TITLE 37

BUSINESS ASSOCIATIONS

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CHAPTER 1
CORPORATIONS

§1-101. Short title. — This chapter is known and may be cited as the "Pohnpei Business Corporation Act of 1994."

Source: S.L. No. 3L-92-95 §1, 4/18/95

§1-102. Definitions. — As used in this chapter, unless the context otherwise requires, the term:

(1) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto including articles of merger.

(2) "Authorized shares" means the shares of all classes that the corporation is authorized to issue.

(3) "Capital surplus" means the entire surplus of a corporation other than its earned surplus.

(4) "Corporation" or "domestic corporation" means a corporation for profit subject to this chapter, except a foreign corporation.

(5) "Earned surplus" means the portion of the surplus of a corporation equal to the balance of its net profits, income, gains and losses from the date of incorporation, or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus. Earned surplus shall include also any portion of surplus allocated to earned surplus in mergers, consolidations or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.

(6) "Employee" includes officers but not directors of a corporation. A director may accept duties that make him also an employee of a corporation.

(7) "Foreign corporation" means a corporation for profit organized under laws other than the laws of this state for a purpose or purposes for which a corporation may be organized under this chapter.

(8) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.

(9) "Net assets" means the amount by which the total assets of a corporation exceed the total debts of the corporation.

(10) "Registrar of Corporations'' means an officer of the Pohnpei Government appointed by the Governor as such to administer this chapter.

(11) "Shareholder" means one who is a holder of record of shares in a corporation.

(12) "Shares" means the units into which the proprietary interests in a corporation are divided.

(13) "Attorney General" means the chief legal officer for the executive branch of the Pohnpei Government.

(14) "Stated capital" means, at any particular time, the sum of the following:

(a) The par value of all shares of the corporation having a par value that have been issued;

(b) The amount of the consideration received by the corporation for all shares of the corporation without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law; and

(c) Such amounts not included in Paragraphs (a) and (b) of this subsection as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sums as have been effected in a manner permitted by law. Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation shall be determined

on the same basis and in the same manner as the stated capital of a domestic corporation, for the purpose of computing fees and other charges imposed by this chapter.

(15) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

(16) "Surplus" means the excess of the net assets of a corporation over its stated capital.

(17) "Treasury shares" means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not, either by reason of the acquisition or thereafter, been canceled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be "issued" shares, but not "outstanding" shares.

Source: S.L. No. 3L-92-95 §2, 4/18/95

§1-103. Purposes. — Corporations may be organized under this chapter for any lawful purpose or purposes, except for the purpose of banking or insurance.

Source: S.L. No. 3L-92-95 §3, 4/18/95

§1-104. General powers. — Each corporation shall have power:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) To sue and be sued, complain, and defend, in its corporate name;

(3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;

(4) Subject to the limitations provided in Article 12 of the Pohnpei Constitution, to purchase, take, receive, lease or otherwise acquire, own, hold, improve, use, and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(6) To lend money and use its credit to assist its employees;

(7) To purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships or individuals, or direct or indirect obligations of the Federated States of Micronesia or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof;

(8) To make contracts and 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, franchises, and income;

(9) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(10) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this chapter, within or without this state;

(11) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation;

(12) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation;

(13) To make donations for the public welfare or for charitable, scientific or educational purposes;

(14) To transact any lawful business that the board of directors shall find will be in aid of governmental policy;

(15) 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;

(16) To be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other enterprise; and

(17) To have and exercise all powers necessary or convenient to effect its purposes.

Source: S.L. No. 3L-92-95 §4, 4/18/95

§1-105. Indemnification of officers, directors, employees, and agents. —

(1) 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, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent 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 nolo contendere 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) 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, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him 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 circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

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

(4) Any indemnification under Subsections (1) or (2) of this section unless ordered by a court shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Subsections (1) or (2) of this section. Such determination shall be made as follows:

(a) By the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding; or

(b) If such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion; or

(c) By the shareholders.

(5) Expenses (including attorneys' fees) incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized in the manner provided in Subsection (4) of this section upon receipt of an undertaking by or on behalf of the director, officer, employee or agent 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.

(6) The indemnification provided by this section shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

(7) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under this section.

Source: S.L. No. 3L-92-95 §5, 4/18/95

§1-106. Right of corporation to acquire and dispose of its own shares. —

(1) A corporation shall have the right to purchase, take, receive or otherwise acquire, hold, own, pledge, transfer or otherwise dispose of its own shares, but purchases of its own shares, whether direct or indirect, shall be made only to the extent of unreserved and unrestricted earned surplus available therefor, and, if the articles or incorporation so permit or with the affirmative vote of the holders of a majority of all shares entitled to vote thereon, to the extent of unreserved and unrestricted capital surplus available therefor.

(2) To the extent that earned surplus or capital surplus is used as the measure of the corporation's right to purchase its own shares, such surplus shall be restricted so long as such shares are held as treasury shares, and upon the disposition or cancellation of any such shares the restriction shall be removed pro tanto.

(3) Notwithstanding the foregoing limitation, a corporation may purchase or otherwise acquire its own shares for the purpose of:

(a) Eliminating fractional shares;

(b) Collecting or compromising indebtedness to the corporation;

(c) Paying dissenting shareholders entitled to payment for their shares under this chapter; or

(d) Effecting, subject to the other provisions of this chapter, the retirement of its redeemable shares by redemption or by purchase at or not to exceed the redemption price.

(4) No purchase of or payment for its own shares shall be made at a time when the corporation is insolvent or when such purchase or payment would make it insolvent.

Source: S.L. No. 3L-92-95 §6, 4/18/95

§1-107. Defense of ultra vires. — No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) In a proceeding 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 pursuant to a contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding 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, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation.

(3) In a proceeding by the Attorney General, as provided in this chapter, to dissolve the corporation, or in a proceeding by the Attorney General to enjoin the corporation from the transaction of unauthorized business.

Source: S.L. No. 3L-92-95 §7, 4/18/95

§1-108. Corporate name. —

(1) The corporate name:

(a) Shall contain the word "corporation," "company," "incorporated" or "limited", or shall contain an abbreviation of one of such words.

(b) Shall not contain any word or phrase that indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(c) Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, or the name of a corporation which has in effect a registration of its corporate name as provided in this chapter, except that this provision shall not apply if the applicant files with the Registrar of Corporations either of the following:

(i) The written consent of such other corporation or holder of a reserved or registered name to use the same or deceptively similar name with one or more words added to make such name distinguishable from such other name; or

(ii) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state.

(2) A corporation with which another corporation, domestic or foreign, is merged, or that is formed by the reorganization or consolidation of one or more domestic or foreign corporations or upon a sale, lease or other disposition to or exchange with, a domestic corporation of all or substantially all the assets of another corporation, domestic or foreign, including its name, may have the same name as that used in this state by any of such corporations if such other corporation was organized under the laws of, or is authorized to transact business in, this state.

Source: S.L. No. 3L-92-95 §8, 4/18/95

§1-109. Reserved name. —

(1) The exclusive right to the use of a corporate name may be reserved by:

(a) Any person intending to organize a corporation under this chapter;

(b) Any domestic corporation intending to change its name;

(c) Any foreign corporation intending to make application for a certificate of authority to transact business in this state;

(d) Any foreign corporation authorized to transact business in this state and intending to change its name; or

(e) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this state.

(2) The reservation shall be made by filing with the Registrar of Corporations an application to reserve a specified corporate name, executed by the applicant. If the Registrar of Corporations finds

that the name is available for corporate use, he shall reserve the same for the exclusive use of the applicant for a period of 120 days.

(3) The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the Registrar of Corporations a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

Source: S.L. No. 3L-92-95 §9, 4/18/95

§1-110. Registered name. — Any corporation organized and existing under the laws of any state or the national government of the Federated States of Micronesia may register its corporate name under this chapter, provided its corporate name is not the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state, or the name of any foreign corporation authorized to transact business in this state, or any corporate name reserved or registered under this chapter. Such registration shall be made by:

(1) Filing with the Registrar of Corporations the following:

(a) An application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged; and

(b) A certificate setting forth that such corporation is in good standing under the laws of the state or territory wherein it is organized, executed by the Registrar of Corporations of such state or territory or by such other official as may have custody of the records pertaining to corporations; and

(2) Paying to the Registrar of Corporations a registration fee in the amount of $1 for each month, or fraction thereof, between the date of filing such application and December 31 of the calendar year in which such application is filed. Such registration shall be effective until the close of the calendar year in which the application for registration is filed.

Source: S.L. No. 3L-92-95 §10, 4/18/95

§1-111. Renewal of registered name. — A corporation that has in effect a registration of its corporate name, may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying a fee of $12 to the Registrar of Corporations. A renewal application may be filed between October 1 and December 31 each year, and shall extend the registration for the following calendar year.

Source: S.L. No. 3L-92-95 §11, 4/18/95

§1-112. Registered office and registered agent. — Each corporation shall have and continuously maintain in this state:

(1) A registered office, which may be, but need not be, the same as its place of business; and

(2) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this state, having a business office identical with such registered office.

Source: S.L. No. 3L-92-95 §12, 4/18/95

§1-113. Change of registered office or registered agent. —

(1) A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the Registrar of Corporations a statement setting forth:

(a) The name of the corporation;

(b) The address of its then registered office;

(c) If the address of its registered office is to be changed, the address to which the registered office is to be changed;

(d) The name of its then registered agent;

(e) If its registered agent is to be changed, the name of its successor registered agent;

(f) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and

(g) That such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed by the corporation by its president, or its vice president, and verified by him, and delivered to the Registrar of Corporations. If the Registrar of Corporations finds that such statement conforms to this chapter, he shall file such statement in his office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

(3) Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Registrar of Corporations, who shall forthwith mail a copy thereof to the corporation at its registered office. The appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the Registrar of Corporations.

(4) If a registered agent changes his or its business address to another place within Pohnpei State, he or it may change such address and the address of the registered office of any corporation of which he or it is a registered agent by filing a statement as required in Subsection (1) of this section except that it need be signed only by the registered agent and need not be responsive to Paragraphs (e) or (g) of Subsection (1) of this section and must recite that a copy of the statement has been mailed to the corporation.

Source: S.L. No. 3L-92-95 §13, 4/18/95

§1-114. Service of process on a corporation. — The registered agent so appointed by a corporation shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served. Whenever a corporation shall fail to appoint or maintain a registered agent in this state, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the Registrar of Corporations shall be an agent of such corporation upon whom any such process, notice or demand may be served. Service on the Registrar of Corporations of any such process, notice or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the Registrar of Corporations, he shall immediately cause one of the copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. Any service so had on the Registrar of Corporations shall be returnable in not less than 30 days. The Registrar of Corporations shall keep a record of all processes, notices, and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto. Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

Source: S.L. No. 3L-92-95 §14, 4/18/95

§1-115. Authorized shares. — Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of or provide special voting rights for the shares of any class to the extent not inconsistent with this chapter. Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

(1) Subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof;

(2) Entitling the holders thereof to cumulative, noncumulative or partially cumulative dividends;

(3) Having preference over any other class or classes of shares as to the payment of dividends;

(4) Having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation; and

(5) Convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation, but shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such shares without par value is, at the time of conversion, at least equal to the aggregate par value of the shares into which the shares without par value are to be converted or the amount of any such deficiency is transferred from surplus to stated capital.

Source: S.L. No. 3L-92-95 §15, 4/18/95

§1-116. Issuance of shares of preferred or special classes in series. —

(1) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

(a) The rate of dividend;

(b) Whether shares may be redeemed and, if so, the redemption price and the terms and conditions of redemption;

(c) The amount payable upon shares in the event of voluntary and involuntary liquidation;

(d) Sinking fund provisions, if any, for the redemption or purchase of shares;

(e) The terms and conditions, if any, on which shares may be converted; and

(f) Voting rights, if any.

(2) If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established. In order for the board of directors to establish a series, where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof, or so much thereof as shall not be fixed and determined by the articles of incorporation. Prior to the issuance of any shares of a series established by resolution adopted by the board of directors, the corporation shall file in the office of the Registrar of Corporations a statement setting forth:

(a) The name of the corporation;

(b) A copy of the resolution establishing and designating the series, and fixing and determining the relative rights and preferences thereof;

(c) The date of adoption of such resolution; and

(d) That such resolution was duly adopted by the board of directors.

(3) Such statement shall be executed in duplicate 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 such statement, and shall be delivered to the Registrar of Corporations. If the Registrar of Corporations finds that such statement conforms to law, he shall, when all fees have been paid as prescribed in this chapter:

(a) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(b) File one of such duplicate originals in his office; and

(c) Return the other duplicate original to the corporation or its representative.

(4) Upon the filing of such statement by the Registrar of Corporations, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective and shall constitute an amendment of the articles of incorporation.

Source: S.L. No. 3L-92-95 §16, 4/18/95

§1-117. Subscriptions for shares. — A subscription for shares of a corporation to be organized shall be irrevocable for a period of six months, unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers consent to the revocation of such subscription. Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be. 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 other penalties 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 20 days after written demand has been made therefor. If mailed, such written demand has been made therefor. If mailed, such written demand shall be deemed to be made when deposited in the Federated States of Micronesia mail in a sealed envelope addressed to the subscriber at his last post office address known to the corporation, with postage thereon prepaid. 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.

Source: S.L. No. 3L-92-95 §17, 4/18/95

§1-118. Consideration for shares. —

(1) Shares having a par value may be issued for such consideration expressed in dollars, not less than the par value thereof, as shall be fixed from time to time by the board of directors. Shares without par value may be issued for such consideration expressed in dollars as may be fixed from time to time by the board of directors unless the articles of incorporation reserve to the shareholders the right to fix the consideration. In the event that such right be reserved as to any shares, the shareholders shall, prior to the issuance of such shares, fix the consideration to be received for such shares, by a vote of the holders of a majority of all shares entitled to vote thereon.

(2) Treasury shares may be disposed of by the corporation for such consideration expressed in dollars as may be fixed from time to time by the board of directors.

(3) That part of the surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for the issuance of such shares.

(4) In the event of the issuance of shares upon the conversion or exchange of indebtedness or shares, the consideration for the shares so issued shall be:

(a) The principal sum of, and accrued interest on, the indebtedness so exchanged or converted, or the stated capital then represented by the shares so exchanged or converted;

(b) That part of surplus, if any, transferred to stated capital upon the issuance of shares for the shares so exchanged or converted; and

(c) Any additional consideration paid to the corporation upon the issuance of shares for the indebtedness or shares so exchanged or converted.

Source: S.L. No. 3L-92-95 §18, 4/18/95

§1-119. Payment for shares. —

(1) The consideration or the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, such shares shall be deemed to be fully paid and nonassessable.

(2) Neither promissory notes nor future services shall constitute payment or partial payment for the issuance of shares of a corporation.

(3) In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

Source: S.L. No. 3L-92-95 §19, 4/18/95

§1-120. Stock rights and options. — Subject to any provisions in respect thereof set forth in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from the corporation shares of any class or classes. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the articles of incorporation, shall set forth the terms upon which, the time or times within which, and the price or prices at which such shares may be purchased from the corporation upon the exercise of any such right or option. If such rights or options are to be issued to directors, officers or employees as such of the corporation or of any subsidiary thereof, and not to the shareholders generally, their issuance shall be approved by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or shall be authorized by and consistent with a plan approved or ratified by such a vote of shareholders. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights or options shall be conclusive. The price or prices to be received for any shares having a par value, other than treasury shares to be issued upon the exercise of such rights or options, shall not be less than the par value thereof.

Source: S.L. No. 3L-92-95 §20, 4/18/95

§1-121. Determination of amount of stated capital. —

(1) In case of the issuance by a corporation of shares having a par value, 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 capital surplus.

(2) In case of the issuance by a corporation of shares without par value, the entire consideration received therefor shall constitute stated capital unless the corporation shall determine as provided in this section that only a part thereof shall be stated capital. Within a period of 60 days after the issuance of any shares without par value, the board of directors may allocate to capital surplus any portion of the consideration received for the issuance of 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 in the event of involuntary liquidation except the amount, if any, of such consideration in excess of such preference.

(3) If shares have been or shall be issued by a corporation in merger or consolidation or in acquisition of all or substantially all of the outstanding shares or of the property and assets of another corporation, whether domestic or foreign, any amount that would otherwise constitute capital surplus under the foregoing provisions of this section may instead be allocated to earned surplus by the board of directors of the issuing corporation except that its aggregate earned surplus shall not exceed the sum of the earned surpluses as defined in this chapter of the issuing corporation and of all other corporations, domestic or foreign, that were merged or consolidated or of which the shares or assets were acquired.

(4) The stated capital of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the surplus of the corporation be transferred to stated capital. The board of directors may direct that the amount of the surplus so transferred shall be deemed to be stated capital in respect of any designated class of shares.

Source: S.L. No. 3L-92-95 §21, 4/18/95

§1-122. Expenses of organization, reorganization, and financing. — The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not fully paid or assessable.

Source: S.L. No. 3L-92-95 §22, 4/18/95

§1-123. Certificates representing shares. —

(1) The shares of a corporation shall be represented by certificates signed by the president or a vice president and the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the president or vice president and the secretary or assistant secretary upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar, other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such 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 its issue.

(2) Every 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 designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued, and if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

(3) Each certificate representing shares shall state upon the face thereof:

(a) That the corporation is organized under the laws of this state;

(b) The name of the person to whom issued;

(c) The number and class of shares, and the designation of the series, if any, which such certificate represents; and

(d) The par value of each share represented by such certificate, or a statement that the shares are without par value.

(4) No certificate shall be issued for any share until such share is fully paid.

Source: S.L. No. 3L-92-95 §23, 4/18/95

§1-124. Liability of subscribers and shareholders. — A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or to be issued. Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration. An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall not be personally liable to the corporation as a holder of or subscriber to shares of a corporation but the estate and funds in his hands shall be so liable. No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

Source: S.L. No. 3L-92-95 §24, 4/18/95

§1-125. Shareholders' preemptive rights. — Except to the extent limited or denied by this section or by the articles of incorporation, shareholders shall have a preemptive right to acquire unissued or treasury shares or securities convertible into such shares or carrying a right to subscribe to or acquire shares. Unless otherwise provided in the articles of incorporation:

(1) No preemptive right shall exist:

(a) To acquire any shares issued to directors, officers or employees pursuant to approval by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or when authorized by and consistent with a plan theretofore approved by such a vote of shareholders; or

(b) To acquire any shares sold otherwise than for cash.

(2) Holders of shares of any class that is preferred or limited as to dividends or assets shall not be entitled to any preemptive right.

