TITLE 5

Associations Law

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P A R T I

BUSINESS CORPORATIONS

Chapter 1: GENERAL PROVISIONS

§ 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 formed under this Act, or existing on its effective date and theretofore formed under any other general statute or by any special act of the Republic of Liberia.

(d) "Foreign corporation" means a corporation for profit formed under the 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) "Insolvent" means being unable to pay debts as they become due in the usual course of the debtor's business.

(f) "Non-resident domestic corporation" means a domestic corporation not doing business in Liberia.

(g) "Resident domestic corporation" means a domestic corporation doing business in Liberia.

(h) "Minister of Foreign Affairs" means the Minister of Foreign Affairs and any deputy or assistant or other person in the Ministry of Foreign Affairs exercising a function assigned to him.

(i) "Treasury shares" means shares which have been issued, have

been subsequently acquired, and are retained un-cancelled by the corporation.

§ 1.3. Application of Business Corporation Act.

1. To domestic and foreign corporations in general. The Business Corporation Act applies to every resident and nonresident 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. 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)[1].

§ 1.4. Form of Instrument; filing.

1. General requirement. Whenever any provision of this Act requires any instrument to be filed with the Minister of Foreign Affairs, 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, except that the corporate name may be in another language if written in English letters or characters.

3. Execution. All instruments shall be signed by the president or a vice president, and by the secretary or an assistant secretary.

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

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1. *Prior legislation:* 1956 Code 4:47, 48; L. 1950-51, ch.XXIII, § 1; Lib. Corp. L., 1948, §§ 47, 48.

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 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 government 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 Minister of Foreign Affairs 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 Minister of Foreign Affairs shall certify that the instrument has been filed in his office by endorsing the word "Filed" and the date of filing on the original.

(c) The Minister of Foreign Affairs 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 his office and that it was filed as of the date stated in the endorsement.

(d) Any instrument filed in accordance with paragraph (b) shall be effective as of the filing date stated thereon.

7. Correction of filed instruments. Any instrument relating to a domestic or foreign corporation and filed with the Minister of Foreign Affairs under this Act may be corrected with respect to any error apparent on the face or defect in the execution thereof by filing with the Minister of Foreign Affairs a certificate of correction, executed and acknowledged in the manner required for the original instrument. The certificate of correction shall specify the error or defect to be corrected and shall set forth the portion of the instrument in correct form. The corrected instrument when filed shall be effective as of the date the original instrument was filed.

§ 1.5. Certificates of Certified Copies as Evidence.

All certificates issued by the Minister of Foreign Affairs in accordance with the provisions of this Act and all copies of documents filed in this office in accordance with the provisions of this Act shall, when certified by him, be taken and received in all courts, public offices and official bodies as prima facie evidence of the facts therein stated and of the execution of such instruments.[2]

§ 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:

> Two dollars for each one thousand dollars of par value stock authorized up to and including one hundred twenty-five thousand dollars.
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> Fifty cents for each one thousand dollars of par value stock authorized in excess of one hundred twenty-five thousand dollars and not in excess of one million dollars.
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> Twenty-five cents for each one thousand dollars of par value stock authorized in excess of one million dollars and not in excess of two million dollars.
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> Ten cents for each one thousand dollars of par value stock authorized in excess of two million dollars.

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2. *Prior legislation:* 1956 Code 4:46; Lib. Corp. L., 1948, § 46

Twenty cents for each share of stock without nominal or par value authorized up to and including twelve hundred and fifty shares.

Five cents 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.

One-fourth of one cent for each share of stock without nominal or par value authorized in excess of ten thousand and not in excess of twenty thousand shares.

One-tenth of one cent for each share of stock without nominal or par value authorized in excess of twenty thousand shares.

In no case shall less than one hundred dollars be paid on filing articles of incorporation.

2. *Increasing authorized number of shares; articles of merger or consolidation.* On filing with the Minister of Foreign Affairs 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 ten dollars.

3. *Articles of dissolution; articles of amendment; articles of merger or consolidation into foreign corporations.* On filing with the Minister of Foreign Affairs 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 ten dollars 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 fixed by the Minister of Foreign Affairs in accordance with the authority granted by section 10.5 of the Executive Law to heads of ministries and other executive agencies of the Government.[3]

§ 1.7. Annual Registration Fee.

Every domestic corporation and every foreign corporation authorized to do business in Liberia shall pay to the Minister of Finance an annual fee of one hundred dollars for registration with the Minister of Foreign Affairs.[4]

§ 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.

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3 *Prior Legislation:* 1956 Code 4:43; Lib. Corp. L., 1948, § 43.

4 *Prior Legislation:* L. 1959-60, ch. IX; 1956 Code 4:48; Lib. Corp. L., 1948, § 48.

§ 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. Reservation of Power.

The Legislature reserves, with respect only to resident domestic corporation hereafter formed, the right to alter, amend, suspend or repeal any or all provisions of this Act and thereby to affect provisions of articles of incorporation of such corporations, and the right to modify or revoke the authority to do business in Liberia of foreign corporations.[5]

Chapter 2: CORPORATE PURPOSES AND POWERS

5 *Prior Legislation:* 1956 Code 4:48; Lib. Corp. L., 1948, § 48.

§ 2.6. Liability of directors, officers and shareholders.

§ 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, arbitrative or otherwise, in like cases as natural persons.

(c) To have 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 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 interest 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 interest therein, wherever situated.

(h) To lend money, invest and reinvest its funds, and to make 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 identify 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, stock bonus plans, stock 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.[6]

§ 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 a 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

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6 *Prior Legislation:* 1956 Code 4:5; Lib. Corp. L., 1948.

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 and Shareholders.

Unless otherwise provided by law, the directors, officers and shareholders of a foreign or domestic corporation shall not be liable for corporate debts and obligations.

Chapter 3. SERVICE OF PROCESS; REGISTERED AGENT

§ 3.1. Registered Agent for Service of Process.

1. Registered agent. 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 any notice or demand required or permitted by law to be served may be served. The agent for a corporation having a place of business in 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 $50,000, which is authorized by the Legislature of the Republic to act as registered agent for such corporations or trusts. A domestic corporation, authorized foreign corporation, 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 sections 11.3, 12.7 or 13.4.

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 Minister of Foreign Affairs, 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 Minister of Foreign Affairs.

5. Termination of designation. The designation of a registered agent shall terminate 30 days after the filing with the Minister of Foreign Affairs 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]

§ 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

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7. *Prior legislation:* L. 1965-66, ch. ; 1956 code 4:44; L. 1950-51, ch.XXIII, § 1; Lib. Corp. L., 1948, § 44.

business in Liberia or a foreign maritime entity registered under section 13.1 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.

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 entity registered under section 13.1 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 nonresident domestic corporation, 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 case of a foreign maritime entity registered under section 13.1, to its principal place of business.

§ 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 envelop 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 on 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.

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 such words; but a nonresident domestic corporation or a foreign corporation may, in place of any of the above mentioned words or abbreviations, include as part of its name such word or words, abbreviations, suffix, or prefix as will clearly indicate that it is a corporation as distinguished from a natural person or partnership.

(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 in the Ministry of Foreign Affairs or a name so similar to any such name as to tend to confuse or deceive.

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, 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 organization 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 corporation if at the time such corporation was existing under the laws of Liberia or was authorized to do business in Liberia.[8]

§ 4.3. Index of Names of Corporations.

The Minister of Foreign Affairs shall keep an alphabetical index of all names of all existing domestic corporations 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 files of articles of incorporation and other documents required

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8 *Prior legislation:* L. 1961-62, ch. XLVII, § 1(4:2(a)); 1956 Code 4:2(a); Lib. Corp. L., 1948, § 2(a).

to be kept by the Minister of Foreign Affairs under this Act.

§ 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 legal 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 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 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 required notice shall be given to shareholders of bearer shares.

(i) If the corporation is to issue the share 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 stock by the incorporators, and any provision restricting the transfer of shares or providing for greater quorum or voting requirements with respect to shareholders or directors 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. It is not necessary to enumerate in the articles of incorporation the general corporate

powers stated in section 2.2.[9]

§ 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 Minister of Foreign Affairs in conformity with the provisions of section 1.4. On filing the original copy of the articles of incorporation, the Minister shall indicate thereon whether the corporation is a resident domestic corporation or a non-resident domestic corporation.[10]

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9 *Prior legislation:* L. 1961-62, ch. XLVII, § 1(14:2)); 1956 Code 4:22; Lib. Corp. L., 1948, § 2.

10 *Prior legislation:* 1956 Code 4:2, 3;L. 1950-51, ch. XXIII, § 1; Lib. Corp. L., 1948, § 3.

§ 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 the Minister of Foreign Affairs, 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.

§ 4.8. Organization Meeting.

1. Meeting of incorporators or board. Within a reasonable time after the filing of the articles of incorporation an organization meeting of the incorporator or incorporators, in person or by proxy, or of the board of directors if the initial directors were named in the articles of incorporation, shall be held either within or without Liberia for the purpose of adopting bylaws, electing directors (if the meeting is of the incorporators) to serve or hold office until the first annual meeting of the shareholders or until their successors are elected and qualify, transacting such other business as may come before the meeting, and doing such acts to perfect the organization of the corporation as are deemed appropriate.

2. Transfer of subscriptions. If the articles of incorporation state that the incorporators have subscribed to stock, the subscriptions may be transferred prior to the organization meeting of directors and such transferees shall hold the organization meeting of incorporators.

3. Written consent. Any action permitted to be taken at the organization meeting of the incorporators or directors, as the case may be, may be taken without a meeting if each incorporator or director signs an instrument setting forth the action so taken.

§ 4.9. Bylaws.

1. Power to make bylaws. The initial bylaws of a corporation shall be adopted by its board of directors. Except as otherwise provided in the articles of incorporation, bylaws may be amended, repealed or adopted by vote of the shareholders. If so provided in the articles of incorporation or a bylaw adopted by the shareholders, bylaws may also be amended, repealed or adopted by the board of directors, but any bylaws adopted by the directors may be amended or repealed by shareholders entitled to vote thereon.

