

# Title 12

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## DIVISION 1 — CORPORATIONS ACT

### Division Notes

#### Notes

Under RPPL 11-10 §§ 3 and 4, as amended by RPPL 11-24 §§ 28 and 29 and RPPL §§ 4 and 5, RPPL 11-10 § 2 [the Corporations Act] takes effect "upon the promulgation of regulations by the Registrar". The Registrar promulgated Corporations Regulation CR-01 (Regulation Implementing the Corporations Act) on January 9, 2025.

## Chapter 1 — General Provisions

### § 101. Short title.

This division shall be known and may be cited as the “Corporations Act” (hereinafter “Act”).

### Section Notes

#### Sources

RPPL 11-10 § 2.

### § 102. Definitions.

In this chapter:

- (1) “articles of incorporation” or “articles” means the original articles of incorporation, all amendments thereof, and any other documents permitted or required to be filed by a Palau corporation, except for the annual report filed under Section 1605. If an amendment of the articles or any other document filed under this chapter restates the articles in their entirety, thenceforth the “articles” shall not include any prior documents.
- (2) “authorized shares” means the shares of all classes a domestic or foreign for profit corporation is authorized to issue.
- (3) “bylaws” means the rules (other than the articles) adopted pursuant to this chapter for the management of the affairs of the corporation regardless of the name by which such rules are designated.
- (4) “corporation” means a domestic for profit corporation, a foreign for profit corporation, a domestic nonprofit corporation and a foreign nonprofit corporation.
- (5) “court” means the Supreme Court-Trial Division, of the Republic of Palau.
- (6) “deliver” or “delivery” means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, or electronic transmission.
- (7) “distribution” means a direct or indirect transfer of money or other property (except its own shares) or incurrence of indebtedness by a Palau corporation to or for the benefit of its shareholders or members in respect of any of its shares or membership interests.
- (8) “document” means any tangible medium on which information is inscribed, and includes any writing or written instrument, or an electronic record.

- (9) “domestic for profit corporation” means a for profit corporation incorporated under this chapter or existing on its effective date.
- (10) “domestic nonprofit corporation” means a nonprofit corporation incorporated under this chapter or existing on its effective date.
- (11) “effective date of notice” is defined in Section 110.
- (12) “electronic record” means a document or other information that is stored in an electronic medium.
- (13) “electronic transmission” or “electronically transmitted,” means any form or process of communication, not directly involving the physical transfer of paper which is suitable for the retention, retrieval, and reproduction of information by the recipient, and includes email communications.
- (14) “employee” includes an officer but not a director, but a director may accept duties that make the director also an employee.
- (15) “entity” includes a corporation, estate, trust, partnership, and any domestic and foreign unincorporated entity.
- (16) “foreign corporation” means collectively a foreign for profit corporation and a foreign nonprofit corporation.
- (17) “foreign for profit corporation” means a corporation or other equivalent business entity incorporated for profit in any jurisdiction other than the Republic of Palau.
- (18) “foreign nonprofit corporation” means a corporation not for profit or other equivalent business entity incorporated in any jurisdiction other than the Republic of Palau.
- (19) “member” means with regard to a domestic nonprofit corporation, any person or persons who have the right to vote for the election of a director or directors of the domestic nonprofit corporation. A person is not a member merely by virtue of being a director or officer of the domestic nonprofit corporation.
- (20) “membership interest” means, with regard to a domestic nonprofit corporation, the units into which the voting interests in a Palau domestic nonprofit corporation are divided.
- (21) “mutual benefit corporation” means a type of domestic nonprofit corporation which is formed pursuant to this chapter for a common purpose to benefit its members.
- (22) “notice” designates a written notice unless oral notice would be reasonable under the circumstances (see Section 110).
- (23) “owner liability” means personal liability for a debt, obligation or liability of a corporation or other entity that is imposed on a person:
  - (A) solely by reason of the person’s status as a shareholder or member; or
  - (B) by the articles of incorporation or bylaws to make one or more specified shareholders or members liable in their capacity as shareholders or members for all or specified debts, obligations or liabilities of the corporation or entity.
- (24) “Palau corporation” means collectively a domestic for profit corporation and a domestic nonprofit corporation incorporated either under this chapter or existing on its effective date.
- (25) “person” includes an individual and an entity.

- (26) “principal office” means the office, in or out of the Republic of Palau, so designated in the annual report where the principal executive offices of a corporation are located.
- (27) “proceeding” includes civil suit and criminal, administrative, and investigatory action.
- (28) “public benefit corporation” means a type of domestic nonprofit corporation which is formed pursuant to this chapter and which is organized for charitable, social, educational, recreational, or artistic purposes and the like, for the general benefit of the public or a segment of the public.
- (29) “qualified director” is defined in Section 111.
- (30) “record date” means the date established under this chapter on which a corporation determines the identity of its shareholders and their shareholdings or members and their membership holdings for purposes of this chapter.
- (31) “registrar” means the Registrar of Corporations designated pursuant to Section 109(a).”
- (32) “religious corporation” means a type of domestic nonprofit corporation which is formed pursuant to this chapter and which is primarily organized for religious or spiritual purposes.
- (33) “secretary” means the corporate officer to whom the board of directors has delegated responsibility for custody of the minutes of the meetings of the board of directors and of the shareholders or members and for authenticating records of the corporation.
- (34) “shareholder” means the person in whose name shares are registered in the records of a for profit corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.
- (35) “shares” means the units into which the proprietary interests in a for profit corporation are divided.
- (36) “sign” or “signature” means, with present intent to authenticate or adopt a document:
- (A) to execute or adopt a tangible symbol to a document, and includes any manual, facsimile, or conformed signature;
  - (B) to attach to or logically associate with an electronic transmission an electronic sound, symbol, name, process or whatever method of identification allowed in this chapter or by the Registrar, and includes an electronic signature in an electronic transmission.
- (37) “subscriber” means a person who subscribes for shares in a domestic for profit corporation, whether before or after incorporation.
- (38) “voting group” means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders of a domestic for profit corporation.
- (39) “voting power” means the current power to vote in the election of directors.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

RPPL 11-24 § 25 amends paragraph (31).

**Notes**

The Code Commission has made technical changes to the designations within this section to conform to the Style of the Code.

**§ 103. Requirements for documents.**

- (a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the Registrar.
- (b) The document must be in the English language and be legible and in a format acceptable to the Registrar. A corporate name need not be in English, if written in English letters or Arabic or Roman numerals, and the certificate of existence or equivalent required of foreign corporations need not be in English, if accompanied by an authenticated English translation.
- (c) The document must be signed by an appropriate corporate official, or if the corporation has not been formed, by an incorporator, or if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.
- (d) The document may but need not contain a corporate seal, attestation, acknowledgment, or verification.
- (e) If the Registrar has prescribed a mandatory form for the document the document must be in or on the prescribed form, including any electronic format used for online filing.
- (f) When the document is delivered to the Registrar for filing, the correct filing fee, and any other fee or penalty required to be paid therewith by this chapter or other law must be paid.
- (g) A person who knowingly provides false or misleading information in any document filed with or otherwise submitted or provided to the Registrar is guilty of an offence punishable on conviction by a fine not exceeding ten thousand dollars (\$10,000) and a term of imprisonment not exceeding two (2) years, or both.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 104. Filing, service and copying fees.**

The Registrar shall promulgate a schedule of fees for the filing and issuance of documents under this chapter, and for issuing and certifying copies of documents held by the Registrar.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 105. Effective time and date of document.**

Except as provided in this chapter with regard to filing a statement of correction or articles of merger, a document accepted for filing is effective at the date and time of filing in the Registry.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 106. Correcting filed document.**

- (a) A corporation may correct a document filed with the Registrar if:
  - (1) the document contains an inaccuracy;
  - (2) the document was defectively signed, attested, sealed, verified, or acknowledged; or
  - (3) the electronic transmission was defective.
- (b) A document is corrected by preparing a statement of correction on the prescribed form and delivering it to the Registrar.
- (c) A statement of correction is effective when filed.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 107. Filing by the Registrar; effect.**

- (a) If a document delivered to the office of the Registrar for filing satisfies the requirements of Division 1 or Division 3 of this title, and any regulations promulgated thereunder, the Registrar shall file it accordingly, record the date and time of filing, and deliver an acknowledgement to the filer. For each such document not filed within seven (7) days after the filer delivers the document, the Registrar shall issue such acknowledgement or communication as to why such acknowledgement is delayed or denied, to the filer not less than seven (7) days after the filer delivers the document.
- (b) If the Registrar refuses to file a document, it shall be returned to the filer with a brief, written explanation of the reason for the refusal. The filer may appeal the refusal in accordance with Title 6 of the Palau National Code, the Administrative Procedure Act.
- (c) The Registrar's duty to file documents under this chapter is administrative. The Registrar's filing or refusing to file a document does not:
  - (1) affect the validity or invalidity of the document in whole or part;
  - (2) relate to the correctness or incorrectness of information contained in the document; or
  - (3) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.
- (d) A certificate from the Registrar coupled with a copy of a document filed by the Registrar, is conclusive evidence that the original document is on file with the Registrar.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

RPPL 11-40 § 2, modified, amends subsection (a).

**§ 108. Certificate of good standing.**

- (a) Anyone may apply to the Registrar to furnish a certificate of good standing for a corporation. A certificate of good standing sets forth:

- (1) the corporation's corporate name and registration number used in the Republic of Palau;
  - (2) that:
    - (A) for a Palau corporation, it is duly incorporated under the law of the Republic of Palau and the date of its incorporation; or
    - (B) for a foreign corporation it is duly registered under this chapter;
  - (3) whether the corporation is active and in good standing with all requirements of this chapter;
  - (4) other facts of record that the Registrar may deem appropriate.
- (b) Subject to any qualification stated in the certificate, a certificate issued hereunder by the Registrar may be relied upon as conclusive evidence that the corporation is in existence or is properly registered under this chapter.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 109. Registrar of Corporations; powers of the Registrar; fees.