(3) Holders of shares of common stock shall not be entitled to any preemptive right to shares of any class that is preferred or limited as to dividends or assets or to any obligations, unless convertible into shares of common stock or carrying a right to subscribe to or acquire shares of common stock.

(4) Holders of common stock without voting power shall have no preemptive right to shares of common stock with voting power.

(5) The preemptive right shall be only an opportunity to acquire shares or other securities under such terms and conditions as the board of directors may fix for the purpose of providing a fair and reasonable opportunity for the exercise of such right.

Source: S.L. No. 3L-92-95 §25, 4/18/95

§1-126. Bylaws. — The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws, subject to repeal or change by action of the shareholders, shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

Source: S.L. No. 3L-92-95 §26, 4/18/95

§1-127. Meetings of shareholders. —

(1) Meetings of shareholders may be held at such place within or without this state as may be stated in or fixed in accordance with the bylaws. If no other place is stated or so fixed, meetings shall be held at the registered office of the corporation. An annual meeting of the shareholders shall be held at such time as may be stated or fixed in accordance with the bylaws. If the annual meeting is not held within any 13-month period, the Pohnpei Supreme Court may, on the application of any shareholder, summarily order a meeting to be held.

(2) Special meetings of the shareholders may be called by the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meeting, or such other persons as may be authorized in the articles of incorporation or the bylaws.

Source: S.L. No. 3L-92-95 §27, 4/18/95

§1-128. Notice of shareholders' meetings. — Written notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the Federated States of Micronesia mail addressed to the shareholder at his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid.

Source: S.L. No. 3L-92-95 §28, 4/18/95

§1-129. Closing of transfer books and fixing record date. — For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, 50 days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten days immediately preceding such meeting. In lieu of closing the stock transfer books, the bylaws, or in the absence of an applicable bylaw, the board of directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than 50 days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action requiring such determination of shareholders is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

Source: S.L. No. 3L-92-95 §29, 4/18/95

§1-130. Voting record. — The officer or agent having charge of the stock transfer books for shares of a corporation shall make a complete record of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each. Such record shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof. Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting. An officer or agent having charge of the stock transfer books who shall fail to prepare the record of shareholders, or produce and keep it open for inspection at the meeting, as provided in this section, shall be liable to any shareholder suffering damage on account of such failure, to the extent of such damage.

Source: S.L. No. 3L-92-95 §30, 4/18/95

§1-131. Quorum of shareholders. — Unless otherwise provided in the articles of incorporation, a majority of the 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 less than one-third of the shares

entitled to vote at the meeting. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by this chapter or the articles of incorporation or bylaws.

Source: S.L. No. 3L-92-95 §31, 4/18/95

§1-132. Voting of shares. — Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except as may be otherwise provided in the articles of incorporation. If the articles of incorporation provide for more or less than one vote for any share, on any matter, every reference in this chapter to a majority or other proportion of shares shall refer to such a majority or other proportion of votes entitled to be cast. Neither treasury shares nor shares held by another corporation, if a majority of the shares entitled to vote for the election of directors of such other corporation is held by the corporation, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time. A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy. Unless the articles of incorporation otherwise provide at each election for directors, every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote, or to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal, or by distributing such votes on the same principle among any number of such candidates. Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent or proxy as the bylaws of such other corporation may prescribe, or, in the absence of such provision, as the board of directors of such other corporation may determine. Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name. Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed. A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred. On and after the date on which written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares.

Source: S.L. No. 3L-92-95 §32, 4/18/95

§1-133. Voting trusts and agreements among shareholders. — Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period not to exceed ten years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. Such trustee or trustees shall keep a record of the holders of voting trust certificates evidencing a beneficial interest in the voting trust, giving the names and addresses of all such holders and the number and class of the shares in respect of which the voting trust certificates held by each are issued, and shall deposit a copy of such record with the corporation at its registered office. The counterpart of the voting trust agreement and the copy of such record so deposited with the corporation shall be subject to the same right of examination by a

shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and such counterpart and such copy of such record shall be subject to examination by any holder of record of voting trust certificates, either in person or by agent or attorney, at any reasonable time for any proper purpose. Agreements among shareholders regarding the voting of their shares shall be valid and enforceable in accordance with their terms. Such agreements shall not be subject to this section regarding voting trusts.

Source: S.L. No. 3L-92-95 §33, 4/18/95

§1-134. Board of directors. — The business and affairs of a corporation shall be managed by a board of directors except as may be otherwise provided in the articles of incorporation. If any such provision is made in the articles of incorporation, the powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation. Directors need not be residents of this state or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation.

Source: S.L. No. 3L-92-95 §34, 4/18/95

§1-135. Number and election of directors. — The board of directors of a corporation shall consist of two or more members. The number of directors shall be fixed by, or in the manner provided in, the articles of incorporation or the bylaws, except as to the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw providing for the number of directors, the number shall be the same as that provided for in the articles of incorporation. The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders, and until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this chapter. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.

Source: S.L. No. 3L-92-95 §35, 4/18/95

§1-136. Classification of directors. — When the board of directors shall consist of seven or more members, in lieu of electing the whole number of directors annually, the articles of incorporation may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders.

Source: S.L. No. 3L-92-95 §36, 4/18/95

§1-137. Vacancies. — Any vacancy occurring on the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of

directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the shareholders.

Source: S.L. No. 3L-92-95 §37, 4/18/95

§1-138. Removal of directors. — At a meeting of shareholders called expressly for that purpose, directors may be removed in the manner provided in this section. Any director or the entire board of directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no director may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which he is a part. Whenever the holders of the shares of any class are entitled to elect one or more directors by the articles of incorporation, this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

Source: S.L. No. 3L-92-95 §38, 4/18/95

§1-139. Quorum of directors. — A majority of the number of directors fixed by or in the manner provided in the bylaws or in the absence of a bylaw fixing or providing for the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

Source: S.L. No. 3L-92-95 §39, 4/18/95

§1-140. Directors: conflicts of interest. —

(1) No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association or entity in which one or more of its directors are directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction or because his or their votes are counted for such purpose, if:

(a) The fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors; or

(b) The fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve or ratify such contract or transaction by vote or written consent; or

(c) The contract or transaction is fair and reasonable to the corporation.

(2) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof, which authorizes, approves or ratifies such contract or transaction.

Source: S.L. No. 3L-92-95 §40, 4/18/95

§1-141. Executive and other committees. — If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may

designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the 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 of the board of directors in reference to amending the articles of incorporation, adopting a plan of merger or consolidation, recommending to the shareholders the sale, lease, exchange or other disposition of all or substantially all the property and assets of the corporation otherwise than in the usual and regular course of its business, recommending to the shareholders a voluntary dissolution of the corporation or a revocation thereof, or amending the bylaws of the corporation. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law.

Source: S.L. No. 3L-92-95 §41, 4/18/95

§1-142. Plan and notice of directors' meetings. — Meetings of the board of directors, regular or special, may be held either within or without this state. Regular meetings of the board of directors may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting unless required by the bylaws.

Source: S.L. No. 3L-92-95 §42, 4/18/95

§1-143. Action by directors without a meeting. — Unless otherwise provided by the articles of incorporation or bylaws, any action required by this chapter to be taken at a meeting of the directors of a corporation, or any action which may be taken at a meeting of the directors or of a committee, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, or all of the members of the committee, as the case may be. Such consent shall have the same effect as a unanimous vote.

Source: S.L. No. 3L-92-95 §43, 4/18/95

§1-144. Dividends. — The board of directors of a corporation may, from time to time, declare, and the corporation may pay, dividends in cash, property or its own shares, except when the corporation is insolvent or when the payment thereof would render the corporation insolvent or when the declaration or payment thereof would be contrary to any restriction contained in the articles of incorporation, subject to the following provisions:

(1) Dividends may be declared and paid in cash or property only out of the unreserved and unrestricted earned surplus of the corporation, except as otherwise provided in this section.

(2) If the articles of incorporation of a corporation engaged in the business of exploiting natural resources so provide, dividends may be declared and paid in cash out of the depletion reserves, but each such dividend shall be identified as a distribution of such reserves and the amount per share paid from such reserves shall be disclosed to the shareholders receiving the same concurrently with the distribution thereof.

(3) Dividends may be declared and paid in its own treasury shares.

(4) Dividends may be declared and paid in its own authorized but unissued shares out of any unreserved and unrestricted surplus of the corporation upon the following conditions:

(a) If a dividend is payable in its own shares having a par value, such shares shall be issued at not less than the par value thereof and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate par value of the shares to be issued as a dividend.

(b) If a dividend is payable in its own shares without par value, such shares shall be issued at such stated value as shall be fixed by the board of directors by resolution adopted at the time such dividend is declared, and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate stated value so fixed in respect of such shares; and the amount per share so transferred to stated capital shall be disclosed to the shareholders receiving such dividend concurrently with the payment thereof.

(5) No dividend payable in shares of any class shall be paid to the holders of shares of any other class unless the articles of incorporation so provide or such payment is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the payment is to be made. 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.

Source: S.L. No. 3L-92-95 §44, 4/18/95

§1-145. Distributions from capital surplus. —

(1) The board of directors of a corporation may, from time to time, distribute to its shareholders out of capital surplus of the corporation a portion of its assets, in cash or property, subject to the following provisions:

(a) No such distribution shall be made at a time when the corporation is insolvent or when such distribution would render the corporation insolvent.

(b) No such distribution shall be made unless the articles of incorporation so provide or such distribution is authorized by the affirmative vote of the holders of a majority of the outstanding shares of each class whether or not entitled to vote thereon by the articles of incorporation of the corporation.

(c) No such distribution shall be made to the holders of any class of shares unless all cumulative dividends accrued on all preferred or special classes of shares entitled to preferential dividends shall have been fully paid.

(d) No such distribution shall be made to the holders of any class of shares which would reduce the remaining net assets of the corporation below the aggregate preferential amount payable in event of involuntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

(e) Each such distribution, when made, shall be identified as a distribution from capital surplus and the amount per share disclosed to the shareholders receiving the same concurrently with the distribution thereof.

(2) The board of directors of a corporation may also, from time to time, distribute to the holders of its outstanding shares having a cumulative preferential right to receive dividends, in discharge of their cumulative dividend rights, dividends payable in cash out of the capital surplus of the corporation, if at the time the corporation has no earned surplus and is not insolvent and would not thereby be rendered insolvent. Each such distribution, when made, shall be identified as a payment of cumulative dividends out of capital surplus.

Source: S.L. No. 3L-92-95 §45, 4/18/95

§1-146. Loans to employees and directors. — A corporation shall not lend money to or use its credit to assist its directors without authorization in the particular case by its shareholders, but may lend money to and use its credit to assist any employee of the corporation or of a subsidiary, including any such employee who is a director of the corporation, if the board of directors decides that such loan or assistance may benefit the corporation.

Source: S.L. No. 3L-92-95 §46, 4/18/95

§1-147. Liability of directors in certain cases. —

(1) In addition to any other liabilities imposed by law upon directors of a corporation:

(a) Directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to this chapter or contrary to any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of this chapter or the restrictions in the articles of incorporation.

(b) Directors of a corporation who vote for or assent to the purchase of its own shares contrary to this chapter shall be jointly and severally liable to the corporation for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor without a violation of this chapter.

(c) The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment to and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of such assets which are distributed, to the extent that such debts, obligations, and liabilities of the corporation are not thereafter paid and discharged.

(2) A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

(3) A director shall not be liable under Paragraphs (a), (b) or (c) of Subsection (1) of this section if he relied and acted in good faith upon financial statements of the corporation represented to him to be correct by the president or the officer of such corporation having charge of its books of account, 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, nor shall he be so liable if in good faith in determining the amount available for any such dividend or distribution he considered the assets to be of their book value.

(4) Any director against whom a claim shall be asserted under or pursuant to this section for the payment of a dividend or other distribution of assets of a corporation and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing such dividend or distribution to have been made in violation of this chapter, in proportion to the amounts received by them.

(5) Any director against whom a claim shall be assented under or pursuant to this section shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

Source: S.L. No. 3L-92-95 §47, 4/18/95

§1-148. Actions by shareholders. —

(1) No action shall be brought in this state by a shareholder in the right of a domestic or foreign corporation unless the plaintiff was a holder of record of shares or of voting trust certificates therefor at the time of the transaction of which he complains, or his shares or voting trust certificates thereafter devolved upon him by operation of law from a person who was a holder of record at such time.

(2) In any action hereafter instituted in the right of any domestic or foreign corporation by the holder or holders of record of shares of such corporation or of voting trust certificates therefor, the court having jurisdiction, upon final judgment and a finding that the action was brought without

reasonable cause, may require the plaintiff or plaintiffs to pay to the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in the defense of such action.

(3) In any action now pending or hereafter instituted or maintained in the right of any domestic or foreign corporation by the holder or holders of record of less than five percent (5%) of the outstanding shares of any class of such corporation or of voting trust certificates therefor, unless the shares or voting trust certificates so held have a market value in excess of $25,000, the corporation in whose right such action is brought shall be entitled at any time before final judgment to require the plaintiff or plaintiffs to give security for the reasonable expenses, including fees of attorneys, that may be incurred by it in connection with such action or may be incurred by other parties named as defendant for which it may become legally liable. Market value shall be determined as of the date that the plaintiff institutes the action or, in the case of an intervenor, as of the date that he becomes a party to the action. The amount of such security may from time to time be increased or decreased, in the discretion of the court, upon a showing that the security provided has or may become inadequate or is excessive. The corporation shall have recourse to such security in such amount as the court having jurisdiction shall determine upon the termination of such action, whether or not the court finds the action as brought without reasonable cause.

Source: S.L. No. 3L-92-95 §48, 4/18/95

§1-149. Officers. —

(1) The officers of a corporation shall consist of a president, one or more vice presidents as may be prescribed by the bylaws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. Any two or more offices may be held by the same person, except the offices of president and secretary.

(2) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws.

Source: S.L. No. 3L-92-95 §49, 4/18/95

§1-150. Removal of officers. — Any officer or agent may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Source: S.L. No. 3L-92-95 §50, 4/18/95

§1-151. Books and records. —

(1) Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders and board of directors and shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each. Any books, records, and minutes may be in written form or in any other form capable of being converted into written form within a reasonable time. Any person who shall have been a holder of record of shares or of voting trust certificates therefor at least six months immediately preceding his demand, or shall be the holder of record of, or the holder of record of voting trust certificates for, at least five percent (5%) of all the outstanding shares of the corporation, upon written demand stating the purpose thereof, shall have the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose, its relevant books and records of account, minutes, and record of shareholders and to make extracts therefrom.

(2) Any officer or agent who, or a corporation which, shall refuse to allow any such shareholder or holder of voting trust certificates, or his agent or attorney, so to examine and make extracts from its books and records of account, minutes, and record of shareholders, for any proper purpose, shall be liable to such shareholder or holder of voting trust certificates in a penalty of ten percent (10%) of the value of the shares owned by such shareholder, or in respect of which such voting trust certificates are issued, in addition to any other damages or remedy afforded him by law. It shall be a defense to any action for penalties under this section that the person suing therefor has within two years sold or offered for sale any list of shareholders or of holders of voting trust certificates for shares of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders or of holders of voting trust certificates for any such purpose, or has improperly used any information secured through any prior examination of the books and records of account, or minutes, or record of shareholders or of holders of voting trust certificates for shares of such corporation or any other corporation, or was not acting in good faith or for a proper purpose in making his demand.

(3) Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof by a shareholder or holder of voting trust certificates of proper purpose, irrespective of the period of time during which such shareholder or holder of voting trust certificates shall have been a shareholder of record or a holder of record of voting trust certificates, and irrespective of the number of shares held by him or represented by voting trust certificates held by him, to compel the production for examination by such shareholder or holder of voting trust certificates of the books and records of account, minutes, and record of shareholders of a corporation.

(4) Upon the written request of any shareholder or holder of voting trust certificates or shares of a corporation, the corporation shall mail to such shareholder or holder of voting trust certificates its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations.

Source: S.L. No. 3L-92-95 §51, 4/18/95

§1-152. Incorporators. — One or more persons, or a domestic or foreign corporation, may act as incorporator or incorporators of a corporation by signing and delivering in duplicate to the Registrar of Corporations articles of incorporation for such corporation.

Source: S.L. No. 3L-92-95 §52, 4/18/95

§1-153. Articles of incorporation. —

(1) The articles of incorporation shall set forth:

(a) The name of the corporation;

(b) The period of duration, which may be perpetual;

(c) The purpose or purposes for which the corporation is organized which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this chapter;

(d) The aggregate number of shares that 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 such class or that such shares are to be without par value;

(e) 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;

(f) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to

establish series and fix and determine the variations in the relative rights and preferences as between series;

(g) If any preemptive right is to be granted to shareholders, the provisions therefor;

(h) Any provision, not inconsistent with law, that the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision restricting the transfer of shares and any provision which under this chapter is required or permitted to be set forth in the bylaws;

(i) The address of its initial registered office, and the name of its initial registered agent at such address;

(j) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualify; and

(k) The name and address of each incorporator.

(2) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

Source: S.L. No. 3L-92-95 §53, 4/18/95

§1-154. Filing of articles of incorporation. —

(1) Duplicate originals of the articles of incorporation shall be delivered to the Registrar of Corporations. If the Registrar of Corporations finds that the articles of incorporation conform to law, he shall, when all fees have been paid as prescribed in this chapter:

(a) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(b) File one of such duplicate originals in his office; and

(c) Issue a certificate of incorporation to which he shall affix the other duplicate original.

(2) The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto by the Registrar of Corporations, shall be returned to the incorporators or their representative.

Source: S.L. No. 3L-92-95 §54, 4/18/95

§1-155. Effect of issuance of certificate of incorporation. — Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation 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 chapter, except as against this state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

Source: S.L. No. 3L-92-95 §55, 4/18/95

§1-156. Organization meeting of directors. — After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this state, at the call of a majority of the directors named in the articles of incorporation, for the purpose of adopting bylaws, electing officers, and transacting such other business as may come before the meeting. The directors calling the meeting shall give at least three days' notice thereof by mail to each director so named, stating the time and place of the meeting.

