliation filed in accordance with paragraph 3, the corporation re-domiciling as a Liberian corporation shall not be required to wind up its affairs or pay its liabilities and distribute its assets,

and the re-domiciliation shall constitute a continuation of the existence of the re-domiciling corporation as the Liberian corporation and shall not:

- (h) Constitute a dissolution of the corporation;
- (j) Create a new legal entity; or
- (k) Prejudice or affect the continuity of the Liberian corporation as a re-domiciled corporation.

*Effective:* June 19, 2002.

**§10.10. Power of corporation to re-domicile out of Liberia.**

1. *Application of section.* This section shall apply to a corporation incorporated or deemed to be incorporated in Liberia which re-domiciles into another jurisdiction.

2. *Eligibility to apply to establish domicile in another jurisdiction.* A Liberian corporation may, if permitted to do so by its constitution, apply to establish domicile outside Liberia in another jurisdiction.

3. *Application to establish domicile in another jurisdiction.* An application by a Liberian corporation to establish domicile outside Liberia in another jurisdiction and to cease to be a Liberian

corporation shall be made to the Registrar or the Deputy Registrar in the form prescribed by him and shall be accompanied by:

- (a) A certificate setting out:
  - (i) The name of the Liberian corporation, and, if the name has been changed, the name with which the Liberian corporation was established, and the name, if different, under which registration as a re-domiciled corporation is sought;
  - (ii) The date of existence of the Liberian corporation;
  - (iii) The jurisdiction to which the Liberian corporation proposes to re-domicile and the name and address of the competent authority in that jurisdiction;
  - (iv) The date on which the Liberian corporation proposes to re-domicile;
  - (v) The address for service of the corporation in the jurisdiction of re-domiciliation;
  - (vi) That the proposed re-domiciliation has been approved in accordance with the relevant law and the constitution of the Liberian corporation;
  - (vii) Confirmation by the officers of the Liberian corporation that at the date of re-domiciliation the Liberian corporation will have done everything required by this Act preparatory to re-domiciliation in another jurisdiction and that, on re-domiciliation in the other jurisdiction, the Liberian corporation will cease to be a corporation domiciled in Liberia;
- (b) A copy of the resolution or other instrument of the shareholders of the Liberian corporation resolving to re-domicile, approved in the manner prescribed by the constitution of the Liberian corporation, which shall specify:
  - (i) That the Liberian corporation shall be re-domiciled out of Liberia;
  - (ii) The proposed name of the re-domiciled corporation if different from the present name of the Liberian corporation;
  - (iii) Such other provisions with respect to the proposed re-domiciliation as the shareholders consider necessary or desirable;
- (c) A certificate of goodstanding in respect of the Liberian corporation issued by the Registrar or the Deputy Registrar;
- (d) Evidence to the satisfaction of the Registrar or the Deputy Registrar that no proceedings for insolvency have been commenced in Liberia against the Liberian corporation;
- (e) The address of the registered agent in Liberia which shall be retained during the period of one year or such longer period until the Liberian corporation has been deemed to be

a corporation domiciled in the other jurisdiction, and evidence of acceptance of the appointment by the registered agent; and

- (f) Any amendments to the articles of incorporation that are to take effect on the registration of the re-domiciled corporation in the other jurisdiction,

and the provisions of sections 1.4.1 to 1.4.5 and 1.4.7 of Chapter 1 of Part I of this Title shall apply.

4. *Consent to establish domicile in another jurisdiction.* The Registrar or the Deputy Registrar shall, if he is satisfied that the requirements of this Act in respect of re-domiciliation to another jurisdiction have been met:

- (a) Certify that the Liberian corporation is permitted to establish domicile in the jurisdiction specified in the documents supplied in compliance with paragraph 3, in accordance with those documents, and that it may cease to be registered in Liberia on the date of the issue of the certificate, or, in the case of a certificate to which paragraph 5 applies, on the specified date;
- (b) Enter in the index kept for this purpose in respect of a Liberian corporation to which a certificate has been issued under this paragraph the fact of the issue of the certificate,

and the provisions of section 1.4.6 of Chapter 1 of Part I of this Title shall apply.

5. *Deferred date of re-domiciliation.* Notwithstanding section 1.4.6(d) of Chapter 1 of Part I of this Title, where, at the time of making an application under paragraph 3, the Liberian corporation applying for re-domiciliation has specified a date (in this section referred to as “the specified date”) no later than 12 months after the date of the making of the application as the date of re-domiciliation, the certificate issued by the Registrar or the Deputy Registrar shall show the specified date as the date of re-domiciliation.

6. *Status of a certificate of re-domiciliation.* A certificate given by the Registrar or the Deputy Registrar in accordance with paragraph 4(a) in respect of any Liberian corporation shall be:

- (a) Conclusive evidence that all the requirements of this Act in respect of that re-domiciliation, and matters precedent and incidental thereto, have been complied with and that the corporation is authorized to be so re-domiciled under the provisions of this section;
- (b) Valid for a period of 12 months from the date of the issue of the certificate or, in the case of a certificate to which paragraph 5 applies, from the specified date, unless endorsed in accordance with paragraph 7.

7. *Endorsement of certificate.* Where:

- (a) At the date of the issue of a certificate of re-domiciliation or at any time thereafter within a period of 12 months immediately following the date of the issue of that certificate; or

- (b) In the case of a certificate to which paragraph 5 applies, at the specified date or at any time thereafter within a period of 12 months immediately following that date,

the Registrar or the Deputy Registrar is satisfied, by the service on him of a certificate of continuation executed by the governing body of the re-domiciled corporation, that the corporation has become a corporation under the relevant provisions of the law in the jurisdiction specified in the certificate of re-domiciliation, he may endorse the certificate of re-domiciliation to the effect that the corporation is from the date of the endorsement to be deemed to be re-domiciled and no longer registered in Liberia under this Act and that shall be the effective date of re-domiciliation.

8. *Failure to complete re-domiciliation.* If, by a date 12 months immediately following the date of the issue of a certificate in accordance with paragraph 4(a) or, in the case of a certificate to which paragraph 5 applies, following the specified date, the Liberian corporation has not satisfied the Registrar or the Deputy Registrar that it has become a corporation under the relevant provisions of the law in the jurisdiction to which it proposed to re-domicile, the Registrar or the Deputy Registrar shall revoke the certificate issued under paragraph 4(a), and:

- (a) That certificate and any re-domiciliation under this section shall be of no further force or effect; and
- (b) The Liberian corporation shall continue as a Liberian corporation in Liberia under the provisions of this Act.

9. *Effect of re-domiciliation.* With effect from the date of the issue of a certificate of re-domiciliation:

- (a) The corporation to which the certificate relates shall cease to be:
  - (i) A Liberian corporation registered in Liberia under this Act; and
  - (ii) A Liberian corporation registered in Liberia for the purpose of any other Law;
- (b) The articles of incorporation of the re-domiciled corporation (or other instrument constituting or defining the constitution of the corporation), as amended by the resolution or equivalent document establishing domicile in the other jurisdiction, are the articles of incorporation of the re-domiciled corporation;
- (c) The property of every description and the business of the Liberian corporation are vested in the re-domiciled corporation;
- (d) The re-domiciled corporation is liable for all of the claims, debts, liabilities and obligations of the Liberian corporation;
- (e) No conviction, judgment, ruling, order, debt, liability or obligation due or to become due and no cause existing against the Liberian corporation or against any officer or agent thereof is thereby released or impaired;



- (f) No proceedings whether civil or criminal pending at the time of the issue by the Registrar or the Deputy Registrar of the certificate of re-domiciliation by or against the Liberian corporation or against any officer or agent thereof are thereby abated or discontinued, but the proceedings may be enforced, prosecuted, settled or compromised by or against the re-domiciled corporation or against the officer or agent thereof, as the case may be;
- (g) Unless otherwise provided in the resolution of re-domiciliation filed in accordance with paragraph 3, the Liberian corporation re-domiciling as a re-domiciled corporation in another jurisdiction shall not be required to wind up its affairs or pay its liabilities and distribute its assets,

and the re-domiciliation shall constitute a continuation of the existence of the re-domiciling corporation and shall not:

- (h) Constitute a dissolution of the Liberian corporation;
- (j) Create a new legal entity; or
- (k) Prejudice or affect the continuity of the re-domiciled corporation.

*10. Index of Liberian corporations re-domiciled to another jurisdiction.* The Registrar or the Deputy Registrar shall maintain an index of Liberian corporations in respect of which a certificate issued in accordance with paragraph 4(a) is in force and in that index shall record the name in which the corporation is re-domiciled in the other jurisdiction and the address for service of the corporation in that jurisdiction, and whether the corporation has ceased to be registered under this Act in accordance with paragraph 7.

*Effective:* June 19, 2002.

#### **§10.11. Reregistration of corporation as non-share corporation.**

*1. Power to reregister.* Subject to the provisions of this section a corporation authorized to issue shares may be reregistered as a non-share corporation if:

- (a) A resolution that it should be so reregistered is passed by the vote of the shareholders entitled to receive notice of a meeting of the shareholders of the corporation; and
- (b) The requirements of this section are complied with in respect of the resolution and otherwise.

*2. Not applicable to public corporation.* A public corporation shall not be reregistered under this section.

*3. Not applicable to corporation to which section 10.12 has applied.* A corporation is precluded from reregistering under this section if it is authorized to issue shares by virtue of reregistration under section 10.12.

4. *Resolution to reregister.* The resolution referred to in paragraph 1(a) shall state the share capital of the corporation and shall provide:

- (a) That the total amount of the contribution of the members from time to time shall not fall below the amount of the share capital of the corporation at the date of the resolution;
- (b) For the making of such amendments in the articles of incorporation as are necessary to bring it (in substance and in form) into conformity with the requirements of this Act with respect to the articles of incorporation of a non-share corporation;
- (c) The manner of converting the shares of the corporation authorized to issue shares into membership interest of the non-share corporation; and
- (d) If any shares in the corporation are not to be converted solely into membership interests in the non-share corporation, the cash or other consideration to be paid or delivered in exchange for the shares.

5. *Application of Chapter 9.* Except as provided in this section, the provisions of Chapter 9 shall apply.

6. *Deemed not to be a reduction in share capital.* A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

7. *Certificate of reregistration.* The Registrar shall issue to the corporation a certificate of reregistration appropriate to the status to be assumed by it by virtue of this section.

8. *Effect of certificate.* On the issue of the certificate under paragraph 7:

- (a) The status of the corporation, by virtue of the issue, is changed from authorized to issue shares to a non-share corporation; and
- (b) The alterations in the articles of incorporation of the corporation specified in the resolution take effect.

9. *Status of certificate.* The certificate issued under this section is conclusive evidence that the requirements of this section in respect of reregistration and of matters precedent and incidental to it have been complied with, and that the corporation was authorized to reregister in pursuance of this section and was duly so reregistered.

10. *Continuation.* For the avoidance of doubt it is hereby declared that a corporation reregistered by virtue of this section and in respect of which a certificate has been issued under paragraph 7 is a continuation of that corporation prior to that reregistration.

*Effective:* June 19, 2002.

**§10.12. Reregistration of non-share corporation as corporation.**

1. *Power to reregister.* Subject to the provisions of this section a non-share corporation may be reregistered as a corporation authorized to issue shares if:

- (a) A resolution that it should be so reregistered is passed; and
- (b) The requirements of this section are complied with in respect of the resolution and otherwise.

2. *Not applicable to public corporation.* A corporation shall not be reregistered under this section as a public corporation.

3. *Not applicable to corporation to which section 10.11 applied.* A corporation is precluded from reregistering under this section if it is a non-share corporation by virtue of reregistration under section 10.11.

4. *Resolution to reregister.* The resolution referred to in paragraph 1(a) shall state the total amount of the contribution of the members at the date of the resolution and shall provide:

- (a) That the amount of the share capital of the corporation from time to time shall not fall below the total amount of the contribution of the members at the date of the resolution;
- (b) For the making of such alterations in the articles of incorporation as are necessary to bring them (in substance and in form) into conformity with the requirements of this Act with respect to the articles of incorporation of a corporation authorized to issue shares;
- (c) The manner of converting the membership interests of the non-share corporation into shares of the corporation authorized to issue shares; and
- (d) If any membership interests in the non-share corporation are not to be converted solely into shares in the corporation authorized to issue shares, the cash or other consideration to be paid or delivered in exchange for membership interests.

5. *Application of Chapter 9.* Except as provided in this section, the provisions of Chapter 9 shall apply.

6. *Certificate of reregistration.* The Registrar or the Deputy Registrar shall issue to the corporation a certificate of reregistration appropriate to the status to be assumed by it by virtue of this section.

7. *Effect of certificate.* On the issue of the certificate under this section:

- (a) The status of the corporation, by virtue of the issue, is changed from being a non-share corporation to one authorized to issue shares; and

- (b) The alterations in the articles of incorporation of the corporation specified in the resolution take effect.

8. *Status of certificate.* The certificate issued under paragraph 6 is conclusive evidence that the requirements of this section in respect of reregistration and of matters precedent and incidental to it have been complied with, and that the corporation was authorized to be reregistered in pursuance of this section and was duly so reregistered.

9. *Continuation.* For the avoidance of doubt it is hereby declared that a corporation reregistered by virtue of this section and in respect of which a certificate has been issued under paragraph 6 is a continuation of that corporation prior to that reregistration.

*Effective:* June 19, 2002.

### **§10.13. Reregistration of another entity as a corporation.**

1. *Power to reregister.* A limited liability company, a limited partnership, a private foundation, a registered business company, or any other legal entity existing under the laws of Liberia (in this section referred to as a “legal entity”) may, if permitted to do so by its constitution, apply to reregister as a corporation authorized to issue shares, or as a non-share corporation, or as a hybrid.

2. *Application to reregister as a corporation.* An application by a legal entity to reregister as a corporation shall be made to the Registrar or the Deputy Registrar in the form prescribed by him and shall be accompanied by:

- (a) A certificate setting out:
  - (i) The name of the legal entity, and, if the name has been changed, the name with which the legal entity was formed, and the name, if different, under which reregistration as a reregistered and continued corporation is sought;
  - (ii) The date of formation of the legal entity;
  - (iii) The relevant law under which the legal entity has its existence;
  - (iv) The date on which it is proposed to reregister;
  - (v) That the reregistration has been approved in accordance with the relevant law and the constitution of the legal entity;
  - (vi) Confirmation by, in the case of:
    - (aa) A limited liability company, the members or the manager;
    - (bb) A limited partnership, the partners;

- (cc) A private foundation, the governing bodies;
- (dd) A registered business company, the directors or other governing body;
- (ee) Any other legal entity, the governing body,

that at the date of reregistration as a corporation the legal entity will have done everything required by the relevant legislation preparatory to de-registration and reregistration, and that the entity will cease to be a legal entity registered under that legislation;

- (b) A copy of the resolution or other instrument of the legal entity resolving to de-register and reregister as a corporation, approved in the manner prescribed by the constitution of the legal entity which shall specify:
  - (i) That the entity shall be reregistered as a corporation;
  - (ii) The proposed name of the reregistered corporation if different from the present name of the legal entity;
  - (iii) That the total amount from time to time of the share capital or membership interests of the reregistered corporation shall not fall below the amount of the contributions of the limited liability company or limited partnership, or the share capital or membership interests of the registered business company, or the assets of the foundation, or the capital of any other entity, as the case may be, at the date of the resolution;
  - (iv) The method of converting membership interests, or partnership interests, or shareholding and membership interests, or assets, as the case may be, into shares or membership interests of the reregistered corporation;
  - (v) The arrangements for the appointment of directors and officers;
  - (vi) Such other provisions with respect to the proposed reregistration as, in the case of:
    - (aa) A limited liability company, the members or the manager;
    - (bb) A limited partnership, the partners;
    - (cc) A registered business company, the directors or other governing body;
    - (dd) A foundation, the governing bodies;

- (ee) Any other legal entity, the governing body, considers necessary or desirable;
- (c) A certificate of goodstanding in respect of the legal entity;
- (d) Evidence to the satisfaction of the Registrar or the Deputy Registrar that no proceedings for insolvency have been commenced against the legal entity;
- (e) Any amendments to the instrument constituting or defining the constitution of the legal entity that are to take effect on the reregistration as a reregistered corporation;
- (f) Articles of incorporation in accordance with section 4.4 of Chapter 4 of Part I of this Title which are to be the articles of incorporation of the reregistered corporation;
- (g) The name and address of the registered agent in Liberia and the agent's acceptance of the appointment,

and the provisions of section 1.4 of Chapter 1 of Part I of this Title shall apply with the variation that execution shall be by any officer, manager, partner, director, trustee or other person performing in relation to that legal entity the function of an officer and duly authorized for this purpose.

3. *Name of corporation on reregistration.* The provisions of section 4.2 of Chapter 4 of Part I of this Title shall apply in respect of the name under which the legal entity may apply to reregister as a corporation.

4. *Reregistration and continuation as a corporation.* The Registrar or the Deputy Registrar shall, if he is satisfied that the requirements of this Act in respect of reregistration as a corporation have been met, register the legal entity as a corporation and certify that it is registered and continued as the corporation specified in the documents supplied in compliance with paragraph 2, in accordance with those documents, on the date of the issue of the certificate, or, in the case of a certificate to which paragraph 5 applies, on the specified date.

5. *Deferred date of reregistration.* Notwithstanding section 1.4.6(d) of Chapter 1 of Part I of this Title, where, at the time of the making of an application under paragraph 2, the legal entity applying for reregistration as a corporation has specified a date (in this section referred to as "the specified date") no later than 12 months after the date of the making of the application as the date of reregistration, the certificate issued by the Registrar or the Deputy Registrar shall show the specified date as the date of reregistration.

6. *Status of a certificate of reregistration.* A certificate given by the Registrar or the Deputy Registrar in accordance with paragraph 4 in respect of any legal entity reregistered as a corporation shall be:

- (a) Conclusive evidence that all the requirements of the Act in respect of that reregistration, and matters precedent and incidental thereto, have been complied with and that the legal entity is authorized to be so reregistered and is reregistered under the provisions of this section;

- (b) Valid for a period of 12 months from the date of the issue of the certificate or, in the case of a certificate to which paragraph 5 applies, from the specified date, unless endorsed in accordance with paragraph 8.

7. *Obligation to amend instrument constituting or defining the constitution of the legal entity.* If, at the time of the issue by the Registrar or the Deputy Registrar of the certificate of reregistration in accordance with paragraph 4, any provisions of the instrument constituting or defining the constitution of the legal entity do not, in any respect, accord with this Act:

- (a) The instrument constituting or defining the constitution of the legal entity shall continue to govern the reregistered corporation until:
  - (i) Articles of incorporation complying with this Act are in effect; or
  - (ii) The expiration of a period of 12 months immediately following the date of the issue of that certificate or, in the case of a certificate to which paragraph 5 applies, the specified date,whichever is the sooner;
- (b) Any provisions of the instrument constituting or defining the constitution of the legal entity that are in any respect in conflict with this Act cease to govern the corporation when the articles of incorporation in accordance with this Act are in effect;
- (c) The corporation shall give effect to articles of incorporation as may be necessary to accord with this Act within a period of 12 months immediately following the date of the issue of the certificate or, in the case of a certificate to which paragraph 5 applies, from the specified date.

8. *Endorsement of certificate.* Where:

- (a) At the date of the issue of a certificate of reregistration or at any time thereafter within a period of 12 months immediately following the date of the issue of that certificate; or
- (b) In the case of a certificate to which paragraph 5 applies, at the specified date or at any time thereafter within a period of 12 months immediately following that date,

the Registrar or the Deputy Registrar is satisfied that:

- (c) The legal entity has ceased to be a legal entity under the relevant provisions of the law under which it was established; and
- (d) The articles of incorporation accord in all respects with this Act and the objects of the corporation,

he may, on the application of the corporation to which the certificate has been issued, endorse that

certificate to the effect that the corporation is from the date of the endorsement to be deemed to be reregistered under this Act and that shall be the effective date of reregistration and continuation and the provisions of section 1.4.6 of Chapter 1 of Part I of this Title shall apply.

9. *Failure to complete reregistration.* If, by a date 12 months immediately following the date of the issue of a certificate in accordance with paragraph 4 or, in the case of a certificate to which paragraph 5 applies, following the specified date, the legal entity has not satisfied the Registrar or the Deputy Registrar that:

- (a) It has ceased to be a legal entity under the relevant provisions of the law under which it was established; and
- (b) The articles of incorporation accord in all respects with this Act and the objects of the corporation,

the Registrar or the Deputy Registrar shall revoke the certificate issued under paragraph 4, and:

- (c) That certificate and any reregistration under this section shall be of no further force or effect; and
- (d) The Registrar or the Deputy Registrar shall strike the corporation from the register.

10. *Effect of reregistration.* With effect from the date of the issue of a certificate of reregistration:

- (a) The reregistered corporation to which the certificate relates:
  - (i) Is a corporation reregistered and continued and deemed to be registered under this Act and having as its existence date the date on which it was established under the other relevant law, or in another jurisdiction, as the case maybe; and
  - (ii) Shall be a corporation registered in Liberia for the purpose of any other Law;
- (b) The articles of incorporation as filed in accordance with paragraph 2(f) are the articles of the corporation;
- (c) The property of every description and the business of the legal entity are vested in the corporation;
- (d) The corporation is liable for all of the claims, debts, liabilities and obligations of the legal entity;
- (e) No conviction, judgment, ruling, order, debt, liability or obligation due or to become due and no cause existing against the legal entity or against any officer or agent thereof is thereby released or impaired;
- (f) No proceedings whether civil or criminal pending at the time of the issue by the Registrar or the Deputy Registrar of the certificate of reregistration by or against the legal entity



or against any officer or agent thereof are thereby abated or discontinued, but the proceedings may be enforced, prosecuted, settled or compromised by or against the corporation or against the officer or agent thereof, as the case may be;

- (g) Unless otherwise provided in the resolution of reregistration filed in accordance with paragraph 2, the legal entity reregistering as the corporation shall not be required to wind up its affairs or pay its liabilities and distribute its assets,

and the reregistration and continuation shall not:

- (h) Constitute a dissolution of the legal entity and shall constitute a continuation of the existence of the reregistered legal entity as the corporation;
- (j) Create a new legal entity; or
- (k) Prejudice or affect the continuity of the legal entity as a corporation.

*Effective:* June 19, 2002.

#### **§10.14. De-registration and reregistration of corporation as another entity.**

1. *Eligibility to apply to de-register and reregister as another legal entity.* A corporation registered in Liberia may, if permitted to do so by its constitution, apply to de-register upon reregistration as another legal entity under the laws of Liberia.

2. *Application to de-register and reregister as another legal entity.* An application by a corporation to de-register and reregister as another legal entity in Liberia and to cease to be a corporation registered under this Act shall be made to the Registrar or the Deputy Registrar in the form prescribed by him and shall be accompanied by:

- (a) A certificate setting out:
  - (i) The name of the corporation, and, if the name has been changed, the name with which the corporation was established, and the name, if different, under which registration as another legal entity is sought;
  - (ii) The date of registration of the corporation, and if established under any other law, the date of establishment;
  - (iii) The law under which the corporation proposes to reregister;
  - (iv) The date on which the corporation proposes to de-register and reregister;
  - (v) That the proposed de-registration and reregistration have been approved in accordance with the relevant law and the constitution of the corporation;
  - (vi) Confirmation by the officers of the corporation that at the date of de-registration

and reregistration the corporation will have done everything required by this Act preparatory to de-registration and reregistration as another legal entity and that, on de-registration and reregistration, the corporation will cease to be a corporation;

- (b) A copy of the resolution or other instrument of the corporation resolving to de-register and reregister, approved in the manner prescribed by the constitution of the corporation, which shall specify:
  - (i) That the corporation shall be de-registered and reregistered as another legal entity in Liberia;
  - (ii) The proposed name of the legal entity if different from the present name of the corporation;
  - (iii) That the total amount from time to time of:
    - (aa) The contributions of a limited liability company or a limited partnership;
    - (bb) The share capital or membership contributions, or the sum of both, of a registered business company;
    - (cc) The assets of a private foundation; or
    - (dd) The capital of any other legal entity;with which the corporation proposes to reregister shall not fall below the amount of the share capital or membership contributions of the corporation, or the sum of both, at the date of the resolution;
  - (iv) The method of converting the share capital or membership contributions, or the sum of both, of the corporation into:
    - (aa) Participations in the contributions of the limited liability company or the limited partnership;
    - (bb) Shareholdings or membership interests of a registered business company;
    - (cc) The assets of a private foundation; or
    - (dd) The capital of any other legal entity;
  - (v) The rights attaching to the participations in a limited liability company or a limited partnership referred to in clause (iv)(aa), the shares or membership interests, or both, of a registered business company referred to in clause (iv)(bb), the assets of a private foundation referred to in clause (iv)(cc), or the capital of any other legal entity referred to in clause (iv)(dd);

- (vi) In the case of reregistration:
  - (aa) As a limited liability company, which, if any, of the shareholders, directors or officers, or members of any other governing body, shall be the manager, and if none, the appointment of the manager;
  - (bb) As a limited partnership, who shall become the limited partners and who shall become the general partners;
  - (cc) As a registered business company, which if any, of the shareholders, directors or officers, or members of any other governing body shall be shareholders and directors or members of any other governing body;
  - (dd) As a private foundation, which, if any, of the shareholders, directors or officers, or members of any other governing body shall be officers or members of the supervisory board; or
  - (ee) As any other legal entity, the appointment of the governing body;
- (vii) Such alterations in the articles of incorporation, if any, as are necessary to bring them (in substance and in form) into conformity with the requirements of:
  - (aa) Chapter 14 of Part I of this Title as a limited liability company agreement, in the case of a limited liability company;
  - (bb) Part III of this Title as the partnership agreement, in the case of a limited partnership;
  - (cc) Chapter 70 of Part VII of this Title as the memorandum and articles of incorporation, in the case of a registered business company;
  - (dd) Chapter 60 of Part VI of this Title as the memorandum of endowment and management articles, if any, in the case of a private foundation; or
  - (ee) The relevant statutory provision in the case of any other legal entity; and
- (viii) Such other provisions with respect to the proposed de-registration and reregistration as the governing bodies consider necessary or desirable;
- (c) A certificate of goodstanding in respect of the corporation issued by the Registrar or the Deputy Registrar;
- (d) Evidence to the satisfaction of the Registrar or the Deputy Registrar that no proceedings for insolvency have been commenced in Liberia against the corporation; and
- (e) Any amendments other than those specified in sub-paragraph (b)(vii) to the articles of incorporation that are to take effect on the de-registration of the corporation and

reregistration as the other legal entity,

and the provisions of section 1.4 of Chapter 1 of Part I of this Title shall apply.

3. *Consent to de-register and reregister as another legal entity.* The Registrar or the Deputy Registrar shall, if he is satisfied that the requirements of this Act in respect of de-registration of a corporation prior to reregistration as another legal entity have been met:

- (a) Certify that the corporation is permitted to de-register and reregister as the other legal entity specified in the documents supplied in compliance with paragraph 2, in accordance with those documents, and that it may cease to be registered as a corporation on the date of the issue of the certificate, or, in the case of a certificate to which paragraph 4 applies, on the specified date;
- (b) File the documents referred to in paragraph 2(b), except the documents specified in sub-paragraph (c);
- (c) Return to the corporation the documents delivered to him in compliance with paragraph 2(b)(v), as they relate to reregistration as a foundation and paragraph 2(b)(vii)(dd), endorsed with the date on which they were delivered to him;
- (d) Enter in the index kept for this purpose in respect of a corporation to which a certificate has been issued under this paragraph the fact of the issue of the certificate and the documents filed in compliance with sub-paragraph (b).

4. *Deferred date of de-registration.* Notwithstanding section 1.4.6(d) of Chapter 1 of Part I of this Title, where, at the time of making an application under paragraph 2, the corporation applying for de-registration has specified a date (in this section referred to as “the specified date”) no later than 12 months after the date of the making of the application as the date of de-registration, the certificate issued by the Registrar or the Deputy Registrar shall show the specified date as the date of de-registration.

5. *Status of a certificate of de-registration.* A certificate given by the Registrar or the Deputy Registrar in accordance with paragraph 3(a) in respect of any de-registered corporation shall be:

- (a) Conclusive evidence that all the requirements of this Act in respect of that de-registration, and matters precedent and incidental thereto, have been complied with and that the corporation is authorized to be so de-registered and is de-registered under the provisions of this section;
- (b) Valid for a period of 12 months from the date of the issue of the certificate or, in the case of a certificate to which paragraph 4 applies, from the specified date, unless endorsed in accordance with paragraph 6.

6. *Endorsement of certificate.* Where:

- (a) At the date of the issue of a certificate of de-registration or at any time thereafter

within a period of 12 months immediately following the date of the issue of that certificate; or

- (b) In the case of a certificate to which paragraph 4 applies, at the specified date or at any time thereafter within a period of 12 months immediately following that date,

the Registrar or the Deputy Registrar is satisfied, by the service on him of a certificate of continuation executed by the reregistered legal entity that the corporation has re-registered under the relevant provisions of the law specified in the certificate of de-registration, he may endorse the certificate of de-registration to the effect that the corporation is from the date of the endorsement to be deemed to be de-registered and no longer registered and that shall be the effective date of de-registration.

7. *Failure to complete de-registration and reregistration.* If, by a date 12 months immediately following the date of the issue of a certificate in accordance with paragraph 3(a) or, in the case of a certificate to which paragraph 4 applies, following the specified date, the corporation has not satisfied the Registrar or the Deputy Registrar that it has become the other legal entity under the relevant provisions of the law under which it proposed to reregister, the Registrar or the Deputy Registrar shall revoke the certificate issued under paragraph 3(a), and:

- (a) That certificate and any de-registration under this section shall be of no further force or effect; and
- (b) The corporation shall continue as a corporation under the provisions of this Act.

8. *Effect of de-registration.* With effect from the date of the issue of a certificate of de-registration:

- (a) The corporation to which the certificate relates shall cease to be:
  - (i) A corporation registered under this Act; and
  - (ii) A corporation registered in Liberia for the purpose of any other Law;
- (b) The articles of incorporation (or other instrument constituting or defining the constitution of the corporation), as amended by the resolution or equivalent document for the purpose of reregistration as another legal entity in Liberia, shall be the constitution of the other legal entity;
- (c) The property of every description and the business of the corporation are vested in the other legal entity;
- (d) The other legal entity is liable for all of the claims, debts, liabilities and obligations of the corporation;
- (e) No conviction, judgment, ruling, order, debt, liability or obligation due or to become due and no cause existing against the corporation or against any officer or agent thereof is thereby released or impaired;

- (f) No proceedings whether civil or criminal pending at the time of the issue by the Registrar or the Deputy Registrar of the certificate of de-registration by or against the corporation or against any officer or agent thereof are thereby abated or discontinued, but the proceedings may be enforced, prosecuted, settled or compromised by or against the other legal entity or against the officer or agent thereof, as the case may be;
- (g) Unless otherwise provided in the resolution of de-registration filed in accordance with paragraph 2, the corporation reregistering as the other legal entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets,

and the reregistration shall constitute a continuation of the existence of the de-registering corporation and shall not:

- (h) Constitute a dissolution of the corporation;
- (j) Create a new legal entity; or
- (k) Prejudice or affect the continuity of the de-registered corporation.