- (a) There shall be a Registrar of Corporations designated by the President by Executive Order.
- (b) The Registrar has the powers reasonably necessary to perform the duties required of the Registrar by Division 1 and Division 3 of this title including, but not limited to, the following:
  - (1) The Registrar may make regulations concerning any of the following matters:
    - (A) setting fees, late fees and penalties payable under this Act;
    - (B) prescribing forms for submitting filings to the register which, if prescribed, must be used;
    - (C) establishing the format to be used for submitting online filings to the register; and
    - (D) the overall implementation and regulation of registration under this Act and any matters incidental thereto, including the maintenance of the register in any manner and media deemed appropriate by the Registrar.
  - (2) The Registrar may adopt policies and procedures setting forth:
    - (A) acceptable payment methods for any fees and penalties imposed under this chapter; and
    - (B) for the collection of documentation sufficient to authenticate to the reasonable satisfaction of the Registrar, the identity of any person or entity seeking to submit filings to the Registrar or that is named as a director or shareholder of a corporation.
- (c) All fees paid to the Registrar under Division 1 and 3 of this title shall be deposited in the National Treasury to the credit of a special non-lapsing fund. Such fund shall be known as the "Corporate Registry Expense Fund". Such funds may be authorized to be appropriated and appropriated from year to year, and shall not be subject to the reprogramming authority of the

President of the Republic of Palau. Except as otherwise provided for in statute, such funds shall be used exclusively for expenses related to the operation of an online registry.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

RPPL 11-24 § 26 amends subsection (a).

RPPL 11-40 § 2, modified, amends section.

### § 110. Notices and other communications.

- (a) Notice under this chapter must be in writing unless oral notice is reasonable in the circumstances. Notice by electronic transmission, including email, is written notice.
- (b) Notice or other communication to a corporation registered under this chapter may be delivered to its registered agent at its registered office or to the secretary of the corporation at its principal office shown in its most recent annual report.
- (c) Service of process on a registered agent may be made by registered mail addressed to the registered agent or in any other manner provided by law for the service of summons as if the registered agent were a defendant in a civil action.
- (d) Unless this chapter specifically requires otherwise, notice or other communications from the Registrar may be delivered by any means the Registrar deems appropriate in the circumstances, including but not limited to:
  - (1) email or other forms of electronic transmissions;
  - (2) by posting or delivery by courier to a last known address; or
  - (3) having it published in a newspaper of general circulation in Palau.
- (e) No corporation shall be excused for its failure to comply with the provisions of this chapter, including the requirement to file an annual report under Section 1605, by reason of the failure to receive a notice given by the Registrar.
- (f) An electronic transmission is received under this section even if no individual is aware of its receipt.
- (g) Notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:
  - (1) if in physical form, the earliest of when it is actually received, or when it is left at:
    - (A) a shareholder's address shown on the corporation's record of shareholders maintained by the corporation under Section 1601(c);
    - (B) a director's residence or usual place of business; or
    - (C) the corporation's principal place of business;
  - (2) if mailed postage prepaid and correctly addressed, five (5) days after it is deposited in the mail;
  - (3) if sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee;

- (4) if an electronic transmission from the Registrar, when it is sent to the properly formatted email address, fax number or other address type; and
  - (5) if oral, when communicated.
- (h) If this chapter prescribes requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications (including electronic transmissions) that are internal to the corporation and its shareholders, members, directors or officers, those requirements govern.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 111. Qualified directors.**

- (a) A “qualified director” is a director who, at the time some corporate action is to be taken:
- (1) with regard to a derivative proceeding:
    - (A) is not a party to the proceeding;
    - (B) does not have a material interest in the outcome of the action or proceeding; or
    - (C) does not have a material relationship with a person who has such an interest.
  - (2) is not a director:
    - (A) as to whom Section 834 applies; or
    - (B) who has a material relationship with another director as to whom Section 834 applies.
- (b) For purposes of this section:
- (1) “material relationship” means a familial, financial, professional, employment or other relationship that would reasonably be expected to impair the objectivity of the director’s judgment when participating in the action to be taken; and
  - (2) “material interest” means an actual or potential benefit or detriment (other than one which would devolve on the corporation or the shareholders generally) that would reasonably be expected to impair the objectivity of the director’s judgment when participating in the action to be taken.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 112. Ability of single individual to incorporate.**

Nothing in this chapter shall be interpreted as restricting or limiting the ability of a single individual to form a corporation of which that individual is the sole shareholder.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

## Chapter 2 — Incorporation of Palau Corporations

### § 201. Incorporators.

One or more persons may act as the incorporator or incorporators of a Palau corporation by delivering articles of incorporation in the prescribed format to the Registrar for filing.

#### Section Notes

##### Sources

RPPL 11-10 § 2.

### § 202. Articles of Incorporation for domestic for profit corporation.

- (a) The articles of incorporation for a domestic for profit corporation must set forth:
- (1) a proposed corporate name for the corporation that satisfies the requirements of Section 401;
  - (2) the number of shares the corporation is authorized to issue;
  - (3) the address of the corporation's initial registered office and the name of its initial registered agent at that office;
  - (4) the purposes for which the corporation is organized, which may be for any lawful purpose;
  - (5) the name, address, citizenship, and gender of the individuals who are to serve as the initial directors of the corporation, at least one of whom shall be a lawful resident of the Republic of Palau;
  - (6) the name, address, citizenship, and gender of individuals who are the initial shareholders of the corporation, and the number and class of shares to be issued to each of them;
  - (7) the name, jurisdiction of incorporation, registration number in that jurisdiction of incorporation, and address of its principal office, of any incorporated entity that is to be an initial shareholder of the corporation, and the number and class of shares to be issued to each of them;
  - (8) the name, address, citizenship, and gender of the individuals that are to be the initial president, vice president if any, secretary and treasurer if any, of the corporation;
  - (9) the name and address of each incorporator; and
  - (10) such other information as must be supplied on the prescribed form.
- (b) The articles of incorporation may set forth:
- (1) provisions not inconsistent with law regarding:
    - (A) managing the business and regulating the affairs of the corporation;
    - (B) defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;
    - (C) a par value for authorized shares or classes of shares;
    - (D) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

- (E) a provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages, provided that no such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective, and further provided that such provision shall not eliminate or limit the liability of a director for:
    - (i) any breach of the director's duty of loyalty to the corporation or its shareholders;
    - (ii) acts or omissions not in subjective good faith or which involve intentional misconduct or a knowing violation of law; or
    - (iii) any transaction from which the director derived an improper personal benefit, including financial benefit;
  - (F) a limited duration for the corporation; and
  - (G) whether the shareholders of the corporation have preemptive rights.
- (2) any provision that under this chapter is required or permitted to be set forth in the articles or bylaws.
- (c) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 203. Articles of Incorporation for domestic nonprofit corporation.

- (a) The articles of incorporation for a domestic nonprofit corporation must set forth:
- (1) a proposed corporate name for the corporation that satisfies the requirements of Section 401;
  - (2) whether the corporation is to be a public benefit, mutual benefit or religious corporation;
  - (3) that the corporation is incorporated under this Corporations Act or any other applicable law in effect at the time of incorporation, if the incorporation occurred prior to the effective date of this Act;
  - (4) the address of the corporation's initial registered office and the name of its initial registered agent at that office;
  - (5) the name and address of each incorporator;
  - (6) the purposes for which the corporation is organized, which may be for any lawful purpose;
  - (7) the name, address, citizenship, and gender of the individuals who are to serve as the initial directors of the corporation, at least one of whom shall be a lawful resident of the Republic of Palau;
  - (8) the name, address, citizenship, and gender of the individuals that are to be the initial president, vice president, secretary and treasurer of the corporation;

- (9) the terms of the directors;
  - (10) whether or not the corporation will have members;
  - (11) provisions not inconsistent with law regarding the distribution of assets on dissolution;  
and
  - (12) such other information as must be supplied on the prescribed form.
- (b) The articles of incorporation may set forth provisions not inconsistent with law regarding:
- (1) managing the activities and regulating the affairs of the corporation;
  - (2) defining, limiting, and regulating the powers of the corporation, its board of directors, and members, if any;
  - (3) the characteristics, qualification for admission, rights, limitations and obligations attaching to members;
  - (4) a provision eliminating or limiting the personal liability of a director of the corporation or its members, for monetary damages resulting from action or failure to act in his/her capacity as a director, provided that no such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective, and provided further that such provision shall not eliminate or limit the liability of a director for:
    - (A) any breach of the director’s duty of loyalty to the corporation or its members;
    - (B) for acts or omissions not in subjective good faith or which involve intentional misconduct, intentional infliction of harm or violation of criminal law or a knowing violation of law; or
    - (C) for any transaction from which the director derived an improper personal benefit, including financial benefit;
  - (5) any provision that under this chapter is required, or is permitted to be set forth in the bylaws.
- (c) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 204. Incorporation of Palau corporation.**

- (a) The corporate existence of a Palau corporation begins when the articles of incorporation are filed.
- (b) The Registrar’s filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the Republic of Palau to cancel or revoke the incorporation.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 205. Liability for pre-incorporation transactions.**

All persons purporting to act as or on behalf of a Palau corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 206. Organization of Palau corporation.**

- (a) After incorporation of a Palau corporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws and carrying on any other business brought before the meeting.
- (b) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.
- (c) An organizational meeting may be held in or out of the Republic of Palau.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 207. Bylaws of domestic for profit corporation.**

- (a) Every domestic for profit corporation formed under this title shall have bylaws, and the board of directors or incorporators shall adopt initial bylaws for the corporation.
- (b) The bylaws of a domestic for profit corporation may contain any provision relating to the business of the corporation, the conduct of its affairs, its rights or powers or the rights or powers of its shareholders, directors or officers, that is not inconsistent with law or the articles of incorporation.
- (c) The bylaws may be amended or repealed by approval of the shareholders. The bylaws may permit the Board of Directors to repeal or amend bylaws unless the power is exclusively reserved to the shareholders in the articles of incorporation or the shareholders in amending, repealing or adopting a bylaw expressly provide that the board of directors may not amend, repeal or adopt that bylaw.
- (d) A bylaw that increases a quorum or voting requirement for the board of directors or that requires a meeting of shareholders to be held at a place may be amended or repealed as described in this subsection. Action by the board of directors under subsection (a) to amend or repeal a bylaw that changes a quorum or voting requirement for the board of directors shall meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

- (1) if originally adopted by the shareholders, the bylaw may be amended or repealed only by the shareholders, unless the bylaw otherwise provides. The bylaw may provide that it can be amended or repealed only by a specified vote of either the shareholders or the board of directors; or
- (2) if adopted by the board of directors, may be amended or repealed either by the shareholders or by the board of directors.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 208. Bylaws of domestic nonprofit corporation.

- (a) Every domestic nonprofit corporation formed under this title shall have bylaws. The initial board of directors shall adopt bylaws for the corporation.
- (b) The bylaws may contain any provision relating to the business of the domestic nonprofit corporation and for regulating and managing its affairs that is not inconsistent with law or the articles of incorporation.
- (c) The bylaws may permit the Board of Directors to adopt, repeal or amend bylaws.
- (d) Any bylaw adopted by the directors may be amended or repealed by a vote of the members, if any, entitled to vote thereon, if so provided in the articles.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

##### Notes

The Code Commission designated the undesignated text in RPPL 11-10 § 2[§ 208] as subsection (d).