2. Scope. The bylaws may contain any provision relating to the business of the corporation, the conduct of its affairs, its rights or powers of its shareholders, directors of officers, not inconsistent with this Act or any other statute of Liberia or the articles of incorporation.[11]

Chapter 5. CORPORATE FINANCE

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11 *Prior legislation:* L. 1961-62, ch. XLVII, and 2(4:24(a); 1956 Code 4:25; Lib. Corp. L., 1948, § 25.

§ 5.1. Classes and Series of Shares.

1. Power to issue. Every corporation shall have power to issue the number of shares stated in its articles of incorporation. Such shares may be of one or more classes or one or more series within any class thereof, any or all of which classes may be of shares with par value or shares without par value, and may be registered or bearer shares, with such voting power, 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.[12]

§ 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

12 *Prior legislation:* 1956 Code 4:5; Lib. Corp. L., 1948, § 6.

agreement or voted in favor of the restriction. Any restriction which absolutely prohibits the transfer of shares shall be null.

2. Buy-sell restrictions. Restrictions on the transfer of shares shall 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.

3. Annotation. Any transfer restriction adopted under this section shall be noted on the face or the back of the stock certificate.[13]

§ 5.3. Subscription 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

13 *Prior legislation:* 1956 Code 4:15; Lib. Corp. L., 1948, § 15.

writing and signed by the subscriber.

3. Time of payment calls. Unless otherwise provided in the subscription agreement, subscription 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 subscription shall be uniform as to all shares of the class or as to all shares of the same series, as the case may be.

4. Default in payment; penalties. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The bylaws may prescribe a penalty for failure to pay installments or calls that may become due, but no penalty working a forfeiture of a subscription, or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of thirty 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 of stock are

transferable unless otherwise provided in a subscription agreement.[14]

§ 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 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 that the par value thereof, as is fixed from time to time by the board.

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

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

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

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14 *Prior legislation*: 1956 Code 4:10; Lib. Corp. L., 1948, § 10.

the issuance of such shares.[15]

§ 5.5. Payment for Shares.

1. Obligations for future payments or services not payment. Neither obligations of the subscriber for future payments nor future service shall constitute payment or part payment for shares of a corporation.

2. Payment necessary before issuance of certificates. Certificates for shares may not be issued until the full amount of the consideration therefore has been paid.

3. Rights of subscribers on full payment. When the consideration for shares has been paid in full, the subscriber shall be entitled to all rights and privileges of a holder of such shares and to a certificate representing his shares, and such shares shall be deemed fully paid and nonassessable.[16]

§ 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 and 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

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15 *Prior legislation:* 1956 Code 4:7; Lib. Corp. L., 1948, § 7, 8.

16 *Prior legislation:* 1956 Code 4:7, 9, 10, 11, 12; Lib. Corp. L., 1948, § 7, 9, 10, 11, 12.

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.[17]

§ 5.8. Form and Content of Certificates.

1. Signature and seal. The shares of a corporation shall be represented by certificates signed by the president or vice-president and the secretary or an assistant secretary or the treasurer or an assistant treasurer of the corporation, and may be sealed with the seal of the corporation, if any, or a facsimiles thereof. The signatures of the officers upon a certificate may be facsimiles if the certificate is

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

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 facsimiles 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 prescribed 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. The articles of incorporation may provide that on request of a shareholder his bearer shares shall be exchanged for registered shares or his registered shares exchanged for bearer shares.

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

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

(a) That the corporation is formed under the laws of 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;

(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.[18]

§ 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

18 *Prior legislation*: 1956 Code 4:12, 13; Lib. Corp. L., 1948, §§ 12, 13.

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.[19]

§ 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

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

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.[20]

§ 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 s 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 corpora-tion; or

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

(c) Paying dissenting shareholders entitled to receive payment for their shares under section 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 asset below the stated capital remaining after giving effect to the cancellation of such redeemable shares.

4. Purchase price of redeemable shares. When the 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.[21]

§ 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 acquired 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

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

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 Minister of Foreign Affairs articles of amendment under section 9.5 (Articles of Amendment) eliminating such shares from the number of authorized shares.

§ 5.13. Reduction of Stated Capital by Action of the Board.

1. When board may reduce capital. Except as otherwise provided in

the articles of incorporation, the board may at any time reduce the stated capital of a corporation by eliminating from stated capital amounts previously transferred by the board from surplus to stated capital and not allocated to any designated class or series of shares, or by eliminating any amount of stated capital represented by issued shares having a par value to the extent that the stated capital exceeds the aggregate par value of such shares, or by reducing the amount of stated capital represented by issued shares without par value. If, however, the consideration for the issue of shares without par value was fixed by the shareholders under section 5.4(3) (Consideration for shares), 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.[22]

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

Chapter 6. DIRECTORS AND MANAGEMENT

§ 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.[23]

§ 6.2. Qualifications of Directors.

The articles of incorporation may prescribe special qualifications for

23 *Prior legislation:* L. 1961-62, ch. XIVII, 5 2(4:25(2); 1956 Code, 4:25; Lib. Corp. L. 1948, § 25.

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. Directors of a resident corporation shall be natural persons. Non-resident corporations may appoint or elect directors which are corporations.

§ 6.3. Number of Directors.

1. Number required. The number of directors constituting the entire board shall not be less than three, except that where all the shares of a corporation are owned beneficially and of record by fewer than three shareholders, the number of directors may be fewer than three but not fewer than the number of shareholders. Subject to such limitations, such number may be fixed 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 shall be three.

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

(a) If the board is authorized by the bylaws to change the number of directors, whether by amending the bylaws or by taking action under the specific provisions of a bylaw, such amendment or action shall require the vote of a majority of the entire board.

(b) No decrease shall shorten the term of any incumbent director.[24]

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24 *Prior legislation:* L. 1961-62, ch. XLVIL, 5 2(4:25(b); 1956 Code 4:25; Lib. Corp. L., 1948, § 25.

§ 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 (classification of directors). 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.[25]

§ 6.5. Classification of Directors.

1. Classification authorized: initial classification. The articles of incorporation or the specific provisions of a bylaw adopted by the shareholders may provide that the directors be divided into either two, three or four classes. All classes shall be as nearly equal in number as possible, and no class shall include fewer than three directors. The terms of office of the directors initially classified shall be as follows: that of the first class shall expire at the next annual meeting of shareholders, the second class at the second succeeding annual meeting, the third class, if any, at the third succeeding annual meeting, and the fourth class, if any, at the fourth succeeding annual meeting.

2. Replacement of classes. At each annual meeting after such initial classification, directors to replace those whose terms expire at such annual meeting shall be elected to hold office until the second succeeding annual meeting if there are two classes, the third succeeding annual meeting if there are three classes, or the fourth succeeding annual meeting if there are four classes.

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

3. Change in number of directors. If directors are classified and the number of directors is thereafter changed:

(a) Any newly created directorships or any decrease in directorships shall be so apportioned among the classes as to make all classes as nearly equal in number as possible.

(b) When the number of directors is increased by the board and any new by created directorships are filled by the board, there shall be no classification of the additional directors until the next annual meeting of shareholders.[26]

§ 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

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

office for the unexpired term of his predecessor.[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

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

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 but not less than one-third thereof.

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

3. Proxy. A proxy to a director shall be given in any instrument in writing including a telegram, cable, telex or similar communications equipment.

4. Action without meeting. Unless otherwise restricted by the articles of incorporation or by laws, 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. 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 communica-

tion equipment by means of which all persons participating in the meeting can hear 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 pre-scribed 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 pre-scribed 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.[28]

§ 6.9. Meetings of the Board.

1. Time and Place. Meetings of the board, regular or special, may be

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28 *Prior legislation*: L. 1961-62, ch. XLVII, 32 (4:25(d)-(g); 1956 Code 4:25; Lib. Corp. L., 1948, § 25.

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. Wavier 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.[29]

§ 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:

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

(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.[30]

§ 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:

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

(a) If the material facts as to such director's interest in such contract or transaction and as to any such common director-ship, 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 (Action by the board), 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 restric-tions 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.

A loan shall not be made by a corporation to any director unless it is

authorized by vote of the shareholders. For this purpose, the shares of the director who would be the borrower shall not be shares entitled to vote. A loan made in violation of this section shall be a violation of the duty to the corporation of the directors approving it, but the obligation of the borrower with respect to the loan shall not be affected thereby.

§ 6.13. Indemnification of Directors and Officers.

1. Actions not 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, 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 a judgment in its favor by reason of the fact that he is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

3. When director or officer successful. To the extent that a director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in 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 unless it shall ultimately be determined that he is entitled to

be indemnified by the corporation as authorized in this section.

5. Insurance. A corporation shall have 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.[31]

§ 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. In discharging their duties, directors and officers, when acting in good faith, may rely upon financial statements of the corporation represented to them to be correct by the president or the officer of the corporation having charge of its books or accounts, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such corporation.

§ 6.15 Officers.

1. Appointment. Every corporation shall have a president, secretary and a treasurer who shall be appointed by the board or in the manner directed by the articles of incorporation or the bylaws. Such other officers shall be appointed as are required by the articles or the

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31 *Prior legislation*: L. 1961-62, ch. XLVII, & 14:2(j); 1956 Code 4:2(k); Lib. Corp L., 1948, § 2(k).

bylaws or as the board may determine are desirable or necessary to carry on the business of the corporation.

2. Election by shareholders. The articles of incorporation 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 share-holders, or in the case of officers elected by the shareholders until the next annual meting 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 ben elected or appointed and qualified.

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.

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

8. Nationality and residence. Officers may be of any nationality and need not be residents of Liberia.[32]

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32 *Prior legislation:* 1956 Code 4:28; Lib. Corp. L., 1948, § 28.

§ 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.

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. An annual meeting of the shareholders shall be held for the election of directors on a date and at a time designed by or in the manner provided in the bylaws. 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. The secretary of the corporation upon receiving the written demand shall promptly give notice of such meeting, or if he fails to do so within five business days thereafter, any shareholder signing such demand may give such notice

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.