9. *Index of corporations de-registered and reregistered as another legal entity.* The Registrar or the Deputy Registrar shall maintain an index of corporations in respect of which a certificate issued in accordance with paragraph 3(a) is in force and in that index shall record the name in which the corporation is reregistered as another legal entity and whether the corporation has ceased to be registered under this Act in accordance with paragraph 6.

*Effective:* June 19, 2002.

## **CHAPTER 11.**

# **DISSOLUTION**

- §11.1. Manner of effecting dissolution.
- §11.2. Judicial dissolution.
- §11.3. Dissolution on failure to pay annual registration fee or appoint or maintain registered agent.
- §11.4. Winding up affairs of corporation after dissolution.
- §11.5. Settlement of claims against corporation.

### **§11.1. Manner of effecting dissolution.**

1. *Meeting of shareholders.* Except as otherwise provided in its articles of incorporation, and except where this Chapter otherwise provides, a corporation may be dissolved if, at a meeting of shareholders, the holders of two-thirds of all outstanding shares entitled to vote on a proposal to dissolve, by resolution consent that the dissolution shall take place.

2. *Consent without meeting.* Whenever the shareholders entitled to vote on a proposal to dissolve shall consent in writing to a dissolution in accordance with section 7.4, no meeting of shareholders shall be necessary.

3. *Articles of dissolution; contents, filing.* Articles of dissolution shall be signed, and filed with the Registrar or the Deputy Registrar in accordance with section 1.4. The articles of dissolution shall set forth the name of the corporation, the date of filing of the articles of incorporation, that the corporation elects to dissolve, and the manner in which the dissolution was authorized by the shareholders, a statement that the directors shall be the trustees of the corporation for the purpose of winding up the affairs of the corporation, and a listing of either the names and addresses of the directors and officers or the address of the corporation and the name and address of the corporation's legal representative for the purpose of winding up its affairs.

4. *Time when effective.* The dissolution shall become effective as of the filing date stated on the articles of dissolution.

5. *Dissolution before issuance of shares or beginning of business.* If a corporation has not issued shares or has not commenced the business for which the corporation was organized, a majority of the incorporators, or, if directors were named in the articles of incorporation or have been elected, a majority of the directors, may dissolve the corporation by filing in the Office of the Registrar or the Deputy Registrar a certificate, executed and acknowledged by a majority of the incorporators or directors, stating that:

- (a) No shares have been issued or that the business or activity for which the corporation

was organized has not been begun;

- (b) No part of the capital of the corporation has been paid, or, if some capital has been paid, that the amount actually paid in for the corporation's shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;
- (c) If the corporation has begun business but it has not issued shares, all debts of the corporation have been paid;
- (d) If the corporation has not begun business but has issued share certificates, all issued share certificates, if any, have been surrendered and cancelled; and
- (e) All rights and interests of the corporation are surrendered,

and upon such certificate being filed in accordance with section 1.4, the corporation shall be dissolved.

6. *Rescission of dissolution.* A corporation may rescind articles of dissolution filed in error upon adoption of a resolution of the board of directors and a resolution adopted by the holders of two-thirds of all outstanding shares entitled to vote, both of which shall be filed with the Registrar or the Deputy Registrar. After being satisfied that all arrears of statutory fees have been paid, that the corporation has retained a registered agent and that fees in respect of the period from the date of dissolution to the date on which rescission is to take place have been paid to the former registered agent, the corporation may be restored to full existence.

*Prior legislation:* 1956 Code 4:37; Lib. Corp. L., 1948, §37; 1976 Liberian Code of Laws Revised, Chapter 11, §11.1, amended effective June 19, 2002.

## **§11.2. Judicial dissolution.**

1. *Dissolution of corporation by court; general procedure.* A shareholders' meeting to consider adoption of a resolution to institute a special proceeding on any of the grounds specified below, may be called, notwithstanding any provision in the articles of incorporation, by the holders of ten percent of all outstanding shares entitled to vote thereon, or if the articles of incorporation authorize a lesser proportion of shares to call the meeting, by such lesser proportion. A meeting under this section may not be called more often than once in any period of twelve consecutive months. Except as otherwise provided in the articles of incorporation, the holders of one-half of all outstanding shares of a corporation entitled to vote in an election of directors may adopt at the meeting a resolution and institute a special proceeding in Liberia for dissolution on one or more of the following grounds:

- (a) That the directors are so divided respecting the management of the corporation's affairs that the votes required for action by the board cannot be obtained;
- (b) That the shareholders are so divided that the votes required for the election of directors cannot be obtained;
- (c) That there is internal dissension and two or more factions of shareholders are so divided that dissolution would be beneficial to the shareholders;



- (d) That the acts of the directors are illegal, oppressive or fraudulent;
- (e) That the corporate assets are being misapplied or wasted.

If it appears, following due notice to all interested persons and hearing that any of the foregoing grounds for dissolution of the corporation exists, the court in Liberia shall make a judgment that the corporation shall be dissolved. The clerk of the court shall transmit certified copies of the judgment to the Minister of Foreign Affairs who shall provide a copy to the Registrar or the Deputy Registrar. Upon filing with the Registrar or the Deputy Registrar, the corporation shall be dissolved.

2. *Dissolution of joint venture corporation having two shareholders.* If the shareholders of a corporation having only two shareholders each of which own 50% of the shares therein, shall be engaged in the prosecution of a joint venture and if such shareholders shall be unable to agree upon the desirability of discontinuing such joint venture and disposing of the assets used in such venture, either shareholder may, unless otherwise provided in the articles of incorporation of the corporation or in a written agreement between the shareholders, file with the court a petition stating that it desires to discontinue such joint venture and to dispose of the assets used in such venture in accordance with a plan to be agreed upon by both shareholders or that, if no such plan shall be agreed upon by both shareholders, the corporation be dissolved. Such petition shall have attached thereto a copy of the proposed plan of discontinuance and distribution and a certificate stating that copies of such petition and plan have been transmitted in writing to the other shareholder and to the directors and officers of such corporation. The petition and certificate shall be executed and acknowledged in accordance with section 1.4. Unless both shareholders file with the court:

- (a) Within three months of the date of the filing of such petition, a certificate similarly executed and acknowledged stating that they have agreed on such plan, or a modification thereof; and
- (b) Within one year from the date of the filing of such petition, a certificate similarly executed and acknowledged stating that the distribution provided by such plan had been completed,

the court may dissolve such corporation and may by appointment of one or more trustees or receivers with all the powers and title of a trustee or receiver appointed under section 11.4.3, administer and wind up its affairs. Either or both of the above periods may be extended by agreement of the shareholders, evidenced by a certificate similarly executed, acknowledged and filed with the court prior to the expiration of such period.

*Prior legislation:* 1976 Liberian Code of Laws Revised, Chapter 11, §11.2, amended effective June 19, 2002.

### **§11.3. Dissolution on failure to pay annual registration fee or appoint or maintain registered agent.**

1. *Procedure for dissolution.* On failure of a corporation to pay the annual registration fee or to maintain a registered agent for a period of one year, the Registrar or the Deputy Registrar shall cause a notification to be sent to the corporation through its last recorded registered agent that its

articles of incorporation will be revoked unless within ninety days of the date of the notice, payment of the annual registration fee has been received or a registered agent has been reappointed, as the case may be. On the expiration of the ninety day period, the Registrar or the Deputy Registrar, in the event the corporation has not remedied its default, shall issue a proclamation declaring that the articles of incorporation have been revoked and the corporation dissolved as of the date stated in the proclamation. The proclamation of the Minister of Foreign Affairs shall be filed in his office and he shall mark on the record of the articles of incorporation of the corporation named in the proclamation the date of revocation and dissolution, and he shall give notice thereof to the last recorded registered agent. Thereupon the affairs of the corporation shall be wound up in accordance with the procedure provided in this Chapter.

2. *Erroneous annulment.* Whenever it is established to the satisfaction of the Minister of Foreign Affairs that the articles of incorporation were erroneously revoked and the corporation involuntarily dissolved (annulled), he may restore the corporation to full existence by publishing and filing in his office a proclamation to that effect provided that neither the Minister nor the Registrar or the Deputy Registrar shall be held liable for any such error.

3. *Rescission of dissolution.* Whenever the articles of a corporation have been revoked and the corporation dissolved pursuant to this section, the corporation may request the Minister to reinstate the corporation. After being satisfied that all arrears of statutory fees have been paid, that the corporation has retained a registered agent and that fees in respect of the period from the date of dissolution to the date on which rescission is to take place have been paid to the former registered agent, the corporation may be restored to full existence.

*Prior legislation:* L. 1959-60, ch. IX; 1956 Code 4:48; Lib. Corp. L., 1948, §48; 1976 Liberian Code of Laws Revised, Chapter 11, §11.3, amended effective June 19, 2002.

#### **§11.4. Winding up affairs of corporation after dissolution.**

1. *Continuation of corporation for winding up.* All corporations, whether they expire by their own limitations or are otherwise dissolved, shall nevertheless be continued for the term of three years from such expiration or dissolution as bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, to discharge their liabilities, and to distribute to the shareholders any remaining assets, but not for the purpose of continuing the business for which the corporation was organized. With respect to any action, suit, or proceeding begun by or against the corporation either prior to or within three years after the date of its expiration or dissolution, and not concluded within such period, the corporation shall be continued as a body corporate beyond that period for the purpose of concluding such action, suit or proceeding and until any judgment, order, or decree therein shall be fully executed.

2. *Trustees.* Upon the dissolution of any corporation, or upon the expiration of the period of its corporate existence, the directors shall be trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell and convey the property, real and personal, as may be required by the laws of the country where situated, prosecute and defend all such suits as may be necessary or proper for the purposes aforesaid, distribute the money and other property among the shareholders after paying or adequately providing for payment of its liabilities and obligations, and do all other

acts which might be done by the corporation, before dissolution, that may be necessary for the final settlement of the unfinished business of the corporation.

3. *Supervision by court of liquidation.* At any time within three years after the filing of the articles of dissolution, the circuit court in Liberia in the judicial circuit where the office of the corporation or the registered address was located at the date of its dissolution, in a special proceeding instituted under this paragraph, upon the petition of the corporation, or of a creditor, claimant, director, officer, shareholder, subscriber for shares, incorporator or the Minister of Justice, may continue the liquidation of the corporation under the supervision of the court in Liberia and may make all such orders as it may deem proper in all matters in connection with the dissolution or in winding up the affairs of the corporation, including the appointment or removal of a receiver, who may be a director, officer or shareholder of the corporation.

*Prior legislation:* 1956 Code 4:37 (par. 4), 38, 39, 40; Lib. Corp L., 1948, §§37 (par.4), 38, 39, 40.

### **§11.5. Settlement of claims against the corporation.**

1. *Notice to creditors.* Any time within one year after dissolution, a domestic corporation shall give notice requiring all creditors and claimants, including any with unliquidated or contingent claims and any with whom the corporation has unfulfilled contracts, to present their claims in writing and in detail at a specified place and by a specified day, which shall not be less than six months after the first publication of such notice. Such notice shall be published at least once a week for four successive weeks in a newspaper of general circulation in the county in which the office of the corporation was located at the date of dissolution, or if none exists, in a newspaper of general circulation in Liberia or elsewhere in a location in which the corporation regularly conducted its business. On or before the date of the first publication of such notice, the corporation shall mail a copy thereof, postage prepaid and addressed to his last known address, to each person believed to be a creditor of or claimant against the corporation whose name and address are known to or can with due diligence be ascertained by the corporation. The giving of such notice shall not constitute a recognition that any person is a proper creditor or claimant, and shall not revive or make valid or operate as a recognition of the validity of, or a waiver of any defense or counter claim in respect of any claim against the corporation, its assets, directors, officers or shareholders, which has been barred by any statute of limitations or become invalid by any cause, or in respect of which the corporation, its directors, officers or shareholders, have any defense or counterclaim.

2. *Filing or barring claim.* Any claims which shall have been filed as provided in such notice and which shall be disputed by the corporation may be submitted for determination to the circuit court. Any person whose claim is, at the date of the first publication of such notice, barred by any statute of limitations is not a creditor or claimant entitled to any notice under this section. The claim of any such person and all other claims which are not timely filed as provided in such notice except claims which are the subject of litigation on the date of the first publication of such notice, and all claims which are so filed but are disallowed by the court, shall be forever barred as against the corporation, its assets, directors, officers and shareholders, except to such extent, if any, as the court may allow them against any remaining assets of the corporation in the case of a creditor who shows satisfactory reason for his failure to file his claim as so provided. Any claim not so barred may be reviewed by the court to determine the amount and form of security sufficient to compensate claimants.

3. *Claims by Government.* Notwithstanding this section, tax claims and other claims by the Government shall not be required to be filed under those sections, and such claims shall not be barred because not so filed, and distribution of the assets of the corporation, or any part thereof, may be deferred until determination of any such claims.

*Prior legislation:* 1976 Liberian Code of Laws Revised, Chapter 11, §11.5, amended effective June 19, 2002.

## **CHAPTER 12.**

# **FOREIGN CORPORATIONS**

- §12.1. Authorization of foreign corporations.
- §12.2. Application to existing authorized foreign corporations.
- §12.3. Application for authority to do business.
- §12.4. Filing of application for authority to do business.
- §12.5. Amendment of authority to do business.
- §12.6. Termination of authority of foreign corporation.
- §12.7. Revocation of authority to do business.
- §12.8. Rights and liabilities of unauthorized foreign corporations doing business.
- §12.9. Actions at special proceedings against foreign corporations.
- §12.10. Record of shareholders.
- §12.11. Liability of foreign corporations for failure to disclose information.
- §12.12. Applicability to foreign corporations of other provisions.

### **§12.1. Authorization of foreign corporations.**

*1. Authorization required.* A foreign corporation shall not do business in Liberia until it has been authorized to do so as provided in this Chapter. A foreign corporation may be authorized to do in Liberia any business which it is authorized to do in the jurisdiction of its incorporation, and which may be done in Liberia by a domestic corporation.

*2. Activities which do not constitute doing business.* Without excluding other activities which may not constitute doing business in Liberia, a foreign corporation shall not be considered to be doing business in Liberia, for the purposes of this Act, by reason of carrying on in Liberia any one or more of the following activities:

- (a) Maintaining or defending any action or proceeding, or effecting settlement thereof or the settlement of claims or disputes;
- (b) Holding meetings of its directors or shareholders;
- (c) Maintaining bank accounts;
- (d) Maintaining facilities or agencies only for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities;
- (e) For a foreign maritime trust or foreign maritime corporation to maintain a registered

agent and registered address or carry on activities authorized by section 13.2.

*Prior legislation:* L. 1966-67, An act to amend the Associations Law to require all foreign corporations desiring to engage in business in Liberia to register (4:60).

### **§12.2. Application to existing authorized foreign corporations.**

Every foreign corporation which on the effective date of this Title is authorized to do business in Liberia shall continue to have such authority. Such foreign corporation, its shareholders, directors and officers shall have the same rights, franchises and privileges and shall be subject to the same limitations, restrictions, liabilities and penalties as a foreign corporation authorized under this Act, its shareholders, directors and officers respectively. Reference in this Act to an application for authority shall, unless the context otherwise requires, include the statement and designation and any amendment thereof required to be filed with the Minister of Foreign Affairs under prior statutes to obtain authority to do business.

### **§12.3. Application for authority to do business.**

*I. Contents.* A foreign corporation, in order to procure authority to transact business in Liberia, shall make application to the Minister of Foreign Affairs. The application shall be signed and verified by an officer or attorney-in-fact for the corporation and shall set forth:

- (a) The name of the foreign corporation;
- (b) The jurisdiction and date of its incorporation;
- (c) The address of the principal office of the corporation in the state or country under the laws of which it is incorporated;
- (d) A statement of the business which it proposes to do in Liberia and a statement that it is authorized to do that business in the jurisdiction of its incorporation;
- (e) The city or town and the county within Liberia in which its office is to be located;
- (f) The name and address within Liberia of the registered agent and a statement that the registered agent is to be its agent upon whom process against it may be served;
- (g) A designation of the Minister of Foreign Affairs as its agent upon whom process against it may be served under the circumstances stated in section 3.2 and the post office address within or without Liberia to which the Minister of Foreign Affairs shall mail a copy of any process against it served upon him;
- (h) A statement that the foreign corporation has not since its incorporation or since the date its authority to do business in Liberia was last surrendered, engaged in any activity constituting the doing of business therein contrary to law.

2. *Certificate of incorporation.* Attached to the application for authority shall be a certificate by an authorized officer of the jurisdiction of its incorporation that the foreign corporation is an existing corporation. If such certificate is in a foreign language, a translation thereof under oath of the translator shall be attached thereto.

*Prior legislation:* L. 1966-67, An act to amend the Associations Law to require all foreign corporations desiring to engage in business in Liberia to register (4:60, 61).

#### **§12.4. Filing of application for authority to do business.**

The application of a foreign corporation for authority to do business together with a copy of its articles of incorporation duly authenticated by the proper officer of the jurisdiction under the laws of which it is incorporated, together with a translation of such articles and authentication under oath of the translator, shall be filed with the Minister of Foreign Affairs in accordance with the provisions of section 1.4 and shall thereupon be effective as an authorization to the foreign corporation to do business in Liberia.

*Prior legislation:* L. 1966-67, An act to amend the Associations Law to require all foreign corporations desiring to engage in business in Liberia to register (4:60, 61).

#### **§12.5. Amendment of authority to do business.**

1. *Requirement stated.* A foreign corporation authorized to do business in Liberia may have its authority amended to effect any of the following changes:

- (a) To change its corporate name if such change has been effected under the laws of the jurisdiction of its incorporation;
- (b) To enlarge, limit or otherwise change the business which it proposes to do in Liberia;
- (c) To change the location of its office in Liberia;
- (d) To specify or change the post office address to which the Minister of Foreign Affairs shall mail a copy of any process against it served upon him;
- (e) To make, revoke or change the designation of a registered agent or to specify or change his address.

Every foreign corporation authorized to do business in Liberia which shall amend its articles of incorporation or shall be a party to a merger or consolidation shall, within thirty days after the amendment or merger or consolidation becomes effective, file with the Minister of Foreign Affairs a copy of the amendment or a copy of the articles of merger or consolidation, duly certified by the proper officer of the jurisdiction in which the corporation was incorporated or under the laws of which the merger or consolidation was effected, together with a translation of the amendment or articles under oath of the translator.

2. *Procedure.* An application to have its authority to do business amended shall be made to the

Minister of Foreign Affairs. The requirements in respect to the form and contents of such application, the manner of its execution, and the filing of duplicate originals thereof with the Minister of Foreign Affairs shall be the same as in the case of an original application for authority to do business.

**§12.6. Termination of authority of foreign corporation.**

1. *Surrender of authority.* A foreign corporation authorized to transact business in Liberia may withdraw from Liberia upon filing with the Minister of Foreign Affairs an application for withdrawal, which shall set forth:

- (a) The name of the corporation and the jurisdiction in which it is incorporated;
- (b) The date it was authorized to do business in Liberia;
- (c) That the corporation surrenders its authority to do business in Liberia;
- (d) That the corporation revokes the authority of its registered agent in Liberia to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in Liberia during the time the corporation was authorized to do business in Liberia may thereafter be made on such corporation by service thereof on the Minister of Foreign Affairs;
- (e) A post office address to which the Minister of Foreign Affairs may mail a copy of any process against the corporation that may be served on him.

The application for withdrawal shall be made on forms prescribed and furnished by the Minister of Foreign Affairs and shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing the application, or if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him. The application for withdrawal shall be filed with the Minister of Foreign Affairs in accordance with the provisions of section 1.4. Upon such filing the authorization of the corporation to do business in Liberia is terminated.

2. *Termination of existence in foreign jurisdiction.* When an authorized foreign corporation is dissolved or its authority or existence is otherwise terminated or cancelled in the jurisdiction of its incorporation or when such foreign corporation is merged into or consolidated with another foreign corporation, a certificate of the official in charge of corporate records in the jurisdiction of incorporation of such foreign corporation, which certificate attests to the occurrence of any such event, or a certified copy of an order or decree of a court of such jurisdiction directing the dissolution of such foreign corporation or the termination of its existence shall be delivered to the Minister of Foreign Affairs in Liberia, who shall file such document in accordance with section 1.4. The authority of the corporation to transact business in Liberia shall thereupon cease. Service of process in any action, suit or proceeding based upon any cause of action which arose in Liberia during the time the corporation was authorized to transact business in Liberia may thereafter be made on such corporation by service on the Minister of Foreign Affairs.



**§12.7. Revocation of authority to do business.**

The authority of a foreign corporation to do business in Liberia may be revoked by the Minister of Foreign Affairs on the same grounds and in the same manner as provided in section 11.3 with respect to revocation of articles of incorporation.

**§12.8. Rights and liabilities of unauthorized foreign corporation doing business.**

1. *Actions or special proceedings by corporation.* A foreign corporation doing business in Liberia without authority shall not maintain any action or special proceeding in Liberia unless and until such corporation has been authorized to do business in Liberia and it has paid to the Government all fees, penalties and taxes for the years or parts thereof during which it did business in Liberia without authority. This prohibition shall apply to any successor in interest of such foreign corporation.

2. *Validity of contracts or acts by unauthorized corporation; defending action.* The failure of a foreign corporation to obtain authority to do business in Liberia shall not impair the validity of any contract or act of the foreign corporation or the right of any other party to the contract to maintain any action or special proceeding thereon, and shall not prevent the foreign corporation from defending any action or special proceeding in Liberia.

**§12.9. Actions or special proceedings against foreign corporations.**

1. *By resident of Liberia or domestic corporation.* Subject to the limitations with regard to personal jurisdiction contained in sections 3.2 or 3.3 of the Civil Procedure Law, an action or special proceeding against a foreign corporation may be maintained by a resident of Liberia or by a domestic corporation of any type or kind.

2. *By another foreign corporation or nonresident.* Except as otherwise provided in this Chapter, an action or special proceeding against a foreign corporation may be maintained in Liberia by another foreign corporation of any type or kind or by a nonresident in the following cases only:

- (a) Where the action is brought to recover damages for the breach of a contract made or to be performed within Liberia, or relating to property situated within Liberia at the time of the making of the contract;
- (b) Where the cause of action arose within Liberia, except where the object of the action or special proceeding is to affect the title of real property situated outside Liberia;
- (c) Where the subject matter of the litigation is situated within Liberia;
- (d) Where the action or special proceeding is based on a liability for acts done within Liberia by a foreign corporation;
- (e) Where the defendant is a foreign corporation doing business in Liberia, subject to the provisions of paragraph 3.

3. *Dismissal for inconvenience to parties.* Any action upon a cause of action not arising out of business transacted or activities performed within Liberia brought against a foreign corporation by a nonresident of Liberia or a foreign corporation may in the discretion of the Liberian court be dismissed if it appears that the convenience of the parties would be better served by an action brought in some other jurisdiction.

#### **§12.10. Record of shareholders.**

Any resident of Liberia who shall have been a shareholder of record of an authorized foreign corporation for at least six months preceding his demand, upon at least ten days' written demand may require such foreign corporation to produce a record of its registered shareholders containing the names and addresses of such shareholders, the number and class of shares held by each and the date when they respectively became the owners of record thereof, and, if such corporation issues bearer shares, a record of all certificates issued in bearer form, including the number, class and dates of issuance of such certificates. The shareholder requiring production of such records shall have the right to examine in person or by agent or attorney at the office of the foreign corporation in Liberia or at such other place in Liberia as may be designated by the foreign corporation, the record of shareholders or an exact copy thereof certified as correct by the corporate officer or agent for keeping or producing such record, and to make extracts therefrom. Any inspection authorized by this section may be denied to such shareholder or other person upon his refusal to furnish to the corporation an affidavit that such inspection is not desired for a purpose which is in the interest of a business or object other than the business of the foreign corporation and that such shareholder or other person has not within five years sold or offered for sale any list of shareholders of any domestic or foreign corporation or aided or abetted any person in procuring any such record of shareholders for any such purpose.

#### **§12.11. Liability of foreign corporations for failure to disclose information.**

A foreign corporation doing business in Liberia shall, in the same manner as a domestic corporation, disclose to its shareholders of record who are residents of Liberia the information required under paragraph 3 of section 5.10 (Share dividends) or paragraph 4 of section 5.12 (Reacquired shares) or paragraph 3 of section 5.13 (Reduction of stated capital by action of the board).

#### **§12.12. Applicability to foreign corporations of other provisions.**

In addition to Chapter 1 (General provisions), Chapter 3 (Service of process), and the other sections of Chapter 12, the following provisions to the extent provided therein, shall apply to a foreign corporation doing business in Liberia, its directors, officers and shareholders:

- (a) Section 7.16 (Shareholders' derivative actions);
- (b) Section 10.5 (Merger or consolidation of domestic and foreign corporations);
- (c) Section 10.8 (Procedure to enforce shareholder's right to receive payment for shares).

## CHAPTER 13.

# FOREIGN MARITIME ENTITIES

- §13.1. Method of registration.
- §13.2. Powers granted on registration.
- §13.3. Subsequent change of business address or address of lawful fiduciary or legal representative; amendment of document upon which existence is based.
- §13.4. Revocation of registration.
- §13.5. Fees.
- §13.6. Termination of registration of foreign maritime entity.
- §13.7. Revocation of authority to do business.
- §13.8. Actions or special proceedings against foreign maritime entities.

### **§13.1. Method of registration.**

1. *Eligibility.* A foreign entity whose indenture or instrument of trust, charter or articles of incorporation, agreement of partnership or other document recognized by the foreign State of its creation as the basis of its existence, which document directly or by force of law of the State of creation comprehends the power to own or operate vessels, and which confers or recognizes the capacity under the law of the State of creation to sue and be sued in the name of the entity or its lawful fiduciary or legal representative, may apply to the Registrar or the Deputy Registrar to be registered as a foreign maritime entity. The burden of establishing the capacity to sue and be sued shall be upon the applicant for such registration.

2. *Form of Application.* The application shall be executed by an authorized signatory of the entity or by an attorney-in-fact or in law, so authorized. The application shall be dated and shall state the following:

- (a) The name of the entity;
- (b) The legal character or nature of the entity;
- (c) The jurisdiction and date of its creation;
- (d) Whether the entity has the power to own or operate vessels;
- (e) Whether the entity has the capacity to sue and be sued in its own name or, if not, in the name of its lawful fiduciary or legal representative;

- (f) The address of the principal place of business of the entity and, if such place is not in the jurisdiction of the creation of the entity, either the address of its place of business or the name and address of its lawful fiduciary or legal representative within the jurisdiction of the creation of the entity;
- (g) The full names and addresses of the persons currently vested under law with management of the entity;
- (h) The name and address within Liberia of the registered agent designated in accordance with the requirement of section 3.1.1 and a statement that the registered agent is to be its agent upon whom process against it may be served; and
- (j) The title of the person authorized to execute the document and where he is not an officer of the corporation the basis of his authority to so execute.

3. *Certified copy of document; certification of legal existence.* To each application shall be attached a full copy of the indenture or instrument of trust or charter or articles of incorporation or agreement of partnership or other documents upon which the existence of the entity is based, and, if such copy is in a foreign language, a translation thereof into English certified by a translator. Each such copy shall be certified by an authorized officer of government or, if government certification cannot be obtained, by a lawyer admitted to practice in the jurisdiction of creation of the entity, stating that the entity is in existence. If such certificate is in a foreign language, a translation thereof in English certified by a translator shall be attached thereto. Each application, with attachments, shall be filed with the Registrar or the Deputy Registrar in accordance with the provisions of section 1.4, and the applicant is registered as a foreign maritime entity as of the filing date stated thereon.

*Prior legislation:* L. 1972-73, An act to amend the Associations Law with respect to foreign maritime trusts and Corporations (4:49). Amended eff. August 31, 1989; 1976 Liberian Code of Laws Revised, Chapter 13, §13.1, amended effective June 19, 2002.

### **§13.2. Powers granted on registration.**

A registered foreign maritime entity shall have the following powers:

- (a) To own and operate vessels registered under the Laws of the Republic of Liberia provided all requirements of the Maritime Law are met;
- (b) To do all things necessary to the conduct of the business of ownership and operation of Liberian-flag vessels and, for that purpose, to have one or more offices in Liberia and to hold, purchase, lease, mortgage and convey real and personal property, subject to the organic law of the Republic of Liberia.

*Prior legislation:* L. 1972-73, An act to amend the Associations Law with respect to foreign maritime trusts and corporations (4:49). Amended eff. August 31, 1989.

**§13.3. Subsequent change of business address of lawful fiduciary or legal representative; amendment of document upon which existence is based.**

1. *Change of address.* Whenever a change occurs in the address or addresses stated under section 13.1.2(f) written notice of such change, stating the new information, shall be filed with the registered agent named under section 13.1.2(h).

2. *Amendment of document.* Whenever the indenture or instrument of trust or charter or articles of incorporation or agreement of partnership or other document upon which the existence of the entity is based is amended, a duly certified copy of such amendment shall be filed with the Registrar or the Deputy Registrar. If such amendment is in a foreign language, a translation thereof into English certified by a translator shall be attached.

*Prior legislation:* L. 1972-73, An act to amend the Associations Law with respect to foreign maritime trusts and corporations (4:49). Amended eff. August 31, 1989; 1976 Liberian Code of Laws Revised, Chapter 13, §13.3, amended effective June 19, 2002.

**§13.4. Revocation of registration.**

The registration of a foreign maritime entity may be revoked by the Registrar or the Deputy Registrar on the same grounds and in the same manner provided in section 11.3 with respect to dissolution of a corporation for failure to pay the annual registration fee or to maintain a registered agent.

*Prior legislation.* August 31, 1989; 1976 Liberian Code of Laws Revised, Chapter 13, §13.4, amended effective June 19, 2002.

**§13.5. Fees.**

The following fees shall be paid to the Minister of Finance by a foreign maritime entity:

- (a) Upon application for registration, US\$500;
- (b) An annual registration fee of US\$200.

*Prior legislation:* L. 1972-73, An act to amend the Associations Law with respect to foreign maritime trusts and corporations (4:49). Amended eff. August 31, 1989; 1976 Liberian Code of Laws Revised, Chapter 13, §13.5, amended effective June 19, 2002.

**§13.6. Termination of registration of foreign maritime entity.**

1. *Application to terminate.* A foreign maritime entity registered under this Chapter in Liberia may terminate that registration by filing with the Registrar or the Deputy Registrar an application for termination, which shall set forth:

- (a) The name of the foreign maritime entity and the jurisdiction in which it is created;

- (b) The date the foreign maritime entity was registered in Liberia;
- (c) That the foreign maritime entity applies to terminate its registration in Liberia;
- (d) That the foreign maritime entity revokes the authority of its registered agent in Liberia to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in Liberia during the time the entity was authorized to do business in Liberia may thereafter be made on such entity by service thereof on the Minister of Foreign Affairs;
- (e) The address of the foreign maritime entity's place of business or the name and address of its lawful fiduciary or legal representative within the jurisdiction of the creation of the foreign maritime entity to which the Minister may mail a copy of any process against the foreign maritime entity that may be served on him.