Source: S.L. No. 3L-92-95 §56, 4/18/95

§1-157. 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, so long as its articles of incorporation, as amended, contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment, and, if a change in shares or the rights

of shareholders, or an exchange, reclassification or cancellation of shares or rights of shareholders is to be made, such provision as may be necessary to effect such change, exchange, reclassification or cancellation. In particular, and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation, from time to time, so as:

(1) To change its corporate name;

(2) To change its period of duration;

(3) To change, enlarge or diminish its corporate purposes;

(4) To increase or decrease the aggregate number of shares, or shares of any class, that the corporation has authority to issue;

(5) To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued;

(6) To exchange, classify, reclassify or cancel all or any part of its shares, whether issued or unissued;

(7) To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and the relative rights in respect of all or any part of its shares, whether issued or unissued;

(8) To change shares having the par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value:

(9) To change the shares of any class, whether issued or unissued and whether with or without par value, into a different number of shares of the same class or into the same or a different number of shares, either with or without par value, of other classes;

(10) To create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued;

(11) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared;

(12) To divide any preferred or special class of shares, whether issued or unissued into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series;

(13) To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established;

(14) To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed;

(15) To revoke, diminish or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established; or

(16) To limit, deny or grant to shareholders of any class the preemptive right to acquire additional or treasury shares of the corporation, whether then or thereafter authorized.

Source: S.L. No. 3L-92-95 §57, 4/18/95

§1-158. Procedure to amend articles of incorporation. —

(1) Amendments to the articles of incorporation shall be made in the following manner:

(a) The board of directors shall adopt a resolution setting forth the proposed amendment and, if shares have been issued, directing that it be submitted to a vote at a meeting of shareholders, which may be either the annual or a special meeting. If no shares have been issued, the amendment shall be adopted by resolution of the board of directors and the provisions for adoption by shareholders shall not apply. The resolution may incorporate the proposed

amendment in restated articles of incorporation which contain a statement that except for the designated amendment the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as therefore amended, and that the restated articles of incorporation together with the designated amendment supersede the original articles of incorporation and all amendments thereto;

(b) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting; and

(c) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(2) Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting.

Source: S.L. No. 3L-92-95 §58, 4/18/95

§1-159. Class voting on amendments. — The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the articles of incorporation, if the amendment would:

(1) Increase or decrease the aggregate number of authorized shares of such class;

(2) Increase or decrease the par value of the shares of such class;

(3) Effect an exchange, reclassification or cancellation of all or part of the shares of such class;

(4) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class;

(5) Change the designations, preferences, limitations or relative rights of the shares of such class;

(6) Change the shares of such class, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same class or another class or classes;

(7) Create a new class of shares having rights and preferences prior and superior to the shares of such class, or increase the rights and preferences or the number of authorized shares, of any class having rights and preferences prior or superior to the shares of such class;

(8) In the case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series, or authorize the board of directors to do so;

(9) Limit or deny any existing preemptive rights of the shares of such class; or

(10) Cancel or otherwise affect dividends on the shares of such class that have accrued but have not been declared.

Source: S.L. No. 3L-92-95 §59, 4/18/95

§1-160. Articles of amendment. — The articles of amendment shall be executed in duplicate 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 such articles, and shall set forth:

(1) The name of the corporation;

(2) The amendments so adopted;

(3) The date of the adoption of the amendment by the shareholders, or by the board of directors where no shares have been issued;

(4) The number of shares outstanding, and the number of shares entitled to vote thereon, and if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(5) The number of shares voted for and against such amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively, or if no shares have been issued, a statement to that effect;

(6) If such amendment provides for an exchange, reclassification or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected; and

(7) If such amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by such amendment.

Source: S.L. No. 3L-92-95 §60, 4/18/95

§1-161. Filing of articles of amendment. —

(1) Duplicate originals of the articles of amendment shall be delivered to the Registrar of Corporations. If the Registrar of Corporations finds that the articles of amendment conform to law, he shall, when all fees have been paid as prescribed in this chapter:

(a) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(b) File one of such duplicate originals in his office; and

(c) Issue a certificate of amendment to which he shall affix the other duplicate original.

(2) The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the Registrar of Corporations, shall be returned to the corporation or its representative.

Source: S.L. No. 3L-92-95 §61, 4/18/95

§1-162. Effect of certificate of amendment. — Upon the issuance of the certificate of amendment by the Registrar of Corporations, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly. No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of persons other than shareholders; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

Source: S.L. No. 3L-92-95 §62, 4/18/95

§1-163. Restated articles of incorporation. —

(1) A domestic corporation may at any time restate its articles of incorporation as theretofore amended, by a resolution adopted by the board of directors.

(2) Upon the adoption of such resolution, restated articles of incorporation shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or assistant secretary and verified by one of the officers signing such articles and shall set forth all of the operative provisions of the articles of incorporation as theretofore amended together with a statement that the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended and that the restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

(3) Duplicate originals of the restated articles of incorporation shall be delivered to the Registrar of Corporations. If the Registrar of Corporations finds that such restated articles of incorporation conform to law, he shall, when all fees have been paid as prescribed in this chapter:

(a) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(b) File one of such duplicate originals in his office; and

(c) Issue a restated certificate of incorporation, to which he shall affix the other duplicate original.

(4) The restated certificate of incorporation, together with the duplicate original of the restated articles of incorporation affixed thereto by the Registrar of Corporations, shall be returned to the corporation or its representative.

(5) Upon the issuance of the restated certificate of incorporation by the Registrar of Corporations, the restated articles of incorporation shall become effective and shall supersede the original articles of incorporation and all amendments thereto.

Source: S.L. No. 3L-92-95 §63, 4/18/95

§1-164. Amendment of articles of incorporation in reorganization proceedings. —

(1) Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of such corporation, pursuant to any applicable statute of Pohnpei or the Federated States of Micronesia relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

(2) In particular and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:

(a) Change the corporate name, period of duration or corporate purposes of the corporation;

(b) Repeal, alter or amend the bylaws of the corporation;

(c) Change the aggregate number of shares or shares of any class, which the corporation has authority to issue;

(d) Change the preferences, limitations, and relative rights in respect of all or any part of the shares of the corporation, and classify, reclassify or cancel all or any part thereof, whether issued or unissued;

(e) Authorize the issuance of bonds, debentures or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and

(f) Constitute or reconstitute and classify or reclassify the board of directors of the corporation, and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.

(3) Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

(a) Articles of amendment approved by decree or order of such court shall be executed and verified in duplicate by such person or persons as the court shall designate or appoint for the purpose, and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered, and a statement that such decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to an applicable statute of Pohnpei or the Federated States of Micronesia.

(b) Duplicate originals of the articles of amendment shall be delivered to the Registrar of Corporations. If the Registrar of Corporations finds that the articles of amendment conform to law, he shall, when all fees have been paid as prescribed in this chapter:

(i) Endorse on each of such duplicate originals the word “Filed,” and the month, day, and year of the filing thereof;

(ii) File one of such duplicate originals in his office; and

(iii) Issue a certificate of amendment to which he shall affix the other duplicate original.

(4) The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the Registrar of Corporations shall be returned to the corporation or its representative.

(5) Upon the issuance of the certificate of amendment by the Registrar of Corporations, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly, without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation.

Source: S.L. No. 3L-92-95 §64, 4/18/95

§1-165. Restriction on redemption or purchase of redeemable shares. — No redemption or purchase of redeemable shares shall be made by a corporation when it is insolvent or when such redemption or purchase would render it insolvent, or which would reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon involuntary dissolution.

Source: S.L. No. 3L-92-95 §65, 4/18/95

§1-166. Cancellation of redeemable shares by redemption or purchase. —

(1) When redeemable shares of a corporation are redeemed or purchased by the corporation, the redemption or purchase shall effect a cancellation of such shares, and a statement of cancellation shall be filed as provided in this section. Thereupon such shares shall be restored to the status of authorized but unissued shares, unless the articles of incorporation provide that such shares when redeemed or purchased shall not be reissued, in which case the filing of the statement of cancellation shall constitute an amendment to the articles of incorporation and shall reduce the number of shares of the class so canceled which the corporation is authorized to issue by the number of shares so canceled.

(2) The statement of cancellation shall be executed in duplicate 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 such statement, and shall set forth:

(a) The name of the corporation;

(b) The number of redeemable shares canceled through redemption or purchase, itemized by classes and series;

(c) The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation;

(d) The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation;

(e) If the articles of incorporation provide that the canceled shares shall not be reissued, the number of shares which the corporation will have authority to issue itemized by classes and series, after giving effect to such cancellation. Duplicate originals of such statement shall be delivered to the Registrar of Corporations. If the Registrar of Corporations finds that such statement conforms to law, he shall, when all fees have been paid as prescribed in this chapter:

(i) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(ii) File one of such duplicate originals in his office; and

(iii) Return the other duplicate original to the corporation or its representative.

(3) Upon the filing of such statement of cancellation, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled.

(4) Nothing contained in this section shall be construed to forbid cancellation of shares or a reduction of stated capital in any other manner permitted by this chapter.

Source: S.L. No. 3L-92-95 §66, 4/18/95

§1-167. Cancellation of other reacquired shares. —

(1) A corporation may at any time, by resolution of its board of directors, cancel all or any part of the shares of the corporation of any class reacquired by it, other than redeemable shares redeemed or purchased, and in such event a statement of cancellation shall be filed as provided in this section.

(2) The statement of cancellation shall be executed in duplicate 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 such statement, and shall set forth:

(a) The name of the corporation;

(b) The number of reacquired shares canceled by resolution duly adopted by the board of directors, itemized by classes and series, and the date of its adoption;

(c) The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation; and

(d) The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation.

(3) Duplicate originals of such statement shall be delivered to the Registrar of Corporations. If the Registrar of Corporations finds that such statement conforms to law, he shall, when all fees have been paid as prescribed in this chapter:

(a) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(b) File one of such duplicate originals in his office; and

(c) Return the other duplicate original to the corporation or its representative.

(4) Upon the filing of such statement of cancellation, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital that was, at the time of such cancellation, represented by the shares so canceled, and the shares so canceled shall be restored to the status of authorized but unissued shares.

(5) Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this chapter.

Source: S.L. No. 3L-92-95 §67, 4/18/95

§1-168. Reduction of stated capital in certain cases. —

(1) A reduction of the stated capital of a corporation, where such reduction is not accompanied by any action requiring an amendment of the articles of incorporation and not accompanied by a cancellation of shares, may be made in the following manner:

(a) The board of directors shall adopt a resolution setting forth the amount of the proposed reduction and the manner in which the reduction shall be effected, and directing that the question of such reduction be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting;

(b) Written notice, stating that the purpose or one of the purposes of such meeting is to consider the question of reducing the stated capital of the corporation in the amount and manner proposed by the board of directors, shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders; and

(c) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the question of approving the proposed reduction of stated capital, which shall require for its adoption the affirmative vote of the holders of a majority of the shares entitled to vote thereon.

(2) When a reduction of the stated capital of a corporation has been approved as provided in this section, a statement shall be executed in duplicate 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 such statement, and shall set forth:

(a) The name of the corporation;

(b) A copy of the resolution of the shareholders approving such reduction, and the date of its adoption;

(c) The number of shares outstanding, and the number of shares entitled to vote thereon;

(d) The number of shares voted for and against such reduction, respectively; and

(e) A statement of the manner in which such reduction is effected, and a statement, expressed in dollars, of the amount of stated capital of the corporation after giving effect to such reduction.

(3) Duplicate originals of such statement shall be delivered to the Registrar of Corporations. If the Registrar of Corporations finds that such statement conforms to law, he shall, when all fees have been paid as prescribed in this chapter:

(a) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(b) File one of such duplicate originals in his office; and

(c) Return the other duplicate original to the corporation or its representative.

(4) Upon the filing of such statement, the stated capital of the corporation shall be reduced as therein set forth.

(5) No reduction of stated capital shall be made under this section which would reduce the amount of the aggregate stated capital of the corporation to an amount equal to or less than the aggregate preferential amounts payable upon all issued shares having a preferential right in the assets of the corporation in the event of involuntary liquidation, plus the aggregate par value of all issued shares having a par value but no preferential right in the assets of the corporation in the event of involuntary liquidation.

Source: S.L. No. 3L-92-95 §68, 4/18/95

§1-169. Special provisions relating to surplus and reserves. — The surplus, if any, created by or arising out of a reduction of the stated capital of a corporation shall be capital surplus. The capital surplus of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the earned surplus of the corporation be transferred to capital surplus. A corporation may, by resolution of its board of directors, apply any part or all of its capital surplus to the reduction or elimination of any deficit arising from losses, however incurred, but only after first eliminating the earned surplus, if any, of the corporation by applying such losses against earned surplus and only to the extent that such losses exceed the earned surplus, if any. Each such application of capital surplus shall, to the extent thereof, effect a reduction of capital surplus. A corporation may, by resolution of its board of directors, create a reserve or reserves out of its earned surplus for any proper purpose or purposes, and may abolish any such reserve in the same manner. Earned surplus of the corporation to the extent so reserved shall not be available for the payment of dividends or other distributions by the corporation except as expressly permitted by this chapter.

Source: S.L. No. 3L-92-95 §69, 4/18/95

§1-170. Procedure for merger. — Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter. The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

(1) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;

(2) The terms and conditions of the proposed merger;

(3) The manner and basis of converting the shares of each corporation into shares, obligations or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property:

(4) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger; and

(5) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

Source: S.L. No. 3L-92-95 §70, 4/18/95

§1-171. Procedure for consolidation. — Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter. The board of directors of each corporation shall, by a resolution adopted by each such board, approve a plan of consolidation setting forth:

(1) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(2) The terms and conditions of the proposed consolidation;

(3) The manner and basis of converting the shares of each corporation into shares, obligations or other securities of the new corporation or of any other corporation or, in whole or in part, into cash or other property:

(4) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter; and

(5) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

Source: S.L. No. 3L-92-95 §71, 4/18/95

§1-172. Approval by shareholders. —

(1) The board of directors of each corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than 20 days before such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed plan of merger or consolidation. A copy or a summary of the plan of merger or plan of consolidation, as the case may be, shall be included in or enclosed with such notice.

(2) At each such meeting, a vote of the shareholders shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon of each such corporation, 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 of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Any class of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class.

(3) After such approval by a vote of the shareholders of each corporation, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

Source: S.L. No. 3L-92-95 §72, 4/18/95

§1-173. Articles of merger or consolidation. —

(1) Upon such approval, articles of merger or articles of 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 the plan of consolidation;

(b) As to each corporation, the number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; and

(c) As to each corporation, the number of shares voted for and against such plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

(2) Duplicate originals of the articles of merger or articles of consolidation shall be delivered to the Registrar of Corporations. If the Registrar of Corporations finds that such articles conform to law, he shall, when all fees have been paid as prescribed in this chapter:

(a) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(b) File one of such duplicate originals in his office; and

(c) Issue a certificate of merger or a certificate of consolidation to which he shall affix the other duplicate original.

(3) The certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto by the Registrar of Corporations, shall be returned to the surviving or new corporation, as the case may be, or its representative.

Source: S.L. No. 3L-92-95 §73, 4/18/95

§1-174. Merger of subsidiary corporation. —

(1) Any corporation owning at least ninety percent (90%) of the outstanding shares of each class of another corporation may merge such other corporation into itself without approval by a vote of the shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth:

(a) The name of the subsidiary corporation and the name of the corporation owning at least ninety percent (90%) of its shares, which is hereinafter designated as the surviving corporation; and

(b) The manner and basis of converting the shares of the subsidiary corporation into shares, obligations or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property.

(2) A copy of such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

(3) Articles of merger shall be executed in duplicate by the surviving corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of its officers signing such articles, and shall set forth:

(a) The plan of merger;

(b) The number of outstanding shares of each class of the subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and

(c) The date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

(4) On and after the thirtieth day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation or upon the waiver thereof by the holders of all outstanding shares duplicate originals of the articles of merger shall be delivered to the Registrar of Corporations. If the Registrar of Corporations finds that such articles conform to law, he shall, when all fees have been paid as prescribed in this chapter:

(a) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(b) File one of such duplicate originals in his office; and

(c) Issue a certificate of merger to which he shall affix the other duplicate original.

(5) The certificate of merger, together with the duplicate original of the articles of merger affixed thereto by the Registrar of Corporations, shall be returned to the surviving corporation or its representative.

Source: S.L. No. 3L-92-95 §74, 4/18/95

§1-175. Effect of merger or consolidation. —

(1) Upon the issuance of the certificate of merger or the certificate of consolidation by the Registrar of Corporations, the merger or consolidation shall be effected.

(2) When such merger or consolidation has been effected:

(a) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation;

(b) The separate existence of all corporate parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease;

(c) Such surviving or new corporation shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter;

(d) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation;

(e) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation; and

(f) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the original articles of incorporation of the new corporation.

Source: S.L. No. 3L-92-95 §75, 4/18/95

§1-176. Merger or consolidation of domestic and foreign corporations. —

(1) One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

(a) Each domestic corporation shall comply with this chapter 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 state under which it is organized; and

(b) If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this state, it shall comply with this chapter with respect to foreign corporations if it is to transact business in this state, and in every case it shall file with the Registrar of Corporations of this state:

(i) An agreement that it may be served with process in this state 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 new corporation;

(ii) An irrevocable appointment of the Registrar of Corporations of this state as its agent to accept service of process in any such proceeding; and

(iii) An agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under this chapter with respect to the rights of dissenting shareholders.

(2) 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 new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other state provide otherwise.

(3) At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

Source: S.L. No. 3L-92-95 §76, 4/18/95

§1-177. Sale of assets in regular course of business and mortgage or pledge of assets. — The sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of a corporation in the usual and regular course of its business and the mortgage or pledge of any or all property and assets of a corporation whether or not in the usual and regular course of business may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of cash or other property, including shares, obligations or other securities of any other corporation, domestic or foreign, as shall be authorized by its board of directors; and in any such case no authorization or consent of the shareholders shall be required.

Source: S.L. No. 3L-92-95 §77, 4/18/95

§1-178. Sale of assets other than in regular course of business. — A sale, lease, exchange or other disposition of all, or substantially all, the property and assets, with or without the good will, of a corporation, if not in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of cash or other property, including shares, obligations or other securities of any other corporation, domestic or foreign, as may be authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending such sale, lease, exchange or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than 20 days before such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes is to consider the proposed sale, lease, exchange or other disposition.

(3) At such meeting the shareholders may authorize such sale, lease, exchange or other disposition and may fix, or may authorize the board of directors to fix, any or all of the 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 a majority 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.

(4) After such authorization by a vote of shareholders, the board of directors nevertheless, in its discretion, may abandon such sale, lease, exchange or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders.

Source: S.L. No. 3L-92-95 §78, 4/18/95

§1-179. Right of shareholders to dissent. —

(1) Any shareholder of a corporation shall have the right to dissent from any of the following corporate actions:

(a) Any plan of merger or consolidation to which the corporation is a party; or

(b) Any sale or exchange of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution, but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all of the net proceeds of the sale be distributed to the shareholders in accordance with their respective interests within one year after the date of sale.