## Chapter 3 — Corporate Purposes and Powers

### § 301. Purposes of Palau corporations.

- (a) Every Palau corporation incorporated under this chapter or existing on its effective date has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.
- (b) A Palau corporation engaging in a business that is subject to registration or regulation under another statute of the Republic of Palau may incorporate under this chapter only if permitted by the other statute and subject to all limitations of the other statute.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 302. General powers of Palau corporations.

Unless its articles of incorporation provide otherwise, every Palau corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including power:

- (1) to sue and be sued, complain and defend in its corporate name;
- (2) to have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
- (3) to make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the Republic, for managing the business and regulating the affairs of the corporation;
- (4) to purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
- (5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (6) to purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;
- (7) to make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other securities obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;
- (8) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (9) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
- (10) to conduct its business in compliance with all applicable laws, locate offices, and exercise the powers granted by this chapter within or without the Republic of Palau;

- (11) to elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;
- (12) to pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;
- (13) to make donations for the public welfare or for charitable, scientific, or educational purposes and for other purposes that further the corporate interest;
- (14) to transact any lawful business that will aid governmental policy;
- (15) with regard to a domestic nonprofit corporation, to impose dues, assessments, admission and transfer fees upon its members to establish conditions for admission and revocation of members, admit or revoke members, and issue or rescind memberships;
- (16) to do all things necessary or convenient in furtherance of the business, activities and affairs of the corporation, to the extent permitted by law.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

##### Notes

The Code Commission has made technical changes to the designations within this section to conform to the Style of the Code.

### § 303. Emergency powers of Palau corporations.

- (a) In anticipation of or during an emergency, as defined in subsection (c), unless emergency bylaws provide otherwise:
  - (1) notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio;
  - (2) one or more officers of the Palau corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum; and
  - (3) the board of directors of a corporation may:
    - (A) modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and
    - (B) relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.
- (b) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the Palau corporation:
  - (1) binds the corporation; and
  - (2) may not be used to impose liability on a corporate director, officer, employee, or agent.
- (c) An emergency exists for purposes of this section if a quorum of the corporation's board of directors cannot readily be assembled because of some catastrophic event.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 304. Lack of power to act.**

- (a) Except as provided in subsection (b), the validity of corporate action may not be challenged on the ground that the Palau corporation lacks or lacked power to act.
- (b) A domestic for profit corporation's power to act may be challenged:
  - (1) in a proceeding by a shareholder against the corporation to enjoin the act;
  - (2) in a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or
  - (3) in a proceeding by the Attorney General under Section 1417, (a)(1)(B).
- (c) In a shareholder's proceeding under subsection (b)(1) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss (other than anticipated profits) suffered by the corporation or another party because of enjoining the unauthorized act.
- (d) A domestic nonprofit corporation's power to act may be challenged in a proceeding against a director, officer, employee or agent of the corporation brought by a director, a receiver or other legal representative, a member or members in a derivative proceeding, or in the case of a public benefit corporation, by the Attorney General.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

## Chapter 4 — Corporate Name

### § 401. Corporate name of a Palau corporation.

- (a) A corporate name of a Palau corporation:
- (1) must contain the word “corporation,” “incorporated,” “company,” or “limited,” or the abbreviation “corp.,” “inc.,” “co.,” or “ltd.”;
  - (2) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by Section 301 and its articles of incorporation or that violates some other enactment; and
  - (3) may not contain a word or phrase that, in the opinion of the Registrar, is manifestly offensive.
- (b) A corporate name must be distinguishable upon the records of the Registrar from:
- (1) the name of any corporation or other business entity registered with the Registrar;
  - (2) the fictitious name registered or adopted by a foreign corporation in the Republic of Palau because its real name is unavailable.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 402. Registered name of foreign corporations.

- (a) A foreign corporation may register its corporate name that complies with this chapter if the name is distinguishable upon the records of the Registrar from the corporate names that are not available under Section 401(b).
- (b) A foreign corporation registers its corporate name by delivering to the Registrar for filing an application on the prescribed form accompanied by a certificate of existence (or a document of similar import) from its country of incorporation current as from thirty (30) days from the date of the application.
- (c) The name is registered for the applicant’s exclusive use upon the effective date of the application, and the foreign corporation may thereafter register as a foreign corporation under this chapter.
- (d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Registrar for filing a renewal application, which complies with the requirements of subsection (b), prior to the expiration of the registration. The renewal application when filed renews the registration for the following calendar year.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

## Chapter 5 — Registered Office and Registered Agent of Palau Corporations

### § 501. Maintenance of registered office and registered agent.

- (a) Each Palau corporation must continuously maintain in the Republic of Palau:
  - (1) a registered office that may be the same as any of its places of business; and
  - (2) a registered agent, who may be an individual who lawfully resides in the Republic of Palau and whose business office is identical with the registered office; or a Palau corporation whose business office is identical with the office registered in the Republic.
- (b) Every corporation shall maintain contact information of a director of the corporation to allow the registered agent to contact the director at all times.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

##### Notes

The Code Commission has made technical changes to the designations within this section to conform to the Style of the Code.

### § 502. Change of registered office or registered agent.

- (a) A Palau corporation may change its registered office or registered agent by filing with the Registrar a notice of designation of a new registered agent or office on the prescribed form. It will be effective ten (10) days after registration in the register. The notice shall include the name and registration number in Palau of the corporation, the street and mailing address of its former and new registered office or agent if the address changes; if the name of the registered agent changes, the name of the new registered agent and the new agent's written consent to the appointment and other relevant details of the new registered office or registered agent.
- (b) The registered agent's business office may change its mailing address by giving notice to the Palau corporation and by filing with the Registrar (i) a notice of change of agent business office's address in the prescribed form and (ii) stating that the corporation has been notified of the change. A change of agent's business office address will become effective ten (10) days after it is filed with the Registrar.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 503. Resignation of registered agent.

- (a) A registered agent of a Palau corporation may resign upon filing a signed written notice of resignation with the Registrar on the prescribed form and deliver to the corporation notice of the date on which a notice of resignation was filed with the Registrar. Such notice will be effective twenty (20) days after registration in the register.

- (b) The Registrar shall notify the corporation of the resignation of the registered agent pursuant to Section 110(d).

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 504. Service on Palau corporations.**

- (a) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.
- (b) Service of process on a registered agent may be made under this chapter or in any manner provided by law for a service of summons as if the registered agent were a defendant in a civil proceeding under the laws of the Republic of Palau.
- (c) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered mail, addressed to the secretary of the corporation at its principal office. Service is perfected under this subsection at the earliest of:
  - (1) the date the corporation receives the mail; or
  - (2) five (5) days after its deposit in the Republic of Palau mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

## Chapter 6 — Shares and Distributions of Palau Corporations

### § 601. Authorized shares of domestic for profit corporations.

- (a) The articles of incorporation must set forth any classes of shares and series of shares within a class, and the number of shares of each class and series, that a domestic for profit corporation is authorized to issue. If more than one class or series of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class or series and must describe, prior to the issuance of shares of a class or series, the terms, including the preferences, rights, and limitations, of that class or series. Except to the extent varied as permitted by this section, all shares of a class or series must have terms, including preferences, rights and limitations, that are identical with those of other shares of the same class or series.
- (b) The articles of incorporation of a domestic for profit corporation must authorize:
  - (1) one or more classes or series of shares that together have full voting rights; and
  - (2) one or more classes or series of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.
- (c) The articles of incorporation of a domestic for profit corporation may authorize one or more classes or series of shares that:
  - (1) have special, conditional, or limited voting rights, or no right to vote, except to the extent otherwise provided by this chapter;
  - (2) are redeemable or convertible as specified in the articles of incorporation;
  - (3) entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or
  - (4) have preference over any other class or series of shares with respect to distributions, including distributions upon the dissolution of the corporation.
- (d) Any of the terms of shares may vary among holders of the same class or series so long as such variations are expressly set forth in the articles of incorporation.
- (e) The description of the preferences, rights and limitations of classes or series of shares in subsection (c) is not exhaustive.
- (f) If the articles of incorporation so provide, the board of directors is authorized, without shareholder approval, to: classify any unissued shares into one or more classes or into one or more series within a class, reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes, or reclassify any unissued shares of any series of any class into one or more classes or into one or more series within a class. The board of directors shall determine the terms, including the preferences, rights, and limitations of any class of shares before the issuance of any shares of that class, or any series within a class before the issuance of any shares of that series. Before issuing any shares of a class or series created under this section, the corporation shall deliver to the Registrar for filing articles of amendment setting forth the terms determined hereinabove.

- (g) A domestic for profit corporation may not issue bearer shares. Any bearer share issued in contravention of this section is of no legal effect and does not give the holder of the bearer share any rights in the corporation or in any of the assets of the corporation.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 602. Issued and outstanding shares.

- (a) A domestic for profit corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or cancelled.
- (b) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (c) of this section and to Section 613.
- (c) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 603. Fractional shares.

- (a) A domestic for profit corporation may not issue fractional shares but may pay in money the value of a fractional share.
- (b) If a fractional share is created by operation of law such as the laws of inheritance, the holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation.
- (c) The board of directors may authorize the issuance of scrip for each fractional share subject to any condition considered desirable, including that the holder shall receive a full share upon surrendering enough scrip to equal a full share.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 604. Subscription for shares before incorporation.