The application for termination shall be made on forms furnished by the Registrar or the Deputy Registrar and shall be executed in accordance with section 13.1 or if the foreign maritime entity is in the hands of a receiver or trustee, shall be executed on behalf of the foreign maritime entity by such receiver or trustee and verified by him. The application for termination shall be filed with the Registrar or the Deputy Registrar in accordance with the provisions of section 1.4. Upon such filing the registration of the foreign maritime entity in Liberia is terminated.

2. *Termination of existence in foreign jurisdiction.* When a registered foreign maritime entity is dissolved or its authority or existence is otherwise terminated or cancelled in the jurisdiction of its creation or when such foreign maritime entity is merged into or consolidated with another foreign entity, a certificate of the official in charge of the records relevant to the entity in the jurisdiction of creation of such foreign entity, which certificate attests to the occurrence of any such event, or a certified copy of an order or decree of a court of such jurisdiction directing the dissolution of such foreign entity or the termination of its existence shall be delivered to the Registrar or the Deputy Registrar who shall file such document in accordance with section 1.4. The registration of the foreign maritime entity in Liberia shall thereupon cease. Service of process in any action, suit or proceeding based upon any cause of action which arose during the time the foreign maritime entity was registered in Liberia may thereafter be made on such corporation by service on the Minister of Foreign Affairs.

*Prior legislation:* August 31, 1989; 1976 Liberian Code of Laws Revised, Chapter 13, §13.6, amended effective June 19, 2002.

### **§13.7. Revocation of authority to do business.**

The registration of a foreign maritime entity in Liberia may be revoked by the Minister of Foreign Affairs on the same grounds and in the same manner as provided in section 11.3 with respect to revocation of articles of incorporation.

*Prior legislation:* 1976 Liberian Code of Laws Revised, Chapter 13, §13.7, amended effective June 19, 2002.

**§13.8. Actions or special proceedings against foreign maritime entities.**

1. *By resident of Liberia or domestic corporation.* Subject to the limitations with regard to personal jurisdiction contained in sections 3.2 or 3.3 of the Civil Procedure Law, an action or special proceeding against a foreign maritime entity may be maintained by a resident of Liberia or by a domestic corporation of any type or kind.

2. *By another foreign corporation.* Except as otherwise provided in this Chapter, an action or special proceeding against a foreign maritime entity may be maintained in Liberia by another foreign entity of any type or kind in the following cases only:

- (a) Where the action is brought to recover damages for the breach of a contract made or to be performed within Liberia, or relating to property situated within Liberia at the time of the making of the contract;
- (b) Where the cause of action arose within Liberia, except where the object of the action or special proceeding is to affect the title of real property situated outside Liberia;
- (c) Where the subject matter of the litigation is situated within Liberia;
- (d) Where the action or special proceeding is based on a liability for acts done within Liberia by a foreign maritime entity;
- (e) Where the defendant is a foreign maritime entity doing business in Liberia, subject to the provisions of paragraph 3.

3. *Dismissal for inconvenience to parties.* Any action upon a cause of action not arising out of business transacted or activities performed within Liberia brought against a foreign maritime entity by a foreign entity may in the discretion of the Liberian court be dismissed if it appears that the convenience of the parties would be better served by an action brought in some other jurisdiction.

*Effective:* June 19, 2002





**CHAPTER 14.**

**LIMITED LIABILITY COMPANIES**

**SUBCHAPTER I.**

**GENERAL PROVISIONS**

- §14.1.1. Definitions.
- §14.1.2. Name set forth in certificate.
- §14.1.3. Reservation of name.
- §14.1.4. Registered agent and service of process.
- §14.1.5. Nature of business permitted; powers.
- §14.1.6. Business transactions of member or manager with the limited liability company.
- §14.1.7. Indemnification.

**§14.1.1. Definitions.**

As used in this Chapter unless the context otherwise requires:

- (a) “***Bankruptcy***” means an event that causes a person to cease to be a member as provided in section 14.3.4 of this Chapter;
- (b) “***Certificate of formation***” means the certificate referred to in section 14.2.1 of this Chapter and the certificate as amended;
- (c) “***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;
- (d) “***Foreign limited liability company***” means a limited liability company formed under the laws of another jurisdiction and denominated as such under the laws of such other jurisdiction and ‘authorized’ when used with respect to a foreign limited liability company means having authority to do business in Liberia under Chapter 12 of Part I of this Title, as applied to a foreign limited liability company;
- (e) “***Limited liability company***” and “***domestic limited liability company***” means a limited liability company formed under the laws of the Republic of Liberia and having one or more members;

- (f) “**Limited liability company agreement**” means a written agreement of the members as to the affairs of a limited liability company and the conduct of its business. A limited liability company agreement or another written agreement or writing:
- (i) 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:
    - (aa) 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
    - (bb) 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 requests (orally, in writing or by other action such as payment for a limited liability company interest) that the records of the limited liability company reflect such admission or assignment; and
  - (ii) 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 subparagraph (i) of this subdivision, or by reason of its having been signed by a representative as provided in this Chapter;
  - (iii) May be entered into either before, after, or at the time of the filing of the certificate of formation and, whether entered into before, after, or at the time of such filing, may be made effective as of the formation of the limited liability company or at such other time or date as provided in the limited liability company agreement;
- (g) “**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;
- (h) “**Liquidating trustee**” means a person carrying out the winding up of a limited liability company;
- (j) “**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;
- (k) “**Member**” means a person who has been admitted to a limited liability company as a member as provided in section 14.3.1 of this Chapter;

- (l) “**Nonresident limited liability company**” means a domestic limited liability company not doing business in Liberia;
- (m) “**Person**” means a natural person, partnership (whether general or limited), limited liability company, trust, estate, association, corporation, foundation, registered business company, custodian, nominee or any other individual or entity in its own or any representative capacity;
- (n) “**Resident limited liability company**” means a domestic limited liability company doing business in Liberia.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.1.2. Name set forth in certificate.**

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

- (a) Shall contain the words “Limited Liability Company” or the abbreviation “L.L.C.” or the designation “LLC”;
- (b) May contain the name of a member or manager;
- (c) Must be such as to distinguish it upon the records in the Office of the Registrar or the Deputy Registrar from the name of any corporation, or foreign maritime entity, limited partnership or partnership, business trust, limited liability company, foundation or registered business company reserved, registered, formed or organized under the laws of the Republic of Liberia or qualified to do business or registered as a foreign maritime entity in the Republic of Liberia: Provided, however, that a 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 or the Deputy Registrar from the name of any corporation, foreign maritime entity, limited partnership or partnership, business trust or limited liability company, foundation or registered business company reserved, registered, formed or organized under the laws of the Republic of Liberia with the written consent of the other corporation, limited partnership, business trust, limited liability company, foundation or registered business company, which written consent shall be filed with the Registrar or the Deputy Registrar;
- (d) May contain the following words: “Company”, “Association”, “Club”, “Foundation”, “Fund”, “Institute”, “Society”, “Union”, “Syndicate”, “Limited” or “Trust” (or abbreviations of like import),

and sections 4.2 and 4.3 of Chapter 1 of Part I of this Title shall apply *mutatis mutandis*.

*Effective:* November 26, 1999; amended effective June 19, 2002.

### **§14.1.3. Reservation of name.**

1. *Right to reserve* The exclusive right to the use of a name may be reserved by:
  - (a) Any person intending to organize a limited liability company under this Chapter and to adopt that name;
  - (b) Any limited liability company which proposes to change its name;
  - (c) Any entity proposing to re-domicile or reregister as a limited liability company.

2. *Method of making reservation.* The reservation of a specified name shall be made by filing with the Registrar or the Deputy Registrar an application, executed by the applicant, together with a duplicate copy specifying the name to be reserved and the name and address of the applicant. If the Registrar or the Deputy Registrar finds that the name is available for use by a domestic limited liability company, he shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having so reserved a name, the same applicant may again reserve the same name for successive 120 day periods. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the Office of the Registrar or the Deputy Registrar a notice of the transfer, executed by the applicant for whom the name was reserved, together with a duplicate copy, specifying the name to be transferred and the name and address of the transferee. The reservation of a specified name may be cancelled by filing with Registrar or the Deputy Registrar a notice of cancellation, executed by the applicant or transferee, together with a duplicate copy specifying the name reservation to be cancelled and the name and address of the applicant or transferee. Any duplicate copy filed with the Registrar or the Deputy Registrar as required by this paragraph shall be returned by the Registrar or the Deputy Registrar to the person who filed it or his representative with a notation thereon of the action taken with respect to the original copy thereof by the Registrar or the Deputy Registrar.

*Effective:* November 26, 1999; amended effective June 19, 2002.

### **§14.1.4. Registered agent and service of process**

The provisions of Chapter 3 of Part I of this Title shall apply to a limited liability company as they apply to a corporation.

*Effective:* November 26, 1999; amended effective June 19, 2002.

### **§14.1.5. Nature of business permitted; powers.**

1. *Lawful business.* A limited liability company may carry on any lawful business, purpose or activity, whether or not for profit, with the exception of the business of granting policies of insurance, or assuming insurance risks or banking.
2. *General powers.* A limited liability company shall possess and may exercise all the powers and privileges granted by this Chapter 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.

*Effective:* November 26, 1999; amended effective June 19, 2002.

**§14.1.6. 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.

*Effective:* November 26, 1999; amended effective June 19, 2002.

**§14.1.7. 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.

*Effective:* November 26, 1999; amended effective June 19, 2002.



## CHAPTER 14.

### SUBCHAPTER II.

#### FORMATION, AMENDMENT, MERGER CONSOLIDATION, RE-DOMICILIATION, DE- REGISTRATION AND CANCELLATION.

- §14.2.1. Certificate of formation.
- §14.2.2. Amendment to certificate of formation.
- §14.2.3. Cancellation of certificate.
- §14.2.4. Execution.
- §14.2.5. Execution, amendment or cancellation by judicial order.
- §14.2.6. Effect of filing.
- §14.2.7. Notice.
- §14.2.8. Restated certificate.
- §14.2.9. Merger and consolidation.
- §14.2.10. Effect of merger or consolidation.
- §14.2.11. Merger or consolidation of limited liability company and other associations.
- §14.2.12. Power of limited liability company to re-domicile into Liberia.
- §14.2.13. Power of limited liability company to re-domicile out of Liberia.
- §14.2.14. Reregistration of another entity as a limited liability company.
- §14.2.15. Cancellation and reregistration of limited liability company as another entity.

##### **§14.2.1. Certificate of formation.**

1. *Filing of certificate.* In order to form a limited liability company, one or more persons may execute a certificate of formation. The certificate of formation shall be filed in the Office of the Registrar or the Deputy Registrar 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 14.1.4 of this Chapter;
- (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; and
- (d) Any other matters the members determine to include therein.

2. *Formation.* A limited liability company is formed at the time of the filing of the initial certificate of formation in the Office of the Registrar or the Deputy Registrar 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 Chapter 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 or as otherwise specified in relation to limited liability companies which re-domicile or reregister or de-register and reregister.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.2.2. Amendment to certificate of formation.**

1. *Filing of amendment* A certificate of formation is amended by filing a certificate of amendment thereto in the Office of the Registrar or the Deputy Registrar. The certificate of amendment shall set forth:

- (a) The name of the limited liability company and the date of the original filing of the certificate of formation; and
- (b) The amendment to the certificate of formation.

2. *Duty of manager* 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. *Timing and purpose of amendment.* A certificate of formation may be amended at any time for any other proper purpose.

4. *Effective date.* Unless otherwise provided in this Chapter or unless a later effective date or time (which shall be a date of 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 or the Deputy Registrar.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.2.3. Cancellation of certificate.**

A certificate of formation shall be cancelled upon the dissolution and the completion of winding up of a limited liability company, 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. A certificate of cancellation shall be filed in the Office of the Registrar or the Deputy Registrar to accomplish the cancellation of a certificate of formation upon the dissolution and the completion of winding up of a limited liability company and shall set forth:

- (a) The name of the limited liability company;



- (b) The date of filing of its certificate of formation;
- (c) The reason for filing the certificate of cancellation;
- (d) The future effective date or time (which shall be a date or time certain) of cancellation if it is not to be effective upon the filing of the certificate; and
- (e) Any other information the person filing the certificate of cancellation determines.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.2.4. Execution.**

1. *Application of Chapter 1.* Except where otherwise provided in this Chapter, section 4 of Chapter 1 of Part I of this Title shall apply in respect of any document to be filed with the Registrar or the Deputy Registrar under the provisions of this Chapter.

2. *Power to enter into agreement.* Unless otherwise provided in a limited liability company agreement, any person may 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 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 or the Deputy Registrar, but if in writing, must be retained by the limited liability company.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.2.5. Execution, amendment or cancellation by judicial order.**

1. *Failure properly to execute.* If a person required to execute a certificate required by this Subchapter fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the circuit court 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 or the Deputy Registrar to record an appropriate certificate.

2. *Remedies.* 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 circuit court 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.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.2.6. Effect of filing.**

1. *Effect of filing on existing certificate.* Upon filing of a certificate of amendment (or a judicial decree of amendment), or restated certificate in the Office of the Registrar or the Deputy Registrar, 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, as provided for therein, the certificate of formation is cancelled.

2. *Application of Chapter 1.* The provisions of sections 1.5 to 1.11 of Chapter 1 of Part I of this Title shall apply *mutatis mutandis* to a limited liability company as to a corporation.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.2.7. Notice.**

The fact that a certificate of formation is on file in the Office of the Registrar or the Deputy Registrar 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 Liberia and is notice for all other facts set forth therein which are required to be set forth in a certificate of formation by section 14.2.1.1 of this Chapter.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.2.8. Restated certificate.**

1. *Application for restated certificate* 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 or the Deputy Registrar one or more certificates or other instruments pursuant to any of the sections in this Subchapter by adopting a restated certificate of formation.

2. *Form of application* 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 or the Deputy Registrar, and the future effective date or time (which shall be a date or time certain) of the restated certificate.

3. *Former certificate superseded.* Upon the filing of a restated certificate of formation with the Registrar or the Deputy Registrar, 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.

*Effective:* November 26, 1999; amended effective June 19, 2002.

### **§14.2.9. Merger and consolidation.**

1. *Power to merge or consolidate.* Two or more limited liability companies may merge into a single limited liability company, which may be any one of the constituent limited liability companies, or they may consolidate into a new limited liability company formed by the consolidation, pursuant to a plan of merger or consolidation, as the case may be, complying and approved in accordance with this section.

2. *Plan of merger or consolidation.* The members of each limited liability company proposing to participate in a merger or consolidation under this section shall approve a plan of merger or consolidation setting forth:

- (a) The name of each constituent limited liability company, and if the name of any of them has been changed, the name under which it was formed; and the name of the surviving limited liability company, or the name, or the method of determining it, of the consolidated limited liability company;
- (b) As to each constituent limited liability company, the designation and number of members, specifying the entitlement to vote;
- (c) The terms and conditions of the proposed merger or consolidation, including the manner and basis of converting the contributions, rights and obligations of each member of each constituent limited liability company into member interests in the surviving or consolidated limited liability company, or the cash or other consideration to be paid or delivered in exchange for member interests in each constituent limited liability company, or combination thereof;
- (d) In case of merger, a statement of any amendment in the certificate of formation and limited liability company agreement of the surviving limited liability company to be effected by such merger; in case of consolidation, all statements required to be included in a certificate of formation and limited liability company agreement for a limited liability company formed under this Chapter, except statements as to facts not available at the time the plan of consolidation is approved by the members;
- (e) Such other provisions with respect to the proposed merger or consolidation as the members consider necessary or desirable.

3. *Authorization by members.* The members of each constituent limited liability company shall approve such plan of merger or consolidation in accordance with the terms of the relevant limited liability company agreement.

4. *Certificate of merger or consolidation.* After approval of the plan of merger or consolidation by the members, the certificate of merger or consolidation shall be executed in duplicate by each limited liability company and shall set forth:

- (a) The plan of merger or consolidation, and, in case of consolidation, any statement required to be included in a certificate of formation for a limited liability company

formed under this Chapter but which was omitted under paragraph 2(d);

- (b) The date when the certificates of formation of each constituent limited liability company were filed with the Registrar or the Deputy Registrar;
- (c) The manner in which the merger or consolidation was authorized with respect to each constituent limited liability company.

5. *Filing of certificate of merger or consolidation.* The surviving or consolidated limited liability company shall deliver duplicate originals of a certificate of merger or consolidation to the Registrar or the Deputy Registrar and the certificate shall be filed in accordance with section 14.2.1 and the provisions of section 1.4 of Chapter 1 of Part I of this Title shall apply with the variation that execution shall be by any manager or member or other person performing in relation to the limited liability company the function of an officer and duly authorized for this purpose.

6. *Certificate of merger or consolidation.* The certificate of merger or consolidation shall state:

- (a) The name of each of the constituent limited liability companies;
- (b) That a plan of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent limited liability companies in accordance with this section;
- (c) The name of the surviving or consolidated limited liability company;
- (d) In the case of a merger, such amendments or changes in the certificate of formation of the surviving limited liability company as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of formation of the surviving limited liability company shall be the certificate of the limited liability company;
- (e) In the case of a consolidation, that the certificate of formation of the consolidated limited liability company shall be as set forth in an attachment to the certificate of merger or consolidation;
- (f) That the executed plan of consolidation or merger is on file at an office of the surviving limited liability company; and
- (g) That a copy of the plan of consolidation or merger will be furnished by the surviving limited liability company on request and without cost, to any member of any constituent limited liability company.

7. *Plan may be conditional.* Any of the terms of the plan of merger or consolidation may be made dependent upon facts ascertainable outside of such plan, provided that the manner in which such facts shall operate upon the terms of the plan is clearly and expressly set forth in the plan of merger or consolidation. The term “facts,” as used in the preceding sentence, includes, but is not

limited to, the occurrence of any event, including a determination or action by any person or body, including the limited liability company.

8. *Plan of merger or consolidation may be terminated.* Any plan of merger or consolidation may contain a provision that at any time prior to the time that the certificate of merger or consolidation filed with the Registrar or the Deputy Registrar become effective in accordance with section 1.4 of Chapter 1 of Part I of this Title, the plan may be terminated by the members of any constituent limited liability company notwithstanding approval of the plan by the members of all or any of the constituent limited liability companies and in the event the plan of merger or consolidation is terminated after the filing of the certificate of merger or consolidation with the Registrar or the Deputy Registrar but before the plan has become effective, a certificate of termination of merger or consolidation shall be filed in accordance with section 1.4 of Chapter 1 of Part I of this Title.

9. *Plan of merger or consolidation may be amended.* Any plan of merger or consolidation may contain a provision that the members of the constituent limited liability company may amend the plan at any time prior to the time that the certificate of merger or consolidation filed with the Registrar or the Deputy Registrar becomes effective in accordance with section 1.4 of Chapter 1 of Part I of this Title, provided that an amendment made subsequent to the adoption of the plan by the members of any constituent limited liability company shall not alter or change:

- (a) The membership interests to be received in exchange for or on conversion of all or any of the membership interests of such constituent limited liability company;
- (b) Any term of the certificate of formation of the surviving limited liability company to be effected by the merger or consolidation; or
- (c) Any of the terms and conditions of the plan if such alteration or change would adversely affect the individual members of such constituent limited liability company,

and in the event the plan of merger or consolidation is amended after the filing of the certificate of merger or consolidation with the Registrar or the Deputy Registrar but before the plan has become effective, a certificate of amendment of merger or consolidation shall be filed and the provisions of section 1.4 of Chapter 1 of Part I of this Title shall apply with the variation that execution shall be by any manager or member or other person performing in relation to the limited liability company the function of an officer and duly authorized for this purpose.

10. *Application of section 14.2.10.* The provisions of section 14.2.10 shall apply.

11. *Liability of member of former limited liability company.* The personal liability, if any, of any member of a constituent limited liability company existing at the time of such merger or consolidation shall not thereby be extinguished, shall remain personal to such member and shall not become the liability of any subsequent transferee of any membership in such surviving or consolidated limited liability company or of any other member of such surviving or consolidated limited liability company.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.2.10. Effect of merger or consolidation.**

1. *When effective.* Upon the filing of the certificate of merger or consolidation with the Registrar or the Deputy Registrar or on such date subsequent thereto, not to exceed ninety days, as shall be set forth in such certificate, the merger or consolidation shall be effective.
2. *Effects stated.* When such merger or consolidation has been effected:
  - (a) Such surviving or consolidated limited liability company shall thereafter consistently with its certificate of formation and limited liability company agreement as altered or established by the merger or consolidation, possess all the rights, privileges, immunities, powers and purposes of each of the constituent limited liability companies;
  - (b) All the property, real and personal, including subscriptions to shares, causes of action and every other asset of each of the limited liability companies, shall vest in such surviving or consolidated limited liability company without further act or deed;
  - (c) The surviving or consolidated limited liability company shall assume and be liable for all the liabilities, obligations and penalties of each of the constituent limited liability companies. No liability or obligation due or to become due, claim or demand for any cause existing against any such limited liability company, or any member thereof, shall be released or impaired by such merger or consolidation. No action or proceeding, whether civil or criminal, then pending by or against any such constituent limited liability company, or any member thereof, shall abate or be discontinued by such merger or consolidation, but may be enforced, prosecuted, settled or compromised as if such merger or consolidation had not occurred, or such surviving or consolidated limited liability company may be substituted in such action or special proceeding in place of any constituent limited liability company;
  - (d) In the case of a merger, the limited liability company agreement of the surviving limited liability company shall be automatically amended to the extent, if any, that changes in its limited liability company agreement are set forth in the plan of merger; and, in the case of a consolidation, the statements set forth in the certificate of consolidation and which are required or permitted to be set forth in the limited liability company agreement of a limited liability company formed under this Chapter, shall be its limited liability company agreement;
  - (e) Unless otherwise provided in the articles of merger or consolidation, a constituent limited liability company which is not the surviving limited liability company or the consolidated limited liability company, ceases to exist and is dissolved.

*Effective:* June 19, 2002.

#### **§14.2.11. Merger or consolidation of limited liability company and other associations.**

1. *Definitions.* In this section:

“**Association**” includes any association, having legal personality or registered as a legal entity under the laws of Liberia or elsewhere and whether formed by agreement or under statutory authority or otherwise, and includes a corporation, by whatever name described, limited partnership, limited liability company, except a limited liability company to which this Chapter applies, foundation or registered business company; and

“**Shareholder**” includes every member of such an association or holder of a share or person having present or future direct financial or beneficial interest therein.

2. *Power to merge or consolidate.* One or more limited liability companies may merge or consolidate with one or more associations, except an association formed under the laws of a jurisdiction which forbids such merger or consolidation. Such one or more limited liability company or limited liability companies and such one or more associations may merge into a single limited liability company or association, which may be any one of such limited liability companies or associations, or may consolidate into a new limited liability company or association established in Liberia or elsewhere, pursuant to a plan of merger or consolidation, as the case may be, complying with and approved in accordance with this section. The surviving or consolidated entity may be organized for profit or not organized for profit, and if the surviving or consolidated association is a corporation, it may be a corporation authorized to issue shares or a non-share corporation.

3. *Method in respect of constituent limited liability companies.* In the case of a constituent limited liability company the provisions of section 14.2.9 shall apply with the variation that the plan of merger or consolidation of each constituent limited liability company shall state:

- (a) The manner of converting the membership contributions of the constituent limited liability companies and the shares, memberships or financial or beneficial interests in the constituent associations into membership contributions or shares, memberships or financial or beneficial interests of the surviving or consolidated limited liability company or association, as the case may be;
- (b) If any members’ contributions in any constituent limited liability company or shares, memberships or financial or beneficial interests in any constituent association are not to be converted solely into members’ contributions of the surviving or consolidated limited liability company or shares, memberships or financial or beneficial interests in the surviving or consolidated association, the cash or other consideration to be paid or delivered in exchange for members’ contributions and, in the case of a constituent association, in exchange for shares, memberships or financial or beneficial interests in the association, as the case may be.

4. *Additional matters in respect of surviving or consolidated foreign associations.* The plan of merger or consolidation shall set forth such other matters or provisions as shall then be required to be set forth in instruments by which an association is organized in the laws of the jurisdiction which are stated in the plan to be the laws which shall govern a surviving or consolidated association and that can be stated in the case of a merger or consolidation.

5. *Method in respect of constituent associations and surviving or consolidated associations organized in Liberia.* The plan of merger or consolidation required by this section shall be adopted,

approved, certified, executed and acknowledged by each constituent association organized or registered in Liberia and, in the case of a surviving or consolidated association organized or registered in Liberia filed by that association in accordance with the relevant statutory requirements.

6. *Method to be followed by constituent and surviving or consolidated foreign associations.* Each constituent and each surviving or consolidated foreign association shall comply with the applicable laws of the jurisdiction under which it is organized.

7. *Additional filing where surviving or consolidated association governed by laws of another jurisdiction.* If the surviving or consolidated association is to be governed by the laws of any jurisdiction other than Liberia, it shall comply with the provisions of this Title with respect to foreign entities if it is to transact business in Liberia, and in every case it shall file with the Minister of Foreign Affairs:

- (a) An irrevocable notice of consent that it may be served with process in Liberia in any proceeding for the enforcement of any obligation of any limited liability company which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting member of any such limited liability company against the surviving or consolidated association;
- (b) An irrevocable appointment of the Minister of Foreign Affairs as its agent to accept service of process in any such proceeding;
- (c) An undertaking that it will promptly pay to the dissenting member of any limited liability company the amount, if any, to which they shall be entitled under the provisions of this Chapter or the plan of merger; and
- (d) Notice executed in accordance with section 1.4 by an officer of the surviving or consolidated association that the merger or consolidation is effective in the other jurisdiction and specifying the competent authority in that jurisdiction.

8. *Effect.* The effect of a merger or consolidation under this section and having one or more foreign constituent associations shall be the same as in the case of the merger or consolidation of limited liability companies with associations organized or registered in Liberia if the surviving or consolidated limited liability company or association is to be governed by the laws of Liberia. If the surviving or consolidated association is to be governed by the laws of any jurisdiction other than Liberia, the effect of such merger or consolidation shall be the same as in the case of merger or consolidation of limited liability companies with associations organized or registered in Liberia except insofar as the laws of such other jurisdiction provide otherwise.

9. *Effective date.* The effective date of a merger or consolidation in cases where the surviving or consolidated association is to be governed by the laws of any jurisdiction other than Liberia shall be determined by the filing requirements and laws of such other jurisdiction.

10. *Liability of member of former limited liability company.* The personal liability, if any, of any member of a limited liability company existing at the time of such merger or consolidation shall not thereby be extinguished, shall remain personal to such member and shall not become the liability



of any subsequent member or shareholder of any surviving or consolidated limited liability company or association or of any other member or shareholder of such surviving or consolidated limited liability company or association.

*Effective:* June 19, 2002.

**§14.2.12. Power of limited liability company to re-domicile into Liberia.**

1. *Application of section.* This section shall apply to a legal entity (in this section referred to as a “limited liability company”) established outside Liberia which re-domiciles into Liberia as a Liberian limited liability company.

2. *Eligibility to apply to establish domicile in Liberia as a Liberian limited liability company.* A limited liability company domiciled outside Liberia may, if permitted to do so by its constitution, apply to establish domicile in Liberia as a Liberian limited liability company.

3. *Filing requirements to establish domicile in Liberia as a Liberian limited liability company.* A limited liability company seeking to establish domicile in Liberia as a Liberian limited liability company shall file with the Registrar or the Deputy Registrar:

(a) A certificate setting out:

- (i) The name of the limited liability company, and, if the name has been changed, the name with which the limited liability company was established, and the name, if different, under which re-domiciliation as a Liberian limited liability company is sought;
- (ii) The date of establishment of the limited liability company, and if registered, the date of registration;
- (iii) The jurisdiction of establishment of the limited liability company;
- (iv) The date on which it is proposed to re-domicile as a Liberian limited liability company;
- (v) That the re-domiciliation has been approved in accordance with the relevant law and the constitution of the limited liability company;
- (vi) Confirmation by the members, or the manager where he is so authorized, of the limited liability company that at the date of re-domiciliation as a Liberian limited liability company the limited liability company will have done in the jurisdiction in which it was established everything required by the relevant legislation of that jurisdiction preparatory to re-domiciliation in another jurisdiction and that the limited liability company will cease to be a limited liability company domiciled in that jurisdiction;

(b) A copy of the resolution or other instrument of the limited liability company resolving

to re-domicile as a Liberian limited liability company, approved in the manner prescribed by the constitution of the limited liability company, which shall specify:

- (i) That the limited liability company shall be re-domiciled in Liberia as a Liberian limited liability company;
  - (ii) The proposed name of the Liberian limited liability company if different from the present name of the limited liability company;
  - (iii) Such other provisions with respect to the proposed re-domiciliation as a Liberian limited liability company as the members or manager, as the case may be, consider necessary or desirable but not to include amendments to the limited liability company agreement;
- (c) Where the limited liability company is registered in the jurisdiction in which it is established, a certificate of goodstanding in respect of the limited liability company issued by the competent authority in that jurisdiction or other evidence to the satisfaction of the Registrar that the limited liability company is in compliance with registration requirements of that jurisdiction;
  - (d) Evidence to the satisfaction of the Registrar that no proceedings for insolvency have been commenced against the limited liability company in the jurisdiction in which it is established;
  - (e) A certificate of formation in accordance with section 14.2.1 of this Chapter which is to be the certificate of formation of the limited liability company as a Liberian limited liability company;
  - (f) The name and address of the registered agent in Liberia and the agent's acceptance of the appointment,

and:

- (g) Where in this section there is reference to the jurisdiction in which the limited liability company is established, that reference shall, in respect of a limited liability company domiciled in a jurisdiction other than that in which it is established, be read to include a reference to the jurisdiction of domicile;
- (h) The provisions of sections 1.4.1 to 1.4.5 and 1.4.7 of Chapter 1 of Part I of this Title shall apply, with the variation that execution shall be by a member or manager or other person performing in relation to that limited liability company the function of an officer and duly authorized for this purpose.

4. *Name of limited liability company on re-domiciliation.* The provisions of sections 14.1.2 and 14.1.3 shall apply in respect of the name in which a limited liability company may apply to re-domicile as a Liberian limited liability company.

5. *Re-domiciliation in Liberia.* The Registrar or the Deputy Registrar shall, if he is satisfied that the requirements of this Chapter in respect of re-domiciliation as a Liberian limited liability company have been met:

- (a) Certify that the limited liability company has established domicile in Liberia and has existence as the Liberian limited liability company specified in the documents supplied in compliance with paragraph 3, in accordance with those documents on the date of the issue of the certificate, or, in case of a certificate to which paragraph 6 applies, on the specified date;
- (b) Retain and record the documents referred to in paragraph 3.