(2) A shareholder may dissent as to less than all of the shares registered in his name. In that event, his rights shall be determined as if the shares as to which he has dissented and his other shares were registered in the names of different shareholders.

(3) This section shall not apply to the shareholders of the surviving corporation in a merger if a vote of the shareholders of such corporation is not necessary to authorize such merger.

Source: S.L. No. 3L-92-95 §79, 4/18/95

§1-180. Rights of dissenting shareholders. —

(1) Any shareholder electing to exercise such right of dissent shall file with the corporation, prior to or at the meeting of shareholders at which such proposed corporate action is submitted to a vote, a written objection to such proposed corporate action. If such proposed corporate action be approved by the required vote and such shareholder shall not have voted in favor thereof, such shareholder may, within ten days after the date on which the vote was taken or if a corporation is to be merged without a vote of its shareholders into another corporation, any of its shareholders may, within 15 days after the plan of such merger shall have been mailed to such shareholders, make written demand on the corporation, or, in the case of a merger or consolidation, on the surviving or new corporation, domestic or foreign, for payment of the fair value of such shareholder's shares, and, if such proposed corporate action is effected, such corporation shall pay to such shareholder, upon surrender of the certificate or certificates representing such shares, the fair value thereof as of the day prior to the date on which the vote was taken approving the proposed corporate action, excluding any appreciation or depreciation in anticipation of such corporate action. Any shareholder failing to make demand within the applicable ten-day or 15-day period shall be bound by the terms of the proposed corporate action. Any shareholder making such demand shall thereafter be entitled only to payment as provided in this section and shall not be entitled to vote or to exercise any other rights of a shareholder.

(2) No such demand may be withdrawn unless the corporation shall consent thereto. If, however, such demand shall be withdrawn upon consent, or if the proposed corporate action shall be abandoned or rescinded or the shareholders shall revoke the authority to effect such action, or if, in the case of a merger, on the date of the filing of the articles of merger the surviving corporation is the owner of all the outstanding shares of the other corporations, domestic and foreign, that are parties to the merger, or if no demand or petition for the determination of fair value by a court shall have been made or filed

within the time provided in this section, or if a court of competent jurisdiction shall determine that such shareholder is not entitled to the relief provided by this section, then the right of such shareholder to be paid the fair value of his shares shall cease and his status as a shareholder shall be restored, without prejudice to any corporate proceedings which may have been taken during the interim.

(3) Within ten days after such corporate action is effected, the corporation, or, in the case of a merger or consolidation, the surviving or new corporation, domestic or foreign, shall give written notice thereof to each dissenting shareholder who has made demand as herein provided, and shall make a written offer to each such shareholder to pay for such shares at a specified price deemed by such corporation to be the fair value thereof. Such notice and offer shall be accompanied by a balance sheet of the corporation, the shares of which the dissenting shareholder holds as of the latest available date and not more than 12 months prior to the making of such offer, and a profit and loss statement of such corporation for the 12-month period ending on the date of such balance sheet.

(4) If within 30 days after the date on which such corporate action was effected the fair value of such shares is agreed upon between any such dissenting shareholder and the corporation, payment therefor shall be made within 90 days after the date on which such corporate action was effected, upon surrender of the certificate or certificates representing such shares. Upon payment of the agreed value the dissenting shareholder shall cease to have any interest in such shares.

(5) If within such period of 30 days a dissenting shareholder and the corporation do not so agree, then the corporation, within 30 days after receipt of written demand from any dissenting shareholder given within 60 days after the date on which such corporate action was effected, shall, or at its election at any time within such period of 60 days may, file a petition in the Pohnpei Supreme Court requesting that the fair value of such shares be found and determined. If the corporation shall fail to institute the proceeding as herein provided, any dissenting shareholder may do so in the name of the corporation. All dissenting shareholders, wherever residing, shall be made parties to the proceeding as an action against their shares quasi in rem. A copy of the petition shall be served on each dissenting shareholder who is a resident of this state and shall be served by registered or certified mail on each dissenting shareholder who is a nonresident. Service on nonresidents shall also be made by publication as provided by law. The jurisdiction of the court shall be plenary and exclusive. All shareholders who are parties to the proceeding shall be entitled to judgment against the corporation for the amount of the fair value of their shares. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or an amendment thereof. The judgment shall be payable only upon and concurrently with the surrender to the corporation of the certificate or certificates representing such shares. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares.

(6) The judgment shall include an allowance for interest at such rate as the court may find to be fair and equitable in all the circumstances, from the date on which the vote was taken on the proposed corporate action to the date of payment.

(7) The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the corporation, but all or any part of such costs and expenses may be apportioned and assessed as the court may deem equitable against any or all of the dissenting shareholders who are parties to the proceeding to whom the corporation shall have made an offer to pay for the shares if the court shall find that the action of such shareholders in failing to accept such offer was arbitrary or vexatious or not in good faith. Such expenses shall include reasonable compensation for and reasonable expenses of the appraisers, but shall exclude the fees and expenses of counsel for and experts employed by any party; but if the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay therefor, or if no offer was made, the court in its discretion may award to any shareholder who is a party to the proceeding such sum as the court may determine to be reasonable compensation to any expert or experts employed by the shareholder in the proceeding.

(8) Within 20 days after demanding payment for his shares, each shareholder demanding payment shall submit the certificate or certificates representing his shares to the corporation for notation thereon that such demand has been made. His failure to do so shall, at the option of the corporation, terminate his rights under this section unless a court of competent jurisdiction, for good and sufficient cause shown, shall otherwise direct. If shares represented by a certificate on which notation has been so made shall be transferred, each new certificate issued therefor shall bear similar notation, together with the name of the original dissenting holder of such shares, and a transferee of such shares shall acquire by such transfer no rights in the corporation other than those which the original dissenting shareholder had after making demand for payment of the fair value thereof.

(9) Shares acquired by a corporation pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor, as provided in this section, may be held and disposed of by such corporation as in the case of other treasury shares, except that, in the case of a merger or consolidation, they may be held and disposed of as the plan of merger or consolidation may otherwise provide.

Source: S.L. No. 3L-92-95 §80, 4/18/95

§1-181. Voluntary dissolution by incorporators. —

(1) A corporation that has not commenced business and that has not issued any shares may be voluntarily dissolved by its incorporators at any time in the following manner:

(a) Articles of dissolution shall be executed in duplicate by a majority of the incorporators, and verified by them, and shall set forth:

(i) The name of the corporation;

(ii) The date of issuance of its certificate of incorporation;

(iii) That none of its shares has been issued;

(iv) That the corporation has not commenced business;

(v) That the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;

(vi) That no debts of the corporation remain unpaid; and

(vii) That a majority of the incorporators elect that the corporation be dissolved.

(b) Duplicate originals of the articles of dissolution shall be delivered to the Registrar of Corporations. If the Registrar of Corporations finds that the articles of dissolution conform to law, he shall, when all fees have been paid as prescribed in this chapter:

(i) Endorse on each of such duplicate originals the word “Filed,” and the month, day, and year of the filing thereof;

(ii) File one of such duplicate originals in his office; and

(iii) Issue a certificate of dissolution to which he shall affix the other duplicate original.

(2) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the Registrar of Corporations, shall be returned to the incorporators or their representative. Upon the issuance of such certificate of dissolution by the Registrar of Corporations, the existence of the corporation shall cease.

Source: S.L. No. 3L-92-95 §81, 4/18/95

§1-182. Voluntary dissolution by consent of shareholders. —

(1) A corporation may be voluntarily dissolved by the written consent of all of its shareholders.

(2) Upon the execution of such written consent, a statement of intent to dissolve shall be executed in duplicate 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 such statement, which statement shall set forth:

(a) The name of the corporation;

(b) The names and respective addresses of its officers;

(c) The names and respective addresses of its directors;

(d) A copy of the written consent signed by all shareholders of the corporation; and

(e) A statement that such written consent has been signed by all shareholders of the corporation or signed in their names by their duly authorized attorneys.

Source: S.L. No. 3L-92-95 §82, 4/18/95

§1-183. Voluntary dissolution by act of corporation. — A corporation may be dissolved by the act of the corporation when authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or special meeting, shall state that the purpose, or one of the purposes of such meeting is to consider the advisability of dissolving the corporation.

(3) At such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of a majority 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 the resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(4) Upon the adoption of such resolution, a statement of intent to dissolve shall be executed in duplicate 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 such statement, which statement shall set forth:

(a) The name of the corporation;

(b) The names and respective addresses of its officers;

(c) The names and respective addresses of its directors;

(d) A copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation;

(e) The number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; and

(f) The number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively.

Source: S.L. No. 3L-92-95 §83, 4/18/95

§1-184. Filing of statement of intent to dissolve. — Duplicate originals of the statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the Registrar of Corporations. If the Registrar of Corporations finds that such statement conforms to law, he shall, when all fees have been paid as prescribed in this chapter:

(1) Endorse on each of such duplicate originals the word “Filed,” and the month, day, and year of the filing thereof;

(2) File one of such duplicate originals in his office; and

(3) Return the other duplicate original to the corporation or its representative.

Source: S.L. No. 3L-92-95 §84, 4/18/95

§1-185. Effect of statement of intent to dissolve. — Upon the filing by the Registrar of Corporations of a statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until a certificate of dissolution has been issued by the Registrar of Corporations or until a decree dissolving the corporation has been entered by a court of competent jurisdiction as provided in this chapter.

Source: S.L. No. 3L-92-95 §85, 4/18/95

§1-186. Procedure after filing of statement of intent to dissolve. — After the filing by the Registrar of Corporations of a statement of intent to dissolve:

(1) The corporation shall immediately cause notice thereof to be mailed to each known creditor of the corporation;

(2) The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in-kind to its shareholders, pay, satisfy, and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in-kind, among its shareholders according to their respective rights and interests; and

(3) The corporation, at any time during the liquidation of its business and affairs, may make application to the Pohnpei Supreme Court to have the liquidation continued under the supervision of the court as provided in this chapter.

Source: S.L. No. 3L-92-95 §86, 4/18/95

§1-187. Revocation of voluntary dissolution proceedings by consent of shareholders. — By the written consent of all its shareholders, a corporation may, at any time prior to the issuance of a certificate of dissolution by the Registrar of Corporations, revoke voluntary dissolution proceedings theretofore taken, in the following manner: Upon the execution of such written consent, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate 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 such statement, which statement shall set forth:

(1) The name of the corporation;

(2) The names and respective addresses of its officers;

(3) The names and respective addresses of its directors;

(4) A copy of the written consent signed by all shareholders of the corporation revoking such voluntary dissolution proceedings; and

(5) That such written consent has been signed by all shareholders of the corporation or signed in their names by their duly authorized attorneys.

Source: S.L. No. 3L-92-95 §87, 4/18/95

§1-188. Revocation of voluntary dissolution proceedings by act of corporation. — By the act of the corporation, a corporation may, at any time prior to the issuance of a certificate of dissolution by the Registrar of Corporations, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

(1) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a special meeting of shareholders.

(2) Written notice, stating that the purpose or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of special meetings of shareholders.

(3) At such meeting a vote of the shareholders entitled to vote thereat shall be taken on a resolution to revoke the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of a majority of the shares entitled to vote thereon.

(4) Upon the adoption of such resolution, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate 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 such statement, which statement shall set forth:

(a) The name of the corporation;

(b) The names and respective addresses of its officers;

(c) The names and respective addresses of its directors;

(d) A copy of the resolution adopted by the shareholders revoking the voluntary dissolution proceedings;

(e) The number of shares outstanding; and

(f) The number of shares voted for and against the resolution, respectively.

Source: S.L. No. 3L-92-95 §88, 4/18/95

§1-189. Filing of statement of revocation of voluntary dissolution proceedings. — Duplicate originals of the statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, shall be delivered to the Registrar of Corporations. If the Registrar of Corporations finds that such statement conforms to law, he shall, when all fees have been paid as prescribed in this chapter:

(1) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(2) File one of such duplicate originals in his office; and

(3) Return the other duplicate original to the corporation or its representative.

Source: S.L. No. 3L-92-95 §89, 4/18/95

§1-190. Effect of statement of revocation of voluntary dissolution proceedings. — Upon the filing by the Registrar of Corporations of a statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, the revocation of the voluntary dissolution proceedings shall become effective and the corporation may again carry on its business.

Source: S.L. No. 3L-92-95 §90, 4/18/95

§1-191. Articles of dissolution. — If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities, and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate 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 such statement, which statement shall set forth:

(1) The name of the corporation;

(2) That the Registrar of Corporations has theretofore filed a statement of intent to dissolve the corporation, and the date on which such statement was filed;

(3) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;

(4) That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests; and

(5) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

Source: S.L. No. 3L-92-95 §91, 4/18/95

§1-192. Filing of articles of dissolution. —

(1) Duplicate originals of such articles of dissolution shall be delivered to the Registrar of Corporations. If the Registrar of Corporations finds that such articles of dissolution conform to law, he shall, when all fees have been paid as prescribed in this chapter:

(a) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(b) File one of such duplicate originals in his office; and

(c) Issue a certificate of dissolution to which he shall affix the other duplicate original.

(2) The certificate of dissolution together with the duplicate original of the articles of dissolution affixed thereto by the Registrar of Corporations, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by shareholders, directors, and officers as provided in this chapter.

Source: S.L. No. 3L-92-95 §92, 4/18/95

§1-193. Involuntary dissolution. — A corporation may be dissolved involuntarily by a decree of the Pohnpei Supreme Court in an action filed by the Attorney General when it is established that:

(1) The corporation has failed to file its annual report within the time required by this chapter; or

(2) The corporation procured its articles of incorporation through fraud; or

(3) The corporation has continued to exceed or abuse the authority conferred upon it by law; or

(4) The corporation has failed for 30 days to appoint and maintain a registered agent in this state; or

(5) The corporation has failed for 30 days after change of its registered office or registered agent to file in the office of the Registrar of Corporations a statement of such change.

Source: S.L. No. 3L-92-95 §93, 4/18/95

§1-194. Notification to Attorney General. — The Registrar of Corporations, on or before the last day of December of each year, shall certify to the Attorney General the names of all corporations which have failed to file their annual reports in accordance with this chapter, together with the facts pertinent thereto. He shall also certify, from time to time, the names of all corporations that have given other cause for dissolution as provided in this chapter, together with the facts pertinent thereto. Whenever the Registrar of Corporations shall certify the name of a corporation to the Attorney General as having given any cause for dissolution, the Registrar of Corporations shall concurrently mail to the corporation at its registered office a notice that such certification has been made. Upon the receipt of such certification, the Attorney General shall file an action in the name of the state against such corporation for its dissolution. Every such certificate from the Registrar of Corporations to the Attorney General pertaining to the failure of a corporation to file an annual report shall be taken and received in all courts as prima facie evidence of the facts therein stated. If, before action is filed, the corporation shall file its annual report, together with all penalties thereon, or shall appoint or maintain a registered agent as provided in this chapter, or shall file with the Registrar of Corporations the required statement of change of registered office or registered agent, such fact shall be forthwith certified by the Registrar of Corporations to the Attorney General and he shall not file an action against such corporation for such cause. If, after action is filed, the corporation shall file its annual report, together with all penalties thereon, or shall appoint or maintain a registered agent as provided in this chapter, or shall file with the Registrar of Corporations the required statement of change of registered office or registered agent, and shall pay the costs of such action, the action for such cause shall abate.

Source: S.L. No. 3L-92-95 §94, 4/18/95

§1-195. Venue and process. — Every action for the involuntary dissolution of a corporation shall be commenced by the Attorney General in the Pohnpei Supreme Court. Summons shall issue and be served as in other civil actions. If process is returned not found, the Attorney General shall cause the posting in such conspicuous places in the state and local government facilities throughout the state, of a notice of the pendency of such action, the title of the court, the title of the action, and the date on or after which default may be entered. The Attorney General may include in one notice the names of any number of corporations against which actions are then pending in the same court. The Attorney General shall cause a copy of such notice to be mailed to the corporation at its registered office within ten days after the first publication thereof. The certificate of the Attorney General of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be kept posted for two successive weeks. Posting of such notice may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than 30 days after the first day of posting of such notice.

Source: S.L. No. 3L-92-95 §95, 4/18/95

§1-196. Jurisdiction of court to liquidate assets and business corporation. —

(1) The Pohnpei Supreme Court shall have full power to liquidate the assets and business of a corporation:

(a) In an action by a shareholder when it is established:

(i) That the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

(ii) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(iii) That the shareholders are deadlocked in voting power, and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or

(iv) That the corporate assets are being misapplied or wasted.

(b) In an action by a creditor:

(i) When the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the corporation is insolvent; or

(ii) When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

(c) Upon application by a corporation that has filed statement of intent to dissolve, as provided in this chapter, to have its liquidation continued under the supervision of the court.

(d) When an action has been filed by the Attorney General to dissolve a corporation and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution.

(2) It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

Source: S.L. No. 3L-92-95 §96, 4/18/95

§1-197. Procedure in liquidation of corporation by court. —

(1) In proceedings to liquidate the assets and business of a corporation the court shall have power to issue injunctions, to appoint a receiver or receiver pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had.

(2) After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a

liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by subscribers on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(3) The court shall have power to allow from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

(4) A receiver of a corporation appointed under this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

Source: S.L. No. 3L-92-95 §97, 4/18/95

§1-198. Qualifications of receivers. — A receiver shall in all cases be a natural person or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

Source: S.L. No. 3L-92-95 §98, 4/18/95

§1-199. Filing of claims in liquidation proceedings. — In proceedings to liquidate the assets and business of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation.

Source: S.L. No. 3L-92-95 §99, 4/18/95

§1-200. Discontinuance of liquidation proceedings. — The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

Source: S.L. No. 3L-92-95 §100, 4/18/95

§1-201. Decree of involuntary dissolution. — In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

Source: S.L. No. 3L-92-95 §101, 4/18/95

§1-202. Filing of decree of dissolution. — In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of the court to cause a certified copy of the decree to be filed with the Registrar of Corporations. No fee shall be charged by the Registrar of Corporations for the filing thereof.

Source: S.L. No. 3L-92-95 §102, 4/18/95

§1-203. Deposit in Treasury of amount due certain shareholders. — Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited in a special trust fund in the Treasury and shall be paid over to such creditor or shareholder or to his legal representative upon proof satisfactory to the Director of the Department of Treasury and Administration of his right thereto.