- (a) A subscription for shares of a domestic for profit corporation entered into before incorporation is irrevocable for six (6) months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.
- (b) The board of directors may determine the payment terms of subscription for shares that were entered into before incorporation unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

- (c) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.
- (d) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid for more than twenty (20) days after the corporation delivers a written demand for payment to the subscriber.
- (e) A subscription, whether made before or after incorporation, is a contract and is not enforceable unless in writing and signed by the subscriber.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 605. Issuance of shares of domestic for profit corporation.**

- (a) The powers granted in this section to the board of directors of a domestic for profit corporation may be reserved to the shareholders by the articles of incorporation.
- (b) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the domestic for profit corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.
- (c) Before the domestic for profit corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. In the absence of fraud and subject to Section 834, that determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and non-assessable.
- (d) When the domestic for profit corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefore are fully paid and non-assessable.
- (e) A domestic for profit corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.
- (f)
  - (1) An issuance of shares or other securities convertible into or rights exercisable for shares in a transaction or a series of integrated transactions requires approval of the shareholders, at a meeting at which a quorum consisting of a majority (or such greater number as the articles of incorporation may prescribe) of the votes entitled to be cast on the matter exists, if:
    - (A) the shares, other securities, or rights are to be issued for consideration other than cash or cash equivalents; and
    - (B) the voting power of shares that are issued and issuable as a result of the transaction or series of integrated transactions will comprise more than twenty

- percent (20%) of the voting power of the shares of the corporation that were outstanding immediately before the transaction.
- (2) For purposes of determining the voting power of shares issued and issuable as a result of a transaction or series of integrated transactions, the voting power of shares or other securities convertible into or rights exercisable for shares shall be the greater of:
    - (A) the voting power of the shares to be issued; or
    - (B) the voting power of the shares that would be outstanding after giving effect to the conversion of convertible shares and other securities and the exercise of rights to be issued.
  - (3) A series of transactions is integrated only if consummation of one transaction is made contingent on consummation of one or more of the other transactions.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

##### Notes

The Code Commission has made technical changes to the designations within subsection (f) to conform to the Style of the Code.

### § 606. Liability of shareholders.

- (a) Unless otherwise provided in the articles of incorporation, a shareholder of a domestic for profit corporation is not personally liable for the liabilities of the corporation, including the acts or debts of the corporation except that a shareholder may become personally liable by reason of its own acts or conduct.
- (b) A purchaser from a domestic for profit corporation of the corporation's own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued or specified in the subscription agreement.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 607. Share dividends.

- (a) Unless the articles of incorporation provide otherwise, shares of a domestic for profit corporation may be issued pro rata and without consideration to its shareholders or to the shareholders of one or more classes or series of shares. An issuance of shares under this subsection is a share dividend.
- (b) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:
  - (1) the articles of incorporation so authorize;
  - (2) a majority of the votes entitled to be cast by the class or series to be issued approve the issue; or
  - (3) there are no outstanding shares of the class or series to be issued.

- (c) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date is the date the board of directors authorizes the share dividend. The record date may not be retroactive.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 608. Share options.**

A domestic for profit corporation may issue rights, options, or warrants for the purchase of shares or other securities of the corporation. Unless the articles of incorporation provide otherwise, the board of directors shall determine the terms upon which the rights, options, or warrants are issued, including any restrictions on the transfer or receipts of such rights, options or warrants, and the terms, including the consideration for which the shares or other securities are to be issued.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 609. Form and content of certificates.**

- (a) Shares must be represented by certificates.
- (b) At a minimum, each share certificate must state on its face:
- (1) the name of the issuing domestic for profit corporation, its registration number and that it is organized under the law of the Republic of Palau;
  - (2) the name of the person or persons to whom it is issued;
  - (3) the number and class of shares and the designation of the series, if any, the certificate represents;
  - (4) The par value of each share represented by the certificate, or a statement that the shares are without par value; and
  - (5) If the share does not entitle the holder to vote or otherwise restricts voting rights, that it is nonvoting or that the right to vote is limited.
- (c) If the issuing corporation is authorized to issue different classes of shares or different series within a class, each certificate shall contain a summary of the designations and any variations of the relative rights, voting rights, preferences, and limitations applicable to each class. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.
- (d) Each share certificate must be signed, either manually or in facsimile, by the officer designated to do so in the bylaws or by two members of the board of directors and may bear the corporate seal or its facsimile.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 610. Restriction on transfer of shares and other securities.**

- (a) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the domestic for profit corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.
- (b) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate. Unless so noted or contained, a restriction is not enforceable against a person without knowledge of the restriction.
- (c) A restriction on the transfer or registration of transfer of shares is authorized for any reasonable purpose, including to maintain the number or identity of its shareholders.
- (d) A restriction on the transfer or registration of transfer of shares of a domestic for profit may:
  - (1) obligate the shareholder first to offer the corporation or other persons (separately, consecutively, or simultaneously) an opportunity to acquire the restricted shares;
  - (2) obligate the corporation or other persons (separately, consecutively, or simultaneously) to acquire the restricted shares;
  - (3) require the corporation, the holders of any class or series of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable;
  - (4) prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.
- (e) For purposes of this section, “shares” includes a security convertible into or carrying a right to subscribe for or acquire shares.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**§ 611. Preemptive rights of shareholders of a domestic for profit corporation.**

- (a) The shareholders of a domestic for profit corporation do not have a preemptive right to acquire the corporation’s unissued shares unless and to the extent the articles of incorporation so provide.
- (b) A statement included in the articles of incorporation that “the corporation elects to have preemptive rights,” or words of similar import, means that preemptive rights of shareholders exist as and only to the extent set out in the articles of incorporation. A shareholder may waive such right in writing, which renders the waiver irrevocable.
- (c) There shall be no preemptive rights with respect to:
  - (1) shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;

§ 612. Domestic for profit corporation's acquisition of its own shares.

- (2) shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;
  - (3) shares authorized in articles of incorporation that are issued within six (6) months from the effective date of incorporation;
  - (4) shares sold otherwise than for money.
- (d) The holders of shares entitled to the preemptive right shall be given prompt notice by the domestic for profit corporation setting forth the period within which and the terms and conditions upon which such shareholders may exercise their preemptive right. Such notice shall be given at least thirty (30) days prior to the expiration of the period during which the right may be exercised.
- (e) For purposes of this section, “shares” includes a security convertible into or carrying a right to subscribe for or acquire shares.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 612. Domestic for profit corporation's acquisition of its own shares.**

- (a) A domestic for profit corporation may acquire its own shares, and shares so acquired constitute authorized but unissued shares.
- (b) If the articles of incorporation prohibit the reissue of the acquired shares, the number of authorized shares is reduced by the number of shares acquired.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 613. Distributions to shareholders of domestic for profit corporations.**

- (a) A board of directors may authorize and the domestic for profit corporation may make distributions to its shareholders, subject to restriction by the articles of incorporation and the limitation in subsection (c).
- (b) If the board of directors does not fix the record date for determining shareholders entitled to a distribution (other than one involving a purchase, redemption, or other acquisition of the corporation's shares), the record date is the date the board of directors authorizes the distribution and it may not be retroactive.
- (c) No distribution may be made by a Palau domestic for profit corporation if, after giving it effect:
  - (1) the Palau corporation would not be able to pay its debts as they become due in the usual course of business; or
  - (2) the corporation's total assets would be less than the sum of its total liabilities, including contingent liabilities that have a reasonable likelihood of requiring payment, plus, unless the articles permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the

preferential rights of shareholders whose preferential rights are superior to those receiving the distribution.

- (d) The board of directors may base a determination that a distribution is not prohibited under subsection (c) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.
- (e) The effect of a distribution under subsection (c) is measured as of the date the money or other property is transferred.
- (f) This section shall not apply to distributions in liquidation.

#### **Section Notes**

##### **Sources**

RPPL 11-10 § 2, modified.

### **§ 614. Notice of change of shareholders of domestic for profit corporation.**

- (a) The board of a domestic for profit corporation shall ensure that notice in the prescribed form is submitted to the Registrar for registration of:
  - (1) a change in the shareholders of a corporation, whether the change be the addition or removal of a shareholder, or a change in the number of shares held by an existing shareholder; or
  - (2) a change in the name, address or other contact details concerning an existing shareholder of a corporation.
- (b) A notice under subsection (a)(1) shall be submitted to the Registrar within thirty (30) days of:
  - (1) the change occurring, in the case of the addition or removal of a shareholder; or
  - (2) the corporation first becoming aware of the change, included but not limited to the death of a shareholder, or a change in the name, address, or other contact details of an existing shareholder.
- (c) The notice of change is also required where a corporation issues new shares, redeems or otherwise acquires outstanding shares.
- (d) Where a domestic for profit corporation fails to comply with this section, an additional late filing fee shall apply in addition to the regular filing fee, as set forth in the regulations.
- (e) In the case of a corporation with more than ten (10) shareholdings, this section shall only apply to shareholdings that are cumulatively equal to or greater than five percent (5%) of the outstanding shares of the corporation.

#### **Section Notes**

##### **Sources**

RPPL 11-10 § 2, modified.

##### **Notes**

The Code Commission has made technical changes to the designations within subsection (b) to conform to the Style of the Code.

## Chapter 7 — Meetings of Palau Corporations

### § 701. Annual shareholder or member meeting of Palau corporations.

- (a) Unless directors are elected by written consent in lieu of an annual meeting as permitted by Section 704, a domestic for profit corporation and a domestic nonprofit corporation with members shall hold a meeting of shareholders or members, annually at a time stated in or fixed in accordance with the articles of incorporation or bylaws.
- (b) If a domestic for profit corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors pursuant to Section 716, directors may not be elected by less than unanimous consent in lieu of an annual meeting.
- (c) Annual shareholders' or members' meetings may be held in or out of the Republic of Palau at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.
- (d) The failure to hold an annual meeting at the time stated in or fixed in accordance with a Palau corporation's bylaws does not affect the validity of any corporate action.
- (e) At the annual meeting:
  - (1) The president and treasurer shall report on the activities and financial condition of the Palau corporation; and
  - (2) The shareholders or members, respectively, shall consider and act upon such other matters as may be raised consistently with the notice requirements pertaining to annual meetings.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 702. Special meeting of shareholders or members of Palau corporations.

- (a) A Palau corporation shall hold a special meeting of shareholders or members, respectively:
  - (1) on call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or
  - (2) upon the written demand of shareholders or members, respectively, holding shares carrying together not less than five percent (5%) of the voting rights entitled to be voted on the issue, provided that the articles of incorporation may fix a lower or higher percentage not exceeding twenty five percent (25%).
- (b) If not otherwise fixed under this chapter, the record date for determining shareholders or members entitled to demand a special meeting is the date of delivery to the corporation of the first shareholder's or member's signed demand.
- (c) Special shareholders' or members' meetings may be held in or outside of the Republic at the place stated in or fixed in accordance with the bylaws, unless the board of directors determines to hold the meeting solely by remote participation. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

- (d) Only business within the purpose or purposes described in the meeting notice may be conducted at a special shareholders' meeting.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 703. Court-Ordered meetings of Palau corporations.