6. *Deferred date of re-domiciliation.* Notwithstanding section 1.4.6(d) of Chapter 1 of Part I of this Title, where, at the time of the making of an application under paragraph 3, the limited liability company applying for re-domiciliation as a Liberian limited liability company has specified a date (in this section referred to as “the specified date”) no later than 12 months after the date of the making of the application as the date of re-domiciliation, the certificate issued by the Registrar or the Deputy Registrar shall show the specified date as the date of re-domiciliation.

7. *Status of a certificate of re-domiciliation.* A certificate given by the Registrar or the Deputy Registrar in accordance with paragraph 5 in respect of any re-domiciled limited liability company shall be:

- (a) Conclusive evidence that all the requirements of this Chapter in respect of that re-domiciliation, and matters precedent and incidental thereto, have been complied with and that the limited liability company is authorized to be so re-domiciled and is re-domiciled under the provisions of this section;
- (b) Valid for a period of 12 months from the date of the issue of the certificate or, in case of a certificate to which paragraph 6 applies, from the specified date, unless endorsed in accordance with paragraph 9.

8. *Obligation to amend the limited liability company agreement of the limited liability company.* If, at the time of the issue by the Registrar or the Deputy Registrar of the certificate of re-domiciliation in accordance with paragraph 5, any provisions of the limited liability company agreement of the limited liability company do not, in any respect, accord with this Chapter:

- (a) The limited liability company agreement shall continue to govern the re-domiciled limited liability company until:
  - (i) A limited liability company agreement complying with this Chapter is in effect;  
or
  - (ii) The expiration of a period of 12 months immediately following the date of the issue of that certificate of re-domiciliation or, in case of a certificate to which paragraph 6 applies, the specified date,

whichever is the sooner;

- (b) Any provisions of the instrument constituting or defining the constitution of the limited liability company that are in any respect in conflict with this Chapter cease to govern the re-domiciled limited liability company when the limited liability company agreement in accordance with this Chapter is in effect;
- (c) The re-domiciled limited liability company shall give effect to a limited liability company agreement as may be necessary to accord with this Chapter within a period of 12 months immediately following the date of the issue of the certificate of re-domiciliation or, in case of a certificate to which paragraph 6 applies, from the specified date.

9. *Endorsement of certificate of re-domiciliation. Where:*

- (a) At the date of the issue of a certificate of re-domiciliation or at any time thereafter within a period of 12 months immediately following the date of the issue of that certificate; or
- (b) In the case of a certificate to which paragraph 6 applies, at the specified date or at any time thereafter within a period of 12 months immediately following that date,

the Registrar or the Deputy Registrar is satisfied that:

- (c) The legal entity has ceased to be a legal entity under the relevant provisions of the law under which it was established; and
- (d) A limited liability company agreement according in all respects with this Chapter and the objects of the limited liability company is in place,

he may, on the application of the re-domiciled limited liability company to which the certificate of re-domiciliation has been issued endorse that certificate to the effect that the re-domiciled limited liability company is from the date of the endorsement to be deemed to be re-domiciled and in existence in Liberia under this Chapter and that shall be the effective date of re-domiciliation and the provisions of section 1.4.6 of Chapter 1 of Part I of this Title shall apply.

10. *Failure to complete re-domiciliation and registration.* If, by a date 12 months immediately following the date of the issue of a certificate of re-domiciliation in accordance with paragraph 5 or, in the case of a certificate to which paragraph 6 applies, following the specified date, the re-domiciled limited liability company has not satisfied the Registrar or the Deputy Registrar that it has ceased to be a limited liability company under the relevant provisions of the law in the jurisdiction in which it was established the Registrar or the Deputy Registrar shall revoke the certificate issued under paragraph 5 and:

- (a) That certificate and any re-domiciliation under this section shall be of no further force or effect; and

- (b) The Registrar or the Deputy Registrar shall strike the re-domiciled limited liability company from the register.

11. *Effect of re-domiciliation.* With effect from the date of the issue of a certificate of re-domiciliation:

- (a) The Liberian limited liability company to which the certificate relates:
  - (i) Is a limited liability company re-domiciled and deemed to be formed in Liberia under this Chapter and having as its existence date the date on which it was established in another jurisdiction; and
  - (ii) Shall be a limited liability company formed in Liberia for the purpose of any other Law;
- (b) The certificate of formation of the limited liability company as filed in accordance with paragraph 3(e) is the certificate of formation of the Liberian limited liability company;
- (c) The property of every description and the business of the limited liability company are vested in the Liberian limited liability company;
- (d) The Liberian limited liability company is liable for all of the claims, debts, liabilities and obligations of the limited liability company;
- (e) No conviction, judgment, ruling, order, debt, liability or obligation due or to become due and no cause existing against the limited liability company or against any member, manager or agent thereof is thereby released or impaired;
- (f) No proceedings whether civil or criminal pending at the time of the issue by the Registrar or the Deputy Registrar of the certificate of re-domiciliation by or against the limited liability company or against any member or manager or agent thereof are thereby abated or discontinued, but the proceedings may be enforced, prosecuted, settled or compromised by or against the Liberian limited liability company or against the member, manager or agent thereof, as the case may be;
- (g) Unless otherwise provided in the resolution of re-domiciliation filed in accordance with paragraph 3, the limited liability company re-domiciling as a Liberian limited liability company shall not be required to wind up its affairs or pay its liabilities and distribute its assets,

and the re-domiciliation shall constitute a continuation of the existence of the re-domiciling limited liability company as the Liberian limited liability company and shall not:

- (h) Constitute a dissolution of the limited liability company;
- (j) Create a new legal entity; or

- (k) Prejudice or affect the continuity of the Liberian limited liability company as a re-domiciled limited liability company.

*Effective:* June 19, 2002.

**§14.2.13. Power of limited liability company to re-domicile out of Liberia.**

1. *Application of section.* This section shall apply to a limited liability company formed or deemed to be formed in Liberia which re-domiciles into another jurisdiction.

2. *Eligibility to apply to establish domicile in another jurisdiction.* A Liberian limited liability company may, if permitted to do so by its constitution, apply to establish domicile outside Liberia in another jurisdiction.

3. *Application to establish domicile in another jurisdiction.* An application by a Liberian limited liability company to establish domicile outside Liberia in another jurisdiction and to cease to be a Liberian limited liability company shall be made to the Registrar or the Deputy Registrar in the form prescribed by him and shall be accompanied by:

- (a) A certificate setting out:
  - (i) The name of the Liberian limited liability company, and, if the name has been changed, the name with which the Liberian limited liability company was established, and the name, if different, under which registration as a re-domiciled limited liability company is sought;
  - (ii) The date of existence of the Liberian limited liability company;
  - (iii) The jurisdiction to which the Liberian limited liability company proposes to re-domicile and the name and address of the competent authority in that jurisdiction;
  - (iv) The date on which the Liberian limited liability company proposes to re-domicile;
  - (v) The address for service of the limited liability company in the jurisdiction of re-domiciliation;
  - (vi) That the proposed re-domiciliation has been approved in accordance with the relevant law and the constitution of the Liberian limited liability company;
  - (vii) Confirmation by the members, or by the manger if he is authorized so to do, of the Liberian limited liability company that at the date of re-domiciliation the Liberian limited liability company will have done everything required by this Chapter preparatory to re-domiciliation in another jurisdiction and that, on re-domiciliation in the other jurisdiction, the Liberian limited liability company will cease to be a limited liability company domiciled in Liberia;
- (b) A copy of the resolution or other instrument of the members of the Liberian limited

liability company resolving to re-domicile, approved in the manner prescribed by the constitution of the Liberian limited liability company, which shall specify:

- (i) That the Liberian limited liability company shall be re-domiciled out of Liberia;
  - (ii) The proposed name of the re-domiciled limited liability company if different from the present name of the Liberian limited liability company;
  - (iii) Such other provisions with respect to the proposed re-domiciliation as the members or manager, as the case may be, consider necessary or desirable;
- (c) A certificate of goodstanding in respect of the Liberian limited liability company issued by the Registrar or the Deputy Registrar;
  - (d) Evidence to the satisfaction of the Registrar or the Deputy Registrar that no proceedings for insolvency have been commenced in Liberia against the Liberian limited liability company;
  - (e) The address of the registered agent in Liberia which shall be retained during the period of one year or such longer period until the Liberian limited liability company has been deemed to be a limited liability company domiciled in the other jurisdiction, and evidence of acceptance of the appointment by the registered agent; and
  - (f) Any amendments to the certificate of formation that are to take effect on the registration of the re-domiciled limited liability company in the other jurisdiction,

and the provisions of sections 1.4.1 to 1.4.5 and 1.4.7 of Chapter 1 of Part I of this Title shall apply, with the variation that execution shall be by a member or manager or other person performing in relation to that limited liability company the function of an officer and duly authorized for this purpose.

4. *Consent to establish domicile in another jurisdiction.* The Registrar or the Deputy Registrar shall, if he is satisfied that the requirements of this Chapter in respect of re-domiciliation to another jurisdiction have been met:

- (a) Certify that the Liberian limited liability company is permitted to establish domicile in the jurisdiction specified in the documents supplied in compliance with paragraph 3, in accordance with those documents, and that it may cease to be registered in Liberia on the date of the issue of the certificate, or, in case of a certificate to which paragraph 5 applies, on the specified date;
- (b) Enter in the index kept for this purpose in respect of a Liberian limited liability company to which a certificate has been issued under this paragraph the fact of the issue of the certificate,

and section 1.4.6 of Chapter 1 of Part I of this Title shall apply.

5. *Deferred date of re-domiciliation.* Notwithstanding section 1.4.6(d) of Chapter 1 of Part I of this Title, where, at the time of making an application under paragraph 3, the Liberian limited liability company applying for re-domiciliation has specified a date (in this section referred to as “the specified date”) no later than 12 months after the date of the making of the application as the date of re-domiciliation, the certificate issued by the Registrar shall show the specified date as the date of re-domiciliation.

6. *Status of a certificate of re-domiciliation.* A certificate given by the Registrar or the Deputy Registrar in accordance with paragraph 4(a) in respect of any Liberian limited liability company shall be:

- (a) Conclusive evidence that all the requirements of this Chapter in respect of that re-domiciliation, and matters precedent and incidental thereto, have been complied with and that the limited liability company is authorized to be so re-domiciled under the provisions of this section;
- (b) Valid for a period of 12 months from the date of the issue of the certificate or, in case of a certificate to which paragraph 5 applies, from the specified date, unless endorsed in accordance with paragraph 7.

7. *Endorsement of certificate.* Where:

- (a) At the date of the issue of a certificate of re-domiciliation or at any time thereafter within a period of 12 months immediately following the date of the issue of that certificate; or
- (b) In the case of a certificate to which paragraph 5 applies, at the specified date or at any time thereafter within a period of 12 months immediately following that date,

the Registrar or the Deputy Registrar is satisfied, by the service on him of a certificate of continuation executed by the governing body of the re-domiciled limited liability company, that the limited liability company has become a limited liability company under the relevant provisions of the law in the jurisdiction specified in the certificate of re-domiciliation, he may endorse the certificate of re-domiciliation to the effect that the limited liability company is from the date of the endorsement to be deemed to be re-domiciled and no longer registered in Liberia under this Chapter and that shall be the effective date of re-domiciliation.

8. *Failure to complete re-domiciliation.* If, by a date 12 months immediately following the date of the issue of a certificate in accordance with paragraph 4(a) or, in the case of a certificate to which paragraph 5 applies, following the specified date, the Liberian limited liability company has not satisfied the Registrar or the Deputy Registrar that it has become a limited liability company under the relevant provisions of the law in the jurisdiction to which it proposed to re-domicile, the Registrar or the Deputy Registrar shall revoke the certificate issued under paragraph 4(a), and:

- (a) That certificate and any re-domiciliation under this section shall be of no further force or effect; and



- (b) The Liberian limited liability company shall continue as a Liberian limited liability company in Liberia under the provisions of this Chapter.

9. *Effect of re-domiciliation.* With effect from the date of the issue of a certificate of re-domiciliation:

- (a) The limited liability company to which the certificate relates shall cease to be:
  - (i) A Liberian limited liability company registered in Liberia under this Chapter; and
  - (ii) A Liberian limited liability company registered in Liberia for the purpose of any other Law;
- (b) The certificate of formation of the re-domiciled limited liability company (or other instrument constituting or defining the constitution of the limited liability company), as amended by the resolution or equivalent document establishing domicile in the other jurisdiction, is the instrument defining the constitution of the re-domiciled limited liability company;
- (c) The property of every description and the business of the Liberian limited liability company are vested in the re-domiciled limited liability company;
- (d) The re-domiciled limited liability company is liable for all of the claims, debts, liabilities and obligations of the Liberian limited liability company;
- (e) No conviction, judgment, ruling, order, debt, liability or obligation due or to become due and no cause existing against the Liberian limited liability company or against any member, manager or agent thereof is thereby released or impaired;
- (f) No proceedings whether civil or criminal pending at the time of the issue by the Registrar or the Deputy Registrar of the certificate of re-domiciliation by or against the Liberian limited liability company or against any member, manager or agent thereof are thereby abated or discontinued, but the proceedings may be enforced, prosecuted, settled or compromised by or against the re-domiciled limited liability company or against the member, manager or agent thereof, as the case may be;
- (g) Unless otherwise provided in the resolution of re-domiciliation filed in accordance with paragraph 3, the Liberian limited liability company re-domiciling as a re-domiciled limited liability company in another jurisdiction shall not be required to wind up its affairs or pay its liabilities and distribute its assets,

and the re-domiciliation shall constitute a continuation of the existence of the re-domiciling limited liability company and shall not:

- (h) Constitute a dissolution of the Liberian limited liability company;

- (j) Create a new legal entity; or
- (k) Prejudice or affect the continuity of the re-domiciled limited liability company.

10. *Index of Liberian limited liability companies re-domiciled to another jurisdiction.* The Registrar or the Deputy Registrar shall maintain an index of Liberian limited liability companies in respect of which a certificate issued in accordance with paragraph 4(a) is in force and in that index shall record the name in which the limited liability company is re-domiciled in the other jurisdiction and the address for service of the limited liability company in that jurisdiction, and whether the limited liability company has ceased to be registered under this Chapter in accordance with paragraph 7.

*Effective:* June 19, 2002.

#### **§14.2.14. Reregistration of another entity as a limited liability company.**

1. *Power to reregister.* A corporation, a limited partnership, a private foundation, a registered business company, or any other legal entity existing under the laws of Liberia (in this section referred to as a “legal entity”) may, if permitted to do so by its constitution, apply to reregister as a limited liability company.

2. *Application to reregister as a limited liability company.* An application by a legal entity to reregister as a limited liability company shall be made to the Registrar or the Deputy Registrar in the form prescribed by him and shall be accompanied by:

- (a) A certificate setting out:
  - (i) The name of the legal entity, and, if the name has been changed, the name with which the legal entity was formed, and the name, if different, under which reregistration as a reregistered and continued limited liability company is sought;
  - (ii) The date of formation of the legal entity;
  - (iii) The relevant law under which the legal entity has its existence;
  - (iv) The date on which it is proposed to reregister;
  - (v) That the reregistration has been approved in accordance with the relevant law and the constitution of the legal entity;
  - (vi) Confirmation by, in the case of:
    - (aa) A corporation, the directors and officers;
    - (bb) A limited partnership, the partners;
    - (cc) A private foundation, the governing bodies;

(dd) A registered business company, the directors or other governing body;

(ee) Any other legal entity, the governing body,

that at the date of reregistration as a limited liability company the legal entity will have done everything required by the relevant legislation preparatory to de-registration and reregistration, and that the entity will cease to be a legal entity registered under that legislation;

(b) A copy of the resolution or other instrument of the legal entity resolving to de-register and reregister as a limited liability company, approved in the manner prescribed by the constitution of the legal entity which shall specify:

(i) That the entity shall be reregistered as a limited liability company;

(ii) The proposed name of the reregistered limited liability company if different from the present name of the legal entity;

(iii) That the total amount from time to time of the contributions of the limited liability company shall not fall below the share capital or membership interests of the corporation, or the amount of the contributions of the limited partnership or the share capital or membership interests of the registered business company, or the assets of the foundation, or the capital of any other entity, as the case may be, at the date of the resolution;

(iv) The method of converting shareholding and membership interests, partners' contributions, or shareholding and membership interests, or assets, or capital, as the case may be, into contributions of the reregistered limited liability company;

(v) Who shall be members and the interests of each and who shall be the manager;

(vi) Such other provisions with respect to the proposed reregistration as, in the case of:

(aa) A corporation, the directors or other governing body;

(bb) A limited partnership, the partners;

(cc) A registered business company, the directors or other governing body;

(dd) A foundation, the governing bodies;

(ee) Any other legal entity, the governing body,

considers necessary or desirable;

(c) A certificate of goodstanding in respect of the legal entity;

- (d) Evidence to the satisfaction of the Registrar or the Deputy Registrar that no proceedings for insolvency have been commenced against the legal entity;
- (e) A certificate of formation in accordance with section 14.2.1;
- (f) The name and address of the registered agent in Liberia and the agent's acceptance of the appointment,

and the provisions of section 1.4 of Chapter 1 of Part I of this Title shall apply with the variation that execution shall be by any officer, manager, partner, director, trustee or other person performing in relation to that legal entity the function of an officer and duly authorized for this purpose.

3. *Name of limited liability company on reregistration.* The provisions of sections 14.1.2 and 14.1.3 shall apply in respect of the name under which the legal entity may apply to reregister as a limited liability company.

4. *Reregistration and continuation as a limited liability company.* The Registrar or the Deputy Registrar shall, if he is satisfied that the requirements of this Chapter in respect of reregistration as a limited liability company have been met, register the legal entity as a limited liability company and certify that it is registered and continued as the limited liability company specified in the documents supplied in compliance with paragraph 2, in accordance with those documents, on the date of the issue of the certificate, or, in the case of a certificate to which paragraph 5 applies, on the specified date.

5. *Deferred date of reregistration.* Notwithstanding section 1.4.6(d) of Chapter 1 of Part I of this Title, where, at the time of the making of an application under paragraph 2, the legal entity applying for reregistration as a limited liability company has specified a date (in this section referred to as "the specified date") no later than 12 months after the date of the making of the application as the date of reregistration, the certificate issued by the Registrar or the Deputy Registrar shall show the specified date as the date of reregistration.

6. *Status of a certificate of reregistration.* A certificate given by the Registrar or the Deputy Registrar in accordance with paragraph 4 in respect of any legal entity reregistered as a limited liability company shall be:

- (a) Conclusive evidence that all the requirements of the Chapter in respect of that reregistration, and matters precedent and incidental thereto, have been complied with and that the legal entity is authorized to be so reregistered and is reregistered under the provisions of this section;
- (b) Valid for a period of 12 months from the date of the issue of the certificate or, in case of a certificate to which paragraph 5 applies, from the specified date, unless endorsed in accordance with paragraph 8.

7. *Obligation to amend instrument constituting or defining the constitution of the legal entity.* If, at the time of the issue by the Registrar or the Deputy Registrar of the certificate of reregistration in accordance with paragraph 4, any provisions of the instrument constituting or defining the

constitution of the legal entity do not, in any respect, accord with the requirements of this Chapter in respect of a limited liability company agreement:

- (a) The instrument constituting or defining the constitution of the legal entity shall continue to govern the reregistered limited liability company until:
  - (i) A limited liability company agreement complying with this Chapter is in effect; or
  - (ii) The expiration of a period of 12 months immediately following the date of the issue of that certificate or, in case of a certificate to which paragraph 5 applies, the specified date,whichever is the sooner;
- (b) Any provisions of the instrument constituting or defining the constitution of the legal entity that are in any respect in conflict with this Chapter cease to govern the limited liability company when the limited liability company agreement in accordance with this Chapter is in effect;
- (c) The limited liability company shall give effect to a limited liability company agreement as may be necessary to accord with this Chapter within a period of 12 months immediately following the date of the issue of the certificate or, in case of a certificate to which paragraph 5 applies, from the specified date.

8. *Endorsement of certificate.* Where:

- (a) At the date of the issue of a certificate of reregistration or at any time thereafter within a period of 12 months immediately following the date of the issue of that certificate; or
- (b) In the case of a certificate to which paragraph 5 applies, at the specified date or at any time thereafter within a period of 12 months immediately following that date,

the Registrar or the Deputy Registrar is satisfied that:

- (c) The legal entity has ceased to be a legal entity under the relevant provisions of the law under which it was established; and
- (d) A limited liability company agreement according in all respects with this Chapter and the objects of the limited liability company is in place,

he may, on the application of the limited liability company to which the certificate has been issued, endorse that certificate to the effect that the limited liability company is from the date of the endorsement to be deemed to be reregistered under this Chapter and that shall be the effective date of reregistration and continuation and the provisions of section 1.4.6 of Chapter 1 of Part I of this Title shall apply.

9. *Failure to complete reregistration.* If, by a date 12 months immediately following the date of the issue of a certificate in accordance with paragraph 4 or, in the case of a certificate to which paragraph 5 applies, following the specified date, the legal entity has not satisfied the Registrar or the Deputy Registrar that:

- (a) It has ceased to be a legal entity under the relevant provisions of the law under which it was established; and
- (b) A limited liability company agreement according in all respects with this Chapter and the objects of the limited liability company is in place,

the Registrar or the Deputy Registrar shall revoke the certificate issued under paragraph 4, and:

- (c) That certificate and any reregistration under this section shall be of no further force or effect; and
- (d) The Registrar or the Deputy Registrar shall strike the limited liability company from the register.

10. *Effect of reregistration.* With effect from the date of the issue of a certificate of reregistration:

- (a) The reregistered limited liability company to which the certificate relates:
  - (i) Is a limited liability company reregistered and continued and deemed to be registered under this Chapter and having as its existence date the date on which it was established under the other relevant law, or in another jurisdiction, as the case maybe; and
  - (ii) Shall be a limited liability company registered in Liberia for the purpose of any other Law;
- (b) The certificate of formation as filed in accordance with paragraph 2(e) is the certificate of the limited liability company;
- (c) The property of every description and the business of the legal entity are vested in the limited liability company;
- (d) The limited liability company is liable for all of the claims, debts, liabilities and obligations of the legal entity;
- (e) No conviction, judgment, ruling, order, debt, liability or obligation due or to become due and no cause existing against the legal entity or against any officer or agent thereof is thereby released or impaired;
- (f) No proceedings whether civil or criminal pending at the time of the issue by the Registrar or the Deputy Registrar of the certificate of reregistration by or against the legal entity or against any officer or agent thereof are thereby abated or discontinued, but the

proceedings may be enforced, prosecuted, settled or compromised by or against the limited liability company or against the members, manager or agents thereof, as the case may be;

- (g) Unless otherwise provided in the resolution of reregistration filed in accordance with paragraph 2, the legal entity reregistering as the limited liability company shall not be required to wind up its affairs or pay its liabilities and distribute its assets,

and the reregistration and continuation shall not:

- (h) Constitute a dissolution of the legal entity and shall constitute a continuation of the existence of the reregistered legal entity as the limited liability company;
- (j) Create a new legal entity; or
- (k) Prejudice or affect the continuity of the legal entity as a limited liability company.

*Effective:* June 19, 2002.

#### **§14.2.15. Cancellation and reregistration of limited liability company as another entity.**

1. *Eligibility to apply to cancel and reregister as another legal entity.* A limited liability company formed under this Chapter may, if permitted to do so by its constitution, apply to cancel upon reregistration as another legal entity under the laws of Liberia.

2. *Application to cancel and reregister as another legal entity.* An application by a limited liability company to cancel and reregister as another legal entity in Liberia and to cease to be a limited liability company formed under this Chapter shall be made to the Registrar or the Deputy Registrar in the form prescribed by him and shall be accompanied by:

- (a) A certificate setting out:
  - (i) The name of the limited liability company, and, if the name has been changed, the name with which the limited liability company was established, and the name, if different, under which registration as another legal entity is sought;
  - (ii) The date of filing of the certificate of formation, and if established under any other law, the date of establishment;
  - (iii) The law under which the limited liability company proposes to reregister;
  - (iv) The date on which the limited liability company proposes to cancel and reregister;
  - (v) That the proposed cancellation and reregistration have been approved in accordance with the relevant law and the constitution of the limited liability company;

- (vi) Confirmation by the partners of the limited liability company that at the date of cancellation and reregistration the limited liability company will have done everything required by this Chapter preparatory to cancellation and reregistration as another legal entity and that, on cancellation and reregistration, the limited liability company will cease to be a limited liability company;
- (b) A copy of the resolution or other instrument of the limited liability company resolving to cancel and reregister, approved in the manner prescribed by the limited liability company agreement, which shall specify:
  - (i) That the limited liability company shall be cancelled and reregistered as another legal entity in Liberia;
  - (ii) The proposed name of the legal entity if different from the present name of the limited liability company;
  - (iii) That the total amount from time to time of:
    - (aa) The share capital or membership interests, or the sum of both, of a corporation;
    - (bb) The participations of a limited partnership;
    - (cc) The share capital or membership contributions, or the sum of both, of a registered business company;
    - (dd) The assets of a private foundation; or
    - (ee) The capital of any other legal entity;with which the limited liability company proposes to reregister shall not fall below the amount of the members' contributions at the date of the resolution;
  - (iv) The method of converting contributions of the limited liability company into:
    - (aa) Shareholdings or membership interests of a corporation;
    - (bb) Participations in a limited partnership;
    - (cc) Shareholdings or membership interests of a registered business company;
    - (dd) The assets of a private foundation; or
    - (ee) The capital of any other legal entity;
  - (v) The rights attaching to the shares or membership interests, or both, of a corporation referred to in clause (iv)(aa), participations in a limited partnership referred to in



clause (iv)(bb), the shares or membership interests, or both, of a registered business company referred to in clause (iv)(cc), the assets of a private foundation referred to in clause (iv)(dd), or the capital of any other legal entity referred to in clause (iv)(ee);

(vi) In the case of reregistration:

(aa) As a corporation, which, if any, of the members and the manager, shall be the shareholders and the directors or members of any other governing body;

(bb) As a limited partnership, which, if any, of the members and the manager shall be the general partner and which shall be the limited partner;

(cc) As a registered business company, which, if any, of the members and the manager shall be shareholders and directors or members of any other governing body;

(dd) As a private foundation, which, if any, of the members and the managers shall be officers or members of the supervisory board; or

(ee) As any other legal entity, the appointment of the governing body;

(vii) Such alterations in the limited liability company agreement if any, as are necessary to bring it (in substance and in form) into conformity with the requirements of:

(aa) Section 4.4 of Chapter 4 of Part I of this Title as the articles of incorporation, in the case of a corporation;

(bb) Chapter 31.2 of Part III of this Title as a certificate of limited partnership, in the case of a limited partnership;

(cc) Chapter 70 of Part VII of this Title as the memorandum and articles of incorporation, in the case of a registered business company;

(dd) Chapter 60 of Part VI of this Title as the memorandum of endowment and management articles, if any, in the case of a private foundation; or

(ee) The relevant statutory provision in the case of any other legal entity; and

(viii) Such other provisions with respect to the proposed cancellation and reregistration as the partners consider necessary or desirable;

(c) A certificate of goodstanding in respect of the limited partnership issued by the Registrar or the Deputy Registrar;

(d) Evidence to the satisfaction of the Registrar or the Deputy Registrar that no proceedings for insolvency have been commenced in Liberia against the limited liability company;

and

- (e) Any amendments other than those specified in sub-paragraph (b)(vii) to the limited liability company agreement that are to take effect on the cancellation of the certificate of the limited partnership and reregistration as the other legal entity,

and the provisions of section 1.4 of Chapter 1 of Part I of this Title shall apply with the variation that execution shall be by any member, manager or other person performing the function of an officer and duly authorized for this purpose.

3. *Consent to cancel and reregister as another legal entity.* The Registrar or the Deputy Registrar shall, if he is satisfied that the requirements of this Chapter in respect of cancellation of a certificate of formation prior to reregistration as another legal entity have been met:

- (a) Certify that the limited liability company is permitted to cancel and reregister as the other legal entity specified in the documents supplied in compliance with paragraph 2, in accordance with those documents, and that it may cease to be registered as a limited liability company on the date of the issue of the certificate, or, in case of a certificate to which paragraph 4 applies, on the specified date;
- (b) File the documents referred to in paragraph 2(b), except the documents specified in sub-paragraph (c);
- (c) Return to the limited liability company the documents delivered to him in compliance with paragraph 2(b)(v), as they relate to reregistration as a foundation, and paragraph 2(b)(vii)(dd), endorsed with the date on which they were delivered to him;
- (d) Enter in the index kept for this purpose in respect of a limited liability company to which a certificate has been issued under this paragraph the fact of the issue of the certificate and the documents filed in compliance with sub-paragraph (b).

4. *Deferred date of cancellation.* Notwithstanding section 1.4.6(d) of Chapter 1 of Part I of this Title, where, at the time of making an application under paragraph 2, the limited liability company applying for cancellation has specified a date (in this section referred to as “the specified date”) no later than 12 months after the date of the making of the application as the date of cancellation, the certificate issued by the Registrar or the Deputy Registrar shall show the specified date as the date of cancellation.

5. *Status of a certificate of cancellation.* A certificate of cancellation given by the Registrar or the Deputy Registrar in accordance with paragraph 3(a) in respect of any cancelled certificate of formation shall be:

- (a) Conclusive evidence that all the requirements of this Chapter in respect of that cancellation, and matters precedent and incidental thereto, have been complied with and that the certificate of formation is authorized to be so cancelled and is cancelled under the provisions of this section;

- (b) Valid for a period of 12 months from the date of the issue of the certificate of cancellation or, in case of a certificate to which paragraph 4 applies, from the specified date, unless endorsed in accordance with paragraph 6.

6. *Endorsement of certificate of cancellation.* Where:

- (a) At the date of the issue of a certificate of cancellation or at any time thereafter within a period of 12 months immediately following the date of the issue of that certificate; or
- (b) In the case of a certificate to which paragraph 4 applies, at the specified date or at any time thereafter within a period of 12 months immediately following that date,

the Registrar or the Deputy Registrar is satisfied, by the service on him of a certificate of continuation executed by the reregistered legal entity that the limited liability company has re-registered under the relevant provisions of the law specified in the certificate of cancellation, he may endorse the certificate of cancellation to the effect that the certificate of formation is from the date of the endorsement to be deemed to be cancelled and that shall be the effective date of cancellation.

7. *Failure to complete cancellation and reregistration.* If, by a date 12 months immediately following the date of the issue of a certificate in accordance with paragraph 3(a) or, in the case of a certificate to which paragraph 4 applies, following the specified date, the limited liability company has not satisfied the Registrar or the Deputy Registrar that it has become the other legal entity under the relevant provisions of the law under which it proposed to reregister, the Registrar or the Deputy Registrar shall revoke the certificate issued under paragraph 3(a), and:

- (a) That certificate and any cancellation under this section shall be of no further force or effect; and
- (b) The limited liability company shall continue as a limited liability company under the provisions of this Chapter.