Source: S.L. No. 3L-92-95 §103, 4/18/95

§1-204. Survival of remedy after dissolution. — The dissolution of a corporation either by the issuance of a certificate of dissolution by the Registrar of Corporations, or by a decree of court when the court has not liquidated the assets and business of the corporation as provided in this chapter, or by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration.

Source: S.L. No. 3L-92-95 §104, 4/18/95

§1-205. Admission of foreign corporation. —

(1) No foreign corporation shall have the right to transact business in this state until it shall have procured a certificate of authority so to do from the Registrar of Corporations. No foreign corporation shall be entitled to procure a certificate of authority under this chapter to transact in this state any business which a corporation organized under this chapter is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing contained in this chapter shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

(2) Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state, for the purposes of this chapter, by reason of carrying on in this state any one or more of the following activities:

(a) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

(b) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;

(c) Maintaining bank accounts;

(d) Maintaining offices or agencies for the transfer, exchange, and registration of its securities or appointing and maintaining trustees or depositories with relation to its securities;

(e) Effecting sales through independent contractors;

(f) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts;
(g) Creating evidences of debt, mortgages or liens on real or personal property;
(h) Securing or collecting debts or enforcing any rights in property securing the same;
(i) Transacting any business in interstate commerce; or
(j) Conducting an isolated transaction completed within a period of 30 days and not in the course of a number of repeated transactions of like nature.
Source: S.L. No. 3L-92-95 §105, 4/18/95

§1-206. Powers of foreign corporation. — A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same, but not greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, except as provided otherwise in this chapter, shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character.
Source: S.L. No. 3L-92-95 §106, 4/18/95

§1-207. Corporate name of foreign corporation. — No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(1) Shall contain the word "corporation," "company," "incorporated" or "limited," or shall contain an abbreviation of one of such words, or such corporation shall, for use in this state, add at the end of its name one of such words or an abbreviation thereof.

(2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking or insurance.

(3) Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, or the name of a corporation which has in effect a registration of its name as provided in this chapter, except that this provision shall not apply if the foreign corporation applying for a certificate of authority files with the Registrar of Corporations any one of the following:

(a) A resolution of its board of directors adopting a fictitious name for use in transacting business in this state which fictitious name is not deceptively similar to the name of any domestic corporation or of any foreign corporation authorized to transact business in this state or to any name reserved or registered as provided in this chapter; or
(b) The written consent of such other corporation or holder of a reserved or registered name to use the same or deceptively similar name and one or more words are added to make such name distinguishable from such other name; or
(c) A certified copy of a final decree of the Pohnpei Supreme Court establishing the prior right of such foreign corporation to the use of such name in this state.
Source: S.L. No. 3L-92-95 §107, 4/18/95

§1-208. Change of name by foreign corporation. — Whenever a foreign corporation which is authorized to transact business in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter transact any business in this state until it has changed its name to a name which is available to it under the laws of this state or has otherwise complied with this chapter.
Source S.L. No. 3L-92-95 §108, 4/18/95

§1-209. Application for certificate of authority. —

(1) A foreign corporation, in order to procure a certificate of authority to transact business in this state, shall make application therefor to the Registrar of Corporations, which application shall set forth:

(a) The name of the corporation and the state or country under the laws of which it is incorporated;

(b) If the name of the corporation does not contain the word "corporation," "company," "incorporated" or "limited," or does not contain an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this state;

(c) The date of incorporation and the period of duration of the corporation;

(d) The address of the principal office of the corporation in the state or country under the laws of which it is incorporated;

(e) The address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent in this state at such address;

(f) The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state;

(g) The names and respective addresses of the directors and officers of the corporation;

(h) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(i) A statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(j) A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in this chapter;

(k) An estimate, expressed in dollars, of the value of all property to be owned by the corporation for the following year, wherever located, and an estimate of the value of the property of the corporation to be located within this state during such year, and an estimate, expressed in dollars, of the gross amount of business which will be transacted by the corporation during such year, and an estimate of the gross amount thereof which will be transacted by the corporation at or from places of business in this state during such year; and

(l) Such additional information as may be necessary or appropriate in order to enable the Registrar of Corporations to determine whether such corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees payable as prescribed in this chapter.

(2) Such application shall be made on forms prescribed and furnished by the Registrar of Corporations and shall be executed in duplicate 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 such application.

Source: S.L. No. 3L-92-95 §109, 4/18/95

§1-210. Filing of application for certificate of authority. —

(1) Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the Registrar of Corporations, together with a copy of its articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the state or country under the laws of which it is incorporated.

(2) If the Registrar of Corporations finds that such application conforms to law, he shall, when all fees have been paid as prescribed in this chapter:

(a) Endorse on each of such documents the word "Filed," and the month, day, and year of the filing thereof;

(b) File in his office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto; and

(c) Issue a certificate of authority to transact business in this state to which he shall affix the other duplicate original application.

(3) The certificate of authority, together with the duplicate original of the application affixed thereto by the Registrar of Corporations, shall be returned to the corporation or its representative.

Source: S.L. No. 3L-92-95 §110, 4/18/95

§1-211. Effect of certificate of authority. — Upon the issuance of a certificate of authority by the Registrar of Corporations, the corporation shall be authorized to transact business in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in this chapter.

Source: S.L. No. 3L-92-95 §111, 4/18/95

§1-212. Registered office and registered agent of foreign corporation. — Each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state:

(1) A registered office that may be, but need not be, the same as its place of business in this state; and

(2) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this state, having a business office identical with such registered office.

Source: S.L. No. 3L-92-95 §112, 4/18/95

§1-213. Change of registered office or registered agent of foreign corporation. —

(1) A foreign corporation authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing in the office of the Registrar of Corporations a statement setting forth:

(a) The name of the corporation;

(b) The address of its then registered office;

(c) If the address of its registered office be changed, the address to which the registered office is to be changed;

(d) The name of its then registered agent;

(e) If its registered agent be changed, the name of its successor registered agent;

(f) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and

(g) That such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed by the corporation by its president or a vice president, and verified by him, and delivered to the Registrar of Corporations. If the Registrar of Corporations finds that such statement conforms to this chapter, he shall file such statement in his office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

(3) Any registered agent of a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Registrar of Corporations, who shall forthwith mail a copy thereof to the corporation at its principal office in the state or country under the laws of which it is incorporated. The appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the Registrar of Corporations.

(4) If a registered agent changes his or its business address, he or it may change such address and the address of the registered office of any corporation of which he or it is a registered agent by filing a statement as required above except that it need be signed only by the registered agent and need not be

responsive to Paragraphs (e) or (g) of Subsection (1) of this section and must recite that a copy of the statement has been mailed to the corporation.

Source: S.L. No. 3L-92-95 §113, 4/18/95

§1-214. Service of process on foreign corporation. —

(1) The registered agent so appointed by a foreign corporation authorized to transact business in this state shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

(2) Whenever a foreign corporation authorized to transact business in this state shall fail to appoint or maintain a registered agent in this state, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be suspended or revoked, then the Registrar of Corporations shall be an agent of such corporation upon whom any such process, notice or demand may be served. Service on the Registrar of Corporations of any such process, notice or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the Registrar of Corporations, he shall immediately cause one of such copies thereof to be forwarded by registered mail, addressed to the corporation at its principal office in the state or country under the laws of which it is incorporated. Any service so had on the Registrar of Corporations shall be returnable in not less than 30 days.

(3) The Registrar of Corporations shall keep a record of all processes, notices, and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

(4) Nothing contained herein shall limit or affect the right to serve any process, notice or demand, required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law.

Source: S.L. No. 3L-92-95 §114, 4/18/95

§1-215. Amendment to articles of incorporation of foreign corporation. — Whenever the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, such foreign corporation shall, within 30 days after such amendment becomes effective, file in the office of the Registrar of Corporations a copy of such amendment duly authenticated by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this state, nor authorize such corporation to transact business in this state under any other name than the name set forth in its certificate of authority.

Source: S.L. No. 3L-92-95 §115, 4/18/95

§1-216. Merger of foreign corporation authorized to transact business in this state. — Whenever a foreign corporation authorized to transact business in this state shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within 30 days after such merger becomes effective, file with the Registrar of Corporations a copy of the articles of merger duly authenticated by the proper officer of the state or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state.

Source: S.L. No. 3L-92-95 §116, 4/18/95

§1-217. Amended certificate of authority. —

(1) A foreign corporation authorized to transact business in this state shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the Registrar of Corporations.

(2) The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the Registrar of Corporations, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority.

Source: S.L. No. 3L-92-95 §117, 4/18/95

§1-218. Withdrawal of foreign corporation. —

(1) A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the Registrar of Corporations a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the Registrar of Corporations an application for withdrawal, which shall set forth:

(a) The name of the corporation and the state or country under the laws of which it is incorporated;

(b) That the corporation is not transacting business in this state;

(c) That the corporation surrenders its authority to transact business in this state;

(d) That the corporation revokes the authority of its registered agent in this state 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 this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the Registrar of Corporations;

(e) A post office address to which the Registrar of Corporations may mail a copy of any process against the corporation that may be served on him;

(f) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, as of the date of such application;

(g) A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, as of the date of such application;

(h) A statement, expressed in dollars, of the amount of stated capital of the corporation, as of the date of such application; and

(i) Such additional information as may be necessary or appropriate in order to enable the Registrar of Corporations to determine and assess any unpaid fees payable by such foreign corporation as prescribed in this chapter.

(2) The application for withdrawal shall be made on forms prescribed and furnished by the Registrar of Corporations 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.

Source: S.L. No. 3L-92-95 §118, 4/18/95

§1-219. Filing of application for withdrawal. —

(1) Duplicate originals of such application for withdrawal shall be delivered to the Registrar of Corporations. If the Registrar of Corporations finds that such application conforms to this chapter, he shall, when all fees have been paid as prescribed in this chapter:

(a) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(b) File one of such duplicate originals in his office; and

(c) Issue a certificate of withdrawal to which he shall affix the other duplicate original.

(2) The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the Registrar of Corporations, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this state shall cease.

Source: S.L. No. 3L-92-95 §119, 4/18/95

§1-220. Revocation of certificate of authority. —

(1) The certificate of authority of a foreign corporation to transact business in this state may be revoked by the Registrar of Corporations upon the conditions prescribed in this section when:

(a) The corporation has failed to file its annual report within the time required by this chapter, or has failed to pay any fees or penalties prescribed by this chapter when they have become due and payable; or

(b) The corporation has failed to appoint and maintain a registered agent in this state as required by this chapter; or

(c) The corporation has failed, after change of its registered office or registered agent, to file in the office of the Registrar of Corporations a statement of such change as required by this chapter; or

(d) The corporation has failed to file in the office of the Registrar of Corporations any amendment to its articles of incorporation or any articles of merger within the time prescribed by this chapter; or

(e) A misrepresentation has been made of any material matter in any application, report, affidavit or other document submitted by such corporation pursuant to this chapter.

(2) No certificate of authority of a foreign corporation shall be revoked by the Registrar of Corporations unless:

(a) He shall have given the corporation not less than 60 days' notice thereof by mail addressed to its registered office in this state; and

(b) The corporation shall fail prior to revocation to file such annual report, or pay such fees or penalties, or file the required statement of change of registered agent or registered office, or file such articles of amendment or articles of merger, or correct such misrepresentation.

Source: S.L. No. 3L-92-95 §120, 4/18/95

§1-221. Issuance of certificate of revocation. —

(1) Upon revoking any such certificate of authority, the Registrar of Corporations shall:

(a) Issue a certificate of revocation in duplicate;

(b) File one of such certificates in his office; and

(c) Mail to such corporation at its registered office in this state a notice of such revocation accompanied by one of such certificates.

(2) Upon the issuance of such certificate of revocation, the authority of the corporation to transact business in this state shall cease.

Source: S.L. No. 3L-92-95 §121, 4/18/95

§1-222. Application to corporation heretofore authorized to transact business in this state. — Foreign corporations which are duly authorized to transact business in this state at the time this chapter takes effect, for a purpose or purposes for which a corporation might secure such authority under this chapter, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under this chapter, and from the time this chapter takes effect such

corporations shall be subject to all the limitations, restrictions, and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this state under this chapter.

Source: S.L. No. 3L-92-95 §122, 4/18/95

§1-223. Transacting business without certificate of authority. —

(1) No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state, until such corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

(2) The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state.

(3) A foreign corporation which transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees which would have been imposed by this chapter upon such corporation had it duly applied for and received a certificate of authority to transact business in this state as required by this chapter and thereafter filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay such fees. The Attorney General shall bring proceedings to recover all amounts due this state under this section.

Source: S.L. No. 3L-92-95 §123, 4/18/95

§1-224. Annual report of domestic and foreign corporations. —

(1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall file, within the time prescribed by this chapter, an annual report setting forth:

(a) The name of the corporation and the state or country under the laws of which it is incorporated;

(b) The address of the registered office of the corporation in this state, and the name of its registered agent in this state at such address, and, in case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated;

(c) A brief statement of the character of the business in which the corporation is actually engaged in this state;

(d) The names and respective addresses of the directors and officers of the corporation;

(e) A statement of the aggregate number of shares that the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(f) A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(g) A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in this chapter; and

(h) A statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within this state, and a statement, expressed in dollars, of the gross amount of business transacted by the corporation for the 12 months ending on December 31 preceding the date herein provided for the filing of such report and the gross amount thereof transacted by the corporation at or from places of business in this state. If, on December 31 preceding the time herein provided for the filing of such report, the corporation had not been in existence for a period of 12 months, or in the case of a foreign corporation, had not been authorized to transact business in

this state for a period of 12 months, the statement with respect to business transacted shall be furnished for the period between the date of incorporation or the date of its authorization to transact business in this state, as the case may be, and such December 31.

(2) Such annual report shall be made on forms prescribed and furnished by the Registrar of Corporations, and the information contained therein shall be given as of the date of the execution of the report, except as to the information required by Paragraph (h) of Subsection (1) of this section, which shall be given as of the close of business on December 31 next preceding the date herein provided for the filing of such report. It shall be executed by the corporation by its president, a vice president, secretary, an assistant secretary or treasurer, and verified by the officer executing the report, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation and verified by such receiver or trustee.

Source: S.L. No. 3L-92-95 §124, 4/18/95

§1-225. Filing of annual report of domestic and foreign corporations. — Such annual report of a domestic or foreign corporation shall be delivered to the Registrar of Corporations between January 1 and March 1 each year, except that the first annual report of a domestic or foreign corporation shall be filed between January 1 and March 1 of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the Registrar of Corporations. Proof to the satisfaction of the Registrar of Corporations that prior to March 1 such report was deposited in the Federated States of Micronesia mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the Registrar of Corporations finds that such report conforms to the requirements of this chapter, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time herein provided shall not apply, if such report is corrected to conform to the requirements of this chapter and returned to the Registrar of Corporations within 30 days from the date on which it was mailed to the corporation by the Registrar of Corporations.

Source: S.L. No. 3L-92-95 §125, 4/18/95

§1-226. Fees and charges to be collected by Registrar of Corporations. — The Registrar of Corporations shall charge and collect in accordance with this chapter:

(1) Fees for filing documents and issuing certificates;

(2) Miscellaneous charges; and

(3) License fees.

Source: S.L. No. 3L-92-95 §126, 4/18/95

§1-227. Fees for filing documents and issuing certificates. — The Registrar of Corporations shall charge and collect for:

(1) Filing articles of incorporation and issuing a certificate of incorporation – $50.

(2) Filing articles of amendment and issuing a certificate of amendment – $15.

(3) Filing restated articles of incorporation – $50.

(4) Filing articles of merger or consolidation and issuing a certificate of merger or consolidation – $50.

(5) Filing an application to reserve a corporate name – $20.

(6) Filing a notice of transfer of a reserved corporate name – $20.

(7) Filing a statement of change of address of registered office or change of registered agent, or both – $10.

(8) Filing a statement of the establishment of a series of shares – $20.

(9) Filing a statement of cancellation of shares – $10.

(10) Filing a statement of reduction of stated capital – $10.

(11) Filing a statement of intent to dissolve – $20.

(12) Filing a statement of revocation of voluntary dissolution proceedings – $10.

(13) Filing articles of dissolution – $20.

(14) Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority – $50.

(15) Filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority – $25.

(16) Filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this state – $15.

(17) Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state – $50.

(18) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal – $70.

(19) Filing any other statement or report, except an annual report, of a domestic or foreign corporation – $10.

Source: S.L. No. 3L-92-95 §127, 4/18/95

§1-228. Miscellaneous charges. — The Registrar of Corporations shall charge and collect:

(1) For furnishing a certified copy of any document, instrument or paper relating to a corporation, twenty cents per page and $5 for the certificate and affixing the seal thereto.

(2) At the time of any service of process on him as resident agent of a corporation $5, which amount may be recovered as costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

Source: S.L. No. 3L-92-95 §128, 4/18/95

§1-229. License fees payable by domestic corporations. —

(1) The Registrar of Corporations shall charge and collect from each domestic corporation license fees, based upon the number of shares which it will have authority to issue or the increase in the number of shares which it will have authority to issue, at the time of:

(a) Filing articles of incorporation;

(b) Filing articles of amendment increasing the number of authorized shares; and

(c) Filing articles of merger or consolidation increasing the number of authorized shares which the surviving or new corporation, if a domestic corporation, will have the authority to issue above the aggregate number of shares which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this state had authority to issue.

(2) The license fees shall be at the rate of ten cents per share up to and including the first 10,000 authorized shares, 15 cents per share for each authorized share in excess of 10,000 shares up to and including 100,000 shares, and 20 cents per share for each authorized share in excess of 100,000 shares, whether the shares are of par value or without par value.

(3) The license fees payable on an increase in the number of authorized shares shall be imposed only on the increased number of shares, and the number of previously authorized shares shall be taken into account in determining the rate applicable to the increased number of authorized shares.

Source: S.L. No. 3L-92-95 §129, 4/18/95

§1-230. License fees payable by foreign corporations. —

(1) The Registrar of Corporations shall charge and collect from each foreign corporation license fees, based upon the proportion represented in this state of the number of shares which it has authority to issue or the increase in the number of shares which it has authority to issue, at the time of:

(a) Filing an application for a certificate of authority to transact business in this state;

(b) Filing articles of amendment which increased the number of authorized shares; and

(c) Filing articles of merger or consolidation which increased the number of authorized shares which the surviving or new corporation, if a foreign corporation, has authority to issue above the aggregate number of shares which the constituent domestic corporations and constituent foreign corporation authorized to transact business in this state had authority to issue.