5. Ballots. The articles of incorporation or the bylaws may provide that elections of directors shall be by written ballot.[33]

§ 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, 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 secretary of the corporation a written request that notices to him be mailed to some other address, then directed to him at some 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.

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33 *Prior legislation:* 1956 Code 4:21, 27; Lib. Corp. L., 1948, sec. 21, 27.

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.[34]

§ 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.[35]

§ 7.4. Action by Shareholders Without a Meeting.

Any action required by this Act to be taken by a meeting of shareholders of a corporation, or any action which may be taken at a meeting of the shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the shareholders entitled to vote with respect to the subject matter thereof. Such consent shall have the same effect as a unanimous vote

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

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

of shareholders, and may be stated as such in any articles or documents filed with the Minister of Foreign Affairs under this Act.

§ 7.5. Fixing Record Date.

For the purpose of determining the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or to express consent to or dissent from any proposal without a meeting, or for the purpose of determining shareholders entitled to receive payment of any dividend or the allotment of any rights, or for the purpose of any other action, the bylaws may provide for fixing or, in the absence of such provision, the board may fix, in advance a date as the record date for any such determination of shareholders. Such date shall not be more than sixty nor less than fifteen days before the date of such meeting, nor more than sixty days prior to any other action. Notice shall be given in the manner prescribed by section 1.9 to holders of bearer shares concerning the record date by which such holders are to present their shares to the corporation in order to be considered "holders of record" entitled to vote or claim any other right or privilege of a shareholder.[36]

§ 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

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36 *Prior legislation:* 1956 Code 4:22; Lib. Corp. L., 1948, § 22.

revocable at the pleasure of the shareholder executing it, except as otherwise provided in this section.

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

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

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

(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.

7. When proxy stated to be irrevocable becomes revocable. Notwithstanding a provision in a proxy stating that it is irrevocable, the proxy becomes revocable after the pledge is redeemed, or the debt of the corporation is paid, or the period of employment provided for in the contract of employment has terminated, 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 if 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.[37]

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37 *Prior legislation:* 1956 Code 4:23; Lib. Corp. L., 1948, § 23.

§ 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 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.[38]

§ 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 holder 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 share, 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

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38 *Prior legislation:* 1956 Code 4:24, 27; Lib. Corp. L., 1948, §§ 24, 27.

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.

3. Noting greater requirement on share certificates. If the articles of incorporation of any corporation contain a provision authorized by this section, the existence of such provision shall be noted on the face or back of every certificate for shares issued by such corporation.

§ 7.10. List of Shareholders at Meeting.

A list of registered shareholders as of the record date, and of holders of bearer shares who as of the record date have qualified for voting, certified by the corporate officer responsible for its preparation or by a transfer agent, shall be produced at any meeting of shareholders upon request of any shareholder at the meeting or prior thereto. If the right to vote at any meeting is challenged, the inspector of election, or person presiding thereat, shall require such list of shareholders to be produced as evidence of the right of the persons challenged to vote at such meeting, and all persons who appear from such list to be shareholders entitled to vote thereat may vote at such meeting.[39]

§ 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.

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

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. Shares of pledgor. A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgor, or a nominee of the pledgor.

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

8. Limitations on right to vote. The articles of incorporation may provide, except as limited by section 5.1 (Classes and series of

shares), 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 certificate 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.[40]

§ 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

40 *Prior legislation:* Par. 1: 1956 Code 4:22; Lib. Corp. L., 1948, § 22, par. 2: 1956 Code 4:5(e); Lib. Corp. L., 1945, § 4.5(e).

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 trusts 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.[41]

§ 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

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41 *Prior legislation:* 1956 Code 4:16; Lib. Corp. L., 1948, § 16.

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' meting, 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.[42]

§ 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.

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

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 the discontinuance, compromise, or settle-ment, 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 a 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 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.

Chapter 8: CORPORATE RECORDS AND REPORTS

§ 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 resident domestic corporation 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, the number and class of shares held by each and the dates when they respectively became the owners of record thereof. In addition, any such corporation which issues bearer shares shall maintain a record of all certificates issued in bearer form, including the number, class and dates of issuance of such certificates. A resident domestic corporation shall keep the records required to be maintained by this paragraph at the office of the corporation in Liberia or at the office of its transfer agent or registrar in Liberia.

3. Form of record. Any of the foregoing 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.[43]

§ 8.2. Shareholders' Right to Inspect Books and Records.

1. Right stated. Any shareholder or holder of a voting trust certificate in person or by attorney or other agent, may during the usual hours of business inspect, for a purpose reasonably related to his interest as a shareholder, or as the holder of a voting trust certificate, and make copies or extracts from the share register, books of account, and minutes of all proceedings.

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43 *Prior legislation:* 1956 Code 4:45; Lib. Corp. L., 1948, § 45.

2. 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.

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

§ 8.3. Directors' Right of Inspection.

Every director shall have the absolute right at any reasonable time to inspect all books, records, documents of every kind, and the physical properties of the corporation, domestic or foreign, of which he is a director, and also of its subsidiary corporation, domestic or foreign. Such inspection by a director may be made in person or by agent or attorney, and the right of inspection includes the right to make extracts. In the case of authorized foreign corporations this right extends only to such books, records, documents and properties of such corporations as are kept or located in the Republic of Liberia.

§ 8.4. List of Directors and Officers.

If a shareholder or creditor of a resident domestic corporation, in person or by his attorney or agent, or a representative of the Minister of Foreign Affairs, Minister of Justice, or other government official makes a written demand on such corporation to inspect a current list of its directors and officers and their residence addresses, the corporation shall, within two business days after receipt of the demand and for a period of one week thereafter, make the list available for such

inspection at its office during usual business hours.

§ 8.5. Enforcement of Right of Inspection.

Upon refusal of a lawful demand for inspection of records required to be maintained in Liberia, the person making the demand may apply to the circuit court of the county in Liberia in which the records are located, upon such notice as the court may direct, for any order directing the corporation to show cause why an order should not be granted permitting such inspection by the applicant. Upon the return day of the order to show cause, the court shall hear the parties summarily, by affidavit or otherwise, and if it appears that the applicant is qualified and entitled to such inspection, the court shall grant an order compelling such inspection and awarding such further relief as to the court may seem just and proper. On order of the court issued under this section, all officers and agents of the corporation shall produce to the inspectors or accountant so appointed all books and documents in their custody or power, under penalty of punishment for contempt of court. All expenses of the inspection shall be defrayed by the applicant unless the court orders them to be paid or shared by the corporation.

§ 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 holder 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 have 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.

A corporation may amend its articles of incorporation from time to time in any and as many respects as may be desired, provided such amendment contains only such provisions as might lawfully be contained in original articles of incorporation filed at the time of making such amendment.[44]

§ 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

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

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.[45]

§ 9.3. Procedure for Amendment.

1. General method of amending. Amendment of the articles of incorporation may be authorized by vote of the holders of the majority of all outstanding shares entitled to vote thereon at a meeting of shareholders or by written consent of all shareholders entitled to vote thereon.

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

(a) To specify or change the location of the office or registered address of the corporation;

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

3. Amendment by incorporators. The articles of incorporation may be amended by consent in writing of all the incorporators provided the incorporators verify that no shares have been issued.

4. 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

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

authorize amendments under any other section.[46]

§ 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 any 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 purpose of this section.[47]

§ 9.5. Articles of Amendment.

The articles of amendment shall be executed for the corporation by its president or a vice president and by its secretary or an assistant secretary, and acknowledged in accordance with provisions of sections 1.4 and 1.5, and shall set forth:

(a) The name of the corporation and, if it has been changed, the

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

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

name under which it was formed;

(b) The date its articles of incorporation were filed with the Minister of Foreign Affairs;

(c) Each section affected thereby;

(d) If any such amendment provides for a change or elimination of issued shares and, if the manner in which the same shall be effected is not set forth in such amendment, then a statement of the manner in which the same shall be effected;

(e) If any amendment reduced states 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 Minister of Foreign Affairs in accordance with the provisions of section 1.4.[48]

§ 9.6. Effectiveness of Amendment.

1. Time when effective. Upon filing of the articles of amendment with the Minister of Foreign Affairs, the amendment shall become effective as of the filing date stated thereon and the articles of incorporation shall be deemed amended accordingly.

2. Limitation on effect of amendment. No amendment shall affect

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

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.

§ 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 (Procedure to enforce shareholders' right to receive payment for shares) 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 share 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 Minister of Foreign Affairs 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.

Chapter 10. MERGER OR CONSOLIDATION

§ 10.1. Definitions.

Whenever used in this chapter:

(a) "Merger" means a procedure whereby any two or more corporations merge into a single corporation, which is one of the constituent corporations.

(b) "Consolidation" means a procedure whereby any two or more corporations consolidate into a new corporation formed by the consolidation.

(c) "Constituent corporation" means an existing corporation that is participating in the merger or consolidation with one or more other corporations.

(d) "Surviving corporation" means the constituent corporation into which one or more other constituent corporations are merged.

(e) "Consolidated corporation" means the new corporation into which two or more constituent corporations are consolidated.

§ 10.2. Merger or Consolidation of Domestic Corporations.

1. Power stated. Two or more domestic corporations may merge or consolidate as provided in this chapter.

2. Plan of merger or consolidation. The board of each corporation

proposing to participate in a merger or consolidation shall approve a plan of merger or consolidation setting forth:

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

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

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

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

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

3. Authorization by shareholders. The board of each constituent corporation, upon approving such plan of merger or consolidation, shall submit such plan to a vote of shareholders of each such

corporation in accordance with the following:

(a) Notice of the meeting, accompanied by a copy of the plan of merger or consolidation, shall be given to each shareholder of record, whether or not entitled to vote.