8. *Effect of cancellation.* With effect from the date of the issue of a certificate of cancellation:

- (a) The limited liability company to which the certificate relates shall cease to be:
  - (i) A limited liability company registered under this Chapter; and
  - (ii) A limited liability company registered in Liberia for the purpose of any other Law;
- (b) The limited liability company agreement (or other instrument constituting or defining the constitution of the limited liability company), as amended by the resolution or equivalent document for the purpose of reregistration as another legal entity in Liberia, shall be the constitution of the other legal entity;
- (c) The property of every description and the business of the limited liability company are vested in the other legal entity;

- (d) The other legal entity is liable for all of the claims, debts, liabilities and obligations of the limited liability company;
- (e) No conviction, judgment, ruling, order, debt, liability or obligation due or to become due and no cause existing against the limited liability company or against any member, manager or agent thereof is thereby released or impaired;
- (f) No proceedings whether civil or criminal pending at the time of the issue by the Registrar or the Deputy Registrar of the certificate of cancellation by or against the limited liability company or against any member, manager or agent thereof are thereby abated or discontinued, but the proceedings may be enforced, prosecuted, settled or compromised by or against the other legal entity or against the officer or agent thereof, as the case may be;
- (g) Unless otherwise provided in the resolution of cancellation filed in accordance with paragraph 2, the limited liability company reregistering as the other legal entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets,

and the reregistration shall constitute a continuation of the existence of the de-registering limited liability company and shall not:

- (h) Constitute a dissolution of the limited liability company;
- (j) Create a new legal entity; or
- (k) Prejudice or affect the continuity of the de-registered limited liability company.

9. *Index of limited liability companies cancelled and reregistered as another legal entity.* The Registrar or the Deputy Registrar shall maintain an index of limited liability companies in respect of which a certificate issued in accordance with paragraph 3(a) is in force and in that index shall record the name in which the limited liability company is reregistered as another legal entity and whether the limited liability company has ceased to be registered under this Chapter in accordance with paragraph 6.

*Effective:* June 19, 2002.

**CHAPTER 14.**

**SUBCHAPTER III.**

**MEMBERS**

§14.3.1. Admission of members.

§14.3.2. Classes and voting.

§14.3.3. Liability to third parties.

§14.3.4. Events of bankruptcy.

§14.3.5. Access to and confidentiality of information; records.

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

**§14.3.1. Admission of members.**

*1. Admission at formation.* 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
- (c) 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. Admission after formation.* 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 14.7.4.1 of this Chapter, 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.

3. *No contribution required.* 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 limited liability company without making a contribution or being obligated to make a contribution to the limited liability company.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.3.2. Classes and voting.**

1. *Provision for classes and groups.* 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 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. *Voting rights.* 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. *Notices.* A limited liability company agreement which grants a right to vote 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.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.3.3. Liability to third parties.**

Except as otherwise provided by this Chapter, 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.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.3.4. Events of bankruptcy.**

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

- (a) Unless otherwise provided in a limited liability company agreement, or with the written consent of all members, a member:
  - (i) Makes an assignment for the benefit of creditors;
  - (ii) Files a voluntary petition in bankruptcy;
  - (iii) Is adjudged a bankrupt or insolvent, or has entered against him an order for relief, in any bankruptcy or insolvency proceeding;
  - (iv) Files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;
  - (v) 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;
  - (vi) Seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all of any substantial part of his properties; or
- (b) Unless otherwise provided in a limited liability company agreement, or with the written consent of all members, 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 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 90 days after the expiration of any such stay, the appointment is not vacated.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.3.5. Access to and confidentiality of information; records.**

*1. Right of member to information, etc..* Each member of a limited liability company has the right, subject in 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:

- (a) True and full information regarding the status of the business and financial condition of the limited liability company;
- (b) Promptly after becoming available a copy of the limited liability company's tax returns if applicable for each year;
- (c) A current list of the name and last known business, residence or mailing address of each member and manager;
- (d) 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;
- (e) 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
- (f) Other information regarding the affairs of the limited liability company as is just and reasonable.

2. *Right of manager to examine information.* Each manager of a limited liability company shall have the right to examine all of the information described in subsection 1 for a purpose reasonably related to his position as a manager.

3. *Confidentiality.* The manager of a limited liability company shall have the right to keep confidential from the members, for such 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.

4. *Demand shall be in writing.* Any demand by a member under this section shall be in writing and shall state the purpose of such demand.

5. *Action to enforce rights.* Any action to enforce any rights arising under this section shall be brought to the circuit court.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.3.6. Remedies for breach of limited liability company agreement by member.**

A limited liability company agreement may provide that a member:

- (a) Who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement; or



(b) At the time or upon the happening of events specified in the limited liability company agreement,

shall be subject to specified penalties or specified consequences.

*Effective:* November 26, 1999; amended effective June 19, 2002.



**CHAPTER 14.**  
**SUBCHAPTER IV.**  
**MANAGEMENT**

- §14.4.1. Admission of managers.
- §14.4.2. Management of limited liability company.
- §14.4.3. Contributions by a manager.
- §14.4.4. Classes and voting.
- §14.4.5. Remedies for breach of limited liability company agreement by a manager.
- §14.4.6. Reliance on reports and information by member or manager.
- §14.4.7. Delegation of rights and powers to manage.

**§14.4.1. Admission of managers.**

A person may be named or designated as the manager, as defined in section 14.1.1 (j), of a limited liability company.

*Effective:* November 26, 1999; amended effective June 19, 2002.

**§14.4.2. 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 proportion to the then current percentage of the interest of each member in the profits of that limited liability company, and the members having more than 50 percent of the interest shall have a controlling power:

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:

- (a) Be chosen by the members in the manner provided in the limited liability company agreement;
- (b) Hold the offices and have the responsibilities accorded to him by the members and set forth in the limited liability company agreement;

- (c) Upon resignation cease to be a manager, as provided in the limited liability company agreement.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.4.3. 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, to the extent of participating in the limited liability company as a member, is subject to the restrictions and liabilities of a member.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.4.4. Classes and voting.**

1. *Provision for classes and groups.* A limited liability company agreement may provide for:

- (a) Classes or groups of managers having such relative rights, powers and duties as the limited liability company agreement may provide;
- (b) 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;
- (c) The taking of an action, including:
  - (i) The amendment of the limited liability company agreement; or
  - (ii) 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,

without the vote or approval of any manager or class or group of managers.

2. *Voting rights.* 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 and voting by managers may be on a per capita, member, financial interest, class, group or any other basis.

3. *Provisions in respect of voting rights.* A limited liability company agreement which grants a right to vote may set forth provisions relating to:

- (a) 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;

- (b) Waiver of any such notice;
- (c) Action by consent without a meeting;
- (d) The establishment of a record date;
- (e) Quorum requirements;
- (f) Voting in person or by proxy; or
- (g) Any other matter with respect to the exercise of any such right to vote.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.4.5. Remedies for breach of limited liability company agreement by a manager.**

A limited liability company agreement may provide that a manager:

- (a) Who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement; or
- (b) At the time or upon the happening of events specified in the limited liability company agreement,

shall be subject to specified penalties or specified consequences.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.4.6. 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:

- (a) The records of the limited liability company;
- (b) Such information, opinions, reports or statements (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) presented to the limited liability company by:
  - (i) Any of its other managers, members, officers or employees;
  - (ii) Committees of the limited liability company; or

- (iii) Any other person, as to matters the member or manager reasonably believes are within such other person's professional or expert competence and where that person has been selected with reasonable care by or on behalf of the limited liability company.

*Effective:* November 26, 1999; amended effective June 19, 2002.

**§14.4.7. 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 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 and employees of a member or manager or the limited liability company, and to delegate by a management agreement or another agreement with, or otherwise to, any other person. 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.

*Effective:* November 26, 1999; amended effective June 19, 2002.

**CHAPTER 14.**

**SUBCHAPTER V.**

**FINANCE**

- §14.5.1. Form of contribution.
- §14.5.2. Liability for contribution.
- §14.5.3. Allocation of profits and losses.
- §14.5.4. Allocations of distributions.

**§14.5.1. Form of contribution.**

The contribution of a member of 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.

*Effective:* November 26, 1999; amended effective June 19, 2002.

**§14.5.2. Liability for contribution.**

1. *Obligation to contribute.* 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. *Compromise of obligation.* 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 Chapter, 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 any 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. *Penalties.* 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.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.5.3. 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.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.5.4. Allocations 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.

*Effective:* November 26, 1999; amended effective June 19, 2002.



## **CHAPTER 14.**

### **SUBCHAPTER VI.**

#### **DISTRIBUTIONS AND RESIGNATION**

- §14.6.1. Interim distribution.
- §14.6.2. Resignation of manager.
- §14.6.3. Resignation of member.
- §14.6.4. Distribution upon resignation.
- §14.6.5. Distribution in kind.
- §14.6.6. Right to distribution.
- §14.6.7. Limitations on distribution.

##### **§14.6.1. Interim distribution.**

Except as provided in this Subchapter, 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.

*Effective:* November 26, 1999; amended effective June 19, 2002.

##### **§14.6.2. Resignation of a manager.**

A manager may resign as a manager of a limited liability company at the time or upon the happening of events specified in the limited liability company agreement and in accordance with that 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, he may resign at any time by giving written notice to the members and other managers. If the resignation of a manager violates the 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 agreement and offset the damages against the amount otherwise distributable to the resigning manager.

*Effective:* November 26, 1999; amended effective June 19, 2002.

### **§14.6.3. Resignation of member.**

A member may resign from a limited liability company at the time or upon the happening of events specified in the limited liability company agreement and in accordance with that 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 6 months prior written notice to the limited liability company at its registered office and to each member and manager at each member's and manager's address in the records of the limited liability company. Notwithstanding anything to the contrary in this Chapter, 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.

*Effective:* November 26, 1999; amended effective June 19, 2002.

### **§14.6.4. Distribution upon resignation.**

Except as provided in this Subchapter, upon resignation any resigning member is entitled to receive any distribution to which he is entitled under a limited liability company agreement and, if not otherwise provided in a limited liability company agreement, he is entitled to receive, within a reasonable time after resignation, the fair value of his limited liability company interest as of the date of resignation based upon his right to share in distributions from the limited liability company.

*Effective:* November 26, 1999; amended effective June 19, 2002.

### **§14.6.5. 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.

*Effective:* November 26, 1999; amended effective June 19, 2002.

### **§14.6.6. Right to distribution.**

Subject to sections 14.6.7 and 14.8.4, 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.

*Effective:* November 26, 1999; amended effective June 19, 2002.

**§14.6.7.Limitations on distribution.**

1. *Restrictions.* A limited liability company shall not make a distribution to a member to the extent that, at the time of the distribution, and after giving effect to the distribution, all liabilities of the limited liability company, other than:

- (a) Liabilities to members on account of their limited liability company interests; and
- (b) 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, and for the purpose of this paragraph 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. *Member's liability.* A member who receives a distribution in violation of paragraph 1 of this section, and who:

- (a) Knew at the time of the distribution that the distribution violated that paragraph, shall be liable to a limited liability company for the amount of the distribution;
- (b) Did not know at the time of the distribution that the distribution violated that, shall not be liable for the amount of the distribution,

and subject to paragraph 3, this paragraph 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. *Expiration of liability.* Unless otherwise agreed, a member who receives a distribution from a limited liability company shall have no liability under this Chapter or other applicable law for the amount of the distribution after the expiration of three 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 year period and an adjudication of liability against such member is made in the said action.

*Effective:* November 26, 1999; amended effective June 19, 2002.



## CHAPTER 14.

### SUBCHAPTER VII.

## ASSIGNMENT OF LIMITED LIABILITY COMPANY INTERESTS

- §14.7.1. Nature of limited liability company interest.
- §14.7.2. Assignment of limited liability company interest.
- §14.7.3. Rights of judgment creditor.
- §14.7.4. Right of assignee to become member.
- §14.7.5. Powers of estate of deceased or incompetent member.

#### **§14.7.1. Nature of limited liability company interest.**

A limited liability company interest is personal property. A member has no interest in specific property of the limited liability company.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.7.2. Assignment of limited liability company interest.**

1. *Power to assign.* A limited liability company interest is assignable in whole or in part except as provided in the limited liability company agreement. An assignment of a limited liability company interest does not entitle the assignee to become or to exercise any rights or powers of a member. 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 a 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. *Effect of assignment.* 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. *Certificate of member's interest.* A limited liability company agreement may provide that a certificate of limited liability company interest issued by the limited liability company may evidence a member's interest in a limited liability company.

4. *Assignee's liability.* 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 result of the assignment.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.7.3. Rights of judgment creditor.**

On application in 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 Chapter does not deprive any member of the benefit of any exemption laws applicable to his limited liability company interest.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.7.4. Right of assignee to become member.**

1. *Assignees to be member.* 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 member assigning his limited liability company interest; or
- (b) Compliance with any procedure provided for in the limited liability company agreement.

2. *Rights and obligations.* 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 Chapter. 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 14.5.2, but shall not be liable for the obligations of his assignor under Subchapter VI. However, the assignee is not obligated for liabilities, including the obligations of his assignor to make contributions as provided in

section 14.5, unknown to the assignee at the time he became a member and which could not be ascertained from a limited liability company agreement.

3. *No release of assignor from liabilities.* 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 Subchapters V and VI of this Chapter.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.7.5. 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 other legal 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.

*Effective:* November 26, 1999; amended effective June 19, 2002.





**CHAPTER 14.**

**SUBCHAPTER VIII.**

**DISSOLUTION**

- §14.8.1. Dissolution.
- §14.8.2. Involuntary dissolution.
- §14.8.3. Judicial dissolution.
- §14.8.4. Winding up.
- §14.8.5. Distribution of assets.

**§14.8.1. Dissolution.**

*1. Occurrence of dissolution.* A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

- (a) The time specified in a limited liability company agreement, or, if no such time is set forth in the limited liability company agreement, 30 years from the date of the formation of the limited liability company;
- (b) Upon the happening of events specified in the limited liability company agreement;
- (c) The written consent of all members;
- (d) The death, retirement, resignation, expulsion, bankruptcy or dissolution of a member, or the occurrence of any other event which terminates the continued membership of a member in the limited liability company unless the business of the limited liability company is continued either:
  - (i) By the consent of all the remaining members given within 90 days following the occurrence of any such event; or
  - (ii) Pursuant to a right to continue stated in the limited liability company agreement; or
- (e) The entry of a decree of judicial dissolution under section 14.8.3.

2. *Filing of certificate.* Upon dissolution, a certificate of cancellation shall be filed in accordance with section 14.2.3.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.8.2. Involuntary dissolution.**

1. *Dissolution on failure to comply.* On failure of a limited liability company to pay the annual registration fee or to maintain a registered agent for a period of one year, the Registrar or the Deputy Registrar 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 90 days of the date of the notice, payment of the annual registration fee has been received or a registered agent has been reappointed, as the case may be. On the expiration of the 90 day period, the Minister of Foreign Affairs, in the event the limited liability company has not remedied its default, shall issue a proclamation declaring that the certificate of formation of the limited liability company has been revoked, and the limited liability company dissolved as of the date stated in the proclamation. The proclamation of the Minister of Foreign Affairs shall be filed in his office and he shall mark on the record of the certificate of formation of the limited liability company named in the proclamation the date of revocation and dissolution, and shall give notice thereof to the last recorded registered agent. Thereupon the affairs of the limited liability company shall be wound up in accordance with the procedures provided in this Chapter.

2. *Erroneous annulment.* Whenever it is established to the satisfaction of the Minister of Foreign Affairs that the certificate of formation was erroneously revoked, he may restore the limited liability company to full existence by publishing and filing in his office a proclamation to that effect.

3. *Petition to reinstate.* Whenever the certificate of formation of a limited liability company has been revoked and the limited liability company dissolved pursuant to this section, the limited liability company may request that the Minister to reinstate the limited liability company. After being satisfied that all arrears of statutory fees have been paid, that the limited liability company has retained a registered agent and that fees in respect of the period from the date of dissolution to the date on which rescission is to take place have been paid to the former registered agent, the limited liability company may be restored to full existence.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.8.3. Judicial dissolution.**

On application by or for a member or manager the circuit court 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.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.8.4. Winding up.**

1. *Procedure for winding up.* 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 50 percent 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 circuit court, upon cause shown, may wind up the limited liability company's affairs upon application of any member of manager, his legal representative or assignee, and in connection therewith, may appoint a liquidating trustee.

2. *Continuation after cancellation.* Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in section 14.2.3, 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.

*Effective:* November 26, 1999; amended effective June 19, 2002.

#### **§14.8.5. Distribution of assets.**

1. *Priority in distribution.* 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 section 14.6.1 or 14.6.4;
- (b) Unless otherwise provided in a limited liability company agreement, to members and former members in satisfaction of liabilities for distributions under section 14.6.1 or 14.6.4; 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. *Obligation to pay creditors, etc..* A limited liability company which has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured 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 Chapter. 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.

*Effective:* November 26, 1999; amended effective June 19, 2002.

**CHAPTER 14**

**SUBCHAPTER IX.**

**DERIVATIVE ACTIONS**

- §14.9.1. Right to bring action.
- §14.9.2. Proper plaintiff.
- §14.9.3. Complaint.
- §14.9.4. Expenses.

**§14.9.1. Right to bring action.**

A member may bring an action in the circuit court 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.

*Effective:* November 26, 1999; amended effective June 19, 2002.

**§14.9.2. Proper plaintiff.**

In a derivative action, the plaintiff must be a member 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 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 at the time of the transaction.

*Effective:* November 26, 1999; amended effective June 19, 2002.

**§14.9.3. 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.

*Effective:* November 26, 1999; amended effective June 19, 2002..

**§14.9.4. 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.

*Effective:* November 26, 1999; amended effective June 19, 2002.

**CHAPTER 14.**

**SUBCHAPTER X.**

**MISCELLANEOUS**

- §14.10.1. Construction and application of Chapter and limited liability company agreements.
- §14.10.2. Severability.
- §14.10.3. Cases not provided for in this Chapter.
- §14.10.4. Fees associated with limited liability companies.
- §14.10.5. Foreign limited liability companies.

**§14.10.1. Construction and application of Chapter and limited liability company agreements.**

1. *Application of rules of construction.* The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this Chapter. This Chapter as it applies to limited liability companies that do not have a place of business in Liberia shall be construed and interpreted in a manner consistent with the Limited Liability Company Act of the State of Delaware in the United States of America, insofar as that Act does not conflict with any provision of this Chapter.

2. *Freedom of contract.* It is the policy of this Chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.

3. *Liability of members and managers.* 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, 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 the member's or manager's duties and liabilities may be expanded or restricted by provisions in a limited liability company agreement.

*Effective:* November 26, 1999; amended effective June 19, 2002.

**§14.10.2. Severability.**

If any provision of this Chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Chapter which can be given effect

without the invalid provision or application, and to this end, the provisions of this Chapter are severable.

*Effective:* November 26, 1999; amended effective June 19, 2002.

### **§14.10.3. Cases not provided for in this Chapter.**

In any case not provided for in this Chapter, the rules of law and equity, including the law merchant, shall govern.

*Effective:* November 26, 1999; amended effective June 19, 2002..

### **§14.10.4. Fees associated with limited liability companies.**

1. *Annual registration fee.* Every limited liability company shall pay an annual registration fee of US\$150.

2. *Application of Chapter 1.* The provisions of section 1.7 of Chapter 1 of Part I of this Title, except paragraph 1 thereof, shall apply to limited liability companies as they apply to corporations with the substitution of references to limited liability companies for references to corporations and references to members and managers for references to shareholders and directors and officers.

*Effective:* November 26, 1999; amended effective June 19, 2002.

### **§14.10.5. Foreign limited liability companies.**

The provisions of Chapter 12 of Part I of this Title shall apply to foreign limited liability companies seeking to be authorized or authorized as they apply to foreign corporations with the substitution of references to limited liability companies for references to corporations and references to members and managers for references to shareholders and directors and officers and with substitution of references to relevant sections of this Chapter for references therein to provisions in respect of corporations.

*Effective:* June 19, 2002.



**PART II.**

**NOT-FOR-PROFIT CORPORATIONS**



## **CHAPTER 20.**

# **GENERAL PROVISIONS**

- §20.1. Title of Part.
- §20.2. Scope.
- §20.3. Application of Business Corporation Act.
- §20.4. Powers.
- §20.5. Reservation of power.
- §20.6. Fees.

### **§20.1. Title of Part.**

Part II of this Title shall be known as the Not-for-Profit Corporation Act.

### **§20.2. Scope.**

The provisions of this Act apply to every domestic not-for-profit corporation hereafter formed and to every foreign not-for-profit corporation to the extent stated in this Act or in the Business Corporation Act insofar as applicable to not-for-profit corporations as stated in section 20.3 of this Title (Application of the Business Corporation Act). The provisions of this Act and of the Business Corporation Act insofar as stated in section 20.3 of this Title apply to every presently existing domestic not-for-profit corporation to the extent that such application will not constitute an impairment of obligations assumed by the government under the charter or articles of incorporation.

### **§20.3. Application of Business Corporation Act.**

The provisions of the Business Corporation Act which constitute Part I of this Title, and which relate to domestic corporations or foreign corporations, apply to not-for-profit corporations, except as to matters specifically otherwise provided for in this Act. The term “shareholder” as used in the Business Corporation Act shall be deemed to apply to members of a not-for-profit corporation, and references to doing business in Liberia by a foreign corporation shall be deemed to apply to conducting of activities in Liberia by a foreign not-for-profit corporation.

### **§20.4. Powers.**

Every not-for-profit corporation organized under this Chapter and subject to any limitations provided in this Act or any other statute of Liberia or its articles of incorporation, shall have power to:

- (a) Sue and be sued;

- (b) Make contracts;
- (c) Receive property by devise or bequest, and otherwise acquire and hold all property, real or personal, including shares of stock, bonds, and securities of other corporations;
- (d) Act as trustee under any trust incidental to the principal object of the corporation, and receive, hold, administer, and expend funds and property subject to such trust;
- (e) Convey, exchange, lease, mortgage, encumber, transfer upon trust, or otherwise dispose of all property, real or personal;
- (f) Borrow money, contract debts, and issue bonds, notes and debentures, and secure the payment or performance of its obligations;
- (g) Do all other acts necessary or expedient for the administration of the affairs and attainment of the purposes of the corporation.

**§20.5. Reservation of power.**

The Legislature reserves the right to alter, amend, suspend or repeal any or all provisions of this Act and thereby to affect the provisions of any charter or articles of incorporation of a domestic not-for-profit corporation hereafter formed, or the authority to conduct activities in Liberia of any foreign not-for-profit corporation.

**§20.6. Fees.**

On filing articles of incorporation or any other document required by law to be filed with the Registrar or the Deputy Registrar, a not-for-profit corporation shall pay a fee of US\$ 50.00 to the Minister of Finance and a receipt therefor shall accompany the documents presented for filing. A not-for-profit corporation shall not be liable for payment of an annual registration fee.

*Prior legislation:* 1976 Liberian Code of Laws Revised, Chapter 20.6; amended effective June 19, 2002

## **CHAPTER 21.**

# **FORMATION**

- §21.1. Incorporators; purpose of corporation.
- §21.2. Incorporation of unincorporated associations.
- §21.3. Method of incorporating.
- §21.4. Required provisions in articles of incorporation.
- §21.5. Registered agent for service of process.

### **§21.1. Incorporators; purpose of corporation.**

A not-for-profit corporation may be formed by three or more persons for any lawful purposes which do not contemplate the distribution of gains, profits, or dividends to members thereof and for which individuals lawfully may associate themselves, such as religious, patriotic, professional, scientific, charitable, social, educational, athletic, or cultural purposes, or for rendering services, subject to laws applicable to particular classes of not-for-profit corporations or lines of activity. A corporation to which this Chapter applies shall conduct no activities for pecuniary profit or financial gain, whether or not in furtherance of its corporate purposes except to the extent that such activity supports other lawful activities which it conducts. No corporation formed or existing under this Act shall distribute any gains, profits, or dividends to any of its members as such except upon dissolution.

### **§21.2. Incorporation of unincorporated associations.**

A not-for-profit corporation may be formed for the purpose of incorporating any existing unincorporated association or organization.

### **§21.3. Method of incorporating.**

A not-for-profit corporation may be formed by grant of a charter by special Act of the Legislature or by filing articles of incorporation as provided by the provisions of this Title.

### **§21.4. Required provisions in articles of incorporation.**

The articles of incorporation shall set forth:

- (a) The name of the corporation;
- (b) The duration of the corporation if other than perpetual;

- (c) The purpose or purposes for which the corporation is organized;
- (d) That the corporation is organized pursuant to the provisions of the Not-for-Profit Corporation Act;
- (e) The registered address of the corporation in Liberia and the name and address of its registered agent;
- (f) The number of directors constituting the initial board of directors and if the initial directors are to be named in the articles of incorporation, the names and addresses of the persons who are to serve as directors until the first annual meeting of the members or until their successors shall be elected and qualify;
- (g) If an existing unincorporated association is being incorporated, the name of the existing unincorporated association;
- (h) A designation of the Minister of Foreign Affairs as the agent of the corporation upon whom process against it may be served in accordance with the provisions of section 3.2.

**§21.5. Registered agent for service of process.**

The registered agent for a domestic not-for-profit corporation conducting its activities in Liberia or an authorized foreign not-for-profit corporation shall be a resident domestic corporation having a place of business in Liberia or a natural person, resident of and having a business address in Liberia. The registered agent for a domestic not-for-profit corporation not conducting its activities in Liberia shall be a domestic bank or trust company with a paid in capital of not less than \$50,000, which is authorized by the Legislature of the Republic to act as registered agent for such corporations. A not-for-profit corporation which fails to maintain a registered agent as required shall be dissolved or its authority to conduct its activities in Liberia shall be revoked, as the case may be.

## **CHAPTER 23.**

# **CORPORATE FINANCE**

§23.1. Stock prohibited; membership certificates authorized.

§23.2. Income from corporate activities.

§23.3. Distributions allowable.

### **§23.1. Stock prohibited; membership certificates authorized.**

A not-for-profit corporation shall not have shares of stock or issue certificates for shares of stock, but may issue nontransferrable membership certificates or cards to evidence membership.

### **§23.2. Income from corporate activities.**

A not-for-profit corporation whose lawful activities involve among other things the charging of fees or prices for its services or products shall have the right to receive such income and, in so doing, may make an incidental profit. All such incidental profits shall be applied to the maintenance and operation of the lawful activities of the corporation, and in no case shall be divided or distributed in any manner whatsoever among the members, directors, or officers of the corporation.

### **§23.3. Distributions allowable.**

1. *Dividends.* A not-for-profit corporation shall not pay dividends or distribute any part of its income or profits to its members, directors, or officers.

2. *Compensation for services; distribution on dissolution.* A not-for-profit corporation may pay compensation in a reasonable amount to members, directors or officers for services rendered and may make distributions of cash or property to members upon dissolution or final liquidation as permitted by this Title.





## CHAPTER 24.

### MEMBERS

- §24.1. Who may be members; classes of membership.
- §24.2. Method of effecting and evidencing membership.
- §24.3. Fees, dues and assessments.
- §24.4. Liabilities of members.
- §24.5. Termination of membership.
- §24.6. Distributions to members upon termination of membership.

#### **§24.1. Who may be members; classes of membership.**

Corporations, unincorporated associations and partnerships, as well as natural persons, may be members of a not-for-profit corporation, or it may have no members. A not-for-profit corporation may have one or more classes of members. Any provision for classes of members or for no members shall be set forth in the charter, articles of incorporation or the bylaws. If the corporation has two or more classes of members, the designation and characteristics of each class and the qualifications and rights of, and limitations upon, the members of each class may be set forth in the charter, articles of incorporation, bylaws, or, if the bylaws so provide, a resolution of the board.

#### **§24.2. Method of effecting and evidencing membership.**

If the corporation has members, membership may be effected and evidenced by:

- (a) Signature on the articles of incorporation;
- (b) Designation in the articles of incorporation or the bylaws;
- (c) Membership certificate or card;
- (d) Such method, including but not limited to the foregoing, as its prescribed by the charter, articles of incorporation or the bylaws.

No member may transfer his membership or any right arising therefrom unless the articles or bylaws so provide.

#### **§24.3. Fees, dues and assessments.**

1. *Authorization to levy.* If authorized by its articles of incorporation or bylaws and subject to

any limitations stated therein, a not-for-profit corporation may levy initiation fees, dues and assessments on its members, whether or not they are voting members.

2. *Levy on classes of members.* Initiation fees, dues or assessments may be levied on all classes of members alike or in different amounts or proportions for different classes of members, as the charter, articles of incorporation or the bylaws may provide, but in all cases the obligations of members of one class shall be the same.

3. *Enforcement of collection.* The articles of incorporation or the bylaws may contain such provisions as are deemed necessary to enforce the collection of fees, dues or assessments, including provisions for the termination of membership, upon reasonable notice, for nonpayment of such fees, dues or assessments, and provisions for reinstatement of member-ship.

4. *Distributive rights.* Subject to the provisions of this Act, the articles of incorporation may provide that members paying initiation fees, dues or assessments shall, upon dissolution of the corporation, have distributive rights in its assets. The distributive rights may be different for different classes of members, but in all cases the rights of members of one class shall be the same.

#### **§24.4. Liabilities of members.**

The members of a not-for-profit corporation shall not be personally liable for the debts, liabilities or obligations of the corporation. A member shall be liable to the corporation only to the extent of any unpaid portion of the initiation fees, membership dues or assessments which the corporation may have lawfully imposed upon him, or for any other indebtedness owed by him to the corporation. No action shall be brought by any creditor of the corporation to reach and apply any such liability to any debt of the corporation until after final judgment shall have been rendered against the corporation in favor of the creditor and execution thereon returned unsatisfied, or the corporation shall have been adjudged bankrupt, or a receiver shall have been appointed with power to collect debts, and which receiver, on demand of a creditor to bring suit thereon, has refused to sue for such unpaid amount, or the corporation shall have been dissolved or ceased its activities leaving debts unpaid. No such action shall be brought more than three years after the happening of any one of such events.

#### **§24.5. Termination of membership.**

Except as otherwise provided in the charter or articles of incorporation or the bylaws, membership shall be terminated by death, resignation, expulsion, expiration of a term of membership, or dissolution and liquidation of the corporation.

#### **§24.6. Distributions to members upon termination of membership.**

1. *Termination of interest in property rights.* Except as provided in this Act or the articles of incorporation or the bylaws, the interest of a member in the property of a not-for-profit corporation shall terminate upon the termination of his membership, whether by expiration of the term of membership, or by the death, voluntary withdrawal, or expulsion of the member.