(2) The license fees shall be at the rate of 15 cents per share up to and including the first 10,000 authorized shares represented in this state, 20 cents per share for each authorized share in excess of 10,000 shares up to and including 100,000 shares represented in this state, and 30 cents per share for each authorized share in excess of 100,000 shares represented in this state, whether the shares are of par value or without par value.

(3) The license fees payable on an increase in the number of authorized shares shall be imposed only on the increased number of such shares represented in this state, and the number of previously authorized shares represented in this state shall be taken into account in determining the rate applicable to the increased number of authorized shares.

(4) The number of authorized shares represented in this state shall be that proportion of its total authorized shares which the sum of the value of its property located in this state and the gross amount of business transacted by it at or from places of business in this state bears to the sum of the value of all of its property, wherever located, and the gross amount of its business, wherever transacted. Such proportion shall be determined from information contained in the application for a certificate of authority to transact business in this state until the filing of an annual report and thereafter from information contained in the latest annual report filed by the corporation.

Source: S.L. No. 3L-92-95 §130, 4/18/95

§1-231. Penalties imposed upon corporations. —

(1) Each corporation, domestic or foreign, that fails or refuses to file its annual report for any year within the time prescribed by this chapter shall be subject to a forfeiture of an amount to be determined by the Registrar of Corporations not exceeding $100 for every such violation, neglect or failure, to be recovered by action brought in the name of Pohnpei by the Attorney General. A continuance of a failure to file the required report shall be a separate offense for each 30 days of the continuance. The Registrar of Corporations may, for good cause shown, waive the penalty imposed by this section.

(2) Each corporation, domestic or foreign, that fails or refuses to answer truthfully and fully within the time prescribed by this chapter interrogatories propounded by the Registrar of Corporations in accordance with this chapter, shall be deemed to be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding $500.

Source: S.L. No. 3L-92-95 §131, 4/18/95

§1-232. Penalties imposed upon officers and directors. — Each officer and director of a corporation, domestic or foreign, who fails or refuses within the time prescribed by this chapter to answer truthfully and fully interrogatories propounded to him by the Registrar of Corporations in accordance with this chapter, or who signs any articles, statement, report, application or other document filed with the Registrar of Corporations which is known to such officer or director to be false in any material respect, shall be deemed to be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding $500.

Source: S.L. No. 3L-92-95 §132, 4/18/95

§1-233. Interrogatories by Registrar of Corporations. — The Registrar of Corporations may propound to any corporation, domestic or foreign, subject to this chapter, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation has complied with this chapter applicable to such corporation. Such interrogatories shall be answered within 30 days after the mailing thereof, or within such additional time as shall be fixed by the Registrar of Corporations, and the answers thereto shall be full and

complete and shall be made in writing and under oath. If such interrogatories be directed to an individual they shall be answered by the president, vice president, secretary or assistant secretary thereof. The Registrar of Corporations need not file any document to which such interrogatories relate until such interrogatories be answered as herein provided, and not then if the answers thereto disclose that such document is not in conformity with this chapter. The Registrar of Corporations shall certify to the Attorney General, for such action as the Attorney General may deem appropriate, all interrogatories and answers thereto which disclose a violation of this chapter.

Source: S.L. No. 3L-92-95 §133, 4/18/95

§1-234. Information disclosed by interrogatories. — Interrogatories propounded by the Registrar of Corporations and the answers thereto shall not be open to public inspection nor shall the Registrar of Corporations disclose any facts or information obtained therefrom except insofar as his official duty may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action by this state.

Source: S.L. No. 3L-92-95 §134, 4/18/95

§1-235. Powers of Registrar of Corporations. — The Registrar of Corporations shall have the power and authority reasonably necessary to enable him to administer this chapter efficiently and to perform the duties herein imposed upon him.

Source: S.L. No. 3L-92-95 §135, 4/18/95

§1-236. Appeal from Registrar of Corporations. —

(1) If the Registrar of Corporations shall fail to approve any articles of incorporation, amendment, merger, consolidation or dissolution, or any other document required by this chapter to be approved by the Registrar of Corporations before the same shall be filed in his office, he shall, within ten days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From such disapproval such person or corporation may appeal to the Pohnpei Supreme Court by filing with the clerk of the court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the Registrar of Corporations; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Registrar of Corporations or direct him to take such action as the court may deem proper.

(2) If the Registrar of Corporations shall revoke the certificate of authority to transact business in this state of any foreign corporation pursuant to this chapter, such foreign corporation may likewise appeal to the Pohnpei Supreme Court by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in this state and a copy of the notice of revocation given by the Registrar of Corporations; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Registrar of Corporations or direct him to take such action as the court may deem proper. Appeals from all final orders and judgments entered by the Pohnpei Supreme Court under this section in review of any ruling or decision of the Registrar of Corporations may be taken as in other civil actions.

Source: S.L. No. 3L-92-95 §136, 4/18/95

§1-237. Certificates and certified copies to be received in evidence. — All certificates issued by the Registrar of Corporations in accordance with this chapter, and all copies of documents filed in his office in accordance with this chapter when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the Registrar of Corporations under the great seal of this state, as to the existence or nonexistence of the facts relating to corporations shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

Source: S.L. No. 3L-92-95 §137, 4/18/95

§1-238. Forms to be furnished by Registrar of Corporations. — All reports required by this chapter to be filed in the office of the Registrar of Corporations shall be made on forms that shall be prescribed and furnished by the Registrar of Corporations. Forms for all other documents to be filed in the office of the Registrar of Corporations shall be furnished by the Registrar of Corporations on request therefor, but the use thereof, unless otherwise specifically prescribed in this chapter, shall not be mandatory.

Source: S.L. No. 3L-92-95 §138, 4/18/95

§1-239. Greater voting requirements. — Whenever, with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than required by this chapter with respect to such action, the articles of incorporation shall control.

Source: S.L. No. 3L-92-95 §139, 4/18/95

§1-240. Waiver of notice. — Whenever any notice is required to be given to any shareholder or director of a corporation under this chapter or under 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.

Source: S.L. No. 3L-92-95 §140, 4/18/95

§1-241. Action by shareholders without a meeting. — Any action required by this chapter to be taken at a meeting of the 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, shall be 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 of shareholders, and may be stated as such in any articles or document filed with the Registrar of Corporations under this chapter.

Source: S.L. No. 3L-92-95 §141, 4/18/95

§1-242. Unauthorized assumption of corporate powers. — All persons who assume to act as a corporation without authority to do so shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

Source: S.L. No. 3L-92-95 §142, 4/18/95

§1-243. Application to existing corporations. — This chapter shall apply to all existing corporations organized under any general act providing for the organization of corporations for a purpose or purposes for which a corporation might be organized under this chapter, where the power has been reserved to amend, repeal or modify the act under which such corporation was organized and where such act is repealed by this chapter.

Source: S.L. No. 3L-92-95 §143, 4/18/95

§1-244. Application to foreign and interstate commerce. — This chapter shall apply to commerce with foreign nations and among the several states only insofar as the same may be permitted under the Constitution of the Federated States of Micronesia.

Source: S.L. No. 3L-92-95 §144, 4/18/95

§1-245. Reservation of power. — The Legislature shall at all times have the power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to this chapter, and the Legislature shall have the power to amend, repeal or modify this chapter at pleasure.

Source: S.L. No. 3L-92-95 §145, 4/18/95

§1-246. Effect of supersession of prior acts. — The supersession of a prior act by this chapter shall not affect any right accrued or established, or any liability or penalty incurred, under such act, prior to the repeal thereof.

Source: S.L. No. 3L-92-95 §146, 4/18/95

Notes: 1. S.L. No. 3L-92-95 §147 severability provision has been omitted; *see* 1 PC 1-110.

2. S.L. No. 3L-92-95 §148 repealing provision has been omitted.

CHAPTER 2
PARTNERSHIPS

Section

§2-101. Short title. — This chapter is known and may be cited as the "Partnership Act of 1994."
Source: S.L. No. 3L-111-95 §1-1, 11/24/95

§2-102. Definitions. — As used in this chapter, unless the context clearly requires otherwise:
(1) "Bankrupt" includes bankrupt or insolvent under national or state law.
(2) "Business" includes every trade, occupation or profession.
(3) "Conveyance" includes every assignment, lease, mortgage or encumbrance.
(4) "Court" includes every court and judge having jurisdiction in the case.
(5) "Person" includes individuals, partnerships, corporations, and other associations.
(6) "Real property" includes land and any interest or estate in land.
Source: S.L. No. 3L-111-95 §1-2, 11/24/95

§2-103. Interpretation of "knowledge" and "notice". —
(1) 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 actual knowledge of such other facts as in the circumstances shows bad faith.

(2) 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.

Source: S.L. No. 3L-111-95 §1-3, 11/24/95

§2-104. Rules of construction. —

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

(2) The law of estoppel shall apply under this chapter.

(3) The law of agency shall apply under this chapter.

(4) This chapter shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states within the Federated States of Micronesia which enact it; PROVIDED that due regard shall be given to the particular customs and traditions of this state.

(5) This chapter shall not be construed so as to impair the obligations of any contract existing when the chapter goes into effect, nor affect any action or proceedings begun or right accrued before this chapter takes effect.

(6) A partnership in which there is foreign interest, in addition to this chapter, shall be subject to the state foreign investment laws to the extent they are applicable.

Source: S.L. No. 3L-111-95 §1-4, 11/24/95

§2-105. 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.

Source: S.L. No. 3L-111-95 §1-5, 11/24/95

§2-106. "Partnership" defined. —

(1) A partnership is an association of two or more persons to carry on as co-owners of business for profit.

(2) Any association formed under any other statute of this state, or any statute adopted by authority, other than the authority of this state, is not a partnership under this chapter, unless such association would have been a partnership in this state prior to the adoption of this chapter.

(3) This chapter shall apply to limited partnerships except insofar as the statutes relating to such partnerships are inconsistent herewith.

Source: S.L. No. 3L-111-95 §2-1, 11/24/95

§2-107. Rules for determining the existence of a partnership. — In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by §2-116, persons who are not partners as to each other are not partners as to third persons.

(2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by use of the property.

(3) 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.

(4) 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:

(a) As a debt by installments or otherwise;

(b) As wages of an employee or rent to a landlord;

(c) As an annuity to a widow or representative of a deceased partner;

(d) As interest on a loan, though the amount of payment may vary with the profits of the business; or

(e) As the consideration for the sale of the good will of a business or the property by installments or otherwise.

Source: S.L. No. 3L-111-95 §2-2, 11/24/95

§2-108. Partnership property. —

(1) All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property.

(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

(4) 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.

Source: S.L. No. 3L-111-95 §2-3, 11/24/95

§2-109. Partner, agent of partnership as to partnership business. —

(1) 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 the 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) An act of a partner that is not apparently 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) Unless authorized by other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

(a) Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership;

(b) Dispose of the good will of the business;

(c) Do any other act that would make it impossible to carry on the ordinary business of a partnership;

(d) Confess a judgment; and

(e) Submit a partnership claim or liability to arbitration or reference.

(4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction.

Source: S.L. No. 3L-111-95 §3-1, 11/24/95

§2-110. Conveyance of real property of the partnership. —

(1) 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 §2-109(1), 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) 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 with the authority of the partner under §2-109(1).

(3) Where title to real property is in the name of one or more but not all the partners, and the record does not disclose the right 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 §2-109(1), unless the purchaser or his assignee is a holder for value without knowledge.

(4) Where title to real property is in the name of one or more or all 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 §2-109(1).

(5) Where title to real property is in the names of all the partners, a conveyance executed by all the partners passes all their rights in such property.

Source: S.L. No. 3L-111-95 §3-2, 11/24/95

§2-111. 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.

Source: S.L. No. 3L-111-95 §3-3, 11/24/95

§2-112. Partnership charged with knowledge of or notice to partner. — Notice to any partner of any matter relating to partnership affairs and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and 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.

Source: S.L. No. 3L-111-95 §3-4, 11/24/95

§2-113. 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 co-partners, loss or injury is caused to any person, not being 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 omitting to act.

Source: S.L. No. 3L-111-95 §3-5, 11/24/95

§2-114. Partnership bound by partner's breach of trust. — The partnership is bound to make good the loss:

(1) Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

(2) 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.

Source: S.L. No. 3L-111-95 §3-6, 11/24/95

§2-115. Nature of partner's liability. — All partners are liable:

(1) Jointly and severally for everything chargeable to the partnership under §§2-113 and 2-114; and

(2) Jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract.

Source: S.L. No. 3L-111-95 §3-7, 11/24/95

§2-116. Partner by estoppel. —

(1) When a person, by words spoken or written, or by conduct, represents himself, or consents to another representing him to anyone as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made, who

has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made.

(a) When a partnership liability results, he is liable as though he were an actual member of the partnership.

(b) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

(2) 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.

Source: S.L. No. 3L-111-95 §3-8, 11/24/95

§2-117. 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 this liability shall be satisfied only out of partnership property.

Source: S.L. No. 3L-111-95 §3-9, 11/24/95

§2-118. Determining rights and duties of partners. — The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(1) 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 the 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.

(2) 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.

(3) A partner who, in the aid of the partnership, makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of the payment or advance.

(4) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.

(5) All partners have equal rights in the management and conduct of the partnership business.

(6) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

(7) No person can become a member of a partnership without the consent of all the partners.

(8) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

Source: S.L. No. 3L-111-95 §4-1, 11/24/95

§2-119. 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.

Source: S.L. No. 3L-111-95 §4-2, 11/24/95

§2-120. Duty of partners to render information. — Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability.

Source: S.L. No. 3L-111-95 §4-3, 11/24/95

§2-121. Partner accountable as a fiduciary. —

(1) 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 by him of its property.

(2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

Source: S.L. No. 3L-111-95 §4-4, 11/24/95

§2-122. Right to an account. — Any partner shall have the right to a formal account as to partnership affairs:

(1) If he is wrongfully excluded from the partnership business or possession of its property by his co-partners;

(2) If the right exists under the terms of any agreement;

(3) As provided by §2-121; and

(4) Whenever other circumstances render it just and reasonable.

Source: S.L. No. 3L-111-95 §4-5, 11/24/95

§2-123. Continuation of partnership beyond fixed term. —

(1) 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) 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.

Source: S.L. No. 3L-111-95 §4-6, 11/24/95

§2-124. Extent of property rights of a partner. — The property rights of a partner are:

(1) His rights in specific partnership property;

(2) His interest in the partnership; and

(3) His right to participate in the management.

Source: S.L. No. 3L-111-95 §5-1, 11/24/95

§2-125. Nature of a partner's right in specific partnership property. —

(1) A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

(a) A partner, subject to 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 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 the homestead or exemption laws.

(d) On the death of a partner, his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative 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.

Source: S.L. No. 3L-111-95 §5-2, 11/24/95

§2-126. Nature of partner's interest in the partnership. — A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property.

Source: S.L. No. 3L-111-95 §5-3, 11/24/95

§2-127. Assignment of partner's interest. —

(1) 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 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 conduct the profits to which the assigning partner would otherwise be entitled.

(2) In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest and may require an account from the date only of the last account agreed to by all the partners.

Source: S.L. No. 3L-111-95 §5-4, 11/24/95

§2-128. Partner's interest subject to charging order. —

(1) 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 his 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) The interest 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 partners whose interests are not so charged or sold.

(3) Nothing in this chapter shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership.

Source: S.L. No. 3L-111-95 §5-5, 11/24/95

§2-129. "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.

Source: S.L. No. 3L-111-95 §6-1, 11/24/95

§2-130. Partnership not terminated by dissolution. — On dissolution, the partnership is not terminated, but continues until the winding up of partnership affairs is completed.

Source: S.L. No. 3L-111-95 §6-2, 11/24/95

§2-131. Causes of dissolution. — Dissolution is caused:

(1) Without violation of the agreement between the partners:

(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 bona fide business in accordance with such a power conferred by the agreement between the partners;

(2) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time;

(3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;

(4) By the death of any partner;

(5) By the bankruptcy of any partner or the partnership; or

(6) By decree of court under §2-132.

Source: S.L. No. 3L-111-95 §6-3, 11/24/95

§2-132. Dissolution by court decree. —

(1) On application by or for a partner, the court shall decree dissolution whenever:

(a) A partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind;

(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 affect prejudicially the carrying on of the business;

(d) A partner willfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in the partnership with him;

(e) The business of the partnership can only be carried on at a loss; or

(f) Other circumstances render dissolution equitable.

(2) On the application of the purchaser of a partner's interest under §2-127 or §2-128, the court shall decree dissolution:

(a) After the termination of the specified term or particular undertaking; or

(b) At any time, if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

Source: S.L. No. 3L-111-95 §6-4, 11/24/95

§2-133. 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:

(1) With respect to the partners:

(a) When the dissolution is not by the act, bankruptcy or death of a partner; or

(b) When dissolution is by such act, bankruptcy or death of a partner, in cases where §2-134 so requires.

(2) With respect to persons not partners, as declared in §2-135.

Source: S.L. No. 3L-111-95 §6-5, 11/24/95

§2-134. Right of partner to contribution from co-partners after dissolution. — Where dissolution is caused by the act, death or bankruptcy of a partner, each partner is liable to his co-partners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless:

(1) The dissolution being by act of any partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

(2) The dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

Source: S.L. No. 3L-111-95 §6-6, 11/24/95

§2-135. Power of partner to bind partnership to third persons after dissolution. —

(1) After dissolution, a partner can bind the partnership, except as provided in Subsection (3) of this section:

(a) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution; or

(b) By any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction, though he had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place (or in each place if more than one) at which the partnership business was regularly carried on.

(2) The liability of a partner under Subsection (1)(b) of this section 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) 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 partner has become bankrupt; or

(c) Where the partner has no authority to wind up partnership affairs, except by a transaction with one whom:

(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, has not been advertised in the manner provided for advertising the fact of dissolution in Subsection (1)(b) of this section.

(4) Nothing in this section shall affect the liability under §2-116 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.

Source: S.L. No. 3L-111-95 §6-7, 11/24/95

§2-136. Effect of dissolution on partner's existing liability. —

(1) The dissolution of the partnership does not of itself discharge the existing liability of any partner.

(2) 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; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(3) 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) The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but subject to the prior payment of his separate debts.

Source: S.L. No. 3L-111-95 §6-8, 11/24/95

§2-137. 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 winding up by the court.

Source: S.L. No. 3L-111-95 §6-9, 11/24/95

§2-138. Rights of partners to application of partnership property. —

(1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his co-partners 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 §2-136(2), he shall receive in cash only the net amount due him from the partnership.