(b) The plan of merger or consolidation shall be authorized at a meeting of shareholders by vote of the holders of a majority of outstanding shares entitled to vote thereon, unless any class of shares of any such corporation is entitled to vote thereon as a class, in which event, as to such corporation, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of a majority of the shares of 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 shareholders of each constituent corporation, the articles of merger or consolidation shall be executed in duplicate by each corporation by its president or a vice president and by its secretary or an assistant secretary, 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 section 10.2.2d;

(b) The date when the articles of incorporation of each constituent

corporation were filed with the Minister of Foreign Affairs;

(c) The manner in which the merger or consolidation was authorized with respect to each constituent corporation.

5. Filing. The articles of merger or articles of consolidation shall be filed with the Minister of Foreign Affairs in accordance with the provisions of section 1.4.[49]

§ 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 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

49 *Prior legislation:* 1956 Code 4:31, 32, 33; Lib. Corp. L., 1948, §§ 31, 32, 33.

for shares of 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 holders of shares of each subsidiary corporation to be merged not owned by the surviving corporation, unless the giving of such copy or outline has been waived by such holders.

3. Filing of articles of merger. The surviving corporation shall deliver duplicate originals of the articles of merger to the Minister of Foreign Affairs. 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 Minister of Foreign Affairs;

(c) If the surviving corporation does not own all the shares of each subsidiary corporation to be merged, either the date of the giving to holders of shares of each such subsidiary corporation not owned by the surviving corporation of a copy of the plan of merger or an outline of the material features thereof, or a statement that the giving of such copy of or outline has been waived, if such is the case.

The articles of merger shall be filed with the Minister of Foreign Affairs in accordance with the provisions of section 1.4.[50]

§ 10.4. Effect of Merger or Consolidation.

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50 *Prior legislation:* 1956 Code 4:34; Lib. Corp. L., 1948, § 34.

1. When effective. Upon the filing of the articles of merger or consolidation by the Minister of Foreign Affairs or on such date subsequent thereto, not to exceed thirty 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 the 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 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 case of a consolidation, the statement set forth in the articles of consolidation and which are required or permitted to be set forth in article 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, ceases to exist and is dissolved.[51]

§ 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 this jurisdiction, it shall

51 *Prior legislation:* 1956 Code 4:32, 36; Lib. Corp. L., 1948, §§ 32, 36.

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

(i) An agreement 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; and

(iii) An agreement that it will promptly pay to the dissenting shareholder 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.

(iv) A certificate of merger or consolidation issued by the appropriate official of the foreign jurisdiction.

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

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

4. Merger of subsidiary corporation. The procedure for the merger of a subsidiary corporation or corporations under section 10.3 (Merger of subsidiary corporation) 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.

§ 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.[52]

§ 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; or

(b) Any sale or exchange of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution, but not including a sale pursuant to an order of a court having juris-diction 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.[53]

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

53 *Prior legislation*: 1956 Code 4:30, 32; Lib. Corp. L., 19488, §§ 30, 32.

§ 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 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 (Merger of subsidiary corporations) 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 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, shall make a written offer by registered mail to each shareholder who has filed such notice of election to pay for his shares at a specified price which the corporation considers to be their fair value. If within thirty days after the making of such offer, the corporation making the offer and any shareholder agree upon the price to be paid for his shares, payment therefor shall be made within thirty days after the making of such offer upon the surrender of the certificates representing such shares.

7. Procedure on failure of corporation to pay dissenting

shareholder. The following procedures shall apply if the corporation fails to make such offer within such period of seven 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 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 is located to determine the rights of dissenting shareholders and to fix the fair value of their shares. If, in the case of merger or consolidation, the surviving or consolidated corporation is a foreign corporation without an office in Liberia, such proceeding shall be brought in the county where the office of the domestic corporation, whose shares are to be valued, was located.

(b) If the corporation fails to institute such proceedings within such period of twenty 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 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 shall serve a copy of the petition in such proceeding upon each dissenting shareholder in the manner provided by law for the service of a summons.

(d) The court shall determine whether each dissenting shareholder, as to whom the corporation requests the court to make such determination, is entitled to receive payment for his shares. If the corporation does not request any such determination or if the court finds that any dissenting shareholder is so entitled, it shall proceed to fix the value of the shares, which, for the purposes of this section, shall be the fair value as of the close of business on the day prior to the shareholder's authorization date, including any appreciation or depreciation directly or indirectly induced by such corporate action or its proposal. The court may, if it so elects, appoint an appraiser to receive evidence and recommend a decision on the question of fair value.

(e) The final order in the proceeding shall be entered against the corporation in favor of each dissenting shareholder who is a party to the proceeding and is entitled thereto for the value of his shares so determined. Within sixty days after the final determination of the proceeding, the corporation 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. Shares acquired by the corporation 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 case of a merger or consolidation, they may be held and disposed of as the plan of merger or consolidation may otherwise provide.

9. Right to receive payment by dissenting shareholder as exclusive. The enforcement by a shareholder of his right to receive payment for his shares in the manner provided herein shall exclude the enforcement by such shareholder of any right to which he might otherwise be entitled by virtue of share ownership, except that this section shall not

exclude the right of such shareholder to bring or maintain an appropriate action to obtain relief on the ground that such corporate action will be or is illegal or fraudulent as to such shareholder.[54]

Chapter 11. DISSOLUTION

§ 11.1. Manner of Effecting Dissolution.

1. Meeting of shareholders. Except as otherwise provided in its articles of incorporation, a corporation may be dissolved if, at a meeting of shareholders, the holders of two-thirds of all outstanding shares entitled to vote on a proposal to dissolve, by resolution consent that the dissolution shall take place. A certified copy of such resolution shall be filed with the articles of dissolution.

2. Consent without meeting. Whenever all the shareholders entitled to vote on a proposal to dissolve shall consent in writing to a dissolution, no meeting of shareholders shall be necessary. The writing or writings evidencing the consent shall be filed with the articles of dissolution.

3. Articles of dissolution; contents, filing. Articles of dissolution shall be signed, verified and delivered to the Minister of Foreign Affairs.

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54 *Prior legislation:* 1956 Code 4:41; Lib. Corp. L., 1948, § 41.

They shall set forth the name of the corporation, the date its articles of incorporation were filed with the Minister of Foreign Affairs, the name and address of each of its directors and officers, that the corporation elects to dissolve, and the manner in which the dissolution was authorized. The articles of dissolution shall be filed with the Minister of Foreign Affairs in accordance with the provisions of section 1.4.

4. Time when effective. The dissolution shall become effective as of the filing date stated on the articles of dissolution.[55]

§ 11.2. Judicial Dissolution.

A shareholders' meeting to consider adoption of a resolution to institute a special proceeding on any of the grounds specified below, may be called, notwithstanding any provision in the articles of incorporation, by the holders of ten percent 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

55 *Prior legislation:* 1956 Code 4:37; Lib. Corp. L., 1948, § 37.

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. Upon filing with the Minister of Foreign Affairs, the corporation shall be dissolved.

§ 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 two years, the Minister of Foreign Affairs on or about the first day of November of each year or on such other date as shall be determined by regulation, shall cause a notification to be sent to the 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 appointed, as the case may be. On the expiration of the ninety day period, the Minister of Foreign Affairs, 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 chapter 11.

2. Erroneous annulment. Whenever it is established to the satisfaction of the Minister of Foreign Affairs that the articles of incorporation were erroneously annulled, he may restore the corporation to full existence by publishing and filing in his office a proclamation to that effect.[56]

§ 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

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56 Prior legislation: L. 1959-60, ch. IX; 1956 Code 4:48; Lib. Corp. L., 1948, § 48.

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.[57]

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57 *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 Corporation.

1. Notice to creditors. Any time within one year after dissolution, a resident domestic corporation shall and a nonresident domestic corporation may give notice requiring all creditors and claimants, including any with unliquidated or contingent claims and any with whom the corporation has unfulfilled contracts, to present their claims in writing and in detail at a specified place and by a specified day, which shall not be less than six 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 elsewhere in Liberia. 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 counterclaim in respect of any claim against the corporation, its assets, directors, officers or shareholders, which has been barred by any statute of limitations or become invalid by any cause, or in respect of which the corporation, its directors, officers or shareholders, have any defense or counterclaim.

2. Filing or barring claims. Any claims which shall have been filed as provided in such notice and which shall be disputed by the corporation may be submitted for determination to the 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.

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.

Chapter 12. FOREIGN CORPORATIONS

§ 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 security, or appointing and maintaining trustees or depositarie 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.[58]

§ 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.

1. 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;

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58 *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).

(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 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.[59]

§ 12.4. Filing of Application for Authority to do Business.

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59 *Prior legislation*: L. 1966-67, An act to amend the Associations law to require all foreign corporation desiring to engage in business in Liberia to register (4:60, 61).

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.

§ 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 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 if 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 Libe-

rian 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 require 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) § 7:16 (Shareholders derivative action);

(b) § 10.5 (Merger or consolidation of domestic and Foreign Corporations);

(c) § 10.8 (Procedure to enforce Shareholder's right to receive payment for shares).

Chapter 13. FOREIGN MARITIME ENTITIES

§ 13.1. Method of Registration.

1. Eligibility. A foreign trust or corporation whose indenture or instrument of trust, charter or articles of incorporation agreement or 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 Minister of Foreign Affairs 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 authorized in writing by appropriate action of the trustee(s), board of directors or other person(s) in whom, under the law of the State of creation management of the entity is vested, and shall bear their signature(s) and title(s) or the signature of a duly constituted attorney-in-fact. The application shall be dated and shall state the following:

(a) The name of the entity;

(b) The legal character or nature of the entity;

(c) The jurisdiction and date of its creation;

(d) Where the legal entity has the power to own or operate vessel;

(e) Whether the entity has the capacity to sue and be sued in its

own name or, if not, in the name of its lawful fiduciary or legal representative;

(f) The address of the principal place of business of the entity and, if such place is not in the jurisdiction of the creation of the entity, either the address of its place of business or 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 designate 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.

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 the 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 the translator. Each such copy shall be certified by an authorized officer or if 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 Minister of Foreign Affairs 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.[60]

§ 13.2. Powers Granted on Registration.