- (a) The court may summarily order a meeting to be held:
- (1) on application of any shareholder or member of the Palau corporation entitled to participate in an annual meeting if an annual meeting was not held or action by written consent in lieu thereof was not taken in compliance with Section 704; or
  - (2) on application of a shareholder or member, respectively, who signed a demand for a special meeting valid under Section 702, if:
    - (A) notice of the special meeting was not given within thirty (30) days after the date the demand was delivered to the Palau corporation's secretary; or
    - (B) the special meeting was not held in accordance with the notice.
  - (3) In the case of a domestic nonprofit public benefit corporation, the Attorney General may request a court order if an annual meeting was not held within the earlier of six (6) months after the end of the corporation's fiscal year or fifteen (15) months after its last annual meeting.
- (b) The court may make such orders as are necessary to accomplish the purpose or purposes of the meeting.
- (c) If the court orders a meeting, it may also order the corporation to pay the costs (including reasonable counsel fees) incurred to obtain the order.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 704. Action by Palau corporations without meeting.

- (a) Unless limited or prohibited by the articles or bylaws, any action that may be taken at any annual, regular or special meeting may be taken without a meeting if the action is taken by all the shareholders or members entitled to vote on the action. Unless otherwise provided in the bylaws, the action must be evidenced by one or more written consents or ballots bearing the date of signature and describing the action taken, signed by all the shareholders or members entitled to vote on the action and delivered to the Palau corporation for inclusion in the minutes or filing with the corporate records. A consent or ballot signed pursuant to the provisions of this section has the effect of a vote taken at a meeting and may be described as such in any document. Unless the articles of incorporation or bylaws provide otherwise, such written consents or ballots may be in electronic format.
- (b) The bylaws may further regulate the manner in which consents or ballots are given or action by consent or ballots undertaken, including listing actions that may be taken by less than

unanimous consent of the shareholders or members entitled to vote on the action, how votes may be tabulated, and how consents or ballots may be collected by the Palau corporation, including via the use of email for voting and for collection of consents or ballots in an electronic format.

- (c) If this chapter requires that notice of a proposed action be given to nonvoting shareholders of a domestic for profit corporation and the action is to be taken by written consent of the voting shareholders, the for profit corporation must give its nonvoting shareholders written notice that reasonably describes the action taken not more than ten (10) days after written consents sufficient to take the action have been delivered to the corporation.
- (d) The notice requirements in this section shall not delay the effectiveness of actions taken by written consent, and a failure to comply with such notice requirements shall not invalidate actions taken by written consent, provided that this subsection shall not be deemed to limit judicial power to fashion any appropriate remedy in favor of a shareholder or member adversely affected by a failure to give such notice within the required time period.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 705. Notice of meeting of Palau corporations.

- (a) A Palau corporation shall notify shareholders or members, respectively, of the date, time, and place of each annual and special meeting no fewer than ten (10) nor more than sixty (60) days before the meeting date. The notice shall be given in a manner consistent with Section 110 and include the record date for determining the shareholders or members entitled to vote at the meeting, if such date is different than the record date for determining persons entitled to notice of the meeting. If the board of directors has authorized participation by means of remote communication for any participants, the notice shall describe the means of remote communication to be used. Unless this chapter or the articles require otherwise, the Palau corporation is required to give notice only to shareholders or members, respectively, entitled to vote at the meeting.
- (b) Unless the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.
- (c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.
- (d) If not otherwise fixed under Section 707, the record date for determining shareholders or members, respectively, entitled to notice of and to vote at an annual or special meeting is the day before the first notice is delivered.
- (e) Unless the bylaws require otherwise, if an annual or special meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under Section 707, however, notice of the adjourned meeting must be given under this section to participants entitled to vote at such adjourned meeting as of the new record date.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**§ 706. Waiver of notice by shareholder or member.**

- (a) A shareholder or member may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder or member entitled to the notice or their authorized attorney, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records. Unless the articles of incorporation or bylaws provide otherwise, such waivers may be in electronic format.
- (b) A shareholder or member's attendance at a meeting, in person or by proxy:
- (1) waives objection to lack of notice or defective notice of the meeting, unless the participant at the beginning of the meeting objects to holding the meeting or transacting business at the meeting;
  - (2) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the participant objects to considering the matter when it is presented.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**§ 707. Record date; shareholders or members entitled to notice and vote.**

- (a) The bylaws of a Palau corporation may fix or provide the manner of fixing the record date or dates for determining the shareholders (or one or more voting groups) or members entitled to notice of a shareholders' or members' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the Palau corporation may fix a future date as the record date. If no such record date is fixed, shareholders or members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.
- (b) A record date fixed under this section may not be more than sixty (60) days before the meeting or action requiring a determination of shareholders.
- (c) A determination of shareholders or members entitled to notice of or to vote at a meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date or dates, which it must do if the meeting is adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting.
- (d) If a court orders a meeting adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting, it may provide that the original record date or dates continue in effect or it may fix a new record date or dates.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**§ 708. Conduct of a meeting of a Palau corporation.**

- (a) At each meeting of shareholders or members a chair shall preside. The chair shall be appointed as provided in the bylaws or, in the absence of such provision, by the board.
- (b) The chair, unless the articles of incorporation or bylaws provide otherwise, shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting, and any rules adopted shall be fair to the shareholders or members, respectively.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 709. Remote participation in annual and special meetings of Palau corporations.**

Shareholders and members may participate in any meeting of shareholders or members by means of remote communication to the extent authorized by the bylaws or the board of directors. Shareholders or members participating in a meeting by means of remote communication shall be deemed present and may vote at such a meeting and a record of such vote or other action shall be maintained by the Palau corporation.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 710. Shareholders' and members' lists for meetings.**

- (a) After fixing a record date for a meeting, a Palau corporation shall prepare an alphabetical list of the names of all its shareholders or members, respectively, who are entitled to notice of a shareholders' or member's meeting. The list:
  - (1) with regard to a domestic for profit corporation, must be arranged by voting group, and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder; and
  - (2) with regard to a domestic nonprofit corporation, must show the address and number of votes each member is entitled to vote.
- (b) The shareholders' or members' list must be available for inspection by any shareholder or member, beginning two (2) business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder or member, or their agent or attorney, is entitled on written demand to inspect and to copy a list, during regular business hours and at their own expense, during the period it is available for inspection.
- (c) The Palau corporation shall make the list of shareholders or members, respectively, entitled to vote available at the meeting, and any shareholder or member, or their agent or attorney, is entitled to inspect the list at any time during the meeting or any adjournment.
- (d) If the Palau corporation refuses to allow inspection of a list before or at the meeting, or the copying of a list as permitted by subsection (b), the court on application of the shareholder or

member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

- (e) Refusal or failure to prepare or make available a shareholders' or members' list does not affect the validity of action taken at the meeting.
- (f) The articles or bylaws of a nonprofit religious corporation may limit or abolish the rights of a member under this section to inspect and copy any corporate record.

#### **Section Notes**

##### **Sources**

RPPL 11-10 § 2, modified.

### **§ 711. Voting entitlement of shares and membership interests.**

- (a) Except as provided in subsections (b) and (d) or unless the articles of incorporation provide otherwise, each outstanding share or membership interest as established on the record date, regardless of class, is entitled to one vote on each matter voted on at a shareholders' or members' meeting.
- (b) Absent a specific court order, shares of a parent corporation held by a subsidiary corporation are not shares entitled to vote or to be counted in determining the total number of outstanding shares.
- (c) Subsection (b) does not limit the power of a Palau corporation to vote any shares or membership interests, including its own, held by it in a fiduciary capacity.
- (d) With regard to a domestic for profit corporation, redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

#### **Section Notes**

##### **Sources**

RPPL 11-10 § 2, modified.

### **§ 712. Proxies.**

- (a) Unless limited by the articles or bylaws, a shareholder or member, respectively, may vote in person or by proxy, or by electronic transmission which shows the date of transmission and the sender's authorization to vote or appoint a proxy.
- (b) An appointment of a proxy is effective when received by the officer authorized to tabulate votes. An appointment is valid for eleven (11) months unless a longer period is expressly provided in the appointment form or electronic transmission.
- (c) An appointment of a proxy is revocable in the sole discretion of the shareholder or member.
- (d) The death or incapacity of the shareholder or member that has appointed a proxy does not affect the right of the Palau corporation to accept the proxy's authority unless notice of the

death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 713. Palau corporation's acceptance of votes and other documents.

- (a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder or member, respectively, the Palau corporation, if acting in good faith, is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder or member.
- (b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of its shareholder or member, the Palau corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:
  - (1) the shareholder or member is an entity and the name signed purports to be that of an officer or agent of the entity;
  - (2) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder or member, a receiver or trustee in bankruptcy, a pledgee, beneficial owner, or attorney-in-fact and, if the Palau corporation requests, evidence of such status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;
  - (3) two or more persons are the shareholder or member as co-tenants or fiduciaries and the name signed purports to be the name of at least one of the co-holders and the person signing appears to be acting on behalf of all the co-holders.
- (c) A Palau corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder or member.
- (d) A Palau corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or Section 712 are not liable in damages to the shareholder or member for the consequences of the acceptance or rejection.
- (e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

## § 714. Quorum and voting requirements for voting groups of domestic for profit corporations.

- (a) Shares entitled to vote as a separate voting group of a domestic for profit corporation may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter. The articles of incorporation may provide for a greater quorum or voting requirement for shareholders or voting groups of shareholders than is provided for by this chapter.
- (b) Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.
- (c) If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation require a greater number of affirmative votes.
- (d) The election of directors is governed by Section 716.
- (e) If the articles of incorporation or this chapter provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately. A vote may be taken by one voting group on a matter even though no vote is taken by another voting group entitled to vote on the matter.
- (f) An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

### Section Notes

#### Sources

RPPL 11-10 § 2, modified.

## § 715. Quorum and voting requirements for domestic nonprofit corporations with members.

- (a) Unless this chapter, the articles, or bylaws provide for a higher or lower quorum, twenty percent of the votes entitled to be cast on a matter must be represented at a meeting of members to constitute a quorum on that matter.
- (b) Unless this chapter, the articles, or the bylaws require a greater vote, if a quorum is present, the affirmative vote of the votes represented and voting is the act of the members.
- (c) A bylaw amendment to decrease the quorum for any member action may be approved by the members or, unless prohibited by the bylaws, by the board.
- (d) A bylaw amendment to increase the quorum required for any member action must be approved by the members.