(2) 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 wrongly shall have:

(i) All the rights specified in Subsection (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 Subsection (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 Subsection (2)(b) of this section, all the rights of a partner under Subsection (1) of this section subject to Subsection (2)(a)(ii) of this section;

(ii) If the business is continued under Subsection (2)(b) of this section, the right against his co-partners 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 co-partners 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 liabilities of the partnership; PROVIDED, HOWEVER, that in ascertaining the value of the partner's interest, the value of the goodwill of the business shall not be considered.

Source: S.L. No. 3L-111-95 §6-10, 11/24/95

§2-139. Rights where partnership is dissolved for fraud or misrepresentation. — Where a partnership contract is rescinded on the grounds of fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled:

(1) To a lien on, or a right of retention of, the surplus of 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;

(2) 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

(3) To be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership.

Source: S.L. No. 3L-111-95 §6-11, 11/24/95

§2-140. Rules for distribution. — In settling accounts between the partners after dissolution, the following rules shall be observed subject to any agreement to the contrary:

(1) The assets of the partnership are:

(a) The partnership property; and

(b) The contributions of the partners necessary for the payment of all the liabilities specified in Subsection (2) of this section.

(2) The liabilities of the partnership shall rank in order of payment, as follows:

(a) Those owing to creditors other than partners;

(b) Those owing to partners other than for capital and profits;

(c) Those owing to partners in respect to capital; and

(d) Those owing to partners in respect of profits.

(3) The assets shall be applied in order of their declaration in Subsection (1) of this section to the satisfaction of the liabilities.

(4) The partners shall contribute, as provided by §2-118(1), 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.

(5) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in Subsection (4) of this section.

(6) Any partner or his legal representative shall have the right to enforce the contributions specified in Subsection (4) of this section, to the extent of the amount that he has paid in excess of his share of the liability.

(7) The individual property of a deceased partner shall be liable for the contributions specified in Subsection (4) of this section.

(8) When partnership property and the individual properties of the partners are in possession of a court order for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore.

(9) Where a partner has become bankrupt or his estate is insolvent, the claims against his separate property shall rank in the following order:

(a) Those owing to separate creditors;

(b) Those owing to partnership creditors; and

(c) Those owing to partnership by way of contribution.

Source: S.L. No. 3L-111-95 §6-12, 11/24/95

§2-141. Liability of persons continuing the business in certain cases. —

(1) 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 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) 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) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in Subsections (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) 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) When any partner wrongfully causes a dissolution and the remaining partners continue the business under §2-138(2)(b), either alone or with others, and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(6) When a partner is expelled and the remaining 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) 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) 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 partner or representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased 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) Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

(10) 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 deceased partner liable for any debts contracted by such person or partnership.

Source: S.L. No. 3L-111-95 §6-13, 11/24/95

§2-142. Rights of retiring partner or estate of deceased partner. — When any partner retires or dies, and the business is continued under any of the conditions set forth in Subsections (1) to (3), (5), and (6) of §2-141 or §2-138(2)(b) without any settlement of account 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 person 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 §2-141(8).

Source: S.L. No. 3L-111-95 §6-14, 11/24/95

§2-143. 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 dissolution, in the absence of any agreement to the contrary.

Source: S.L. No. 3L-111-95 §6-15, 11/24/95

CHAPTERS 3 – 6
[RESERVED]

CHAPTER 7
FOREIGN INVESTMENT

Section

§7-101. Short title. — This chapter is known and may be cited as the "Pohnpei Foreign Investment Act of 2011".

Source: S.L. No. 7L-83-11 §2, 3/18/11

§7-102. Definitions. — For the purposes of this chapter, unless it is otherwise provided or the context requires a different construction, application or meaning:

(1) "Engaging in business" means carrying out any activity relating to the conduct of a business, and shall include the activities enumerated in Subsection (1)(a) of this section but shall not include the activities enumerated in Subsection (1)(b) of this section:

(a) "Engaging in business" shall include:

(i) Buying, selling, leasing or exchanging goods, products or property of any kind for commercial purposes;

(ii) Buying, selling or exchanging services of any kind for commercial purposes;

(iii) Conducting negotiations for transactions of the types described in Subparagraphs (i) and (ii) of this paragraph; PROVIDED, HOWEVER, that conducting such negotiations within this jurisdiction for periods of less than 14 days per calendar year shall not be considered "engaging in business";

(iv) Appointing a representative, agent or distributor by a noncitizen to perform any of the acts described in Subparagraphs (i) through (iii) of this paragraph, unless said representative, agent or distributor has an independent status and transacts business in its name for its own account and not in the name of or for the account of any noncitizen principal;

(v) Maintaining a stock of goods for the purpose of having the same processed by another person;

(vi) Establishing or operating a factory, workshop, processing plant, warehouse or store, whether wholesale or retail;

(vii) Mining or exploring for minerals, or the commercial exploitation or extraction of other natural resources;

(viii) Providing services as a management firm or professional consultant in the management, supervision or control of any business entity;

(ix) Providing professional services as defined by this chapter which are offered for a fee; PROVIDED, HOWEVER, that such a professional shall not be considered to be "engaging in business" unless he or she, while present in this jurisdiction, performs his or her respective professional services for more than 30 days in any calendar year; and

(b) "Engaging in business" does not include:

(i) The publication of general advertisements through newspapers, brochures, and other publications, or through radio, television or the internet;

(ii) The conducting of scientific research or investigation, if:

(aa) The research or investigation is sponsored by a university, college, agency or institution normally engaged in such activities primarily for purposes other than commercial profit; and

(bb) The particular research or investigation at issue is not for purposes of, or expected to yield, commercial profit;

(iii) The collection of information by a bona fide journalist for news publication or broadcast; and

(iv) The lawful sale of corporate shares or other interest or holdings in a business entity acquired not for speculation or profit.

(2) "Foreign investment" means any activity in the state by a noncitizen that amounts to "engaging in business" as defined in Subsection (1) of this section.

(3) "Manufacturing" means engaging at any stage in the production of goods by hand or by machine. For purposes of this chapter, manufacturing includes the assemblage and packaging of partially assembled goods, and the processing and/or packaging of marine and agriculture products for sale at wholesale or retail.

(4) "Noncitizen" means:

(a) Any person who is not a citizen of the Federated States of Micronesia;

(b) Any sole proprietorship, partnership, company, corporation, joint venture or association in which any interest is owned by a person who is not a citizen of the Federated States of Micronesia; or

(c) Any sole proprietorship, partnership, company, corporation, joint venture or association that will disburse to a noncitizen through a profit-sharing arrangement more than ten percent (10%) of its annual net profit.

(5) "Omnibus development statute" within the context of this chapter, means a statute enacted by the Pohnpei Legislature, which statute prescribes the terms and incentives for the establishment and operation of one or more businesses in a specialized, priority development project for the state and which statute, upon acceptance thereof by a noncitizen developer or owner of such business or businesses, shall establish a specialized regulatory regime for said project and correspondingly exempt said noncitizens and their respective business activities within the project that are specifically listed in the omnibus development statute from the requirements of this chapter and one or more other statutory or regulatory requirements of this state for the period or periods prescribed in the omnibus development statute.

(6) "Professional services" means engaging in occupational services of a medical practitioner, dentist, lawyer, certified public accountant, architect, engineer or similar category of occupational service found by the Registrar of Corporations to require advanced professional training.

(7) "Registrar of Corporations" means the Pohnpei Registrar of Corporations as specified in Chapter 1 of Title 37 of the Code.

(8) "Retail trade" means engaging in the activity of selling merchandise directly to consumers situated within the state of Pohnpei; PROVIDED that, solely for purposes of this chapter, a manufacturing business which is authorized to do business within this state shall not be deemed to be

engaged in a retail trade for the sale at its factory outlet directly to consumers of products wholly manufactured within the state by that business or with at least fifty percent (50%) value added by the manufacturing processes of that business within the state.

(9) "Service industry" means that category of business which derives its principal economic benefit from the work performed by those engaged or associated with the business, notwithstanding that some part of the economic benefit is gained from the sale of a commodity associated with the performance or delivery of the service. The category of service industry is distinguished from the category of manufacturing in that in the manufacturing category, the principal economic benefit is derived from the sale of the completed product rather than the service performed. The term "service industry" includes, but is not limited to, such businesses as rental of apartments, office space or other commercial properties, beauty parlors, barber shops, tailor shops, restaurants, machine shops, marine repair facilities, and vehicle repair shops, but, solely for the purposes of this chapter, the term "service industry" does not include professional services or tourist services as defined by this section. The Registrar of Corporations shall maintain a comprehensive list of businesses which fall under the category of service industry. In the event that a prospective business does not appear directly on the list, an applicant may request and shall receive from the Registrar of Corporations a prompt response whether the prospective business is within the category of service industry.

(10) "Tourist services" means the operation of hotels, visitors' lodges, golf courses, marinas or other recreational facilities found by the Registrar of Corporations to principally serve the visitor industry.

(11) "Wholesale trade" solely for purposes of this chapter means engaging in the activity of selling merchandise to other merchants who intend to resell a substantial amount of the merchandise so acquired to consumers situated within the state of Pohnpei.

Source: S.L. No. 7L-83-11 §2, 3/18/11

§7-103. Permit required. — Prior to engaging in any business in Pohnpei, a foreign investment permit must first be obtained by the following:

(1) Noncitizen sole proprietorships;
(2) Noncitizen corporations;
(3) Noncitizen partnerships;
(4) Noncitizen joint ventures; and
(5) Any other noncitizen business association.

Source: S.L. No. 7L-83-11 §2, 3/18/11

§7-104. Powers and duties of the Registrar of Corporations. —

(1) For the purposes of this chapter, and without limitation on the scope or responsibilities vested in his Office by other laws of Pohnpei, the powers and duties of the Registrar of Corporations shall be as follows:

(a) To receive applications for foreign investment permits under this chapter, obtain opinions and recommendations from officers of the Pohnpei Government and other interested groups and leaders concerning these applications, make studies, investigations, and inquiries relevant to the applications, evaluate the applications according to the standards of this chapter and decide which applicants shall be granted foreign investment permits; and

(b) To ensure compliance of all noncitizens doing business in Pohnpei with this chapter and all rules, regulations, and foreign investment permits issued pursuant to this chapter, including the performance of investigatory functions as appropriate thereto and may, upon a sworn affidavit from any person or a determination on his own initiative that there is reason to believe that any provision of this chapter or any regulation issued pursuant hereto has been violated, investigate such alleged violation, and, in cooperation with the Office of the Attorney General, enforce this chapter and rules and regulations issued hereunder. In connection with

any hearings or investigations required by this chapter or rules or regulations issued hereunder, the Registrar of Corporations may subpoena witnesses, records, books and documents.

(2) The Registrar of Corporations shall administer this chapter under rules and regulations promulgated by the Registrar of Corporations, which, with the approval of the Governor, shall have the force and effect of law, and shall be issued as provided by the Administrative Procedures Act, Title 8 Chapter 1 of this Code.

Source: S.L. No. 7L-83-11 §2, 3/18/11

§7-105. Establishment of the DRP-FIP. —

(1) There is hereby established within the executive branch of the Pohnpei Government the Discretionary Review Panel on Foreign Investment Permits, hereinafter referred to as the DRP-FIP, for purposes of oversight, assurance and guidance as to the activities of the Registrar of Corporations in the discretionary performance of his duties pursuant to the provisions of this chapter.

(2) The DRP-FIP shall be composed of seven members consisting of:

(a) Two representatives of the business community appointed by the Governor with the advice and consent of the Legislature for a term consecutive with that of the Governor;

(b) Two representatives of the consumers of Pohnpei appointed by the Governor with the advice and consent of the Legislature for a term consecutive with that of the Governor;

(c) The Director of the Department of Land and Natural Resources;

(d) The Administrator of the Office of Transportation and Infrastructure; and

(e) The Administrator of the Office of Economic Affairs; PROVIDED that when the DRP-FIP is considering discretionary permits with respect to commercial fisheries or aquaculture, the Administrator of the Office of Fisheries and Aquaculture shall replace the Administrator of the Office of Economic Affairs on the panel.

(3) A member of the DRP-FIP representing the business community or the Pohnpei consumers may be removed from the DRP-FIP by the Governor solely for cause but only after written charges are served on the affected DRP-FIP member and he is given the right to a public hearing and to be represented by counsel at the hearing of the charges made against him. Such an action of removal may be appealed to the Trial Division of the Pohnpei Supreme Court. A member of the DRP-FIP representing a department or office within the Pohnpei Government may be removed from the DRP-FIP in the manner prescribed by the Constitution.

(4) The DRP-FIP shall elect its own Chairman and other officers from among its membership and shall prescribe the procedures under which it operates.

(5) Members of the DRP-FIP shall be compensated at the rates established by the Government Officers' Salary Act, Title 9 Chapter 4, as amended or superseded by Pohnpei law, when actually performing functions of the DRP-FIP at the direction of the Chairman, except that those members who are Pohnpei Government employees shall instead be granted administrative leave from their regular duties while performing functions of the DRP-FIP. All members shall also receive travel expenses and per diem at Pohnpei Government rates when those amounts would be payable to Pohnpei Government employees in the same circumstances.

Source: S.L. No. 7L-83-11 §2, 3/18/11

§7-106. Application for a foreign investment permit. —

(1) Every noncitizen required to obtain a foreign investment permit under this chapter shall submit an application to the Registrar of Corporations. Every application shall be accompanied by a filing fee of $250, which fee shall accrue to the general fund of the Treasury and shall not be refundable; PROVIDED that the following areas of investment shall require a reduced filing fee of $50:

(a) Applications submitted under the Preferred Joint Venture Sector as provided in §7-107(1)(a) of this chapter;

(b) Applications for alternate energy businesses, irrespective of the category or sector of investment, the main purpose of which is the production or distribution of alternate energy intended to reduce the state's reliance on imported fossil fuels for its energy needs; and

(c) [RESERVED].

(2) The application for a foreign investment permit shall be on the form supplied by the Registrar of Corporations for the category of investment for which the permit is sought and shall contain the following information:

(a) The name of the applicant's business, the form of the business organization under which the applicant proposes to do business, its officers, directors, and proposed and existing stockholders, and their citizenship, or the citizenship of the owners of the applicant's business if it is in a form of business other than a corporation;

(b) The location of the proposed principal office in Pohnpei;

(c) The purpose, scope, and objective of the business activity to be conducted by the applicant and an explanation as to why the business activity fits within the category of investment as specified by §7-107 of this chapter under which the permit is being sought;

(d) Any additional information that the Registrar of Corporations may require; PROVIDED that such additional information is necessary for the Registrar of Corporations to evaluate the application being filed with respect to the criteria identified in §7-107 for the category and sector of investment for which the permit is being sought; PROVIDED FURTHER that with respect to prospective investments over which the Registrar of Corporations has discretionary approval authority pursuant to the provisions of §7-107(2) of this chapter, such additional information may include, but is not limited to:

(i) The specific benefits to the economy of the state which the applicant believes will materialize from the award of a discretionary permit under the provisions of §7-107(2) of this chapter;

(ii) The employment preference to be accorded to citizens, the initial number of citizens to be employed, and the training programs to be offered to citizens in managerial and other positions;

(iii) A listing of total capital anticipated to be invested initially, identifying borrowed funds and their sources for each of the five years prior to and after receipt of the foreign investment permit, and from where such capital funds have been or will be obtained; and

(e) Any other information that the applicant may deem appropriate.

(3) In addition to the information required for noncitizen applications under Subsection (2) of this section, the application of a noncitizen that is a corporation (including a joint stock company) shall contain the following:

(a) A duly-certified copy of the articles of incorporation, charter, and bylaws of the corporation;

(b) An affidavit sworn by an authorized officer of the corporation stating the amount of its authorized capital stock on or within 60 days before the date of filing; and

(c) A designation of a person residing within Pohnpei upon whom process may be served, and the person's place of business or residence, and a certified copy of the minutes of the board of directors of the corporation authorizing the designation.

Source: S.L. No. 7L-83-11 §2, 3/18/11

§7-107. Categories of economic sectors. — The following system of categories of economic sectors, as listed in Subsections (1) through (3) of this section and as expanded by Subsection (4) of this section, is hereby established for the purpose of implementing the policy of Pohnpei to guide foreign investment in the state's economy:

(1) Open "Pohnpei Green List" category:

(a) Preferred Joint Venture Sector: Except for the prohibited category of investments identified in Subsection (3) of this section, no special criteria needs to be met before a foreign investment permit is issued to a business in which not less than sixty percent (60%) of the total equity of the business is held by citizens of the Federated States of Micronesia; PROVIDED that in order to qualify as a "preferred joint venture" under this sector, the applicant must provide convincing evidence to the satisfaction of the Registrar of Corporations that the named FSM citizen investors in the joint venture truly own and fully control, by such means as voting rights of common stock in the corporation, not less than the required sixty percent (60%) of the total equity in the joint venture.

(b) Initial Capitalization Sector: Except for economic sectors restricted by Subsection (1)(c) of this section and economic sectors prohibited by Subsection (3) of this section, foreign investment in any business with an initial capitalization of $250,000 or more, or $50,000 in the case of a professional service, no further equity requirements nor special criteria needs to be met, before a foreign investment permit is issued.

(c) Special Investment Sector: Subject to the capitalization requirements of Subsection (1)(b) of this section, no special criteria needs to be met before a foreign investment permit is issued to a business in the following economic sectors in which not more than forty-nine percent (49%) of the total equity of the business is held by noncitizens; PROVIDED that in order to qualify as a "special investment" business under this sector, the applicant must provide convincing evidence to the satisfaction of the Registrar of Corporations that the named FSM citizen investors in the business truly own and fully control, by such means as voting rights of common stock in the corporation, not less than the required fifty-one percent (51%) of the total equity in the business:

(i) Service industries, except that businesses providing professional services or tourist services as defined by §7-102 of this chapter shall be governed pursuant to Subsections (1)(a) and (1)(b) of this section;

(ii) Retail trade;

(iii) Exploration, development and extraction of land-based mineral resources and of marine-based mineral resources within the marine regulatory jurisdiction of the state; and

(iv) Exploration, cutting and milling of naturally occurring timber resources.

(2) Discretionary "Pohnpei Amber List" category: In addition to such permits as may be granted without special criteria beyond that specified in Subsection (1) of this section, the Registrar of Corporations may, upon written concurrence of a majority of the members of the DRP-FIP, grant a foreign investment permit to a business within such categories with less than the citizenship investment therein required by Subsection (1)(a) of this section; less than the initial capitalization requirement required by Subsection (1)(b) of this section; or possessing more than forty-nine percent (49%) noncitizen-owned equity therein stipulated by Subsection (1)(c) of this section; upon a finding that the applicant business will be of significant benefit to the economy of Pohnpei. A permit issued under this subsection may, with the written concurrence of a majority of the DRP-FIP, carry special conditions as to equity ownership, citizen employment, minimum capital investment and length of the term of the investment permit; PROVIDED that such conditions shall later be waived upon a showing to the satisfaction of the Registrar of Corporations that the business has attained and will maintain the capitalization and, where applicable, the equity requirements of the Pohnpei Green List category of this section.