A registered foreign maritime trust or corporation shall have the following powers:

(a) To own and operate vessels registered under the Republic of Liberia provided all requirements 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 60.

§ 13.3. Subsequent change of business address or address of lawful fiduciary or legal representative; Amendment of document on which existence is based.

1. Change of address. Whenever a change occurs in the address(es) stated under section 13.1.2(f), written notice of such change, stating the new information, shall be filed with the registered agent 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 Minister of Foreign Affairs. If such amendment

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60 *Prior legislation:* L. 1972-73, An act to amend the Associations Law with respect to foreign maritime trust and corporations (4.49).

is in a foreign language, a translation thereof into English certified by a translator shall be attached. [61]

§ 13.4. Revocation of Registration.

The registration of a foreign maritime entity may be revoked by the Minister of Foreign Affairs 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.[62]

§ 13.5. Fees.

The following fees shall be paid to the Minister of Finance by a foreign maritime entity:

(a) Upon application for registration, five hundred dollars;

(b) An annual registration fee of two hundred dollars.[63]

§ 13.6. Application of Other Provisions to Registered Foreign Maritime Entities.

All provisions of chapter 12 not in conflict with the provisions of this chapter shall apply to foreign maritime entities, with the exception of sections 12.10, 12.11, and 12.12. [64]

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61 *Prior legislation:* L.1972-73, An act to amend the Associations Law with respect to foreign maritime trust and corporations (4:49), Amended eff. August 31,1989

62 Amended eff. August 11, 1989

63 *Prior legislation:* L. 197-273, An act to amend the Associations Law with respect to foreign maritime trusts and corporations (4:49).

64 Amended eff. August 31, 1989.

§ 13.7. Status of Prior Registrations.

Any foreign maritime trusts or corporations previously registered under this chapter shall after the effective date of this amendatory legislation, be considered and deemed to be foreign maritime entities.

Chapter 14. LIMITED LIABILITY COMPANIES

Subchapter I. GENERAL PROVISIONS

§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 sectionl4.2.1 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.[65]

§ 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

65. *Effective*: November 26, 1999; amended effective June 19, 2002.

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.*[66]

§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;

66. *Effective:* November 26, 1999; amended effective June 19, 2002.

(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.[67]

§ 14.1.4. Registered agent and service of process

The provisions of Chapter 3 of Part I of this Title shall apply to a

67. *Effective:* November 26, 1999; amended effective June 19, 2002.

limited liability company as they apply to a corporation.[68]

§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.[69]

§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.[70]

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68. *Effective:* November 26, 1999; amended effective June 19, 2002.

69. *Effective:* November 26, 1999; amended effective June 19, 2002.

70. *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.[71]

Subchapter II. FORMATION, AMENDMENT, MERGER, CONSOLIDATION, REDOMICILIATION, REREGISTRATION, DEREGISTRATION AND CANCELLATION.

71. *Effective:* November 26, 1999; amended effective June 19, 2002.

§ 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.[72]

§ 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.[73]

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72. *Effective:* November 26, 1999; amended effective June 19, 2002.

73. *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.[74]

§ 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.

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74. *Effective:* November 26, 1999; amended effective June 19, 2002.

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.[75]

§ 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

75. *Effective:* November 26, 1999; amended effective June 19, 2002.

limited liability company agreement or amendment thereof has failed or refused to do so, it shall enter an order granting appropriate relief.[76]

§ 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.[77]

§ 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

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76. *Effective:* November 26, 1999; amended effective June 19, 2002.

77. *Effective:* November 26, 1999; amended effective June 19, 2002.

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.[78]

§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.[79]

§ 14.2.9. Merger and consolidation.

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78. *Effective:* November 26, 1999; amended effective June 19, 2002.

79. *Effective:* November 26, 1999; amended effective June 19, 2002.

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.[80]

§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 con-

80. *Effective:* November 26, 1999; amended effective June 19, 2002.

solidated 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.[81]

§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 regis-tered 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

81. *Effective:* June 19, 2002.

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 offormer 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.[82]

§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

82. *Effective:* June 19, 2002.

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 redomiciliation 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 good standing 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 redomiciliation, 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 redomiciled 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 redomiciled 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 redomiciliation:

(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.[83]

§ 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

83. *Effective:* June 19, 2002.

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 redomiciliation 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 good standing 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 redomiciliation 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 redomiciled 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 *S* 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 im-mediately 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 redomiciliation, 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 redomiciled 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 redomiciliation:

(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 redomiciling 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.[84]

§14.2.14. Re-registration 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 reregis-tration as a reregistered and continued limited liability company is sought;

84. *Effective:* June 19, 2002.

(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 deregister 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 good standing 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 *S* 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 *S* 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.[85]

§14.2.15. Cancellation and reregistration of limited liability

85. *Effective:* June 19, 2002.

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 appli-cation 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 participation 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) Participation 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), participation 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 good standing 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 subparagraph (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 re-registering 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.[86]

Subchapter III. MEMBERS

§ 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

86. *Effective:* June 19, 2002.

(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.[87]

§ 14.3.2. Classes and voting.

87. *Effective:* November 26, 1999; amended effective June 19, 2002.

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.[88]

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88. *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.[89]

§ 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 re-organization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute,

89. *Effective:* November 26, 1999; amended effective June 19, 2002.

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.[90]

§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

90. *Effective:* November 26, 1999; amended effective June 19, 2002.

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 I 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.[91]

§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.[92]

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91. *Effective:* November 26, 1999; amended effective June 19, 2002.

92. *Effective:* November 26, 1999; amended effective June 19, 2002.

Subchapter IV. MANAGEMENT

§ 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.[93]

§ 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

93. *Effective:* November 26, 1999; amended effective June 19, 2002.

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.[94]

§ 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.[95]

§ 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;

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94. *Effective:* November 26, 1999; amended effective June 19, 2002.

95. *Effective:* November 26, 1999; amended effective June 19, 2002.

(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 out-standing, 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.[96]

§ 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.[97]

§ 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:

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96. *Effective:* November 26, 1999; amended effective June 19, 2002.

97. *Effective:* November 26, 1999; amended effective June 19, 2002.

(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.[98]

§ 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

98. *Effective:* November 26, 1999; amended effective June 19, 2002.

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.[99]

Subchapter V. FINANCE

§ 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.[100]

§ 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

99. *Effective:* November 26, 1999; amended effective June 19, 2002.

100. *Effective:* November 26, 1999; amended effective June 19, 2002.

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.[101]

§ 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.[102]

§ 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.[103]

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101. *Effective:* November 26, 1999; amended effective June 19, 2002.

102. *Effective:* November 26, 1999; amended effective June 19, 2002.

103. *Effective:* November 26, 1999; amended effective June 19, 2002.

Subchapter VI. DISTRIBUTIONS AND RESIGNATION

§ 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.[104]

§ 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

104. *Effective:* November 26, 1999; amended effective June 19, 2002.

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.[105]

§ 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.[106]

§ 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

105. *Effective:* November 26, 1999; amended effective June 19, 2002.

106. *Effective:* November 26, 1999; amended effective June 19, 2002.

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.[107]

§ 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.[108]

§ 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.[109]

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107. *Effective:* November 26, 1999; amended effective June 19, 2002.

108. *Effective:* November 26, 1999; amended effective June 19, 2002.

109. *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.[110]

Subchapter VII. ASSIGNMENT OF LIMITED LIABILITY COMPANY INTERESTS

§ 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.[111]

§ 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

110. *Effective:* November 26, 1999; amended effective June 19, 2002.

111. *Effective:* November 26, 1999; amended effective June 19, 2002.

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.[112]

§ 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.[113]

§ 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

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112. *Effective:* November 26, 1999; amended effective June 19, 2002.

113. *Effective:* November 26, 1999; amended effective June 19, 2002.

(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.[114]

§ 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

114. *Effective:* November 26, 1999; amended effective June 19, 2002.

or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor.[115]

Subchapter VIII. DISSOLUTION

§ 14.8.1. Dissolution.

I. 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

115. *Effective:* November 26, 1999; amended effective June 19, 2002.

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.[116]

§ 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

116. *Effective:* November 26, 1999; amended effective June 19, 2002.

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.[117]

§ 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

117. *Effective:* November 26, 1999; amended effective June 19, 2002.

limited liability company agreement.[118]

§ 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

118. *Effective:* November 26, 1999; amended effective June 19, 2002.

imposing liability on a liquidating trustee.[119]

§ 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

119. *Effective:* November 26, 1999; amended effective June 19, 2002.

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.[120]

Subchapter IX. DERIVATIVE ACTIONS

§ 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

120. *Effective:* November 26, 1999; amended effective June 19, 2002.

the action is not likely to succeed.[121]

§ 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.[122]

§ 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.[123]

§ 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

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121. *Prior Legislation:* § 14.10.1, effective November 26, 1999; amended effective June 19, 2002.

122. *Prior Legislation:* § 14.10.2, effective November 26, 1999; amended effective June 19, 2002.

123. *Prior Legislation: §* 14.10.3, effective November 26, 1999; amended effective June 19, 2002.

limited liability company.[124]

Subchapter X. MISCELLANEOUS

§ 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

124. *Prior Legislation:* § 14.10.4, effective November 26, 1999; amended effective June 19, 2002.

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.[125]

§ 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.[126]

§ 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.[127]

§ 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

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125. *Prior Legislation:* § 14.11.1, effective November 26, 1999; amended effective June 19, 2002.

126. *Effective:* November 26, 1999; amended effective June 19, 2002.

127. *Effective:* November 26, 1999; amended effective June 19, 2002.

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.[128]

§ 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. [129]

128. *Prior Legislation:* § 14.11.7, effective November 26, 1999; amended effective June 19, 2002.

129. *Effective:* June 19, 2002.

P A R T II

Not-For-Profit Corporations

Chapter 20. GENERAL PROVISIONS

§ 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 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 the 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 objects 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 Minister of Foreign Affairs, a not-for-profit corporation shall pay a fee of fifty dollars 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.