2. *Expulsion.* In the event of the expulsion of a member who would be entitled to a distributive

share of the corporation's assets upon liquidation, if the charter, articles of incorporation or the bylaws define cause for expulsion and provide reasonable safeguards for the property rights of the expelled member, such provisions shall be conclusive. In the absence of such provisions, the corporation shall pay to the expelled member an amount equal to what the expelled member would receive if the corporation's assets were liquidated at the time of the expulsion. If the parties cannot agree upon this amount, each shall appoint an appraiser and those two appraisers shall appoint a third appraiser. The three appraisers, by majority action after notice and hearing, shall determine the value of the expelled member's distributive share and the corporation shall immediately pay the amount thereof to the expelled member. If either party by registered letter addressed to the correct address of the other party requests in writing the appointment of appraisers and names the appraiser whom he appoints and indicates the amount which he believes to be the value of the expelled member's share, upon failure of the other party to appoint an appraiser within thirty days from receipt of, or refusal to receive the registered letter, the amount so indicated shall be the value of the share of the expelled member.

3. *Dissolution of corporation.* On dissolution or liquidation of the corporation, the assets of the corporation remaining after payment or adequately providing for payment of its liabilities shall be distributed in accordance with the applicable provisions of the articles of incorporation or the bylaws, or, in the absence of any such provisions, equally to all members.



**PART III.**  
**PARTNERSHIPS**



## **CHAPTER 30.**

# **PARTNERSHIPS**

- §30.1. Short Title.
- §30.2. General definitions.
- §30.3. Interpretation of knowledge and notice.
- §30.4. Rules of construction.
- §30.5. Rules for cases not provided for in this Chapter.
- §30.6. Partnership defined.
- §30.7. Rules for determining the existence of a partnership.
- §30.8. Partnership property.
- §30.9. Partner agent of partnership as to partnership business.
- §30.10. Conveyance of real property of the partnership.
- §30.11. Partnership bound by admission of partner.
- §30.12. Partnership charged with knowledge of or notice to partner.
- §30.13. Partnership bound by partner's wrongful act.
- §30.14. Partnership bound by partner's breach of trust.
- §30.15. Actions by and against the partnership.
- §30.16. Service upon partnership.
- §30.17. Liability of partners and partnership.
- §30.18. Partner by estoppel.
- §30.19. Liability of incoming partner.
- §30.20. Rules determining rights and duties of partners.
- §30.21. Partnership books.
- §30.22. Duty of partners to render information.
- §30.23. Partner accountable as a fiduciary.
- §30.24. Right to an account.
- §30.25. Continuation of partnership beyond fixed term.
- §30.26. Extent of property rights of a partner
- §30.27. Specific property.
- §30.28. Nature of partner's interest in the partnership.
- §30.29. Assignment of partner's interest.
- §30.30. Partner's interest subject to an order of a court.
- §30.31. Dissolution defined.
- §30.32. Partnership not terminated by dissolution.
- §30.33. Cause of dissolution.
- §30.34. Dissolution by decree of court.
- §30.35. General effect of dissolution on authority of partner.
- §30.36. Right of partner to contribution from copartners after dissolution.
- §30.37. Power of partner to bind partnership to third person after dissolution.
- §30.38. Effect of dissolution on partner's existing liability.

- §30.39. Right to wind up.
- §30.40. Right of partners to application of partnership property.
- §30.41. Rights where partnership is dissolved for fraud or misrepresentation.
- §30.42. Rules for distribution.
- §30.43. Liability in certain cases of persons continuing the business.
- §30.44. Rights of retiring or estate of deceased partner when business continued.
- §30.45. Accrual of actions.
- §30.46. Continuance of partnership business during action for accounting.
- §30.47. Payment of wages by receivers.
- §30.48. When partnership name may be continued.
- §30.49. Formation of partnership.

### **§30.1. Short Title**

This Chapter shall be known as the “Partnership Act.”

### **§30.2. General definitions.**

As used in this Chapter:

“*Court*” includes every court and judge having jurisdiction in the case;

“*Business*” includes every trade, occupation or profession;

“*Persons*” includes individuals, partnerships, corporations and other associations;

“*Conveyance*” includes every assignment, lease, mortgage or encumbrance;

“*Real property*” includes land and any interest or estate in land;

“*Bankruptcy*” includes bankruptcy under the Commercial and Bankruptcy Law, ch. XI.

### **§30.3. Interpretation of knowledge and notice.**

1. *Knowledge.* A person has “knowledge” of a fact within the meaning of this Chapter not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances show bad faith.

2. *Notice.* A person has “notice” of a fact within the meaning of this Chapter when the person who claims the benefit of the notice:

- (a) States the fact to such person; or
- (b) Delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at his place of business or residence.



**§30.4. Rules of construction.**

1. *Common law.* The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this Chapter.
2. *Estoppel.* The law of estoppel shall apply under this Chapter.
3. *Agency.* The law of agency shall apply under this Chapter.
4. *Construction.* This Chapter shall be so interpreted and construed as to effect its general purpose.
5. *Impairment of obligations.* The Partnership Act shall not be construed so as to impair the obligations of any contract existing when the Title becomes effective, nor to affect any action or proceedings begun or right accrued before this Title takes effect.

**§30.5. Rules for cases not provided for in this Chapter.**

In any case not provided for in this Chapter the rules of law and equity, including the law merchant, shall govern.

**§30.6. Partnership defined.**

1. *How constituted.* A partnership is an association of two or more persons to carry on as co-owners a business for profit.
2. *Effect of Title.* Any association not formed pursuant to this Part is not a partnership or a limited partnership unless it was so considered prior to the effective date of this Title, but all such partnerships and limited partnerships shall comply with the requirements of this Title subsequent to its effective date.

*Prior legislation:* 1956 Code 4:300; Rev. Stat. § 1223; L. 1895.96, 11, §31.

**§30.7. Rules for determining the existence of a partnership.**

In determining whether a partnership exists, these rules shall apply:

- (a) Except as provided for in cases of partnership by estoppel, persons who are not partners as to each other are not partners as to third persons;
- (b) Joint tenancy, tenancy in common, tenancy by the entirety, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property;
- (c) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from

which the returns are derived;

- (d) The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:
  - (i) As a debt, by installments or otherwise;
  - (ii) As wages of an employee or rent to a landlord;
  - (iii) As an annuity to a widow or representative of a deceased partner;
  - (iv) As interest on a loan, though the amount of payment varies with the profits of the business;
  - (v) As the consideration for the sale of the goodwill of a business or other property by installments or otherwise.

### **§30.8. Partnership property.**

1. *On account of partnership.* All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property.
2. *With partnership funds.* Unless the contrary intention appears, property acquired with partnership funds is partnership property.
3. *Estate in real property.* Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.
4. *Conveyance to partnership.* A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears.

### **§30.9. Partner agent of partnership as to partnership business.**

1. *In scope of business.* Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member, binds the partnership unless the partner so acting has in fact no authority to act for the partnership in the particular matter and the person with whom he is dealing has knowledge of the fact that he has no such authority.
2. *Beyond the scope of business.* An act of a partner which is not apparently done for the carrying on of the business of the partnership in the usual way, does not bind the partnership, unless authorized by the other partners.
3. *No authority.* Unless authorized by the other partners, unless the others have abandoned the

business, one or more but less than all of the partners have no authority to:

- (a) Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership;
- (b) Dispose of the good-will of the partnership business;
- (c) Do any other act which would make it impossible to carry on the ordinary business of the partnership;
- (d) Confess a judgment;
- (e) Submit a partnership claim or liability to arbitration or reference.

4. *Restrictions.* No act of a partner in contravention of a restriction on his authority shall bind the partnership to persons having knowledge of the restriction.

### **§30.10. Conveyance of real property of the partnership.**

1. *By one partner.* Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the applicable provisions of paragraph 1 of section 30.9, or unless such property has been conveyed by the grantee or a person claiming through such grantee, to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

2. *Conveyance in partner's name.* Where title to real property is in the name of the partnership, a conveyance executed by a partner in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph 1 of section 30.9.

3. *Partnership name not indicated.* Where title to real property is in the name of one or more but not all of the partners, and the record does not disclose the name of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of paragraph 1 of section 30.9, unless the purchaser or his assignee is a holder for value, without knowledge.

4. *Conveyance in partnership name by partners of title.* Where the title to real property is in the name of one or more or all of the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph 1 of section 30.9.

5. *Conveyance by all partners.* Where the title to real property is in the names of all of the partners, a conveyance executed by all of the partners passes all their rights in such property.

**§30.11. Partnership bound by admission of partner.**

An admission or representation made by any partner concerning partnership affairs, within the scope of his authority as conferred by this Chapter, is evidence against the partnership.

**§30.12. Partnership charged with knowledge of or notice to partner.**

Notice to any partner of any matter relating to partnership affairs, or the knowledge of the partner acting in the particular matter, acquired while a partner or then present in his mind, or the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operates as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

**§30.13. Partnership bound by partner's wrongful act.**

Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership, or with the authority of his copartners, loss or injury is caused to any person not a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or who has omitted to act.

**§30.14. Partnership bound by partner's breach of trust.**

The partnership is bound to make good the loss:

- (a) Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and
- (b) Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

**§30.15. Actions by and against the partnership.**

A partnership shall sue and be sued in the partnership name in accordance with the provisions of section 5.15 of the Civil Procedure Law.

**§30.16. Service upon partnership.**

Service upon a partnership may be effected in accordance with the provisions of section 3.38(4) of the Civil Procedure Law.

**§30.17. Liability of partners and partnership.**

1. *Partnership assets primarily liable.* The partners may not be sued individually for partnership

acts, liabilities, and obligations. When a judgment has been obtained against a partnership, execution thereof shall be against the assets of the partnership, though the partners are personally liable for the satisfaction of such judgments.

2. *Unsatisfied judgments.* In the event that a judgment when executed against partnership assets remains partially or wholly unsatisfied, the judgment creditor may thereafter proceed against one, or more than one, or all of the partners personally in full satisfaction thereof, upon provision therefor made in the writ of execution, and the partner or partners satisfying the said judgment out of personal assets shall be entitled to contributions from the other partner or partners in the proportion which their respective interests in the partnership bear to the amount of the judgment so satisfied, in the absence of private agreement.

### **§30.18. Partner by estoppel.**

1. *Ostensible partner's liability.* When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to any one, as a partner, in an existing partnership or with one or more persons not actually partners, he is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner, he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made:

- (a) When a partnership liability results, he is liable as though he were an actual member of the partnership;
- (b) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

2. *Others bound thereby.* When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.

### **§30.19. Liability of incoming partner.**

A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that his liability therefor shall be satisfied only out of partnership property.

### **§30.20. Rules determining rights and duties of partners.**

The rights and duties of the partners in relation to the partnership shall be determined, subject to any

agreement between them, by the following rules:

- (a) Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute toward the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits;
- (b) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of its business or property;
- (c) A partner, who in aid of the partnership, makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of the payment of advance;
- (d) A partner shall receive interest on the capital contributed by him only from the date when repayment should have been made;
- (e) All partners have equal rights in the management and conduct of the partnership business;
- (f) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his service in winding up the partnership affairs;
- (g) No person can become a member of a partnership without the consent of all the partners;
- (h) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

### **§30.21. Partnership books.**

The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them.

### **§30.22. Duty of partners to render information.**

Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability.

**§30.23. Partner accountable as a fiduciary.**

1. *To the partnership.* Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use of its property.

2. *Representative of deceased partner.* This section applies also to the representative of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representative of the last surviving partner.

**§30.24. Right to an account.**

Any partner shall have the right to a formal account as to partnership affairs:

- (a) If he is wrongfully excluded from the partnership business or possession of its property by his copartners;
- (b) If the right exists under the terms of any agreement;
- (c) As provided by section 30.23;
- (d) Whenever other circumstances render it just and reasonable.

**§30.25. Continuation of partnership beyond fixed term.**

1. *Rights and duties thereunder.* When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking, without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as consistent with a partnership at will.

2. *Evidence of partnership's continuation.* A continuation of the business by the partners or such of them as habitually acted therein during the term without any settlement or liquidation of the partnership affairs, is *prima facie* evidence of a continuation of the partnership.

**§30.26. Extent of property rights of a partner.**

The property rights of a partner are:

- (a) His rights in specific partnership property;
- (b) His interest in the partnership, and
- (c) his right to participate in the management, insofar as it may constitute a right of property.

### **§30.27. Specific property.**

1. *Nature of partner's right therein.* A partner is co-owner with his partners of specific partnership property, holding as a tenant in partnership.
2. Incident of tenancy in partnership.
  - (a) A partner, subject to the provisions of this Chapter and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners;
  - (b) A partner's right in specific partnership property is not assignable, except in connection with the assignment of the rights of all the partners in the same property;
  - (c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under exemption laws;
  - (d) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except when the deceased is the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representatives of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose;
  - (e) A partner's right in specific partnership property is not subject to dower, courtesy, or allowances to widows, heirs or next of kin.

### **§30.28. Nature of partner's interest in the partnership.**

A partner's interest in the partnership is his share of the profits and surplus, which constitutes personal property.

### **§30.29. Assignment of partner's interest.**

1. *Without dissolution.* A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.
2. *In dissolution.* In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest and may require an accounting from the date only of the last account agreed



to by all the partners.

**§30.30. Partner's interest subject to an order of a court.**

1. *In general.* On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of the debtor partner's share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

2. *Redemption of partner's interest.* The interest so charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

- (a) With separate property by any one or more of the partners; or
- (b) With partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold;
- (c) Nothing in this Chapter shall be held to deprive a partner of his rights, if any, under exemption laws, as regards his interest in the partnership.

**§30.31. Dissolution defined.**

The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on, as distinguished from the winding up, of the business.

**§30.32. Partnership not terminated by dissolution.**

On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.

**§30.33. Causes of dissolution.**

1. *Without violation of partnership agreement.* Without violation of the partnership agreement, dissolution is caused:

- (a) By the termination of the definite term or particular undertaking specified in the agreement;
- (b) By the express will of any partner when no definite term or particular undertaking is specified;

- (c) By the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking;
  - (d) By the expulsion of any partner from the business *bona fide* in accordance with such a power conferred by the agreement between the partners.
2. *In contravention of the partnership agreement.* Where the circumstances do not permit a dissolution under any other provision of this section, dissolution may be caused by the express will of any partner at any time.
3. *Unlawfulness of partnership.* Dissolution is caused when any event makes it unlawful for the business of the partnership to be carried on or for the members to carry the business on in partnership.
4. *Death of partner.* The death of any partner causes the dissolution of the partnership.
5. *Bankruptcy.* The bankruptcy of any partner or of the partnership results in the dissolution of the partnership.
6. *Decree.* The decree of the court under section 30.34 can cause the dissolution of the partnership.

**§30.34. Dissolution by decree of court.**

1. *On application by partner.* The court shall decree a dissolution of the partnership upon the application by or for a partner whenever:
- (a) A partner has been declared incompetent in any judicial proceeding or is shown to be of such unsound mind as to render him incapable of formulating sound judgments;
  - (b) A partner becomes in any other way incapable of performing his part of the partnership contract;
  - (c) A partner has been guilty of such conduct as tends to prejudicially affect the carrying on of the business;
  - (d) A partner willfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him;
  - (e) The business of the partnership can only be carried on at a loss;
  - (f) Other circumstances render a dissolution equitable.
2. *Application of a purchaser of partner's interest.* The court shall decree a dissolution of the partnership on the application of the purchaser of a partner's interest under section 30.29 or 30.30:

- (a) After the termination of the specified term or particular undertaking;
- (b) At any time if the partnership was a partnership at will when the interest was assigned or when the order charging the interest was issued.

*Prior legislation: 1956 Code 4:302; Rev. Stat. § 1390.*

**§30.35. General effect of dissolution on authority of partner.**

Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership:

- (a) *Partners.* With respect to the partners:
  - (i) When the dissolution is not by the act, bankruptcy or death of a partner; or
  - (ii) When the dissolution results from the act, bankruptcy or death of a partner, in cases where section 30.36 renders the other partners not liable for contribution to the acting partner;
- (b) *Third persons.* With respect to persons not partners, as declared in section 30.37, covering those cases when the partnership is not liable to them after dissolution.

**§30.36. Right of partner to contribution from copartners after dissolution.**

Where the dissolution is caused by the act, death, or bankruptcy of a partner, each partner is liable to his co-partners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless the partner acting for the partnership had knowledge of the act, death or bankruptcy resulting in the dissolution.

**§30.37. Power of partner to bind partnership to third persons after dissolution.**

*1. Power to bind.* After dissolution a partner can bind the partnership, except as provided in paragraph 3:

- (a) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution;
- (b) By any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction:
  - (i) Had extended credit to the partnership prior to the dissolution and had no knowledge or notice of the dissolution; or
  - (ii) Though he had not so extended credit, had nevertheless known of the partnership prior to the dissolution, and having no knowledge or notice of dissolution, the

fact of dissolution had not been advertised in a newspaper of general circulation in a county or district where newspapers of general circulation are printed, or placarded prominently in front of the Post Office in counties or districts where newspapers of general circulation are not printed, in the place at which the partnership business was regularly carried on.

2. *Partnership assets.* The liability of a partner under paragraph 1(b) shall be satisfied out of partnership assets alone when such partner had been prior to dissolution:

- (a) Unknown as a partner to the person with whom the contract is made; and
- (b) So far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.

3. *Partnership not bound.* The partnership is in no case bound by an act of a partner after dissolution:

- (a) Where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs; or
- (b) Where the acting partner has become bankrupt; or
- (c) Where the partner has no authority to wind up partnership affairs, except by a transaction with one who:
  - (i) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority; or
  - (ii) Had not extended credit to the partnership prior to dissolution and, having no knowledge or notice of his want of authority, the fact of his want of authority had not been advertised in the manner provided for advertising the fact of dissolution in paragraph 1(b)(ii).

4. *Estoppel.* Nothing in this section shall affect the liability under section 30.18 of any person who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business.

### **§30.38. Effect of dissolution on partner's existing liability.**

1. *No discharge.* The dissolution of the partnership does not of itself discharge the existing liability of any partner.

2. *Discharge by agreement.* A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership continuing the business.

3. *Assumption of obligation by another.* Where a person agrees to assume the existing obligations

of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

4. *Deceased partner.* The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but such individual property shall be subject to the prior payment of his separate debts.

### **§30.39. Right to wind up.**

Unless otherwise agreed, the partners who have not wrongfully dissolved the partnership, or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs; provided, however, that any partner, his legal representative, or his assignee, upon cause shown, may obtain from the court the right to wind up.

### **§30.40. Rights of partners to application of partnership property.**

1. *When dissolution not in contravention of agreement.* When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his copartners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, *bona fide* under the partnership agreement, and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under section 30.38.2, he shall receive in cash only the net amount due him from the partnership.

2. *Dissolution in contravention of agreement.* When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

- (a) Each partner who has not caused dissolution wrongfully shall have:
  - (i) All the rights specified in paragraph 1 of this section; and
  - (ii) The right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement;
- (b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully, the value of his interest in the partnership at the dissolution, less any damages recoverable under paragraph 2(a)(ii) of this section, and in like manner indemnify him against all present or future partnership liabilities;
- (c) A partner who has caused the dissolution wrongfully shall have:

- (i) If the business is not continued under the provisions of paragraph 2(b) of this section, all the rights of a partner under paragraph 1, subject to paragraph 2(a)(ii) of this section;
- (ii) If the business is continued under paragraph 2(b) of this section, the right as against his copartners and all claiming through them in respect of their interest in the partnership, to have the value of his interest in the partnership, less any damages caused to his copartners by the dissolution, ascertained and paid to him in cash, or the payment secured by bond approved by the court, and to be released from all existing debt of the partnership; but in ascertaining the value of the partner's interest the value of the good-will of the business shall not be considered.

**§30.41. Rights where partnership is dissolved for fraud or misrepresentation.**

Where a partnership contract is rescinded on the ground of fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other rights, entitled:

- (a) To a lien on, or right of return of, the surplus of the partnership property after satisfying the partnership liabilities to third persons, for any sum of money paid by him for the purchase of an interest in the partnership, and for any capital or advances contributed by him; and
- (b) To stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities; and
- (c) To be indemnified by the person guilty of the fraud or making the misrepresentation, against all debts and liabilities of the partnership.

**§30.42. Rules for distribution.**

In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

- (a) The assets of the partnership are:
  - (i) The partnership property;
  - (ii) The contributions of the partners necessary for the payment of all the liabilities specified in subparagraph (b) of this section;
- (b) The liabilities of the partnership shall rank in order of payment as follows:
  - (i) Those owing to creditors other than partners;

- (ii) Those owing to partners other than for capital and profits;
- (iii) Those owing to partners in respect of capital;
- (iv) Those owing to partners in respect of profits and surplus;
- (c) The assets shall be applied in the order of their declaration in subparagraph (b) hereof to the satisfaction of the liabilities;
- (d) The partners shall contribute, as provided by section 30.20(a), the amount necessary to satisfy the liabilities; but if any, but not all, of the partners are insolvent or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities;
- (e) An assignee for the benefit of creditors, or any person appointed by the court, shall have the right to enforce the contributions specified in subparagraph (d) of this section;
- (f) Any partner or his legal representative shall have the right to enforce the contributions specified in subparagraph (d) of this section, to the extent of the amount which he has paid in excess of his share of the liabilities;
- (g) The individual property of a deceased partner shall be liable for the contributions specified in subparagraph (d) of this section;
- (h) When partnership property and the individual properties of the partners are in the possession of a court for distribution, partnership creditors shall have priority on partnership property, saving the rights of lien or secured creditors;
- (i) Where a partner has become bankrupt or his estate is insolvent, the claims against his separate property shall rank in the following order:
  - (i) Those owing to separate creditors;
  - (ii) Those owing to partnership creditors;
  - (iii) Those owing to partners by way of contribution.

**§30.43. Liability in certain cases of persons continuing the business.**

*1. New and former partners.* When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representative of the deceased partner assigns) his rights in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business.

2. *Sole persons.* When all but one partner retire and assign (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

3. *Without assignment.* When any partner retires or dies and the business of the dissolved partnership is continued as set forth in paragraphs 1 and 2 of this section, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

4. *No former partners.* When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

5. *Wrongful dissolution.* When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of section 30.40.2 (b), either alone or with others, and without liquidation of partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

6. *Expulsion.* When a partner is expelled and the remaining partner or partners continue the business either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

7. *Third persons.* The liability of a third person becoming a partner in the partnership continuing the business under this section, to the creditors of the dissolved partnership, shall be satisfied out of partnership property only.

8. *Creditors of former partners.* When the business of a partnership after dissolution is continued under any conditions set forth in this section, the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partners or the representative of the deceased partner, have a prior right to any claim of the retired partner against the person or partnership continuing the business, on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for his right in partnership property.

9. *Fraud.* Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

10. *Deceased partner.* The use by the person or partnership continuing the business, of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the former or deceased partner liable for any debts contracted by such person or partnership.

**§30.44. Rights of retiring or estate of deceased partner when business continued.**



When any partner retires or dies, and the business is continued under any of the conditions set forth in section 30.43.1, 2, 3, 5, 6, or section 30.40.2 (b), without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option, or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided that the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this section as provided by section 30.43.8.

**§30.45. Accrual of actions.**

The right to an account of his interest shall accrue to any partner, or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of its dissolution, in the absence of agreement to the contrary.

**§30.46. Continuance of partnership business during action for accounting.**

In an action brought to dissolve a partnership, or for an accounting between partners, or affecting the continued prosecution of the business, the court may, in its discretion, by order, authorize the partnership business to be continued during the pendency of the action by one or more of the partners, upon their executing and filing with the court an undertaking, in such a sum and with such sureties as the order prescribes, to the effect that they will obey all orders of the court, in the action, and perform all things which the judgment therein requires them to perform. The court may impose such other conditions as it deems proper, and it may in its discretion at any time thereafter require a new undertaking to be given. The court may also ascertain the value of the partnership property, and of the interests of the respective partners by a reference or otherwise, and may direct an accounting between any of the partners, and the judgment may make such provision for the payment to the retiring partners, for their interests, and with respect to the rights of creditors, the title to the partnership property, and otherwise, as justice requires, with or without the appointment of a receiver, or a sale of the property.

**§30.47. Payment of wages by receivers.**

Upon the appointment of a receiver of a partnership, the wages of the employees of such partnership shall be preferred to every other debt or claim.

**§30.48. When partnership name may be continued.**

The use of a partnership name may be continued in the following cases:

- (a) *After dissolution of an partnership.* Where the business of any partnership which has transacted business continues to be conducted by some or any of the partners, their or any of their assignees, appointees, or successors in interest;

- (b) *Newly-formed partnership.* Where any partnership shall hereafter be formed it may use the firm or corporate name of any general or limited partnership or of any corporation which may theretofore have carried on business, where said general or limited partnership or corporation has discontinued or shall be about to discontinue its business, and where a majority of the partners, general or special, in either of such last mentioned co-partnerships, or where a majority of the members of such co-partnership theretofore existing or of the surviving members thereof, or where stockholders holding a majority of the stock of such corporation shall consent in writing to the use of such firm or corporate name by such new co-partnership.

### **§30.49. Formation of partnership.**

1. *Written agreement.* A partnership is formed when two or more persons agree to carry on as co-owners a business for profit and they reduce such agreement to writing and each signs it.
2. *Filing of partnership agreement or memorandum of partnership.* Within 90 days of the formation of the partnership a signed and acknowledged copy of the partnership agreement or a memorandum of partnership stating the name of the partnership and the character of the business shall be filed in the office of the Registrar of Deeds of the county in which the principal office of the partnership or its registered agent is to be located.
3. *Filing fee.* On filing the partnership agreement or memorandum of partnership, a partnership shall pay a fee of US\$200.00 to the Minister of Finance and a receipt therefor shall accompany the document for filing.
4. **Registered Agent.**
  - (a) Every partnership registered under the provisions of section 30.49.2 but not having a place of business in Liberia shall designate in the partnership agreement or memorandum of partnership filed pursuant to this section a registered agent in Liberia upon whom process against such partnership or any notice or demand required or permitted by law to be served may be served. The registered agent for a partnership having a place of business in Liberia shall be a resident domestic corporation having a place of business in Liberia or a natural person, resident of and having a business address in Liberia. The registered agent for a partnership not having a place of business in Liberia shall be a domestic bank or trust company qualified in accordance with the provisions of section 3.1 of the Liberian Business Corporation Act;
  - (b) A partnership which fails to maintain a registered agent shall be dissolved or its authority to do business or registration shall be revoked, as the case may be;
  - (c) In cases where the registered agent of a partnership fails to meet the requirements of section 3.1 of the Liberian Business Corporation Act, the goodstanding of such partnership for which such registered agent is acting shall not be affected and the provisions of paragraph (b) above shall be suspended so long as the annual fees of such partnership are not outstanding and at the time such annual fees were paid they

were paid to an entity which then qualified to serve as a registered agent;

- (d) In cases where a registered agent fails to meet the requirements of section 3.1 of the Liberian Business Corporation Act, the partnership for which such registered agent is acting shall, notwithstanding any contrary provisions of this Act, not be required to amend its partnership agreement, memorandum of partnership or other constituent documents to designate a new registered agent, and such designation may be made in accordance with procedures approved by the Minister of Foreign Affairs;
- (e) Whenever a registered agent is no longer qualified to serve as a registered agent under section 3.1 of the Liberian Business Corporation Act, the Minister of Foreign Affairs may appoint any other entity qualified to serve as a registered agent pursuant to this section until such partnership appoints a new registered agent qualified under this section.

*Prior legislation:* 1977 Code 5; Part I, ch. 3, §3.1; 1956 Code 4:300; Rev. Stat. 1223,1224; L. 1895-96,11, §31; Nov 26, 1999; 1976 Liberian Code of Laws Revised, Chapter 30, §30.49, amended effective June 19, 2002.



## CHAPTER 31.

### LIMITED PARTNERSHIPS

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- §31.35. Power of limited partnership to re-domicile out of Liberia.
- §31.36. Reregistration of another entity as a limited partnership.
- §31.37. Cancellation and reregistration of limited partnership as another entity.

### **§31.1. Limited partnership defined.**

A limited partnership is a partnership formed by two or more persons under the provisions of section 31.2, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership.

### **§31.2. Formation.**

1. *Filing of certificate.* Two or more persons desiring to form a limited partnership shall sign and acknowledge a certificate containing the limited partnership agreement and shall file the certificate with the Registrar of Deeds of the county in which the principal office of the limited partnership or its registered agent shall be located. The limited partnership is formed upon filing of the certificate.

2. *Contents of certificate.* Included in the certificate shall be statements as to the following:

- (a) The name of the limited partnership;
- (b) The character of the business;
- (c) The address of the limited partnership in Liberia;
- (d) The name and place of residence of each member, general and limited partners being respectively designated;
- (e) The term for which the partnership is to be;
- (f) The amount of cash and a description of and the agreed value of the other property contributed by each limited partner;
- (g) The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made;
- (h) The time, if agreed upon, when the contribution of each limited partner is to be made;
- (i) The share of the profits or the other compensation by way of income, which each limited partner shall receive by reason of his contribution;
- (j) The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution;
- (k) The right, if given, of the partners to admit additional limited partners;
- (l) The right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority;

- (m) The right, if given, of the remaining general partner or partners to continue the business on the death, retirement or disability of a general partner;
- (n) The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

3. *Filing fee.* On filing the certificate a limited partnership shall pay a fee of US\$200.00 to the Minister of Finance and a receipt therefor shall accompany the document for filing.

4. *Registered agent.*

- (a) Every limited partnership registered under the provisions of section 31.2.1 but not having a place of business in Liberia shall designate in the certificate containing the terms of the limited partnership agreement filed pursuant to this section a registered agent in Liberia upon whom process against such limited partnership or any notice or demand required or permitted by law to be served may be served. The registered agent for a limited partnership having a place of business in Liberia shall be a resident domestic corporation having a place of business in Liberia or a natural person, resident of and having a business address in Liberia. The registered agent for a limited partnership not having a place of business in Liberia shall be a domestic bank or trust company qualified in accordance with the provisions of section 3.1 of the Liberian Business Corporation Act;
- (b) A limited partnership which fails to maintain a registered agent shall be dissolved or its authority to do business or registration shall be revoked, as the case may be;
- (c) In cases where the registered agent of a limited partnership fails to meet the requirements of section 3.1 of the Liberian Business Corporation Act, the good standing of such limited partnership for which such registered agent is acting shall not be affected and the provisions of paragraph (b) above shall be suspended so long as the annual fees of such limited partnership are not outstanding and at the time such annual fees were paid they were paid to an entity which then qualified to serve as a registered agent;
- (d) In cases where a registered agent fails to meet the requirements of section 3.1 of the Liberian Business Corporation Act, the limited partnership for which such registered agent is acting shall, notwithstanding any contrary provisions of this Act, not be required to amend its certificate filed pursuant to section 31.2.1, limited partnership agreement or other constituent documents to designate a new registered agent, and such designation may be made in accordance with procedures approved by the Minister of Foreign Affairs, which may include the waiver of the provisions of section 31.25;
- (e) Whenever a registered agent is no longer qualified to serve as a registered agent under section 3.1 of the Liberian Business Corporation Act, the Minister of Foreign Affairs may appoint any other entity qualified to serve as a registered agent pursuant to this

section until such limited partnership appoints a new registered agent qualified under this section.