- (e) Unless one-third or more of the total membership interests are present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of members are those matters that are described in the meeting notice.
- (f) A bylaw amendment to increase or decrease the affirmative vote required for any member action must be approved by the members.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 716. Voting for Directors of Palau corporations; cumulative voting permitted.**

- (a) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.
- (b) Shareholders or members, respectively, do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.
- (c) A clear statement included in the articles of incorporation that cumulative voting is permitted means that the shareholders, or designated voting groups of shareholders, or members so designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two (2) or more candidates.
- (d) With regard to domestic nonprofit corporations, the articles or bylaws may provide for election of directors by members:
  - (1) on the basis of chapter or other organizational unit;
  - (2) by region or other geographic unit; or
  - (3) by any other reasonable method.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 717. Voting trusts for domestic for profit corporations.**

- (a) One or more shareholders of a domestic for profit corporation may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust (which may include anything consistent with its purpose) and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office. Any action by the trustee or trustees contrary to the terms and conditions of the agreement shall not affect the validity of any election, resolution, or other action of the stockholders of the corporation and the sole remedy in that case shall be against the defaulting trustee or trustees.

- (b) All or some of the parties to a voting trust may extend it for additional terms of not more than ten (10) years each by signing written consent to the extension. An extension is valid for ten (10) years from the date the first shareholder signs the extension agreement. An extension agreement binds only those parties signing it.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 718. Voting agreements for domestic for profit corporations.

- (a) Two or more shareholders may provide for the manner in which they will vote their shares of a domestic for profit corporation by signing an agreement for that purpose. A voting agreement created hereunder is specifically enforceable.
- (b) No agreement made under subsection (a) shall be held to be invalid or unenforceable on the grounds that it is either a voting trust or a proxy that does not comply with this chapter.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 719. Standing to bring derivative action against domestic for profit corporation.

A shareholder of a domestic for profit corporation may not commence or maintain a derivative proceeding unless the shareholder:

- (1) was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and
- (2) fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

##### Notes

The Code Commission has made technical changes to the designations within this section to conform to the Style of the Code.

### § 720. Demand upon domestic for profit corporation.

No shareholder of a domestic for profit corporation may commence a derivative proceeding until:

- (1) a written demand has been made upon the corporation to take suitable action; and
- (2) sixty (60) days have expired from the date delivery of the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the sixty (60) day period.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**Notes**

The Code Commission has made technical changes to the designations within this section to conform to the Style of the Code.

**§ 721. Stay of proceedings.**

If the domestic for profit corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 722. Dismissal of action.**

- (a) A derivative proceeding shall be dismissed by the court on motion by the domestic for profit corporation if one of the groups specified in subsection (b) or subsection (e) has determined in good faith, after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation.
- (b) Unless a panel is appointed pursuant to subsection (e), the determination in subsection (a) shall be made by a majority vote of qualified directors present at a meeting of the board of directors if the qualified directors constitute a quorum.
- (c) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing either that a majority of the board of directors did not consist of qualified directors at the time the determination was made or that the requirements of subsection (a) have otherwise not been met.
- (d) If a majority of the board of directors consisted of qualified directors at the time the determination was made, the plaintiff shall have the burden of proving that the requirements of subsection (a) have not been met; if not, the corporation shall have the burden of proving that the requirements of subsection (a) have been met.
- (e) Upon motion by the corporation, the court may appoint a panel of one or more individuals to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the requirements of subsection (a) have not been met.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 723. Discontinuance or settlement.**

A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the domestic for profit corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**§ 724. Payment of expenses.**

On termination of the derivative proceeding the court may:

- (1) order the domestic for profit corporation to pay the plaintiff's expenses, including reasonable lawyers' fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation; or
- (2) order the plaintiff to pay any defendant's expenses, including reasonable lawyer's fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper or frivolous purpose.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**Notes**

The Code Commission has made technical changes to the designations within this section to conform to the Style of the Code.

**§ 725. Applicability to foreign for profit Corporations.**

In any derivative proceeding in the right of a foreign for profit corporation, the laws of the jurisdiction of incorporation of the foreign corporation shall govern except for Sections 721, 723, and 724.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**§ 726. Derivative actions against domestic nonprofit corporations.**

- (a) A proceeding may be brought in the right of a domestic or foreign nonprofit corporation to procure a judgment in its favor by any member or members having ten percent (10%) or more of the membership interests or by twenty (20) members, whichever is less, or by any director.
- (b) In any such proceeding, each complainant shall be a member or director at the time of bringing the proceeding.
- (c) A complaint in a proceeding brought in the right of a corporation must allege with particularity the demand made, if any, to obtain action by the directors and either why the complainants could not obtain the action or why they did not make the demand. If a demand for action was

made and the corporation's investigation of the demand is in progress when the proceeding is filed, the court may stay the suit until the investigation is completed.

- (d) On termination of the derivative proceeding the court may:
- (1) order the domestic nonprofit corporation to pay the plaintiff's expenses, including reasonable lawyers' fees, incurred in the proceeding if it finds that the proceeding has resulted in the corporation taking some action requested by the complainants or was otherwise successful, or a substantial benefit was obtained by the corporation; or
  - (2) order the plaintiff to pay any defendant's expenses, including reasonable lawyer's fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper or frivolous purpose.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 727. Shareholder or member action to appoint custodian or receiver of Palau corporation.**

- (a) The court may appoint one or more persons to be custodians, or, if a Palau corporation is insolvent, to be receivers, of and for the corporation in a proceeding by a shareholder or member, respectively, where it is established that:
- (1) the directors are deadlocked in the management of the corporate affairs, the shareholders or members are unable to break the deadlock, and irreparable injury to the Palau corporation is threatened or being suffered; or
  - (2) the directors or those in control of the Palau corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.
- (b) The court:
- (1) may issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets wherever located, and carry on the business of the Palau corporation until a full hearing is held;
  - (2) shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and
  - (3) has jurisdiction over the Palau corporation and all of its property, wherever located.
- (c) The court may appoint an individual or domestic or foreign corporation that is authorized to transact business in the Republic of Palau as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.
- (d) The court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended from time to time. Among other powers:
- (1) a custodian may exercise all of the powers of the Palau corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation; and

- (2) a receiver may dispose of all or any part of the assets of the Palau corporation wherever located, at a public or private sale, if authorized by the court; and may sue and defend in the receiver's own name as receiver in all courts of the Republic of Palau.
- (e) The court during a custodianship may redesignate the custodian a receiver, and during a receivership may redesignate the receiver a custodian, if doing so is in the best interests of the corporation.
- (f) The court from time to time during the custodianship or receivership may order compensation paid and expense disbursements or reimbursements made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.
- (g) If after a hearing the court determines that one or more grounds for judicial dissolution described in Section 1418 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution and the clerk of the court shall deliver a certified copy of the decree to the Registrar, who shall file it.
- (h) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's affairs in accordance with this chapter.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

## Chapter 8 — Directors and Officers

### § 801. Requirement for and duties of board of directors of Palau corporations.

- (a) Each Palau corporation must have a board of directors.
- (b) All corporate powers shall be exercised by or under the authority of the board of directors of the Palau corporation, and the business and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of its board of directors, subject to any limitation set forth in the articles of incorporation.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 802. Qualifications of directors of Palau corporations.

The articles of incorporation or bylaws may prescribe qualifications for directors. A given director need not be a resident of the Republic of Palau nor a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe; provided, however, that at least one director must be a resident of the Republic of Palau.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 803. Number and election of directors.

- (a) A board of directors of a domestic for profit corporation must consist of one or more individuals, no less than eighteen (18) years of age, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.
- (b) A board of directors of a domestic nonprofit corporation must consist of three (3) or more individuals, no less than eighteen (18) years of age, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.
- (c) 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; provided however, that a domestic nonprofit corporation must never have fewer than three (3) directors.
- (d) The initial directors are named in the articles of incorporation and thereafter elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under Section 806.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

**§ 804. Election of directors by class of shares of domestic for profit corporation.**

If the articles of incorporation of a domestic for profit corporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. A class (or classes) of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**§ 805. Terms of directors of Palau corporations.**

- (a) The articles or bylaws must specify the terms of directors, which may not exceed five (5) years. In the absence of any term specified in the articles or bylaws, the term of each director shall be one (1) year. Directors may be elected for successive terms.
- (b) A decrease in the number of directors does not shorten an incumbent director's term.
- (c) The term of a director elected to fill a vacancy expires at the next shareholders' or members' meeting at which directors are elected.
- (d) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected or otherwise appointed and qualifies or there is a decrease in the number of directors.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**§ 806. Staggered terms for directors of Palau corporations.**

The articles of incorporation of a Palau corporation may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office need not be uniform.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**§ 807. Resignation of directors of Palau corporations.**

A director may resign at any time by delivering a written resignation to the board of directors, or its chair, or to the secretary of the Palau corporation. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**§ 808. Removal of directors by shareholders or members.**

- (a) The shareholders or members, respectively, of a Palau corporation may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.
- (b) If a director is elected by a voting group of shareholders of a domestic for profit corporation, or by a chapter or other organizational unit or by region or other geographic grouping of a domestic nonprofit corporation, only the shareholders of that voting group or members of the chapter or other organizational unit or region may participate in the vote to remove that director.
- (c) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove exceeds the number of votes cast not to remove the director.
- (d) A director may be removed only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.
- (e) An entire board of directors may be removed under subsections (a)–(d).
- (f) A director elected by the board may be removed without cause by the vote of two-thirds of the directors then in office or such greater number as is set forth in the articles or bylaws; provided, however, that a director elected by the board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not the board.
- (g) The articles or bylaws of a domestic nonprofit religious corporation may:
  - (1) limit the application of this section; and
  - (2) set forth the vote and procedures by which the board or any person may remove with or without cause a director elected by the members or the board.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 809. Board vacancies.**

- (a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:
  - (1) the shareholders or members may fill the vacancy;
  - (2) the board of directors may fill the vacancy; or
  - (3) if the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.
- (b) If the vacant office was held by a director elected by a voting group of shareholders of a domestic for profit corporation, or by a chapter or other organizational unit or by region or other geographic grouping of a domestic nonprofit corporation, only the affected shareholders

or members are entitled to vote to fill the vacancy if it is filled by the shareholders, and only the directors elected by the affected shareholders or members are entitled to fill the vacancy if it is filled by the directors.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 810. Compensation of directors of Palau corporations.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 811. Notice of change of directors of a Palau corporations.