Chapter 21. FORMATION

§ 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 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

A not-for-profit corporation shall not have shares of stock or issue certificates for shares of stock, but may issue nontransferable 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.

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 is 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 way 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 or 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 membership.

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 appraisers 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.

P A R T III

Partnerships

Chapter 30. PARTNERSHIPS

§ 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.[130]

§ 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;

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130 *Prior legislation:* 1956 Code 4:300; Rev. Stat. § 1223; L. 1895-96, 11, § 31.

(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 goodwill 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, operate as notice to or knowledge of the partnership, except in the case of 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 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 given 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 he 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 contri-

bute, shall be paid interest from the date of the payment or 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 he 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 represen-tative 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 Partners right therein. A partner is co-partner 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, curtesy, 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 wilfully 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.[131]

§ 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,

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131 *Prior legislation*: 1956 Code 4:302; Rev. Stat. § 1390.

(a) Partners. With respect to the partners:

(i) When the dissolution is not by the act, bankruptcy or death of 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 copartners 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. 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 any 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 debts 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 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 contribution specified in sub-paragraph (d) of this section.

(f) Any partner or his legal representative shall have the right to enforce the contributions specified in sub-paragraph (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 still 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 he continued in the following cases:

(a) After dissolution of a 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 copartnership 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 copartnership.

§ 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 $200 to the Minister of Finance and a receipt therefor shall accompany the document for filing.

4. Registered agent. A partnership registered under paragraph 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 or any notice and demand required or permitted by law to be served may be served. The agent designated 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.[132]

Chapter 31. LIMITED PARTNERSHIPS

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132 *Prior legislation:* 1956 Code 4:300; Rev. Stat. 1223, 1224; L. 1895-96, 11, § 31.

§ 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 $200 to the Minister of Finance and a receipt therefor shall accompany the document for filing.

4. Registered agent. A limited partnership registered under paragraph 1 but not having a place of business in Liberia shall designate in the certificate containing the limited partnership agreement, filed pursuant to this section, a registered agent in Liberia upon whom process or any notice or demand required or permitted by law to be served may be served. The agent designated 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.

§ 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 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.

l. 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 rate 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 partner-ship 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 be 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 two, 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 add and that stated in the certificate as having been made,

(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 wrong-fully 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 "hereunto 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 a 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 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 effect or impair any act done or right accrued, acquired or established by a limited partnership formed prior to its adoption.

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.

P A R T IV

OTHER FORMS OF ASSOCIATIONS

Chapter 41. UNINCORPORATED ASSOCIATIONS

§ 41.1. Definition.

An unincorporated association is a body of individuals acting together for the prosecution of a common enterprise without a corporate charter, but expressed in its bylaws regulating its conduct, expressing its purpose and governing the relations of its members among themselves and to it, in the absence of statute.

§ 41.2. The Certificate.

Every unincorporated association after its organization shall

(a) Execute a certificate, signed and sworn to by its president and treasurer, stating

(i) The name of such unincorporated association;

(ii) The date of its organization;

(iii) The number of its members;

(iv) The names and places of residence of its officers;

(v) A description of the purpose of its organization.

(b) File the certificate in the office of the Registrar of Deeds of the county in which the principal office of such incorporated association is located.

(c) Upon filing the certificate as provided in this section, cause a copy thereof, or a notice containing the substance thereof, to be published once in a newspaper of general circulation in the county where such certificate was filed, and if no newspaper of general circulation is published in such county, copy of the certificate shall be placarded prominently for three consecutive business days, at the front of the Post Office in the principal place where the unincorporated association is located.

(d) Upon completion of such publication in a newspaper or by placarding, an affidavit of compliance shall be filed at the place where the certificate was filed, signed and sworn to by the president or treasurer of the unincorporated association.

§ 41.3. Time of Formation.

After organization of an unincorporated association, and upon substantial compliance in good faith with the requirements of section 41.2, an unincorporated association will have been formed.

§ 41.4. Dissolution.

An unincorporated association shall not be dissolved except in pursuance of its bylaws or by consent of its members, or by judgment of a court for fraud in its management or operation, or for good cause shown, provided that rights of creditors shall not he terminated by such dissolution. Unless otherwise provided for by the bylaws, the net surplus shall be divided equally among the members.

§ 41.5. Power to Hold and Convey Real Property.

An unincorporated association may, in its own name, purchase, take, hold, convey and mortgage such real property as is necessary for its accommodation for the convenient transaction of its business as stated in its bylaws.

§ 41.6. Actions by and Against the Unincorporated Association.

An unincorporated association shall sue and be sued in its common name, and personal service upon such unincorporated association shall be effected in accordance with the provisions of section 3.38.5 of the Civil Procedure Law.

§ 41.7. Liability of Members of Unincorporated Association.

The members of an unincorporated association shall each personally be liable as provided for in section 41.9 for the satisfaction of judgments obtained against the unincorporated association, unless it is not engaged in the pursuit of business for profit. In such latter eventuality, the individual members of an unincorporated association not engaged in business for profit shall only be personally liable when

(a) The judgment obtained against the unincorporated association

arose from a tortuous act or occurrence.

(b) The judgment obtained against the unincorporated asso-ciation otherwise arose, and the individual member sought to be charged either authorized or ratified the course of conduct from which the judgment arose.

§ 41.8. Judgment Against Unincorporated Association.

Judgments obtained against an unincorporated association shall first be satisfied out of the assets of the unincorporated association.

§ 41.9. Amount of Personal Liability of Individual Members.

In the event a judgment obtained against an unincorporated association is returned wholly or partly unsatisfied, and the provisions of section 41.7 hereof are applicable, the judgment creditor may thereafter proceed, upon provision therefor made in the writ of execution, against the individual members liable under section 41.7 who shall be personally liable prorate therefor according to the proportion a member bears to the total membership of the unincorporated association.

Chapter 42. COOPERATIVE SOCIETIES

Subchapter A: General Provisions

Subchapter B. Registration of Societies

Subchapter A. GENERAL PROVISIONS

§ 42.1. Title of Act.

This chapter may be cited as the "Cooperative Societies Act".[133]

§ 42.2. Administration.

The Minister of Agriculture shall be responsible for the administration and enforcement of this Act. Acting under his direction and control shall be a Registrar of Cooperative Societies, hereinafter called the "Registrar," and such Assistant Registrars as may be required for effective administration. The Registrar and Assistant

133 *Prior legislation*: 1956 Code 4:80; L. 1935-36, ch. XXV.

Registrars shall be appointed by the President.[134]

§ 42.3. Publication of Regulations.

All regulations made under the provisions of this chapter shall be published in the Official Gazette and shall become effective immediately upon publication or upon the effective date named therein. they shall have the same force and effect as if enacted as a part of this chapter. In any case when the Minister of Agriculture is satisfied that a substantial number of the members of any registered society are unacquainted with the English language, he shall cause the regulations to be translated into a language with which the members are acquainted and to be made known in such additional manner as is customary in the community concerned.[135]

Subchapter B. REGISTRATION OF SOCIETIES

§ 42.10. Societies Entitled to be Registered.

Any society may be registered under the provisions of this Act if it meets the following requirements:

(a) Its object is the promotion of the economic interests of its members in accordance with cooperative principles;

(b) Its membership is composed of at least ten natural per-sons over eighteen years of age or of at least two registered societies or of a

134 *Prior legislation*: 1956 Code 4:81 (g), (h) 90, 180, 181; L. 1935-36, ch. XXV, 43, § 54, 55.

135 *Prior legislation*: 1956 Code 4:180; L. 1935-36, ch. XXV, § 54.

registered society and one or more natural persons over eighteen years of age;

(c) Its members or the members of any registered society com-posing its membership reside within or occupy realty within the society's proposed area of operation;

(d) None of its members who is a natural person shall hold more that one-fifth of the share capital of the society.[136]

§ 42.11 Method of Registering.

1. Application. Application for registration of a society shall be made to the Minister of Agriculture. Every application shall be in duplicate and shall be accompanied by two copies of the proposed bylaws and shall state the name of the society, the number of its members, the names and places of residence of its officers, the address of the principal office of the society to which all notices and communications other than process may be sent, and the purpose of the organization. The application shall be signed;

(a) In the case of a society no member of which is a registered society, by at least ten members qualified in accordance with the provisions of section 42.10;

(b) In the case of a society of which a registered society is a member, by a duly authorized person on behalf of every registered society which is a member and by any natural persons who are members up to ten in number.

2. Name. The word "Limited" shall be the last word in the name of

136 *Prior legislation:* 1956 Code 4:91; L. 1935-36, ch XXV, § 44.

every society of which a registered society is a member.

3. Registration. If the Minister of Agriculture is satisfied that a society has complied with the provisions of this chapter and that its proposed bylaws are in conformity with this chapter and with the regulations issued thereunder, he shall enter the name of the society on the registrar of cooperative societies to be maintained in the office of the Registrar. The record stall show as to each registered society whether it is of limited or unlimited liability. On registration, the Minister of Agriculture shall;

(a) Endorse on each of the copies of the application and the bylaws, the word "Filed," and the month, day and year of the filing thereof;

(b) File one of the copies of the application and one of the copies of the bylaws in the office of the Registrar;

(c) Issue a certificate of registration to which he shall affix the other copy of the bylaws, and which shall be returned to the society;

(d) Cause a copy of the application, the certificate of registration and a copy of the bylaws to be made and filed in the office of the Minister of Foreign Affairs. The certificate of registration shall be conclusive evidence that all conditions precedent required to be performed for registration have been complied with and that the society has been duly registered.[137]

§ 42.12. Amendment of Bylaws.

No amendment of the bylaws of a registered society shall be valid

137 *Prior legislation*: 1956 Code 4:92, 93, 94(last par.). 95; L. 1935-36, ch. XXV, 44,45.

until it has been filed in accordance with the provisions of this section. In0 order to file such an amendment, two copies shall be delivered to the Minister of Agriculture, who shall file in the office of the Registrar one copy of the amendment if he is satisfied that it is not contrary to the provisions of his chapter, and cause a copy to be made and filed with the Minister of Foreign Affairs. On filing the Minister of Agriculture shall issue to the society a copy of the amendment certified by him, which copy shall be conclusive evidence that such amendment is duly filed.[138]

§ 42.13. Change of Name or Address.