(3) Prohibited "Pohnpei Red List" category. Notwithstanding any other provision of this section, no foreign investment shall be permitted in the following economic sectors:

(a) [RESERVED].

(4) Temporary category. Except as prohibited by Subsection (3) of this section, a temporary category permit may be issued by the Registrar of Corporations for a business activity of limited duration when found by the Registrar of Corporations in his discretion that the business activity to be

covered by the permit is temporary in nature, will be of significant benefit to the economy of the state, and is requested in connection with a project undertaken by the FSM National Government, the Pohnpei Government, a local government of Pohnpei, an enterprise licensed to do business in Pohnpei, or a non-profit organization authorized to conduct religious or humanitarian activities in Pohnpei. A permit issued under this subsection may carry special conditions, including, but not limited to restrictions on side-contracts not related to the project for which the temporary permit is sought, citizen employment, and length of the term of the temporary investment permit, which may not exceed 36 months.

Source: S.L. No. 7L-83-11 §2, 3/18/11

§7-108. Criteria for review of application; conditions of certain permits granted to applicants. — In addition to such requirements as may be prescribed by law, the Registrar of Corporations, by regulations issued pursuant to this chapter, shall prescribe the criteria for the review of applications and conditions that may be attached for permits granted under §7-107(2) and §7-107(4) of this chapter.

Source: S.L. No. 7L-83-11 §2, 3/18/11

§7-109. Duration of permits. —

(1) Foreign investment permits issued under the authority of this chapter shall be valid for the following extent of time; PROVIDED that discretionary permits issued under §7-107(2) and temporary permits issued under §7-107(4) of this chapter shall be valid for the term so prescribed in such permit but not to exceed the term of years described in paragraphs (a), (b) and (c) of this subsection or, in the case of temporary permits, not to exceed the maximum term of months described in §7-107(4) of this chapter:

(a) Businesses principally providing professional services: 10 years;

(b) Businesses, not listed in Paragraph (a) of this subsection, which meet the capital investment criteria for the receipt of a 55 year development leasehold under Chapter 5 of Title 41 of this Code: 55 years; and

(c) All other businesses: 25 years; PROVIDED that a business which later meets the criteria of Paragraph (b) of this subsection may apply to and receive from the Registrar of Corporations an amended term of the permit of 55 years from the date of the initial issuance of the permit.

(2) A business in good standing under this chapter, as it may be amended or superseded by state law in the future, may apply, at any time during the last trimester of its current foreign investment permit, for an extension of that permit for such time, under the terms and conditions and subject to such restrictions that may apply thereto under this chapter or its successor then in place, which extension, if granted, shall be applied from the date that the current permit would have expired.

Source: S.L. No. 7L-83-11 §2, 3/18/11

§7-110. Procedure for granting foreign investment permits. —

(1) Upon receipt of an application, the Registrar of Corporations shall select for the application a preliminary classification taking into account the category form utilized by the applicant and the list of categories and sectors established pursuant to §7-107 of this chapter. The Registrar of Corporations shall provide a copy of each application and his preliminary classification thereof to each member of the DRP-FIP. The Registrar of Corporations shall then undertake such investigations and consultations as he deems appropriate under the regulations issued pursuant to this chapter.

(2) When the Registrar of Corporations is satisfied that his office has sufficient information and opinion, the Registrar of Corporations shall determine the category and sector under which the application should be classified and whether a permit should be granted to the applicant to do business in the state and so inform the applicant and the DRP-FIP. If within ten working days following their receipt of the Registrar of Corporations's selection of category, a majority of the DRP-FIP shall determine that the Registrar of Corporations improperly placed an application under the category

specified in §7-107(1), (Open), rather than §7-107(2), (Discretionary), or §7-107(3), (Prohibited), the DRP-FIP shall so inform the Registrar of Corporations and the applicant and the application shall be reclassified as instructed by the DRP-FIP. Such determination of the Registrar of Corporations, as may be modified by the DRP-FIP, shall be made solely on the basis of a finding of compliance with the eligibility requirements of §7-103 of this chapter, the filing procedures of §7-106 of this chapter, and the statutory requirements of §7-107 of this chapter with respect to applications filed under the respective categories and sectors listed in §7-107. In addition to the elements of determination listed above, a decision with respect to an application filed pursuant to the discretionary category listed in §7-107(2) of this chapter shall also include a discretionary determination of the Registrar of Corporations, subject to the concurrence of a majority of the members of the DRP-FIP, as to the merits of the application taking into account such conditions as the Registrar of Corporations, upon concurrence of a majority of the members of the DRP-FIP, may prescribe for the granting of a permit to an applicant under said subsection. An application filed pursuant to the temporary category listed in §7-107(4) of this chapter shall also include a discretionary determination of the Registrar of Corporations as to the merits of the application taking into account such conditions as the Registrar of Corporations may prescribe for the granting of a permit to an applicant under said subsection.

(3) Upon reaching a determination, the Registrar of Corporations, subject to the modification of the classification of the application by a majority of the members of the DRP-FIP, where deemed necessary, and the concurrence of a majority of the members of the DRP-FIP, where required, shall promptly grant or deny the applicant a permit and so notify the applicant, with courtesy copies thereof provided to the Administrator of the Office of Economic Affairs and to the Secretary of the FSM Department of Resources and Development.

(4) If the actions of the above described officials of the Pohnpei Government are not completed within 60 working days following receipt of the application, the applicant may submit a show-cause demand to the Registrar of Corporations to determine why the action has not been completed in the time prescribed. The Registrar of Corporations shall answer the demand for explanation within five working days of the receipt thereof.

(5) A decision of the Registrar of Corporations, and the concurrence, or denial thereof, by a majority of the members of the DRP-FIP, where stipulated, to grant or deny a permit and, where appropriate, to prescribe the conditions thereof shall be final, subject to judicial review as prescribed by Title 8 Chapter 3 of this Code, as amended or superseded; PROVIDED that an applicant, within 60 days following receipt of the Registrar of Corporation's decision, alone or in concert with the DRP-FIP, or of the court's decision, should judicial review be sought, may submit a supplemental application containing additional information, which supplemental application shall be filed and reviewed in the same manner as an original application; PROVIDED FURTHER that a supplemental application under this subsection shall require a filing fee of $50, which fee shall accrue to the general fund of the Treasury and shall not be refundable.

Source: S.L. No. 7L-83-11 §2, 3/18/11

§7-111. Service of process on noncitizen corporations. — In the case of all noncitizen corporations doing business in Pohnpei under a foreign investment permit granted under this chapter, process served on the person designated by the corporation in its application for a foreign investment permit, or, if he cannot be found at the place designated, on the Attorney General, is valid service on the corporation. When the Attorney General is served with process, he shall send, by registered mail, a notice of service and a copy of the summons and complaint to the corporation concerned at its last known address. A default judgment may not be entered against the corporation in an action in which process is served on the Attorney General until at least 60 days after the date of service.

Source: S.L. No. 7L-83-11 §2, 3/18/11

§7-112. Duty to report on an annual basis. — Every noncitizen doing business in Pohnpei under a foreign investment permit granted under this chapter shall file with the Registrar of Corporations, within 60 days immediately following the end of each calendar year, a full and accurate exhibit of business activities undertaken in Pohnpei, a profit and loss statement, and an up-to-date listing of information as set forth in §7-106(2) undertaken by the noncitizen business during the past calendar year.

Source: S.L. No. 7L-83-11 §2, 3/18/11

§7-113. Duty to report changes in documents previously filed. — A noncitizen business that has been issued a permit pursuant to this chapter shall also file with the Registrar of Corporations any changes in the provisions of its original charter, articles of incorporation or bylaws within 30 days of such change.

Source: S.L. No. 7L-83-11 §2, 3/18/11

§7-114. Investigation by Office of the Attorney General. — The Attorney General or a person authorized by him for the purposes of this chapter, may upon his own initiative at any time, with probable cause, and shall, upon request of the Registrar of Corporations, call for the production of books and papers of any noncitizen doing business in Pohnpei, and examine its officers, members of its board of directors, its agents or its employees, under oath concerning its business activities. The Attorney General shall submit to the Registrar of Corporations copies of all such documents or examinations.

Source: S.L. No. 7L-83-11 §2, 3/18/11

§7-115. Application for amendment of permit. —

(1) A noncitizen seeking an amendment to a permit issued by the Registrar of Corporations and the DRP-FIP, where required, shall comply with the provisions set forth in §7-106 of this chapter.

(2) The application shall be processed in accordance with the procedure set forth in §7-110 of this chapter.

(3) Except as sought by the application for amendment of permit, the terms of the original permit shall not be altered as a result of the Registrar of Corporations and the DRP-FIP's, where required, action on the application.

Source: S.L. No. 7L-83-11 §2, 3/18/11

§7-116. Abridgment, modification, suspension or revocation of foreign investment permit. —

(1) Basis. A foreign investment permit granted under this chapter shall, at all times, be subject to abridgment, modification, suspension or revocation by the Registrar of Corporations, if:

(a) The application of the grantee is found to have contained false or fraudulent information;

(b) The grantee bribed or otherwise unlawfully influenced the Registrar of Corporations or any member of the DRP-FIP to issue the permit other than on the merits of the application;

(c) The grantee presented false or fraudulent information to the Registrar of Corporations or members of the DRP-FIP in support of his application;

(d) The grantee violated any provisions of Pohnpei, national or local government law, or of any rules or regulations issued thereunder which substantially relate to the conduct of business under the foreign investment permit;

(e) The grantee engaged in business activities which are in violation of any condition or term imposed in the foreign investment permit; or

(f) The grantee engaged in business activities outside the scope of the foreign investment permit or charter.

(2) Procedure. The Registrar of Corporations shall, upon receipt of information that a foreign investment permit should be abridged, modified, suspended or revoked, call a public hearing. An

advance written notice of at least three weeks shall be given to the holder of the permit in question, or his authorized representative, of the alleged violations and of the time and date set for the hearing. At any such hearing, the Registrar of Corporations, may abridge, modify, suspend or revoke said permit. In such cases, the Registrar of Corporations shall notify the holder of said permit or his authorized representative, in writing, of the decision of the Registrar of Corporations and the reasons for the action taken. Action of the Registrar of Corporations may be appealed to a court of competent jurisdiction within 20 days following receipt by the permit holder, or his authorized representative, of notification of the action so taken by the Registrar of Corporations that the action of the Registrar of Corporations is improper or that the action taken is excessive for the infraction upon which it is based. Action of the Registrar of Corporations may not take effect until the expiration of 20 days following receipt of said notification by the permit holder or his authorized representative, unless the Registrar of Corporations shall determine that irreparable damage may occur if the action is not made effective sooner.

Source: S.L. No. 7L-83-11 §2, 3/18/11

§7-117. Compliance with laws and regulations. — An individual, partnership, corporation or business association that is granted a foreign investment permit under this chapter shall be subject to all present or future laws of the FSM National Government, the Pohnpei Government or any local government and any rules and regulations issued thereunder unless exempted therefrom by the appropriate jurisdiction.

Source: S.L. No. 7L-83-11 §2, 3/18/11

§7-118. Criminal penalties. — Any person:

(1) Who intentionally engages in business activities in Pohnpei for which a foreign investment permit is required without first obtaining that permit; or

(2) Who, after obtaining a foreign investment permit, intentionally fails to comply with the limitations, if any, stated in the permit; or

(3) Who obtains a foreign investment permit by fraud or misrepresentation; or

(4) Who violates any other provision of this chapter, shall be deemed guilty of a criminal offense and, upon conviction thereof by a court of competent jurisdiction within Pohnpei, shall be imprisoned for a period of less than one year, or fined less than $1,000, or both such fine and imprisonment.

Source: S.L. No. 7L-83-11 §2, 3/18/11

§7-119. State exemptions. — The following businesses are exempt from this chapter:

(1) Any business for which an omnibus development statute has been enacted waiving the requirements of a foreign investment permit for that business; and

(2) Businesses within such economic sectors as the Registrar of Corporations, subject to direction by state law, shall find, following consultation with the appropriate officers and agencies of the national government, are subject to principal regulation by the national government under the FSM Constitution.

Source: S.L. No. 7L-83-11 §2, 3/18/11

§7-120. Compact exemption. —

(1) In recognition of the special relationship between the Federated States of Micronesia and the United States of America memorialized by the Compact of Free Association, as amended, businesses that are solely owned by citizens of the United States of America who have maintained their principal place of residency within the FSM for at least five consecutive years immediately preceding the filing of an application for exemption under this section or jointly owned by citizens of the Federated States of Micronesia and the United States of America who have maintained the specified residency within the FSM may apply to the Registrar of Corporations and be awarded a special Certificate of Compact

Exemption which shall exempt the holder of said certificate from the provisions of this chapter for the period that the certificate remains valid.

(2) The application for a Certificate of Compact Exemption shall require the payment of a non-refundable filing fee of $10 which shall be deposited in the general fund of the Pohnpei Treasury.

(3) The exemption shall apply only to the extent that citizens of the Federated States of Micronesia are accorded the same privileges of investing and doing business within the United States of America.

(4) A Certificate of Compact Exemption shall be valid until reciprocal privileges for FSM citizens doing business in the United States of America are revoked or are substantially regulated beyond that applied to average US citizens doing business in the United States of America, whichever shall first occur; PROVIDED that the certificate shall automatically expire if the recipient due to loss of US citizenship is no longer eligible therefor.

(5) Notwithstanding the award of a certificate under the provisions of this section, US citizens desiring the full benefits of a Pohnpei Foreign Investment Permit, inclusive of the duration of said permit as prescribed by §7-109 of this chapter, are encouraged to apply for a regular permit pursuant to the provisions of this chapter.

(6) The Registrar of Corporations shall annually review the applications under this section and report to the Governor and the Pohnpei Legislature on the issuance of exemption certificates and the impact of the Compact exemptions on the economy of Pohnpei.

Source: S.L. No. 7L-83-11 §2, 3/18/11

§7-121. Grace period for changed circumstances. — A business, duly qualified under state law to conduct business and so conducts business within the state of Pohnpei, that becomes subject to the provisions of this chapter because of an unforeseen event which is not within the decision-making authority of the business and is outside of the ordinary course of business, including, but not limited to, the death of a citizen business owner and the inheritance of the business interests by a noncitizen family member, shall be accorded a grace period of one year following the change in circumstances in which it may continue business activities within the state without the necessity of obtaining a foreign investment permit under this chapter. The grace period granted to a business that has experienced changed circumstances under this section is intended to provide the opportunity for the business or its owner(s) to apply for and obtain a foreign investment permit
under this chapter or to take such other steps as may be necessary to wind up the affairs of the business within the state or to restore its status as a domestic business that is not subject to the provisions of this chapter.

Source: S.L. No. 7L-83-11 §2, 3/18/11

§7-122. Regulations, permits and licenses issued under previous authority. —

(1) Regulations issued under previous versions of this chapter and previous foreign investment laws for this state shall continue in force and effect to the extent they are not inconsistent with the current provisions of this chapter; PROVIDED that the Registrar of Corporations shall endeavor, with the assistance of the Attorney General's Office, to promulgate and maintain a set of updated, consolidated regulations for the full and effective administration of this chapter.

(2) Permits and licenses issued under previous foreign investment laws of the Trust Territory, Ponape District, and Pohnpei State, and the conditions established relative thereto, shall continue in force and effect under the terms so stated, until they expire by their own terms, or are abridged, modified, suspended or revoked by the Registrar of Corporations, alone or in concert with the DRP-FIP, pursuant to this chapter.

(3) Businesses holding a valid permit issued by a previous authority prior to March 18, 2011, whose permit expires prior to December 31, 2011, shall be accorded an automatic extension thereof for one year from the date of expiration indicated on the permit.

Source: S.L. No. 7L-83-11 §2, 3/18/11; S.L. No. 7L-91-11 §1, 5/31/11

§7-123. Authorization for appropriation; administration. — There is hereby authorized for appropriation from the general fund of Pohnpei such sums as are determined annually in the Comprehensive Budget Act for the administration of this chapter. All such sums so appropriated shall be administered and expended by the Registrar of Corporations solely for the purposes specified in this chapter. The Registrar of Corporations shall submit an annual report to the Governor and the Legislature on or before October 15 each year on the administration and expenditure of monies appropriated for the previous fiscal year. All sums appropriated for any fiscal year remaining unexpended or unobligated on September 30 thereof shall revert to the general fund of Pohnpei. The Office of the Attorney General shall be the successor of all funds appropriated and assets assigned in Pohnpei to the former Foreign Investment Board for activities of the Registrar of Corporations as specified in this act.

Source: S.L. No. 7L-83-11 §2, 3/18/11

§7-124. Conflict of interest. —

(1) If the Registrar of Corporations, or any member of the DRP-FIP, advisor thereto or government officer or employee involved in the administration of this chapter shall be interested, either directly or indirectly, through his business holdings, by an agent disclosed or undisclosed or by a marital relationship, in any application submitted under this chapter or consideration by the Registrar of Corporations of an existing permit, such interest shall be disclosed to the Registrar of Corporations and shall be set forth in the public records of the Office of the Attorney General, and the person having such interest therein shall not participate in any further actions of the Pohnpei Government relative thereto outside of formal meetings or hearings wherein such person is requested to appear.

(2) The Registrar of Corporations, and each member of the DRP-FIP, with respect to discretionary permits, shall be prohibited from obtaining any interest, either directly or indirectly, through his business holdings, by an agent disclosed or undisclosed or by undue influence within a marital relationship, in any business which is granted a foreign investment permit under this chapter within three years following the granting of a permit, or a decision of the Registrar of Corporations to amend the permit to substantially expand the scope of permitted activities thereunder.

(3) The Registrar of Corporations, and each member of the DRP-FIP, with respect to discretionary permits, and any advisor or government employee having public or fiduciary responsibilities under this chapter shall not at any time suggest an arrangement with a potential foreign investor or permit holder, whether or not personally initiated by said officer, member, advisor or employee, which would result in a direct or indirect business relationship therewith, whether in person, through his business holdings, by disclosed or undisclosed agent or by marital relationship.

Source: S.L. No. 7L-83-11 §2, 3/18/11

Editor's note: The original Chapter 7 of Title 37 of this Code was repealed pursuant to S.L. No. 7L-83-11 on March 18, 2011.

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