- (a) The board of a Palau corporation shall ensure that notice in the prescribed form of;
- (1) a change in the directors, whether as the result of a director ceasing to hold office or the appointment of a new director, or both; or
  - (2) a change in the name, address or other contact details concerning an existing director of a corporation, is submitted to the Registrar for registration.
- (b) A notice under subsection (a) shall be submitted to the Registrar within thirty (30) days of:
- (1) the change occurring, in the case of the appointment or cessation of a director; or
  - (2) the corporation first becoming aware of the change, in the case of the death of a director or a change in the name, address, or other contact details of an existing director.
- (c) Where a corporation fails to comply with this section, then in addition to the regular filing fee, an additional late filing fee shall apply as set forth in the regulations.
- (d) A change in directors under [subsection (a)(1) or (a)(2)] may not be completed on the corporation's annual report.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

##### Notes

In subsection (d), the Code Commission has changed “paragraph (1)(a) or (1)(b)” from RPPL 11-10 to “[subsection (a)(1) or (a)(2)]” to conform to the Style of the Code and likely intent of the legislation.

### § 812. Meetings of Palau corporations.

- (a) The board of directors may hold regular or special meetings in or out of the Republic of Palau, except as required by some other law or enactment. If the time and place of a directors' meeting is fixed by the bylaws or the board, the meeting is a regular meeting.

- (b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 813. Action without meeting of directors of Palau corporations.**

- (a) Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by this chapter to be taken by the board of directors of a Palau corporation may be taken without a meeting if taken by all members of the Board. The action must be evidenced by one or more written consents or by electronic transmissions, including emails, describing the action taken, signed by each director, and included in the corporate records.
- (b) Action taken under this section is the act of the board of directors when one or more consents signed by all the directors are delivered to the Palau corporation. The consent may specify the time at which the action taken thereunder is to be effective.
- (c) A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 814. Notice of meeting of directors of Palau corporations.**

- (a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors of a Palau corporation may be held without any notice.
- (b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two (2) days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.
- (c) Unless the articles or bylaws provide otherwise, the presiding officer of the board, the president of the Palau corporation or twenty percent (20%) of the directors then in office may call and give notice of a meeting of the board.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 815. Waiver of notice of board meeting of Palau corporations.**

- (a) A director of a Palau corporation may waive any notice required by this chapter, the articles or bylaws. Except as provided by subsection (b), the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.
- (b) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 816. Quorum and voting of board of Palau corporations.**

- (a) Unless the articles of incorporation or bylaws require a greater number or unless otherwise specifically provided in this chapter, a quorum of a board of directors of a Palau corporation consists of a majority of the number of directors being present, either in person or by proxy.
- (b) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.
- (c) A director who is present at a meeting of the board of directors when corporate action is taken is deemed to have assented to the action taken unless the director objects at the beginning of the meeting, or promptly upon arrival, to holding it or transacting business at the meeting; or the dissent or abstention from the action taken is entered in the minutes of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 817. Committees for boards of Palau corporations.**

- (a) Unless this chapter, the articles of incorporation or the bylaws provide otherwise, a board of directors of a Palau corporation may create one or more committees and appoint one or more members of the board of directors to serve on any such committee.
- (b) Provisions of this chapter which govern the conduct of director meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board, apply to committees of the board and their members.
- (c) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the powers of the board of directors under Section 801.
- (d) A committee may not, however:
  - (1) authorize or approve distributions;

- (2) approve or propose to shareholders or members, respectively, an action that this chapter requires be approved by shareholders or members;
  - (3) fill vacancies on the board of directors or on any of its committees;
  - (4) amend, adopt, or repeal the articles or bylaws; or
  - (5) approve a plan of merger.
- (f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in Section 818.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 818. Standard of conduct for directors of Palau corporations.**

- (a) Each member of the board of directors of a Palau corporation, or committee thereof, when discharging the duties of a director, shall act:
- (1) in good faith;
  - (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
  - (3) in a manner the director reasonably believes to be in the best interests of the Palau corporation.
- (b) In discharging board or committee duties a director shall disclose, or cause to be disclosed, to the other board or committee members information not already known by them but known by the director to be material to the discharge of their decision-making or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule.
- (c) In discharging board or committee duties a director who does not have knowledge that makes such reliance unwarranted is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
- (1) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;
  - (2) legal counsel, public accountants, or other persons retained by the corporation as to matters the director reasonably believes are within the person's professional or expert competence;
  - (3) a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence; and
  - (4) in the case of a domestic nonprofit religious corporation, religious authorities and ministers, priests, imams, rabbis or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

## Section Notes

## Sources

RPPL 11-10 § 2, modified.

**§ 819. Standards of liability for directors of Palau corporations.**

- (a) A director shall not be liable to the corporation or its shareholders for any decision to take or not to take any action, or any failure to take any action, as a director, unless the party asserting liability in a proceeding establishes that the challenged conduct consisted or was the result of:
- (1) action or inaction in violation of the standards of conduct set out in Section 818; or
  - (2) a decision
    - (A) which the director did not reasonably believe to be in the best interests of the corporation, or
    - (B) as to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or
  - (3) a lack of objectivity due to the director's familial, financial or business relationship with, or a lack of independence due to the director's domination or control by, a related person or another person having a material interest in the challenged conduct; or
  - (4) a sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation, or to make appropriate inquiry when a reasonably attentive director would do so; or
  - (5) receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.
- (b) The party seeking to hold the director liable:
- (1) for money damages, shall also have the burden of establishing that:
    - (A) harm to the corporation or its shareholders has been suffered; and
    - (B) the harm suffered was proximately caused by the director's challenged conduct; and
    - (C) whatever other equitable remedy may be sought is appropriate in the circumstances.
- (c) Nothing contained in this section shall alter the fact or lack of liability of a director under another section of this chapter, such as the provisions governing the consequences of an unlawful distribution, or affect any rights to which the corporation or a shareholder may be entitled under another statute of the Republic of Palau.
- (d) Notwithstanding anything herein to the contrary, a person who serves as a director of a Palau domestic nonprofit corporation without remuneration or expectation of remuneration shall not be liable for damage, injury or loss caused by or resulting from the person's performance or failure to perform their duties unless the person was grossly negligent in the performance of, or failure to perform, such duties. For purposes of this subsection, remuneration does not include payment of reasonable expenses and indemnification or insurance for actions as a director allowed by this chapter.

Section Notes

Sources

RPPL 11-10 § 2, modified.

**§ 820. Liability for unlawful distributions by Palau corporations.**

- (a) Unless a director complies with the applicable standards of conduct described in Section 818, a director who votes for or assents to a distribution made in violation of Sections 613 or 907 of this chapter is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter.
- (b) A director held liable under subsection (a) for an unlawful distribution is entitled to:
  - (1) contribution from every other director who could be held liable under subsection (a) for the unlawful distribution; and
  - (2) recoupment from each shareholder of the pro-rata portion of the amount of the unlawful distribution the shareholder accepted, knowing the distribution was made in violation of this chapter.
- (c) A proceeding to enforce:
  - (1) the liability of a director under subsection (a) is barred unless it is commenced within two (2) years after the date on which the distribution was made;
  - (2) contribution or recoupment under subsection (b) is barred unless it is commenced within one (1) year after the liability of the claimant has been finally adjudicated under subsection (a).

Section Notes

Sources

RPPL 11-10 § 2, modified.

**§ 821. Officers of Palau corporations.**

- (a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws. Provided, every corporation must have a president and secretary, and the same individual may fill both offices and otherwise may simultaneously hold more than one office in a corporation.
- (b) The board of directors may elect individuals to fill one or more offices of the corporation. An officer may appoint one or more officers if authorized by the bylaws or the board of directors.
- (c) The bylaws or the board of directors shall assign to one of the officers the responsibility for preparing the minutes of the directors' and shareholders' meetings and for maintaining and authenticating the records of the corporation required to be kept under this chapter.
- (d) Each officer has the authority and shall perform the functions set forth in the bylaws or, to the extent consistent with the bylaws, the functions prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the functions of other officers.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 822. Standards of conduct for officers of Palau corporations.**

- (a) An officer, when performing in such capacity, has the duty to act:
  - (1) in good faith;
  - (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
  - (3) in a manner the officer reasonably believes to be in the best interests of the corporation.
- (b) In discharging his or her duties, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on:
  - (1) the performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated; or
  - (2) information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented or by legal counsel, public accountants, or other persons retained by the corporation.
- (c) An officer is not liable for any decision to take or not to take action, or any failure to take any action, as an officer, if the duties of the office are performed in compliance with this section.
- (d) Notwithstanding anything herein to the contrary, a person who serves as an officer of a Palau domestic nonprofit corporation without remuneration or expectation of remuneration shall not be liable for damage, injury or loss caused by or resulting from the person's performance or failure to perform their duties unless the person was grossly negligent in the performance of, or failure to perform, such duties. For purposes of this subsection, remuneration does not include payment of reasonable expenses and indemnification or insurance for actions as a director allowed by this chapter.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 823. Resignation and removal of officers of Palau corporations.**

- (a) Any officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective time.
- (b) An officer may be removed at any time with or without cause by:
  - (1) the board of directors;
  - (2) the officer who appointed such officer; or
  - (3) any other officer if authorized by the bylaws or the board of directors.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 824. Notice of change of officers of a Palau corporation.**

- (a) The board of a Palau corporation shall ensure that notice in the prescribed form of
- (1) a change in the president, vice president, secretary and treasurer of a company, whether as the result of an officer ceasing to hold office or the appointment of a new officer, or both; or
  - (2) a change in the name, address or other contact details concerning an existing officer of a corporation, is submitted to the Registrar for registration.
- (b) A notice under subsection (a) shall:
- (1) be submitted to the Registrar within thirty (30) days of:
    - (A) the change occurring, in the case of the appointment or cessation of an officer; or
    - (B) the company first becoming aware of the change, in the case of the death of an officer or a change in the name, address, or other contact details of an existing officer.
- (c) Where a corporation fails to comply with this section, then in addition to the regular filing fee, an additional late filing fee shall apply as set forth in the regulations.
- (d) A change in officers under subsection (a)(1) or (a)(2) may not be completed on the corporation's annual report.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**Notes**

The Code Commission has changed the word "paragraph" to "subsection" in subsection (d) to conform to the Style of the Code.

**§ 825. Contract rights of officers of Palau corporations.**

- (a) The appointment of an officer does not itself create contract rights.
- (b) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 826. Definitions related to indemnification of directors of Palau corporations.**

In Sections 827 through 832 the following definitions apply:

- (1) “liability” means the obligation to pay a judgment, settlement, penalty, fine, or reasonable expenses incurred with respect to a proceeding.
- (2) “party” means an individual who was, is, or is threatened to be made, a defendant or respondent in a proceeding.
- (3) “proceeding” means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitative, or investigative and whether formal or informal.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

##### Notes

The Code Commission has made technical changes to the designations within this section to conform to the Style of the Code.