The Minister of Agriculture shall be notified of any change of name or address of the society and shall in turn inform the Minister of Foreign Affairs of such change.[139]

Subchapter C. RIGHTS AND LIABILITIES OF MEMBERS

§ 42.20. Payment as Prerequisite to Rights of Members.

No member of a registered society shall exercise the rights of a member until he has made such payment to the society or acquired such interest in the society as may be prescribed as a prerequisite for membership by regulations issued under this chapter or by the bylaws of such society.[140]

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138 *Prior legislation:* 1956 Code 4:96; L. 1935-36, ch. XXV, § 45.

139 *Prior legislation:* 1956 Code 4:110; L. 1935-36, ch. XXV, § 16.

140 *Prior legislation:* 1956 Code 4:100; L. 1935-36, ch. XXV, 45.

§ 42.21. Limitation on Number of Members.

No person shall be a member of more than one registered society of unlimited liability without the approval of the Minister of Agriculture.[141]

§ 42.22. Limitation on Proportion of Share Capital Member May Hold.

No member shall hold more than such proportion of the share capital of any registered society as may from time to time be prescribed by regulation; provided, that except in the case of a registered society which is a member, such maximum proportion shall not exceed one-fifth of the total.[142]

§ 42.23. Right to Vote.

Each member of a registered society shall have only one vote as a member in the affairs of the society notwithstanding the amount of his interest in the capital; but a cooperative society which is a member of another registered society shall have as many votes as may be prescribed by the bylaws of such registered society and may, subject to such bylaws, appoint any number of its members, not exceeding the number of such votes, to exercise its voting powers.[143]

§ 42.24. Limitation on Right to Transfer Interest in Society.

No member of a registered society shall transfer any share held by

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141 *Prior legislation:* 1956 Code 4:110; L. 1935-36, ch.XXV,

142 *Prior legislation:* 1956 Code 4:102; L 1935-36 ch. XXV, § 14(a).

143 *Prior legislation:* 1956 Code 4:103; L. 1935-36, ch. XXV, 44, sec. 14(b).

him or his interest in the capital of the society or any part thereof unless:

(a) He has held such share or interest not less than one year, and

(b) The transfer or change is made to the society or to a member thereof, and

(c) The transferee will not by reason of such transfer exceed the maximum holding prescribed by this chapter or by the regulations issued thereunder.[144]

§ 42.25. Members' Shares Not Liable to Attachment or Sale.

The share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a court for the payment of any debt or liability incurred by such member.

§ 42.26. Liability of Members for Obligations of Society.

1. Societies of which a registered society is member. A member of a society of which a registered society is a member shall not be personally liable for the debts, liabilities or obligations of the society except to the extent of any unpaid initiation fees, membership dues or indebtedness on share subscriptions or other indebtedness owed by him to the society.

2. Other societies. A member of any other society shall be personally liable for the debts, liabilities or obligations of the society only if a judgment has been obtained against the society and returned

144 *Prior legislation:* 1956 Code 4:104; L. 1935-36. ch. XXV, § 15.

wholly or partly unsatisfied. In such case each member shall be personally liable for such judgment prorata according to the proportion his investment in the society bears to the total capital investment, or, if the society has no capital, according to the proportion such member bears to the total membership of the society.[145]

Subchapter D. PRIVILEGES, RIGHTS AND DUTIES OF REGISTERED SOCIETIES

§ 42.30. Society as Entity; Manner of Service.

The registration of a society under this chapter shall entitle it to perpetual succession and a common seal and confer on it the power to hold moveable and immoveable property of every description, to enter into contracts, and to defend civil actions and all other legal proceedings, and to do all things necessary to carry out the purpose for which it was formed. Service on a registered society shall be effected in the same manner as service on an unincorporated association in accordance with the provisions of section 3.38 (5) of the Civil Procedure Law.[146]

§ 42.31. Committees as Governing Body.

The business and affairs of a society registered under this Act shall be managed by a committee, which shall be elected as provided by the regulations issued under this Act or by the bylaws of the society[147].

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145 *Prior legislation:* 1956 Code 4:94; L. 1935-36, ch. XXV, 44.

146 *Prior legislation:* 1956 Code 4:113; L. 1935-36, ch. XXV, 47.

147 *Prior legislation:* 1956 Code 4:81(b); L. 1935-36, ch. XXV, § 43.

§ 42.32. Bylaws.

A registered society may make bylaws covering all matters which are necessary or desirable to further the purposes for which the society was established. Every registered society shall keep a copy of this chapter, of the regulations issued thereunder, and of its bylaws open to inspection without charge during business hours at the registered address of the society.[148]

§ 42.33. Charge on Shares or Deposits of Members.

A registered society shall have a charge upon the shares or interest in the capital and on the deposits of a member or past member as well as upon any dividend, bonus, or accumulated funds payable to a member or past member for any debt due to it from such member or past member, and it may set off any sum credited or payable to a member or past member in or toward payment of any such debt.[149]

§ 42.34. Society's Claim on Members' Property.

Any outstanding debt owed to a registered society by a member or past member shall be a first charge on his property as follows:

(a) When the society has advanced seed or fertilizer or made loans for the purchase of same, it shall have a first charge on the crops or agricultural produce of the member or past member for the unpaid portion of such advance or loan during the two years after such advance or loan was made: and

(b) When the society has supplied domestic animals, fodder for

148 *Prior legislation:* 1956 Code 4:111, 112; L. 1935-36, ch. XXV, § 47.

149 *Prior legislation:* 1956 Code 4:115; L. 1935-36, ch. xxv, 47.

such animals, agricultural or industrial implements or machinery, or raw materials for manufacturing or when it has made loans for the purchase of any of the foregoing, it shall have a first charge on the animals or things so supplied or purchased in whole or in part from any such loan or on articles manufactured from raw materials so supplied or purchased; provided, however, that the claim of the society shall be subject to any prior claim of the government on the property of its debtors and to the prior claims of lessors for rent or any money recoverable as rent; and provided further that nothing contained in this section shall affect the claim of a bona fide purchaser or transferee for value without notice of any such crops, agricultural produce, cattle, raw materials for manufacturers, or articles manufactured therefrom or with such implements or machinery.[150]

§ 42.35. Payment of Value of Member's Interest on Death.

Subject to provisions contained in the bylaws, on death of a member, a society shall pay to his personal representative for distribution according to the will or laws of intestacy, the value of any interest held by such member in the society; provided that on the request of any distributes who is qualified for membership in the society, any share or interest of the deceased member to the value of which such distribute would be entitled, shall be transferred in lieu of payment of its value.[151]

Subchapter E. ADMINISTRATION OF PROPERTY AND FUNDS

150 *Prior legislation:* 1956 Code 4:114; L. 1935-36, ch. XXV, § 47.

151 *Prior legislation*: 1956 Code 4:116; L. 1935-36, ch. XXX, 48.

§ 42.40. Loans by Registered Society.

A registered society may lend money only to members and, with the consent of the Minister of Agriculture, to another registered society.[152]

§ 42.41. Right of Registered Society to Receive Deposits and Loans.

A registered society may receive deposits from members subject only to any applicable provisions of the Banking Law. A registered society may receive deposits and loans from non-members subject to any applicable restrictions contained in the Banking Law or regulations issued under this chapter or the bylaws of the society.[153]

§ 42.42. Approved Investments.

A registered society may invest or deposit its funds;

(a) In any bank approved by the Minister of Agriculture;

(b) In securities issued by the Government of Liberia;

(c) In the shares of any other registered society;

(d) Within the limits of any applicable provisions of the Banking Law, in any other manner permitted by regulations issued by the Minister of Agriculture.[154]

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152 *Prior legislation*: 1956 Code 4:130; L. 1935-36, ch. XXV, § 29.

153 *Prior legislation:* 1956 Code 4:631; L. 1935-36, ch. XXV, § 30

154 *Prior legislation:* 1956 Code 4:133; L. 1935-36, ch. XXV, § 32.

§ 42.43. Marketing of Members' Products.

A registered society which has as one of its objects the disposal of the produce of agriculture, animal husbandry, or handicrafts may contract with its members, either in its bylaws or by a separate document, that they will dispose of all their produce, or such amounts or parts as shall be stated or described therein, to or through the society. It may further provide in the contract for the payment of a specific sum per unit of weight or other measure as liquidated damages for breach of such contract and that such liquidated damages shall be a debt to the society.[155]

§ 42.44. Extension of Contract Terms to Other Producers.

If any registered society shows in an application to the Minister of Agriculture that its membership in the Republic of Liberia or in any county, territory, district, or township comprises fifty percent (seventy-five percent in townships) of all the producers of any kind of product mentioned in section 42.43 and that such producers produce at least fifty percent (seventy-five percent in townships) of the total output of such commodity in the Republic of Liberia or in any county, territory, district, or township, the Minister of Agriculture may declare that every producer of that commodity in the Republic of Liberia or in the county, territory, district, or township shall sell such commodity produced by him to or through the society whether or not he is a member thereof, and such declaration, subject to appeal therefrom to the courts, in accordance with the Administrative Procedure Act (Executive Law, section 82.8), shall be enforceable as a regulation made pursuant to this Act. Each producer who is not a member of the society shall be subject to the conditions and obligations to which he would be subject as a member, and the society may

155 *Prior legislation:* 1956 Code 4:134; L. 1935-36, ch. XXV, § 33.

deduct from any funds received or held on his account a part or the whole of a share subscription sufficient to qualify him for membership and shall admit him to membership on the complete payment of such subscription.[156]

§ 42.45. Distribution of Net Balance.

1. Definition of "net balance." "Net balance" as used in this section means the amount by which the receipts from operations exceed the expenses thereof.

2. Surplus. Every society which derives a profit from its transactions shall maintain a reserve fund. If it advances money or goods to members in excess of the money or goods deposited by them, it shall carry at least one-fourth of the net balance each year to the reserve fund.