*Prior legislation:* 1976 Liberian Code of Laws Revised, Chapter 31, §31.2, amended effective November 26, 1999; June 19, 2002.

**§31.3. Business which may be carried on.**

A limited partnership may carry on any business which a partnership without limited partners may carry on.

**§31.4. Character of limited partner's contributions.**

The contributions of a limited partner may be cash or other property, but not services.

**§31.5. Name of limited partnership.**

1. *Surname of limited partner in partnership name.* The surname of a limited partner shall not appear in the partnership name, unless:

- (a) It is also the surname of a general partner; or
- (b) Prior to the time when the limited partner became such, the business had been carried on under a name in which his surname appeared.

2. *Where surname wrongfully appears.* A limited partner whose name appears in a partnership name contrary to the provisions of paragraph 1, is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner.

**§31.6. Liability for false statement in certificate.**

If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false:

- (a) At the time he signed the certificate; or
- (b) Subsequently, but within a sufficient time before the statement was relied upon to enable him to cancel or amend the certificate or to file a petition for its cancellation or amendment as provided in this Chapter.

**§31.7. Limited partner not liable to creditors.**

A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control and management of the business.



**§31.8. Admission of additional limited partners.**

After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of this Chapter.

**§31.9. Rights, powers and liabilities of a general partner.**

A general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority to:

- (a) Do any act in contravention of the certificate;
- (b) Do any act which would make it impossible to carry on the ordinary business of the partnership;
- (c) Confess a judgment against the partnership;
- (d) Possess partnership property, or assign their rights in specific partnership property for other than a partnership purpose;
- (e) Admit a person as a general partner;
- (f) Admit a person as a limited partner, unless the right to do so is given in the certificate;
- (g) Continue the business with partnership property on the death, retirement or disability of a general partner, unless the right to do so is given in the certificate.

**§31.10. Rights of a limited partner.**

1. *Disclosure and decree.* A limited partner shall have the same rights as a general partner to:

- (a) Have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them;
- (b) Have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable; and
- (c) Have dissolution and winding up by decree of court.

2. *Profits and contributions.* A limited partner shall have the right to receive a share of the profits or other compensation by way of income, and to the return of his contributions as provided for in this Chapter.

**§31.11. Status of person erroneously believing himself to be a limited partner.**

A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or in the other compensation received by him as income, except for interest on any money contributed by him.

**§31.12. One person both general and limited partner.**

1. *Same person.* A person may be a general partner and a limited partner in the same partnership at the same time.
2. *Liability and rights thereof.* A person who is a general, and at the same time also a limited partner, shall have all the rights and powers and be subject to all the restrictions of a general partner; except that in respect to his contributions, he shall have the rights against the other members which he would have had were he not also a general partner.

**§31.13. Loans and other business transactions with limited partner.**

1. *Financial transactions.* A limited partner also may loan money to and transact other business with the partnership and, unless he is also a general partner, receive on account of resulting claims against the partnership, with general creditors, a *pro rata* share of the assets. No limited partner shall in respect to any such claim:
  - (a) Receive or hold as collateral security any partnership property; or
  - (b) Receive from a general partner or the partnership any payment, conveyance or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.
2. *Fraud.* The receiving of collateral security or a payment, conveyance or release in violation of the provisions of paragraph 1 is a fraud on the creditors of the partnership.

**§31.14. Relation of limited partners *inter se*.**

Where there are several limited partners the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income, or as to any other matter. If such an agreement is made it shall be stated in the certificate, but in the absence of such a statement all the limited partners shall stand upon equal footing.

**§31.15. Compensation of limited partner.**

A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated for in the certificate, provided that after such payment is made, whether from the property of the partnership or that of a general partner, the partnership assets shall be in excess of all liabilities of the partnership except liabilities to limited partners on account of their contributions, and to general partners.

**§31.16. Withdrawal or reduction of limited partner's contribution.**

1. *Limitations thereon.* A limited partner shall not receive from a general partner or out of partnership property any part of his contribution until:

- (a) All liabilities of the partnership, except liabilities to general partners and limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them;
- (b) The consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of paragraph 2; and
- (c) The certificate is cancelled or so amended as to set forth the withdrawal or reduction.

2. *Return of contribution.* Subject to the provisions of paragraph 1, a limited partner may rightfully demand the return of his contribution:

- (a) On the dissolution of the partnership; or
- (b) When the date specified in the certificate for its return has arrived; or
- (c) After he has given six months' notice in writing to all other members, if no time is specified in the certificate either for the return of the contribution or the dissolution of the partnership.

3. *Cash.* In the absence of any statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of his contributions, has only the right to demand and receive cash in return for his contributions.

4. *Right to dissolution.* A limited partner may have the partnership dissolved and its affairs wound up when:

- (a) He rightfully but unsuccessfully demands the return of his contribution; or
- (b) The other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment, and the limited partner would otherwise be entitled to the return of his contribution.

### **§31.17. Liability of limited partner to partnership.**

1. *Contributions.* A limited partner is liable to the partnership:
  - (a) For the difference between his contribution as actually made and that stated in the certificate as having been made; and
  - (b) For any unpaid contributions which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.
2. *Waiver and compromise.* The liabilities of a limited partner as set forth in this section can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of the partnership, who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities.
3. *Rights of partnership.* When a limited partner has rightfully received the return in whole or in part of the capital of his contribution, he is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return.
4. *When trustee.* A limited partner holds as trustee for the partnership:
  - (a) Specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned; and
  - (b) Money or other property wrongfully paid or conveyed to him on account of his contribution.

### **§31.18. Nature of interest in partnership.**

A limited partner's interest in the partnership is personal property.

### **§31.19. Assignment of interest.**

1. *Assignable.* A limited partner's interest is assignable.
2. *Substituted limited partner.* A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership.
3. *Assignee.* An assignee who does not become a substituted limited partner, has no right to require any information or account of the partnership transactions or to inspect the partnership books; he is only entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution, to which his assignor would otherwise be entitled.
4. *Assignee as substituted limited partner.* An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with this Chapter and all the members

consent thereto, or if the assignor, being thereunto empowered by the certificate, gives the assignee that right.

5. *Rights of substituted limited partner.* The substituted limited partner has all the rights and powers, and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.

6. *Assignor's liability.* The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership when it would otherwise attach.

#### **§31.20. Dissolution of partnership.**

The causes and means for dissolution of the partnership by the general partners shall be those specified in sections 30.33 and 30.34.

#### **§31.21. Death of a limited partner.**

1. *Representation.* On the death of a limited partner his executor or administrator shall have all the rights of a limited partner for the purpose of settling his estate, and such power as the deceased had to constitute his assignee a substituted limited partner.

2. *Estate.* The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner.

#### **§31.22. Right of creditors of limited partner.**

1. *Charging order.* On due application to a court of competent jurisdiction by any judgment creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of the judgment debt, and may appoint a receiver, and make all other orders, directions and inquiries which the circumstances of the case may require.

2. *Redemption.* The interest may be redeemed with the separate property of any general partner, but may not be redeemed with partnership property.

3. *Not exclusive.* The remedies conferred by paragraph 1 shall not be deemed exclusive of others which may exist.

4. *Exemption.* Nothing in this Act shall be construed to deprive a limited partner of his statutory exemption.

#### **§31.23. Distribution of assets.**

1. *Order of payment.* In settling accounts after dissolution of the partnership the liabilities of the partnership shall be entitled to payment in the following order:

- (a) Those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions, and to general partners;
- (b) Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions;
- (c) Those to limited partners in respect to the capital of their contributions;
- (d) Those to general partners, other than for capital and profits;
- (e) Those to general partners in respect to profits;
- (f) Those to general partners in respect to capital.

2. *Sharing.* Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to their claims for capital, and in respect to their claims for profits or for compensation by way of income on their contributions respectively, in proportion to the respective amounts of such claims.

**§31.24. Certificate cancelled or amended.**

1. *Cancellation.* The certificate shall be cancelled when the partnership is dissolved or all limited partners cease to be such.

2. *Amendment.* A certificate shall be amended when:

- (a) There is a change in the name of the partnership or in the amount or character of the contribution of any limited partner;
- (b) A person is substituted as a limited partner;
- (c) An additional limited partner is admitted;
- (d) A person is admitted as a general partner;
- (e) A general partner retires, dies or becomes disabled and the business is continued;
- (f) There is a change in the character of the business of the partnership, or a change in the location of the principal place of business;
- (g) There is a false or erroneous statement in the certificate;
- (h) There is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution;

- (i) A time is fixed for the dissolution of the partnership, or the return of a contribution, no time having been specified in the certificate;
- (j) The members desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement between them.

**§31.25. Requirements for amendment or cancellation.**

1. *Amendment.* The writing to amend a certificate shall:

- (a) Conform to the requirements of section 31.2 as far as necessary to set forth clearly the change in the certificate which it is desired to make; and
- (b) Be signed and sworn to by all members; an amendment substituting a limited partner or adding a limited or general partner shall be signed and sworn to also by the member to be substituted or added, and when a limited partner is to be substituted the amendment shall also be signed and sworn to by the assigning limited partner.

2. *Cancellation.* The writing to cancel a certificate shall be signed and sworn to by all members.

3. *When amended or cancelled.* A certificate is amended or cancelled when the provisions of paragraphs 1 and 2 have been complied with and such document is filed in the office of the Registrar of Deeds where the certificate was filed, provided that in the case of an amendment made occasioned by a change to another county of the location of the principal place of business, a certificate is not amended until a certified copy of the certificate and certified copies of all writings amending the certificate are also filed in the office of the Registrar of Deeds of the county to which the location of the principal place of business is changed.

4. *Amended certificate.* After the certificate has been duly amended in accordance with this section, the amended certificate shall thereafter be for all purposes the certificate provided for by this Chapter, and when the certificate has been amended by reason of a change to another county of the location of the principal place of business, the county in which certified copy of the amended certificate was last filed shall thereafter be deemed to be the county where the certificate is filed.

**§31.26. Parties to action.**

A contributor, unless he is a general partner, is not a liable party in proceedings against the partnership except when the object is to enforce his liability to the partnership; a limited partner, anything to the contrary notwithstanding, may always enforce his rights against the partnership.

**§31.27. Short Title.**

This Chapter shall be known and may be cited as the Limited Partnership Act.

**§31.28. Rules of construction.**

1. *Common law.* The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this Chapter.
2. *Construction.* This Chapter shall be so interpreted and construed as to effect its general purpose, and the rule of substantial compliance in good faith done shall apply to the formation of limited partnerships and changes in them thereafter made.
3. *Impairment of obligations.* This Chapter shall not be so construed as to impair the obligations of any contract existing when this Chapter takes effect, nor to affect any action or proceeding begun or right accrued before this Chapter takes effect.

**§31.29. Rules for cases not covered.**

In any case not provided for in this Chapter, the rules of law and equity, including the law merchant, shall govern.

**§31.30. Existing limited partnerships.**

1. *Prior limited partnerships.* A limited partnership heretofore formed prior to the adoption of this Chapter shall become a limited partnership under this Chapter by complying with the provisions of section 31.2, provided the certificate sets forth:
  - (a) The amount of the original contribution of each limited partner, and the time when the contribution was made; and
  - (b) That the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners.
2. *Impairment of obligations.* The provisions of this Chapter, or its repeal, shall not affect or impair any act done or right accrued, acquired or established by a limited partnership formed prior to its adoption.

**§31.31. Merger or consolidation of limited partnerships.**

1. *Power to merge or consolidate.* Two or more limited partnerships may merge into a single limited partnership, which may be any one of the constituent limited partnerships, or they may consolidate into a new limited partnership formed by the consolidation, pursuant to a plan of merger or consolidation, as the case may be, complying and approved in accordance with this section.
2. *Plan of merger or consolidation.* The partners of each limited partnership proposing to participate in a merger or consolidation under this section shall approve a plan of merger or consolidation setting forth:



- (a) The name of each constituent limited partnership, and if the name of any of them has been changed, the name under which it was formed, and the name of the surviving limited partnership, or the name, or the method of determining it, of the consolidated limited partnership;
- (b) As to each constituent limited partnership, the designation and number of partners specifying the entitlement to vote;
- (c) The terms and conditions of the proposed merger or consolidation, including the manner and basis of converting the partnership contributions, rights and obligations of each partner of each constituent limited partnership into partnership participation in the surviving or consolidated limited partnership, or the cash or other consideration to be paid or delivered in exchange for partnership interests in each constituent limited partnership, or combination thereof;
- (d) In case of merger, a statement of any amendment in the certificate of limited partnership of the surviving limited partnership to be effected by such merger; in case of consolidation, all statements required to be included in a certificate of limited partnership for a limited partnership formed under this Chapter, except statements as to facts not available at the time the plan of consolidation is approved by the partners;
- (e) Such other provisions with respect to the proposed merger or consolidation as the partners consider necessary or desirable.

3. *Authorization by partners.* The partners of each constituent limited partnership shall approve such plan of merger or consolidation in accordance with the terms of the relevant partnership agreement.

4. *Certificate of merger or consolidation.* After approval of the plan of merger or consolidation by the partners, the certificate of merger or consolidation shall be executed in duplicate by each limited partnership and shall set forth:

- (a) The plan of merger or consolidation, and, in case of consolidation, any statement required to be included in a certificate of limited partnership for a limited partnership formed under this Chapter but which was omitted under paragraph 2(d);
- (b) The date when the certificates of limited partnership of each constituent limited partnership were filed with the Registrar of Deeds;
- (c) The manner in which the merger or consolidation was authorized with respect to each constituent limited partnership.

5. *Filing of certificate of merger or consolidation.* The surviving or consolidated limited partnership shall deliver duplicate originals of a certificate of merger or consolidation to the Registrar of Deeds and the certificate shall be filed in accordance with section 31.2 and the provisions of section 1.4 of Chapter 1 of Part I of this Title shall apply with the variation that execution shall be by any partner or other person performing in relation to the limited partnership the function of an

officer and duly authorized for this purpose.

6. *Certificate of merger or consolidation.* The certificate of merger or consolidation shall state:

- (a) The name of each of the constituent limited partnerships;
- (b) That a plan of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent limited partnerships in accordance with this section;
- (c) The name of the surviving or consolidated limited partnership;
- (d) In the case of a merger, such amendments or changes in the certificate of limited partnership of the surviving limited partnership as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of limited partnership of the surviving limited partnership shall be the certificate of limited partnership;
- (e) In the case of a consolidation, that the certificate of limited partnership of the consolidated limited partnership shall be as set forth in an attachment to the certificate of merger or consolidation;
- (f) That the executed plan of consolidation or merger is on file at an office of the surviving limited partnership; and
- (g) That a copy of the plan of consolidation or merger will be furnished by the surviving limited partnership on request and without cost, to any partner of any constituent limited partnership.

7. *Plan may be conditional.* Any of the terms of the plan of merger or consolidation may be made dependent upon facts ascertainable outside of such plan, provided that the manner in which such facts shall operate upon the terms of the plan is clearly and expressly set forth in the plan of merger or consolidation. The term “facts,” as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the limited partnership.

8. *Plan of merger or consolidation may be terminated.* Any plan of merger or consolidation may contain a provision that at any time prior to the time that the certificate of merger or consolidation filed with the Registrar of Deeds become effective in accordance with section 1.4 of Chapter 1 of Part I of this Title, with the substitution of references to the Registrar of Deeds for references to the Minister of Foreign Affairs, the plan may be terminated by the partners of any constituent limited partnership notwithstanding approval of the plan by the partners of all or any of the constituent limited partnerships and in the event the plan of merger or consolidation is terminated after the filing of the certificate of merger or consolidation with the Registrar of Deeds but before the plan has become effective, a certificate of termination of merger or consolidation shall be filed in accordance with section 1.4 of Chapter 1 of Part I of this Title with the substitution of references to

the Registrar of Deeds for references to the Minister of Foreign Affairs.

9. *Plan of merger or consolidation may be amended.* Any plan of merger or consolidation may contain a provision that the partners of the constituent limited partnership may amend the plan at any time prior to the time that the certificate of merger or consolidation filed with the Registrar of Deeds becomes effective in accordance with section 1.4 of Chapter 1 of Part I of this Title with the substitution of references to the Registrar of Deeds for references to the Minister of Foreign Affairs, provided that an amendment made subsequent to the adoption of the plan by the partners of any constituent limited partnership shall not alter or change:

- (a) The partnership interests to be received in exchange for or on conversion of all or any of the partnership interests of such constituent limited partnership;
- (b) Any term of the certificate of limited partnership of the surviving limited partnership to be effected by the merger or consolidation; or
- (c) Any of the terms and conditions of the plan if such alteration or change would adversely affect the individual partners of such constituent limited partnership,

and in the event the plan of merger or consolidation is amended after the filing of the certificate of merger or consolidation with the Registrar of Deeds but before the plan has become effective, a certificate of amendment of merger or consolidation shall be filed and the provisions of section 1.4 of Chapter 1 of Part I of this Title shall apply with the variation that execution shall be by any partner or other person performing in relation to the limited partnership the function of an officer and duly authorized for this purpose.

10. *Application of section 31.32.* The provisions of section 31.32 shall apply.

11. *Liability of partner of former limited partnership.* The personal liability, if any, of any partner in a constituent limited partnership existing at the time of such merger or consolidation shall not thereby be extinguished, shall remain personal to such partner and shall not become the liability of any subsequent transferee of any partnership in such surviving or consolidated limited partnership or of any other partner of such surviving or consolidated limited partnership.

*Effective:* June 19, 2002.

### **§31.32. Effect of merger or consolidation.**

1. *When effective.* Upon the filing of the certificate of merger or consolidation with the Registrar of Deeds or on such date subsequent thereto, not to exceed ninety days, as shall be set forth in such certificate, the merger or consolidation shall be effective.

2. *Effects stated.* When such merger or consolidation has been effected:

- (a) Such surviving or consolidated limited partnership shall thereafter consistently with its certificate of limited partnership as altered or established by the merger or consolidation, possess all the rights, privileges, immunities, powers and purposes of

each of the constituent limited partnerships;

- (b) All the property, real and personal, including subscriptions to shares, causes of action and every other asset of each of the limited partnerships, shall vest in such surviving or consolidated limited partnership without further act or deed;
- (c) The surviving or consolidated limited partnership shall assume and be liable for all the liabilities, obligations and penalties of each of the constituent limited partnerships. No liability or obligation due or to become due, claim or demand for any cause existing against any such limited partnership, or any partner thereof, shall be released or impaired by such merger or consolidation. No action or proceeding, whether civil or criminal, then pending by or against any such constituent limited partnership, or any partner thereof, shall abate or be discontinued by such merger or consolidation, but may be enforced, prosecuted, settled or compromised as if such merger or consolidation had not occurred, or such surviving or consolidated limited partnership may be substituted in such action or special proceeding in place of any constituent limited partnership;
- (d) In the case of a merger, the certificate of limited partnership of the surviving limited partnership shall be automatically amended to the extent, if any, that changes in its certificate of limited partnership are set forth in the plan of merger; and, in the case of a consolidation, the statements set forth in the certificate of consolidation and which are required or permitted to be set forth in the certificate of limited partnership of a limited partnership formed under this Chapter, shall be its certificate of limited partnership;
- (e) Unless otherwise provided in the articles of merger or consolidation, a constituent limited partnership which is not the surviving limited partnership or the consolidated limited partnership, ceases to exist and is dissolved.

*Effective:* June 19, 2002.

### **§31.33. Merger or consolidation of limited partnership and other associations.**

1. *Definitions.* In this section:

“**Association**” includes any association, having legal personality or registered as a legal entity under the laws of Liberia or elsewhere and whether formed by agreement or under statutory authority or otherwise, and includes a corporation, by whatever name described, limited partnership, except a limited partnership to which this Chapter applies, limited liability company, foundation or registered business company; and

“**Shareholder**” includes every member of such an association or holder of a share or person having present or future direct financial or beneficial interest therein.

2. *Power to merge or consolidate.* One or more limited partnerships may merge or consolidate with one or more associations, except an association formed under the laws of a jurisdiction which forbids such merger or consolidation. Such one or more limited partnership or limited partnerships

and such one or more associations may merge into a single limited partnership or association, which may be any one of such limited partnerships or associations, or may consolidate into a new limited partnership or association established in Liberia or elsewhere, pursuant to a plan of merger or consolidation, as the case may be, complying with and approved in accordance with this section. The surviving or consolidated entity may be organized for profit or not organized for profit, and if the surviving or consolidated association is a corporation, it may be a corporation authorized to issue shares or a non-share corporation.

3. *Method in respect of constituent limited partnerships.* In the case of a constituent limited partnership the provisions of section 31.31 shall apply with the variation that the plan of merger or consolidation of each constituent limited partnership shall state:

- (a) The manner of converting the partnership participations of the constituent limited partnerships and the shares, memberships or financial or beneficial interests in the constituent associations into partnership interests or shares, memberships or financial or beneficial interests of the surviving or consolidated limited partnership or association, as the case may be;
- (b) If any partnership participations in any constituent limited partnership or shares, memberships or financial or beneficial interests in any constituent association are not to be converted solely into partnership participations of the surviving or consolidated limited partnership or shares, memberships or financial or beneficial interests in the surviving or consolidated association, the cash or other consideration to be paid or delivered in exchange for partner participations and, in the case of a constituent association, in exchange for shares, memberships or financial or beneficial interests in the association, as the case may be.

4. *Additional matters in respect of surviving or consolidated foreign associations.* The plan of merger or consolidation shall set forth such other matters or provisions as shall then be required to be set forth in instruments by which an association is organized in the laws of the jurisdiction which are stated in the plan to be the laws which shall govern a surviving or consolidated association and that can be stated in the case of a merger or consolidation.

5. *Method in respect of constituent associations and surviving or consolidated associations organized in Liberia.* The plan of merger or consolidation required by this section shall be adopted, approved, certified, executed and acknowledged by each constituent association organized or registered in Liberia and, in the case of a surviving or consolidated association organized or registered in Liberia filed by that association in accordance with the relevant statutory requirements.

6. *Method to be followed by constituent and surviving or consolidated foreign associations.* Each constituent and each surviving or consolidated foreign association shall comply with the applicable laws of the jurisdiction under which it is organized.

7. *Additional filing where surviving or consolidated association governed by laws of another jurisdiction.* If the surviving or consolidated association is to be governed by the laws of any jurisdiction other than Liberia, it shall comply with the provisions of this Title with respect to foreign entities if it is to transact business in Liberia, and in every case it shall file with the Minister

of Foreign Affairs:

- (a) An irrevocable notice of consent that it may be served with process in Liberia in any proceeding for the enforcement of any obligation of any limited partnership which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting partner of any such limited partnership against the surviving or consolidated association;
- (b) An irrevocable appointment of the Minister of Foreign Affairs as its agent to accept service of process in any such proceeding;
- (c) An undertaking that it will promptly pay to the dissenting partner of any limited partnership the amount, if any, to which they shall be entitled under the provisions of this Chapter or the plan of merger; and
- (d) Notice executed in accordance with section 1.4 by an officer of the surviving or consolidated association that the merger or consolidation is effective in the other jurisdiction and specifying the competent authority in that jurisdiction.

8. *Effect.* The effect of a merger or consolidation under this section and having one or more foreign constituent associations shall be the same as in the case of the merger or consolidation of limited partnerships with associations organized or registered in Liberia if the surviving or consolidated limited partnership or association is to be governed by the laws of Liberia. If the surviving or consolidated association is to be governed by the laws of any jurisdiction other than Liberia, the effect of such merger or consolidation shall be the same as in the case of merger or consolidation of limited partnerships with associations organized or registered in Liberia except insofar as the laws of such other jurisdiction provide otherwise.

9. *Effective date.* The effective date of a merger or consolidation in cases where the surviving or consolidated association is to be governed by the laws of any jurisdiction other than Liberia shall be determined by the filing requirements and laws of such other jurisdiction.

10. *Liability of partner of former limited partnership.* The personal liability, if any, of any partner in a limited partnership existing at the time of such merger or consolidation shall not thereby be extinguished, shall remain personal to such partner and shall not become the liability of any subsequent partner or shareholder of any surviving or consolidated limited partnership or association or of any other partner or shareholder of such surviving or consolidated limited partnership or association.

*Effective:* June 19, 2002.

### **§31.34. Power of limited partnership to re-domicile into Liberia.**

1. *Application of section.* This section shall apply to a legal entity (in this section referred to as a “limited partnership”) established outside Liberia which re-domiciles into Liberia as a Liberian limited partnership.

2. *Eligibility to apply to establish domicile in Liberia as a Liberian limited partnership.* A limited partnership domiciled outside Liberia may, if permitted to do so by its constitution, apply to establish domicile in Liberia as a Liberian limited partnership.

3. *Filing requirements to establish domicile in Liberia as a Liberian limited partnership.* A limited partnership seeking to establish domicile in Liberia as a Liberian limited partnership shall file with the Registrar of Deeds:

- (a) A certificate setting out:
  - (i) The name of the limited partnership, and, if the name has been changed, the name with which the limited partnership was established, and the name, if different, under which re-domiciliation as a Liberian limited partnership is sought;
  - (ii) The date of establishment of the limited partnership, and if registered, the date of registration;
  - (iii) The jurisdiction of establishment of the limited partnership;
  - (iv) The date on which it is proposed to re-domicile as a Liberian limited partnership;
  - (v) That the re-domiciliation has been approved in accordance with the relevant law and the constitution of the limited partnership;
  - (vi) Confirmation by the partners of the limited partnership that at the date of re-domiciliation as a Liberian limited partnership the limited partnership will have done in the jurisdiction in which it was established everything required by the relevant legislation of that jurisdiction preparatory to re-domiciliation in another jurisdiction and that the limited partnership will cease to be a limited partnership domiciled in that jurisdiction;
- (b) A copy of the resolution or other instrument of the limited partnership resolving to re-domicile as a Liberian limited partnership, approved in the manner prescribed by the constitution of the limited partnership, which shall specify:
  - (i) That the limited partnership shall be re-domiciled in Liberia as a Liberian limited partnership;
  - (ii) The proposed name of the Liberian limited partnership if different from the present name of the limited partnership;
  - (iii) Such other provisions with respect to the proposed re-domiciliation as a Liberian limited partnership as the partners consider necessary or desirable;
- (c) Where the limited partnership is registered in the jurisdiction in which it is established, a certificate of goodstanding in respect of the limited partnership issued by the competent authority in that jurisdiction or other evidence to the satisfaction of the Registrar of

Deeds that the limited partnership is in compliance with registration requirements of that jurisdiction;

- (d) Evidence to the satisfaction of the Registrar of Deeds that no proceedings for insolvency have been commenced against the limited partnership in the jurisdiction in which it is established;
- (e) Any amendments to the instrument constituting or defining the constitution of the limited partnership that are to take effect on the registration of the limited partnership as a Liberian limited partnership;
- (f) A certificate of limited partnership in accordance with section 31.2 of this Chapter which is to be the certificate of limited partnership of the Liberian limited partnership;
- (g) The name and address of the registered agent in Liberia and the agent's acceptance of the appointment,

and:

- (h) Where in this section there is reference to the jurisdiction in which the limited partnership is established, that reference shall, in respect of a limited partnership domiciled in a jurisdiction other than that in which it is established, be read to include a reference to the jurisdiction of domicile;
- (j) The provisions of sections 1.4.1 to 1.4.5 and 1.4.7 of Chapter 1 of Part I of this Title shall apply, with the variation that execution shall be by a partner or other person performing in relation to that limited partnership the function of an officer and duly authorized for this purpose.

4. *Name of limited partnership on re-domiciliation.* The provisions of sections 31.5 and 4.2 of Chapter 4 of Part I of this Title shall apply in respect of the name in which a limited partnership may apply to re-domicile as a Liberian limited partnership.

5. *Re-domiciliation in Liberia.* The Registrar of Deeds shall, if he is satisfied that the requirements of this Chapter in respect of re-domiciliation as a Liberian limited partnership have been met, certify that the limited partnership has established domicile in Liberia and has existence as the Liberian limited partnership specified in the documents supplied in compliance with paragraph 3, in accordance with those documents on the date of the issue of the certificate, or, in the case of a certificate to which paragraph 6 applies, on the specified date.

6. *Deferred date of re-domiciliation.* Notwithstanding section 1.4.6(d) of Chapter 1 of Part I of this Title, where, at the time of the making of an application under paragraph 3, the limited partnership applying for re-domiciliation as a Liberian limited partnership has specified a date (in this section referred to as "the specified date") no later than 12 months after the date of the making of the application as the date of re-domiciliation, the certificate issued by the Registrar of Deeds shall show the specified date as the date of re-domiciliation.



7. *Status of a certificate of re-domiciliation.* A certificate given by the Registrar of Deeds in accordance with paragraph 5 in respect of any re-domiciled limited partnership shall be:

- (a) Conclusive evidence that all the requirements of this Chapter in respect of that re-domiciliation, and matters precedent and incidental thereto, have been complied with and that the limited partnership is authorized to be so re-domiciled and is re-domiciled under the provisions of this section;
- (b) Valid for a period of 12 months from the date of the issue of the certificate or, in the case of a certificate to which paragraph 6 applies, from the specified date, unless endorsed in accordance with paragraph 9.

8. *Obligation to amend the instrument constituting or defining the constitution of the limited partnership.* If, at the time of the issue by the Registrar of Deeds of the certificate of re-domiciliation in accordance with paragraph 5, any provisions of the instrument constituting or defining the constitution of the limited partnership do not, in any respect, accord with this Chapter:

- (a) The instrument constituting or defining the constitution of the limited partnership shall continue to govern the re-domiciled limited partnership until:
  - (i) The certificate of limited partnership complying with this Chapter is in effect; or
  - (ii) The expiration of a period of 12 months immediately following the date of the issue of that certificate of re-domiciliation or, in the case of a certificate to which paragraph 6 applies, the specified date,whichever is the sooner;
- (b) Any provisions of the instrument constituting or defining the constitution of the limited partnership that are in any respect in conflict with this Chapter cease to govern the re-domiciled limited partnership when the certificate of limited partnership in accordance with this Chapter is in effect;
- (c) The re-domiciled limited partnership shall give effect to a certificate of limited partnership as may be necessary to accord with this Chapter within a period of 12 months immediately following the date of the issue of the certificate of re-domiciliation or, in the case of a certificate to which paragraph 6 applies, from the specified date.

9. *Endorsement of certificate of re-domiciliation.* Where:

- (a) At the date of the issue of a certificate of re-domiciliation or at any time thereafter within a period of 12 months immediately following the date of the issue of that certificate; or
- (b) In the case of a certificate to which paragraph 6 applies, at the specified date or at any time thereafter within a period of 12 months immediately following that date,

the Registrar of Deeds is satisfied that:

- (c) The re-domiciled limited partnership has ceased to be a limited partnership under the relevant provisions of the law in the jurisdiction in which it was established; and
- (d) The certificate of limited partnership, if any, accords in all respects with this Chapter and the objects of the re-domiciled limited partnership,

he may, on the application of the re-domiciled limited partnership to which the certificate of re-domiciliation has been issued endorse that certificate to the effect that the re-domiciled limited partnership is from the date of the endorsement to be deemed to be re-domiciled and in existence in Liberia under this Chapter and that shall be the effective date of re-domiciliation and the provisions of sections 31.2 and 1.4.6 of Chapter 1 of Part I of this Title, with the substitution of the Registrar of Deeds for references to the Minister of Foreign Affairs and to the Registrar, shall apply.

*10. Failure to complete re-domiciliation and registration.* If, by a date 12 months immediately following the date of the issue of a certificate of re-domiciliation in accordance with paragraph 5 or, in the case of a certificate to which paragraph 6 applies, following the specified date, the re-domiciled limited partnership has not satisfied the Registrar of Deeds that:

- (a) It has ceased to be a limited partnership under the relevant provisions of the law in the jurisdiction in which it was established; and
- (b) The certificate of limited partnership accords in all respects with this Chapter and the objects of the limited partnership as a Liberian limited partnership,

the Registrar of Deeds shall revoke the certificate issued under paragraph 5 and:

- (c) That certificate and any re-domiciliation under this section shall be of no further force or effect; and
- (d) The Registrar of Deeds shall strike the re-domiciled limited partnership from the register.

*11. Effect of re-domiciliation.* With effect from the date of the issue of a certificate of re-domiciliation:

- (a) The Liberian limited partnership to which the certificate relates:
  - (i) Is a limited partnership re-domiciled and deemed to be formed in Liberia under this Chapter and having as its existence date the date on which it was established in another jurisdiction; and
  - (ii) Shall be a limited partnership formed in Liberia for the purpose of any other Law;
- (b) The certificate of limited partnership of the limited partnership as filed in accordance with paragraph 3(f) is the certificate of limited partnership of the Liberian limited

partnership;

- (c) The property of every description and the business of the limited partnership are vested in the Liberian limited partnership;
- (d) The Liberian limited partnership is liable for all of the claims, debts, liabilities and obligations of the limited partnership;
- (e) No conviction, judgment, ruling, order, debt, liability or obligation due or to become due and no cause existing against the limited partnership or against any partner or agent thereof is thereby released or impaired;
- (f) No proceedings whether civil or criminal pending at the time of the issue by the Registrar of Deeds of the certificate of re-domiciliation by or against the limited partnership or against any partner or agent thereof are thereby abated or discontinued, but the proceedings may be enforced, prosecuted, settled or compromised by or against the Liberian limited partnership or against the partner or agent thereof, as the case may be;
- (g) Unless otherwise provided in the resolution of re-domiciliation filed in accordance with paragraph 3, the limited partnership re-domiciling as a Liberian limited partnership shall not be required to wind up its affairs or pay its liabilities and distribute its assets,

and the re-domiciliation shall constitute a continuation of the existence of the re-domiciling limited partnership as the Liberian limited partnership and shall not:

- (h) Constitute a dissolution of the limited partnership;
- (j) Create a new legal entity; or
- (k) Prejudice or affect the continuity of the Liberian limited partnership as a re-domiciled limited partnership.

*Effective:* June 19, 2002.

### **§31.35. Power of limited partnership to re-domicile out of Liberia.**

1. *Application of section.* This section shall apply to a limited partnership formed or deemed to be formed in Liberia which re-domiciles into another jurisdiction.

2. *Eligibility to apply to establish domicile in another jurisdiction.* A Liberian limited partnership may, if permitted to do so by its constitution, apply to establish domicile outside Liberia in another jurisdiction.

3. *Application to establish domicile in another jurisdiction.* An application by a Liberian limited partnership to establish domicile outside Liberia in another jurisdiction and to cease to be a Liberian limited partnership shall be made to the Registrar of Deeds in the form prescribed by him and shall be accompanied by:

- (a) A certificate setting out:
  - (i) The name of the Liberian limited partnership, and, if the name has been changed, the name with which the Liberian limited partnership was established, and the name, if different, under which registration as a re-domiciled limited partnership is sought;
  - (ii) The date of existence of the Liberian limited partnership;
  - (iii) The jurisdiction to which the Liberian limited partnership proposes to re-domicile and the name and address of the competent authority in that jurisdiction;
  - (iv) The date on which the Liberian limited partnership proposes to re-domicile;
  - (v) The address for service of the limited partnership in the jurisdiction of re-domiciliation;
  - (vi) That the proposed re-domiciliation has been approved in accordance with the relevant law and the constitution of the Liberian limited partnership;
  - (vii) Confirmation by the partners of the Liberian limited partnership that at the date of re-domiciliation the Liberian limited partnership will have done everything required by this Chapter preparatory to re-domiciliation in another jurisdiction and that, on re-domiciliation in the other jurisdiction, the Liberian limited partnership will cease to be a limited partnership domiciled in Liberia;
- (b) A copy of the resolution or other instrument of the partners of the Liberian limited partnership resolving to re-domicile, approved in the manner prescribed by the constitution of the Liberian limited partnership, which shall specify:
  - (i) That the Liberian limited partnership shall be re-domiciled out of Liberia;
  - (ii) The proposed name of the re-domiciled limited partnership if different from the present name of the Liberian limited partnership;
  - (iii) Such other provisions with respect to the proposed re-domiciliation as the partners consider necessary or desirable;
- (c) A certificate of goodstanding in respect of the Liberian limited partnership issued by the Registrar of Deeds;
- (d) Evidence to the satisfaction of the Registrar of Deeds that no proceedings for insolvency have been commenced in Liberia against the Liberian limited partnership;
- (e) The address of the registered agent in Liberia which shall be retained during the period of one year or such longer period until the Liberian limited partnership has been deemed

to be a limited partnership domiciled in the other jurisdiction, and evidence of acceptance of the appointment by the registered agent; and

- (f) Any amendments to the certificate of limited partnership that are to take effect on the registration of the re-domiciled limited partnership in the other jurisdiction,

and the provisions of sections 1.4.1 to 1.4.5 and 1.4.7 of Chapter 1 of Part I of this Title shall apply, with the variation that execution shall be by a partner or other person performing in relation to that limited partnership the function of an officer and duly authorized for this purpose.

4. *Consent to establish domicile in another jurisdiction.* The Registrar of Deeds shall, if he is satisfied that the requirements of this Chapter in respect of re-domiciliation to another jurisdiction have been met:

- (a) Certify that the Liberian limited partnership is permitted to establish domicile in the jurisdiction specified in the documents supplied in compliance with paragraph 3, in accordance with those documents, and that it may cease to be registered in Liberia on the date of the issue of the certificate, or, in the case of a certificate to which paragraph 5 applies, on the specified date;
- (b) Enter in the index kept for this purpose in respect of a Liberian limited partnership to which a certificate has been issued under this paragraph the fact of the issue of the certificate,

and 1.4.6 of Chapter 1 of Part I of this Title, with the substitution of the Registrar of Deeds for references to the Minister of Foreign Affairs and to the Registrar, shall apply.

5. *Deferred date of re-domiciliation.* Notwithstanding section 1.4.6(d) of Chapter 1 of Part I of this Title, where, at the time of making an application under paragraph 3, the Liberian limited partnership applying for re-domiciliation has specified a date (in this section referred to as “the specified date”) no later than 12 months after the date of the making of the application as the date of re-domiciliation, the certificate issued by the Registrar of Deeds shall show the specified date as the date of re-domiciliation.

6. *Status of a certificate of re-domiciliation.* A certificate given by the Registrar of Deeds in accordance with paragraph 4(a) in respect of any Liberian limited partnership shall be:

- (a) Conclusive evidence that all the requirements of this Chapter in respect of that re-domiciliation, and matters precedent and incidental thereto, have been complied with and that the limited partnership is authorized to be so re-domiciled under the provisions of this section;
- (b) Valid for a period of 12 months from the date of the issue of the certificate or, in the case of a certificate to which paragraph 5 applies, from the specified date, unless endorsed in accordance with paragraph 7.

7. *Endorsement of certificate.* Where:

- (a) At the date of the issue of a certificate of re-domiciliation or at any time thereafter within a period of 12 months immediately following the date of the issue of that certificate; or
- (b) In the case of a certificate to which paragraph 5 applies, at the specified date or at any time thereafter within a period of 12 months immediately following that date,

the Registrar of Deeds is satisfied, by the service on him of a certificate of continuation executed by the governing body of the re-domiciled limited partnership, that the limited partnership has become a limited partnership under the relevant provisions of the law in the jurisdiction specified in the certificate of re-domiciliation, he may endorse the certificate of re-domiciliation to the effect that the limited partnership is from the date of the endorsement to be deemed to be re-domiciled and no longer registered in Liberia under this Chapter and that shall be the effective date of re-domiciliation.

8. *Failure to complete re-domiciliation.* If, by a date 12 months immediately following the date of the issue of a certificate in accordance with paragraph 4(a) or, in the case of a certificate to which paragraph 5 applies, following the specified date, the Liberian limited partnership has not satisfied the Registrar of Deeds that it has become a limited partnership under the relevant provisions of the law in the jurisdiction to which it proposed to re-domicile, the Registrar of Deeds shall revoke the certificate issued under paragraph 4(a), and:

- (a) That certificate and any re-domiciliation under this section shall be of no further force or effect; and
- (b) The Liberian limited partnership shall continue as a Liberian limited partnership in Liberia under the provisions of this Chapter.

9. *Effect of re-domiciliation.* With effect from the date of the issue of a certificate of re-domiciliation:

- (a) The limited partnership to which the certificate relates shall cease to be:
  - (i) A Liberian limited partnership registered in Liberia under this Chapter; and
  - (ii) A Liberian limited partnership registered in Liberia for the purpose of any other Law;
- (b) The certificate of limited partnership of the re-domiciled limited partnership (or other instrument constituting or defining the constitution of the limited partnership), as amended by the resolution or equivalent document establishing domicile in the other jurisdiction, is the limited partnership agreement of the re-domiciled limited partnership;
- (c) The property of every description and the business of the Liberian limited partnership are vested in the re-domiciled limited partnership;

- (d) The re-domiciled limited partnership is liable for all of the claims, debts, liabilities and obligations of the Liberian limited partnership;
- (e) No conviction, judgment, ruling, order, debt, liability or obligation due or to become due and no cause existing against the Liberian limited partnership or against any partner or agent thereof is thereby released or impaired;
- (f) No proceedings whether civil or criminal pending at the time of the issue by the Registrar of Deeds of the certificate of re-domiciliation by or against the Liberian limited partnership or against any partner or agent thereof are thereby abated or discontinued, but the proceedings may be enforced, prosecuted, settled or compromised by or against the re-domiciled limited partnership or against the partner or agent thereof, as the case may be;
- (g) Unless otherwise provided in the resolution of re-domiciliation filed in accordance with paragraph 3, the Liberian limited partnership re-domiciling as a re-domiciled limited partnership in another jurisdiction shall not be required to wind up its affairs or pay its liabilities and distribute its assets,

and the re-domiciliation shall constitute a continuation of the existence of the re-domiciling limited partnership and shall not:

- (h) Constitute a dissolution of the Liberian limited partnership;
- (j) Create a new legal entity; or
- (k) Prejudice or affect the continuity of the re-domiciled limited partnership.

*10. Index of Liberian limited partnerships re-domiciled to another jurisdiction.* The Registrar of Deeds shall maintain an index of Liberian limited partnerships in respect of which a certificate issued in accordance with paragraph 4(a) is in force and in that index shall record the name in which the limited partnership is re-domiciled in the other jurisdiction and the address for service of the limited partnership in that jurisdiction, and whether the limited partnership has ceased to be registered under this Chapter in accordance with paragraph 7.

*Effective:* June 19, 2002.

### **§31.36. Reregistration of another entity as a limited partnership.**

*1. Power to reregister.* A corporation, a limited liability company, a private foundation, a registered business company, or any other legal entity existing under the laws of Liberia (in this section referred to as a “legal entity”) may, if permitted to do so by its constitution, apply to reregister as a limited partnership.

*2. Application to reregister as a limited partnership.* An application by a legal entity to reregister

as a limited partnership shall be made to the Registrar of Deeds in the form prescribed by him and shall be accompanied by:

- (a) A certificate setting out:
  - (i) The name of the legal entity, and, if the name has been changed, the name with which the legal entity was formed, and the name, if different, under which reregistration as a reregistered and continued limited partnership is sought;
  - (ii) The date of formation of the legal entity;
  - (iii) The relevant law under which the legal entity has its existence;
  - (iv) The date on which it is proposed to reregister;
  - (v) That the reregistration has been approved in accordance with the relevant law and the constitution of the legal entity;
  - (vi) Confirmation by, in the case of:
    - (aa) A corporation, the directors and officers;
    - (bb) A limited liability company, the members or the manager;
    - (cc) A private foundation, the governing bodies;
    - (dd) A registered business company, the directors or other governing body;
    - (ee) Any other legal entity, the governing body,that at the date of reregistration as a limited partnership the legal entity will have done everything required by the relevant legislation preparatory to de-registration and reregistration, and that the entity will cease to be a legal entity registered under that legislation;
- (b) A copy of the resolution or other instrument of the legal entity resolving to de-register and reregister as a limited partnership, approved in the manner prescribed by the constitution of the legal entity which shall specify:
  - (i) That the entity shall be reregistered as a limited partnership;
  - (ii) The proposed name of the reregistered limited partnership if different from the present name of the legal entity;
  - (iii) That the total amount from time to time of the contributions of the limited partnership shall not fall below the share capital or membership interests of the



- corporation, or the amount of the contributions of the limited liability company, or the share capital or membership interests of the registered business company, or the assets of the foundation, or the capital of any other entity, as the case may be, at the date of the resolution;
- (iv) The method of converting shareholding and membership interests, membership interests, or shareholding and membership interests, or assets, or capital, as the case may be, into partnership contributions of the reregistered limited partnership;
  - (v) Who shall be limited partners and who shall be general partners and the interests of each;
  - (vi) Such other provisions with respect to the proposed reregistration as, in the case of:
    - (aa) A corporation, the directors or other governing body;
    - (bb) A limited liability company, the members or the manager;
    - (cc) A registered business company, the directors or other governing body;
    - (dd) A foundation, the governing bodies;
    - (ee) Any other legal entity, the governing body,
 considers necessary or desirable;
  - (c) A certificate of goodstanding in respect of the legal entity;
  - (d) Evidence to the satisfaction of the Registrar of Deeds that no proceedings for insolvency have been commenced against the legal entity;
  - (e) Any amendments to the instrument constituting or defining the constitution of the legal entity that are to take effect on the reregistration as a limited partnership;
  - (f) Certificate of limited partnership in accordance with section 31.2;
  - (g) The name and address of the registered agent in Liberia and the agent's acceptance of the appointment,

and the provisions of section 1.4 of Chapter 1 of Part I of this Title shall apply with the variation that execution shall be by any officer, manager, partner, director, trustee or other person performing in relation to that legal entity the function of an officer and duly authorized for this purpose.

3. *Name of limited partnership on reregistration.* The provisions of sections 31.5 and 4.2 of Chapter 4 of Part I of this Title shall apply in respect of the name under which the legal entity may apply to reregister as a limited partnership.

4. *Reregistration and continuation as a limited partnership.* The Registrar of Deeds shall, if he is satisfied that the requirements of this Chapter in respect of reregistration as a limited partnership have been met, register the legal entity as a limited partnership and certify that it is registered and continued as the limited partnership specified in the documents supplied in compliance with paragraph 2, in accordance with those documents, on the date of the issue of the certificate, or, in the case of a certificate to which paragraph 5 applies, on the specified date.

5. *Deferred date of reregistration.* Notwithstanding section 1.4.6(d) of Chapter 1 of Part I of this Title, where, at the time of the making of an application under paragraph 2, the legal entity applying for reregistration as a limited partnership has specified a date (in this section referred to as “the specified date”) no later than 12 months after the date of the making of the application as the date of reregistration, the certificate issued by the Registrar of Deeds shall show the specified date as the date of reregistration.

6. *Status of a certificate of reregistration.* A certificate given by the Registrar of Deeds in accordance with paragraph 4 in respect of any legal entity reregistered as a limited partnership shall be:

- (a) Conclusive evidence that all the requirements of the Chapter in respect of that reregistration, and matters precedent and incidental thereto, have been complied with and that the legal entity is authorized to be so reregistered and is reregistered under the provisions of this section;
- (b) Valid for a period of 12 months from the date of the issue of the certificate or, in the case of a certificate to which paragraph 5 applies, from the specified date, unless endorsed in accordance with paragraph 8.

7. *Obligation to amend instrument constituting or defining the constitution of the legal entity.* If, at the time of the issue by the Registrar of Deeds of the certificate of reregistration in accordance with paragraph 4, any provisions of the instrument constituting or defining the constitution of the legal entity do not, in any respect, accord with this Chapter:

- (a) The instrument constituting or defining the constitution of the legal entity shall continue to govern the reregistered limited partnership until:
  - (i) A certificate of limited partnership complying with this Chapter is in effect; or
  - (ii) The expiration of a period of 12 months immediately following the date of the issue of that certificate or, in the case of a certificate to which paragraph 5 applies, the specified date,whichever is the sooner;
- (b) Any provisions of the instrument constituting or defining the constitution of the legal entity that are in any respect in conflict with this Chapter cease to govern the limited partnership when the certificate of limited partnership in accordance with this Chapter is in effect;

- (c) The limited partnership shall give effect to a certificate of limited partnership as may be necessary to accord with this Chapter within a period of 12 months immediately following the date of the issue of the certificate or, in the case of a certificate to which paragraph 5 applies, from the specified date.

8. *Endorsement of certificate.* Where:

- (a) At the date of the issue of a certificate of reregistration or at any time thereafter within a period of 12 months immediately following the date of the issue of that certificate; or
- (b) In the case of a certificate to which paragraph 5 applies, at the specified date or at any time thereafter within a period of 12 months immediately following that date,

the Registrar of Deeds is satisfied that:

- (c) The legal entity has ceased to be a legal entity under the relevant provisions of the law under which it was established; and
- (d) The certificate of limited partnership accords in all respects with this Chapter and the objects of the limited partnership,

he may, on the application of the limited partnership to which the certificate has been issued, endorse that certificate to the effect that the limited partnership is from the date of the endorsement to be deemed to be reregistered under this Chapter and that shall be the effective date of reregistration and continuation and the provisions of sections 31.2 and 1.4.6 of Chapter 1 of Part I of this Title, with the substitution of the Registrar of Deeds for references to the Minister of Foreign Affairs and to the Registrar, shall apply.

9. *Failure to complete reregistration.* If, by a date 12 months immediately following the date of the issue of a certificate in accordance with paragraph 4 or, in the case of a certificate to which paragraph 5 applies, following the specified date, the legal entity has not satisfied the Registrar of Deeds that:

- (a) It has ceased to be a legal entity under the relevant provisions of the law under which it was established; and
- (b) The certificate of limited partnership accords in all respects with this Chapter and the objects of the limited partnership,

the Registrar of Deeds shall revoke the certificate issued under paragraph 4, and:

- (c) That certificate and any reregistration under this section shall be of no further force or effect; and
- (d) The Registrar of Deeds shall strike the limited partnership from the register.

10. *Effect of reregistration.* With effect from the date of the issue of a certificate of reregistration:

- (a) The reregistered limited partnership to which the certificate relates:
  - (i) Is a limited partnership reregistered and continued and deemed to be registered under this Chapter and having as its existence date the date on which it was established under the other relevant law, or in another jurisdiction, as the case maybe; and
  - (ii) Shall be a limited partnership registered in Liberia for the purpose of any other Law;
- (b) The certificate of limited partnership as filed in accordance with paragraph 2(f) is the certificate of the limited partnership;
- (c) The property of every description and the business of the legal entity are vested in the limited partnership;
- (d) The limited partnership is liable for all of the claims, debts, liabilities and obligations of the legal entity;
- (e) No conviction, judgment, ruling, order, debt, liability or obligation due or to become due and no cause existing against the legal entity or against any officer or agent thereof is thereby released or impaired;
- (f) No proceedings whether civil or criminal pending at the time of the issue by the Registrar of Deeds of the certificate of reregistration by or against the legal entity or against any officer or agent thereof are thereby abated or discontinued, but the proceedings may be enforced, prosecuted, settled or compromised by or against the limited partnership or against the partners or agents thereof, as the case may be;
- (g) Unless otherwise provided in the resolution of reregistration filed in accordance with paragraph 2, the legal entity reregistering as the limited partnership shall not be required to wind up its affairs or pay its liabilities and distribute its assets,

and the reregistration and continuation shall not:

- (h) Constitute a dissolution of the legal entity and shall constitute a continuation of the existence of the reregistered legal entity as the limited partnership;
- (j) Create a new legal entity; or
- (k) Prejudice or affect the continuity of the legal entity as a limited partnership.

*Effective:* June 19, 2002.

**§31.37. Cancellation and reregistration of limited partnership as another entity.**

1. *Eligibility to apply to cancel and reregister as another legal entity.* A limited partnership formed under this Chapter may, if permitted to do so by its constitution, apply to cancel upon reregistration as another legal entity under the laws of Liberia.

2. *Application to cancel and reregister as another legal entity.* An application by a limited partnership to cancel and reregister as another legal entity in Liberia and to cease to be a limited partnership formed under this Chapter shall be made to the Registrar of Deeds in the form prescribed by him and shall be accompanied by:

- (a) A certificate setting out:
  - (i) The name of the limited partnership, and, if the name has been changed, the name with which the limited partnership was established, and the name, if different, under which registration as another legal entity is sought;
  - (ii) The date of filing of the certificate of limited partnership, and if established under any other law, the date of establishment;
  - (iii) The law under which the limited partnership proposes to reregister;
  - (iv) The date on which the limited partnership proposes to cancel and reregister;
  - (v) That the proposed cancellation and reregistration have been approved in accordance with the relevant law and the constitution of the limited partnership;
  - (vi) Confirmation by the partners of the limited partnership that at the date of cancellation and reregistration the limited partnership will have done everything required by this Chapter preparatory to cancellation and reregistration as another legal entity and that, on cancellation and reregistration, the limited partnership will cease to be a limited partnership;
- (b) A copy of the resolution or other instrument of the limited partnership resolving to cancel and reregister, approved in the manner prescribed by the constitution of the limited partnership, which shall specify:
  - (i) That the limited partnership shall be cancelled and reregistered as another legal entity in Liberia;
  - (ii) The proposed name of the legal entity if different from the present name of the limited partnership;
  - (iii) That the total amount from time to time of:
    - (aa) The share capital or membership interests, or the sum of both, of a

corporation;

- (bb) The contributions of a limited liability company;
- (cc) The share capital or membership contributions, or the sum of both, of a registered business company;
- (dd) The assets of a private foundation; or
- (ee) The capital of any other legal entity;

with which the limited partnership proposes to reregister shall not fall below the amount of the partners' contributions at the date of the resolution;

- (iv) The method of converting contributions of the limited partnership into:
  - (aa) Shareholdings or membership interests of a corporation;
  - (bb) Participations in the contributions of a limited liability company;
  - (cc) Shareholdings or membership interests of a registered business company;
  - (dd) The assets of a private foundation; or
  - (ee) The capital of any other legal entity;
- (v) The rights attaching to the shares or membership interests, or both, of a corporation referred to in clause (iv)(aa), participations in a limited liability company referred to in clause (iv)(bb), the shares or membership interests, or both, of a registered business company referred to in clause (iv)(cc), the assets of a private foundation referred to in clause (iv)(dd), or the capital of any other legal entity referred to in clause (iv)(ee);
- (vi) In the case of reregistration:
  - (aa) As a corporation, which, if any, of the partners, shall be the shareholders and the directors or members of any other governing body;
  - (bb) As a limited liability company, which, if any, of the partners shall be the manager, and if none, the appointment of the manager;
  - (cc) As a registered business company, which, if any, of the partners shall be shareholders and directors or members of any other governing body;
  - (dd) As a private foundation, which, if any, of the partners shall be officers or members of the supervisory board; or

- (ee) As any other legal entity, the appointment of the governing body;
- (vii) Such alterations in the certificate of limited partnership, if any, as are necessary to bring them (in substance and in form) into conformity with the requirements of:
  - (aa) Section 4.4 of Chapter 4 of Part I of this Title as the articles of incorporation, in the case of a corporation;
  - (bb) Chapter 14 of Part I of this Title as a limited liability company agreement, in the case of a limited liability company;
  - (cc) Chapter 70 of Part VII of this Title as the memorandum and articles of incorporation, in the case of a registered business company;
  - (dd) Chapter 60 of Part VI of this Title as the memorandum of endowment and management articles, if any, in the case of a private foundation; or
  - (ee) The relevant statutory provision in the case of any other legal entity; and
- (viii) Such other provisions with respect to the proposed cancellation and reregistration as the partners consider necessary or desirable;
- (c) A certificate of goodstanding in respect of the limited partnership issued by the Registrar of Deeds;
- (d) Evidence to the satisfaction of the Registrar of Deeds that no proceedings for insolvency have been commenced in Liberia against the limited partnership; and
- (e) Any amendments other than those specified in sub-paragraph (b)(vii) to the certificate of limited partnership that are to take effect on the cancellation of the certificate of the limited partnership and reregistration as the other legal entity,

and the provisions of section 1.4 of Chapter 1 of Part I of this Title shall apply with the variation that execution shall be by any partner or other person performing in relation to the limited partnership the function of an officer and duly authorized for this purpose.

3. *Consent to cancel and reregister as another legal entity.* The Registrar of Deeds shall, if he is satisfied that the requirements of this Chapter in respect of cancellation of a certificate of limited partnership prior to reregistration as another legal entity have been met:

- (a) Certify that the limited partnership is permitted to cancel and reregister as the other legal entity specified in the documents supplied in compliance with paragraph 2, in accordance with those documents, and that it may cease to be registered as a limited partnership on the date of the issue of the certificate, or, in the case of a certificate to which paragraph 4 applies, on the specified date;

- (b) File the documents referred to in paragraph 2(b), except the documents specified in sub-paragraph (c);
- (c) Return to the limited partnership the documents delivered to him in compliance with paragraph 2(b)(v), as they relate to reregistration as a foundation and paragraph 2(b)(vii)(dd), endorsed with the date on which they were delivered to him;
- (d) Enter in the index kept for this purpose in respect of a limited partnership to which a certificate has been issued under this paragraph the fact of the issue of the certificate and the documents filed in compliance with sub-paragraph (b).

4. *Deferred date of cancellation.* Notwithstanding section 1.4.6(d) of Chapter 1 of Part I of this Title, where, at the time of making an application under paragraph 2, the limited partnership applying for cancellation has specified a date (in this section referred to as “the specified date”) no later than 12 months after the date of the making of the application as the date of cancellation, the certificate issued by the Registrar of Deeds shall show the specified date as the date of cancellation.

5. *Status of a certificate of cancellation.* A certificate given by the Registrar of Deeds in accordance with paragraph 3(a) in respect of any cancelled limited partnership shall be:

- (a) Conclusive evidence that all the requirements of this Chapter in respect of that cancellation, and matters precedent and incidental thereto, have been complied with and that the certificate of limited partnership is authorized to be so cancelled and is cancelled under the provisions of this section;
- (b) Valid for a period of 12 months from the date of the issue of the certificate or, in the case of a certificate to which paragraph 4 applies, from the specified date, unless endorsed in accordance with paragraph 6.

6. *Endorsement of certificate.* Where:

- (a) At the date of the issue of a certificate of cancellation or at any time thereafter within a period of 12 months immediately following the date of the issue of that certificate; or
- (b) In the case of a certificate to which paragraph 4 applies, at the specified date or at any time thereafter within a period of 12 months immediately following that date,

the Registrar of Deeds is satisfied, by the service on him of a certificate of continuation executed by the reregistered legal entity that the limited partnership has re-registered under the relevant provisions of the law specified in the certificate of cancellation, he may endorse the certificate of cancellation to the effect that the certificate of limited partnership is from the date of the endorsement to be deemed to be cancelled and that shall be the effective date of cancellation.

7. *Failure to complete cancellation and reregistration.* If, by a date 12 months immediately following the date of the issue of a certificate in accordance with paragraph 3(a) or, in the case of a certificate to which paragraph 4 applies, following the specified date, the limited partnership has



not satisfied the Registrar of Deeds that it has become the other legal entity under the relevant provisions of the law under which it proposed to reregister, the Registrar of Deeds shall revoke the certificate issued under paragraph 3(a), and:

- (a) That certificate and any cancellation under this section shall be of no further force or effect; and
- (b) The limited partnership shall continue as a limited partnership under the provisions of this Chapter.

8. *Effect of cancellation.* With effect from the date of the issue of a certificate of cancellation:

- (a) The limited partnership to which the certificate relates shall cease to be:
  - (i) A limited partnership registered under this Chapter; and
  - (ii) A limited partnership registered in Liberia for the purpose of any other Law;
- (b) The certificate of limited partnership (or other instrument constituting or defining the constitution of the limited partnership), as amended by the resolution or equivalent document for the purpose of reregistration as another legal entity in Liberia, shall be the constitution of the other legal entity;
- (c) The property of every description and the business of the limited partnership are vested in the other legal entity;
- (d) The other legal entity is liable for all of the claims, debts, liabilities and obligations of the limited partnership;
- (e) No conviction, judgment, ruling, order, debt, liability or obligation due or to become due and no cause existing against the limited partnership or against any partner or agent thereof is thereby released or impaired;
- (f) No proceedings whether civil or criminal pending at the time of the issue by the Registrar of Deeds of the certificate of cancellation by or against the limited partnership or against any partner or agent thereof are thereby abated or discontinued, but the proceedings may be enforced, prosecuted, settled or compromised by or against the other legal entity or against the partner or agent thereof, as the case may be;
- (g) Unless otherwise provided in the resolution of cancellation filed in accordance with paragraph 2, the limited partnership reregistering as the other legal entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets,

and the reregistration shall constitute a continuation of the existence of the cancelled limited partnership and shall not:

- (h) Constitute a dissolution of the limited partnership;

(j) Create a new legal entity; or

(k) Prejudice or affect the continuity of the cancelled limited partnership.

9. *Index of limited partnerships cancelled and reregistered as another legal entity.* The Registrar of Deeds shall maintain an index of limited partnerships in respect of which a certificate issued in accordance with paragraph 3(a) is in force and in that index shall record the name in which the limited partnership is reregistered as another legal entity and whether the limited partnership has ceased to be registered under this Chapter in accordance with paragraph 6.

*Effective:* June 19, 2002.

## **CHAPTER 32.**

### **MISCELLANEOUS**

#### **§32.1. Filing of names of individuals carrying on business under partnership name.**

Nothing contained in Part III of this Title shall be so construed as to deny or affect the requirements applicable to the individuals comprising a partnership, set forth in the General Business Law, section 5.1, necessitating filing by such individuals in the office of the Minister of Commerce and Industry, of the certificate required under said section 5.1 and the information to be therein furnished.





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