3. Dividends authorized. The net balance of each year remaining after the creation of any required surplus, together with the sum available for distribution from previous years, may be distributed as a dividend in an equal mount to all members or prorated according to the amount of investment or by such other method of distribution as may be fixed by the bylaws of the society. If the bylaws contain no provision as to the method of distribution, and the members are investors in the society, the dividend shall be prorata according to the amount of investment.

4. Limitation on payment of dividends. No registered society shall pay a dividend or distribute any part of its accumulated funds before the balance sheet has been certified by an auditor approved by the Minister of Agriculture. No registered society shall pay a dividend to its members exceeding ten percent of their capital investment. No

156 *Prior legislation:* 1956 Code 4:135; L. 1935-36, ch. XXV, § 34.

registered society which advances money or goods to any member in excess of the goods or money deposited by him shall pay a dividend before ten years have elapsed from the date of its registration.

5. Contributions to charity or education. After the creation of a reserve fund as required by paragraph 2, any registered society may, with the permission of the Minister of Agriculture, contribute an amount not exceeding ten percent of the remaining net balance for any charitable or educational purpose.

Subchapter F. AUDIT AND INSPECTION

§ 42.50. Annual Audit.

1. Requirement stated. At least once every year the Minister of Agriculture shall cause the accounts of every registered society to be audited by a qualified accountant authorized by him by written order. Such audit shall include an examination of overdue debts, if any, and a valuation of the assets and liabilities of the society. Audit of the general business of the society under this section shall be in addition to any audits made pursuant to the Banking Law.

2. Access to books. The Minister of Agriculture or any person appointed as auditor shall at all times have access to all books, accounts, papers, and securities of each society; and every officer of such society shall furnish such information regarding the transactions and working of the society as the person making the audit may require.

3. Power to secure information. The Minister of Agriculture and every person appointed to audit the accounts of a registered society shall have the power when necessary:

(a) To summon for questioning at the time of making the audit

any officer, agent, employee, or member of the society who he has reason to believe can give valuable information as to any transactions of the society or the management of its affairs; and

(b) To require the production of any book or document relating to the society's affairs or of any cash or securities belonging to the society by any officer, agent, employee, or member of the society in possession thereof.

4. Audit on provision of society. A registered society may provide by its bylaws for other periodical audits of its accounts by an auditor appointed in a manner which may be prescribed by the society.

5. Report of audit. A written report of any audit including a statement of total amount of business transacted, balance sheet and income and expenses shall at all times be available for inspection by any member.[157]

§ 42.51. Inquiry into Society's Affairs.

The Minister of Agriculture may on his own motion and shall on the application of the majority of the committee or of not less than one-third of the members hold an inquiry or direct some person authorized by him by written order to hold an inquiry into the operation and financial condition of a registered society. All officers, agents, employees, and members of such society shall produce such books and documents of the society and furnish such information regarding the affairs of the society as the Minister of Agriculture or the person appointed by him to hold the inquiry may require. The society shall pay the costs of any such inquiry, but if it reveals a cause of action existing against members of the committee, any officer or former

157 *Prior legislation:* 1956 Code 4:150; L. 1935-36, ch. XXV, § 39.

officer, any member of the society, or other person, the society may recover the amount of such costs which shall be included in the judgment in such action.[158]

§ 42.52. Inspection on Application of Creditor.

On the application of an unpaid creditor of a registered society, the Minister of Agriculture shall inspect or direct some person authorized by him by written order to inspect the books of such society to determine its financial condition, provided that

(a) The applicant satisfies the Minister that the debt is a sum due and that he has demanded payment thereof and has not received satisfaction within a reasonable time; and

(b) The applicant deposits with the Minister such sum as he may require as security for the costs of the proposed inspection.

The Minister shall communicate the results of any such inspection to the creditor.[159]

Subchapter G. DISSOLUTION

§ 42.60. Grounds for Dissolution; Custody of Books and Assets.

If as a consequence of an inquiry held under the provisions of section 42.51 or of an inspection made under the provisions of section 42.52, the Minister of Agriculture deems that the society ought to be dissolved, he may order cancellation of its registration. The Minister

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158 *Prior legislation.* 1956 Code 4:151; L. 1935-36, ch. XXV, § 40.

159 *Prior legislation:* 1956 Code 4:152; L. 1935-36, ch. XXV, § 41.

shall also order cancellation of the registration of a society on application of three-fourths of the members of a registered society or if at any time it is established to his satisfaction that the number of its members is fewer than required by section 42.10(b). On ordering dissolution the Minister may make such order as he deems proper regarding the custody of the society's books and document and the protection of its assets until the cancellation order takes effect.[160]

§ 42.61. Appeal from Order of Dissolution.

Within 60 days after the date of the order made under the provisions of section 42.60, any member may appeal from such order to the courts, in accordance with the provisions of the Administrative Procedure Act (Executive Law, section 82.8). When no appeal is taken within 60 days of the date of such order, the order shall take effect at the end of that period. When an appeal is taken, the order shall not take effect until it is final.[161]

§ 42.62. Effective Date of Cancellation.

On the effective date of an order of cancellation of a registered society, the society shall cease to be an entity with the powers and privileges conferred by this chapter.[162]

§ 42.63. Liquidator of a Dissolved Society.

1. Appointment. When the registration of a dissolved society is cancelled, the Minister of Agriculture may appoint a competent

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160 *Prior legislation:* 1956 Code 4:160, 161; L. 1935-36, ch. XXV, §§ 44, 45.

161 *Prior legislation:* 1956 Code 4:160; L. 1935-36, ch. XXV, 44.

162 *Prior legislation:* 1956 Code 4:162; L. 1935-36, ch. XXV, § 46.

person to be the liquidator of the society.

2. Powers. A liquidator appointed under this section shall have the following powers:

(a) To institute and defend civil actions and other legal proceedings by and on behalf of the society by his name and office and to appear in court as a litigant in person on behalf of the society;

(b) To refer disputes to arbitration;

(c) To determine the amount of any debts owed by the members, past members, and estates of deceased members of the society and collect such debts;

(d) To investigate all claims against the society, decide questions and pay all just claims;

(e) To determine from time to time how the costs of liquidation are to be borne;

(f) To take possession of the books, documents, and assets of the society;

(g) Insofar as necessary to carry out the purposes of this section, to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and in the same manner as provided in civil actions;

(h) After payment of all lawful debts and liabilities of the society, to distribute any remaining assets to the members of the society pro-rata according to each member's capital investment in the society, or if no such investment has been made, then equally among all the members.

(i) To do all things necessary and proper to wind up the affairs of the society.

3. Enforcement of orders. Orders made by a liquidator pursuant to exercise of his powers under this section shall be enforced by a court which has jurisdiction thereof in the same manner as the decree of such court.[163]

Subchapter H. SETTLEMENT OF DISPUTES

§ 42.70. Reference of Dispute to Minister.

If any dispute concerning the business of a registered society, other than a dispute arising out of the dissolution of the society, arises between any person who is or has been a member of such a society and such registered society or its committee or any of its officers, the dispute shall be referred to the Minister of Agriculture for decision. A dispute includes a claim made by a registered society for any debt due it from a member or past member or for the assets of a past member. Any dispute arising between a society, its committee or any of its officers, and a producer not a member of a society to whom a contract with the society for sale of a commodity has been extended under the provisions of section 42.44, shall also be referred to the Minister for determination.[164]

§ 42.71. Determination of Dispute; Arbitration.

The Minister of Agriculture shall either decide a dispute referred to him or refer it to three arbitrators, of whom one shall be nominated

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163 *Prior legislation:* 1956 Code 4:163, L. 1935-36, ch. XXV, § 47.

164 *Prior legislation:* 1956 Code 4:170; L. 1935-36, ch. XXV, § 50.

by each party to the dispute and the third shall be nominated by the two other arbitrators or, if they cannot agree, by the Minister. If any party fails to nominate an arbitrator within fifteen days after receipt of notice from the Minister to make such nomination, the Minister shall name the arbitrator. Arbitration proceedings shall be subject to the provisions of chapter 64 of the Civil Procedure Law. Awards shall be final except that modification, correction, clarification or vacating is allowable in accordance with the provisions of sections 64.8 and 64.11 of the Civil Procedure Law. A decision of the Mini-ster made without reference to arbitrators is appealable to a court of appropriate jurisdiction under the provisions of the Administrative Procedure Act.[165]

Subchapter I: OFFENSES

§ 42.80. Offense Against Administration of Act.

It shall be an offense under this Act:

(a) For a registered society or an officer or member thereof willfully to neglect or refuse to do any act or to furnish to any official information require for the purposes of this chapter;

(b) For a registered society or officer or member thereof willfully to furnish false information required by this Act, or

(c) For any person willfully or without reasonable excuse to disobey any summons, requisition or lawful written order issued under the provisions of this Act.

Every society, officer, or member of a society or other person guilty

165 *Prior legislation:* 1956 Code 4:171-173; L. 1935-36, ch. XXV, §§ 51-53.

of an offense under this section shall be fined not more than one hundred dollars.[166]

§ 42.81. Inducing Breach of Contract.

Any person who, with knowledge or notice of the existence of a contract described in section 42.43 or of an obligation upon producers as set forth in section 42.44, solicits or persuades any person to sell or deliver produce in, violation of the contract or obligation shall be fined not more than one hundred dollars for each offense and shall in addition pay to the society concerned the market price of such produce at the date of the offense.[167]

§ 42.82. Unpermitted Use of "Cooperative".

No person other than a registered society shall trade or carry on business under any name or title of which the word "cooperative" or its equivalent in any other language is a part. Any person who violates this section shall be fined up to one hundred dollars.[168]

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166 *Prior legislation:* 1956 Code 4:190, L. 1935-36, ch. XXV, § 57.

167 *Prior legislation:* 1956 Code 4:171; L. 1935-36, ch. XXV, § 58.

168 *Prior legislation:* 1956 Code 4:192; L. 1935-36, ch. XXV, § 59.