### § 827. Permissible indemnification of directors by Palau corporations.

- (a) Except as otherwise provided in this section, a Palau corporation may indemnify an individual who is a party to a proceeding because the individual is a director, against any liability incurred in or due to the proceeding only if the director conducted himself or herself in good faith and:
  - (1) reasonably believed:
    - (A) in the case of conduct in an official capacity as a director, that his or her conduct was in the best interests of the corporation; and
    - (B) in all other cases, that the director’s conduct was at least not opposed to the best interests of the corporation; and
  - (2) in the case of any criminal proceeding, the director had no reasonable cause to believe his or her conduct was unlawful; or
  - (3) the director engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation.
- (b) The termination of a proceeding by adverse judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.
- (c) Unless ordered by the court a corporation may not indemnify a director:
  - (1) in connection with a proceeding by or in the right of the corporation, except for expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection (a); or
  - (2) in connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis of receiving a financial benefit to which he or she was not entitled, whether or not involving action in the director’s official capacity.
- (d) Unless the articles or bylaws require otherwise, the determination required in subsection (a) shall be made:
  - (1) if there are two or more qualified directors, by the board of directors by a majority vote of all the qualified directors even though less than a quorum; or

- (2) by independent legal counsel in a written opinion if one has been appointed by the board of directors, and any expense related to the written opinion shall be borne by the corporation; or
- (3) by the shareholders or members but shares or membership interests owned or voted under the control of a director who at the time is not a qualified director are not eligible to vote.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 828. Mandatory indemnification by Palau corporations.**

A Palau corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because he or she was a director of the corporation against expenses incurred by the director in connection with the proceeding.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 829. Advance for expenses by Palau corporations.**

- (a) A Palau corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a member of the board of directors.
- (b) Authorizations under this section shall be made:
  - (1) by the board of directors by a majority vote of all the qualified directors even though less than a quorum; or
  - (2) by the shareholders or members, respectively, but shares or membership interests owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the authorization.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 830. Court ordered indemnification and advance for expenses.**

A director who is a party to a proceeding because he or she is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding. After receipt of an application and after giving any notice it considers necessary, the court shall order indemnification or advance for expenses if the court determines that it is fair and reasonable.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 831. Indemnification of officers of Palau corporations.**

- (a) A Palau corporation may indemnify and advance expenses under this chapter to an officer of the corporation who is a party to a proceeding because he or she is an officer of the corporation to the same extent as a director or as provided in the articles of incorporation, the bylaws, a resolution of the board of directors or an employment contract.
- (b) The provisions of this section shall apply to an officer who is also a director if the basis on which he or she is made a party to the proceeding is an act or omission solely as an officer.
- (c) An officer of a corporation who is not a director is entitled to mandatory indemnification under Section 828, and may apply to a court under Section 830 for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those provisions.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**§ 832. Insurance.**

A Palau corporation may purchase and maintain insurance on behalf of an individual who is a director, officer or employee of the corporation, or who, while a director, officer or employee of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee, or agent of another corporation, partnership, joint venture, trust, or other entity, against liability asserted against or incurred by the individual in that capacity or arising from his or her status as a director, officer or employee, whether or not the corporation would have power to indemnify or advance expenses to the individual against the same liability under this chapter.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**§ 833. Variation of indemnification by corporate action.**

- (a) A corporation may, by a provision in its articles or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders or members, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification or advance funds to pay for or reimburse expenses.
- (b) A corporation may, by a provision in its articles or bylaws, limit any of the rights to indemnification or advance for expenses created by or pursuant to this chapter, but such limitation shall not be effective if made after the occurrence of the act or omission allegedly giving rise to liability.
- (c) This chapter does not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with appearing as a witness in a proceeding at a time when he or she is not a party.
- (d) This chapter does not limit a corporation's power to indemnify, advance expenses to or provide or maintain insurance on behalf of an employee or agent.

Section Notes

Sources

RPPL 11-10 § 2, modified.

**§ 834. Conflicts of interest of directors of Palau corporations.**

- (a) No contract or transaction between a Palau corporation and one or more of its directors, or between a Palau corporation and any other corporation, firm, association, partnership, or other entity in which one or more of its directors are directors, officers or owners, or in which a related person is a director, officer or owner, or in which a director of the Palau corporation or a related person has a material financial interest, shall be void or voidable solely for this reason alone, or solely because the director is present at or participates in the meeting of the board or committee thereof which approves such contract or transaction, or solely because their votes are counted for such purpose, if:
- (1) the material facts as to such director's interest in such contract or transaction, common officership or directorship, material financial interest or relationship to a related person are disclosed in good faith or are known to the board of directors, and the board of directors in good faith authorizes the contract or transaction by the affirmative votes of a majority of the qualified directors, even though the qualified directors be less than a quorum; or
  - (2) the material facts as to such director's interest in such contract or transaction, common officership or directorship, material financial interest or relationship to a related person are disclosed in good faith or are known to the shareholders or members entitled to vote thereon, and the contract or transaction is specifically approved by vote of the shareholders or members.
- (b) The term "related person" as used in this section means the director's spouse, a child, stepchild, grandchild, parent, stepparent, grandparent, sibling, stepsibling, half sibling, aunt, uncle, niece, nephew, or first cousin or spouse of any thereof of the director or of the director's spouse, or an individual living in the same home as the director, or an entity controlled by the director or any person specified above in this subsection.
- (c) The term "material financial interest" as used in this section means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's judgment when participating in action on the authorization of the transaction.
- (d) 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 which authorizes the contract or transaction.
- (e) The articles of incorporation may contain additional restrictions on contracts or other transactions between a Palau corporation and its directors and may provide that, contracts or transactions in violation of such restrictions, shall be void or voidable by the Palau corporation.
- (f) Unless otherwise provided in the articles of incorporation or the bylaws, the setting of the compensation of directors for services in any capacity by the board of directors shall not be deemed to involve a conflict of interest.

- (g) The intent of this section is not only to provide against the voiding or voidability of a contract or transaction, but to set forth as well the substantive law on the methods by which a conflicted transaction may be regularized to become an arms-length transaction.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

## Chapter 9 — Provisions Related to Palau Nonprofit Corporations

### § 901. Admission of members to a domestic nonprofit corporation.

- (a) The articles or bylaws of a domestic nonprofit corporation may establish criteria or procedures for admission of members if the corporation has members.
- (b) No person shall be admitted as a member without his or her consent.
- (c) A domestic nonprofit corporation may have but is not required to have members.
- (d) Except as provided in its articles or bylaws, a domestic nonprofit corporation may admit members for no consideration or for such consideration as is determined by the board.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 902. Rights and obligations of members.

- (a) All members of a domestic nonprofit corporation shall have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the articles establish otherwise and the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.
- (b) A member of a domestic nonprofit corporation is not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation.
- (c) A member of a domestic nonprofit corporation may become liable to the corporation for dues, assessments or fees; provided, however, that an article or bylaw provision or a resolution adopted by the board authorizing or imposing dues, assessments or fees does not, of itself, create liability.
- (d) A member of a domestic nonprofit corporation may resign at any time, but the resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made prior to resignation.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 903. Transfer of membership interests limited.

- (a) Except as set forth in or authorized by the articles or bylaws, no member of a mutual benefit corporation may transfer a membership or any right arising therefrom. Where transfer rights have been provided in the articles, no restriction on them shall be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

- (b) No member of a public benefit or religious corporation may transfer a membership or any right arising therefrom.
- (c) A public benefit or religious corporation may not purchase any of its memberships or any right arising therefrom.
- (d) A mutual benefit corporation may purchase the membership of an existing member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles or bylaws, subject to Section 907 regarding unauthorized distributions.

### Section Notes

#### Sources

RPPL 11-10 § 2, modified.

## § 904. Creditor's action against members.

- (a) No proceeding may be brought by a creditor to reach the liability, if any, of a member of the corporation unless final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part or unless such proceeding would be useless.
- (b) All creditors of the corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subsection (a) to reach and apply unpaid amounts due the corporation. Any or all members who owe amounts to the corporation may be joined in such proceeding.

### Section Notes

#### Sources

RPPL 11-10 § 2, modified.

## § 905. Termination, expulsion and suspension.

- (a) A membership in a domestic nonprofit corporation with members may be terminated or suspended for the reasons and in the manner provided in the articles of incorporation or bylaws.
- (b) If the articles or bylaws do not contain provisions pertaining to termination or suspension of members, then no membership or memberships in such corporations may be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith. In no event shall the temporary interruption of a member's right to use amenities, recreational facilities or any other services for nonpayment of amounts due or for other disciplinary reasons be considered to be an expulsion or suspension of such member.
- (c) A proceeding challenging a termination or suspension must be commenced within one (1) year after the effective date of the termination or suspension.
- (d) The termination or suspension of a member does not relieve the member from any obligations incurred or commitments made prior to the termination or suspension.

### Section Notes

#### Sources

RPPL 11-10 § 2, modified.

**§ 906. Loans to members prohibited.**

- (a) A domestic nonprofit corporation may not lend money to or guaranty the obligation of a director or officer of the corporation.
- (b) The fact that a loan or guaranty is made in violation of this section does not affect the borrower's liability on the loan.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 907. Distributions prohibited.**

- (a) Except as authorized by this section, a domestic nonprofit corporation shall not make any distributions.
- (b) A mutual benefit corporation may purchase its memberships if after the purchase is completed:
  - (1) the corporation would be able to pay its debts as they become due in the usual course of its activities; and
  - (2) the corporation's total assets would at least equal the sum of its total liabilities.
- (c) Domestic nonprofit corporations may make distributions upon dissolution under Chapter 14.
- (d) This section does not apply to a contract or transaction authorized pursuant to Section 908.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 908. Compensation and other permitted payments.**

- (a) A domestic nonprofit corporation may pay reasonable compensation or reimburse reasonable expenses to members, directors, or officers for services rendered.
- (b) A domestic nonprofit corporation may confer benefits upon or make contributions to members or nonmembers in conformity with its purposes, repurchase its memberships only to the extent provided in Section 907(b), or repay capital contributions, except when:
  - (1) the corporation is currently insolvent or would thereby be made insolvent or rendered unable to carry on its purposes; or
  - (2) the fair value of the assets of the corporation remaining after the conferring of benefits, contribution, repurchase or repayment would be insufficient to meet its liabilities.
- (c) A domestic nonprofit corporation may make distributions of cash or property to members upon dissolution or final liquidation only as permitted by this chapter.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 909. Capital contributions of members.**

- (a) A domestic nonprofit corporation that is not a religious corporation may provide in its articles of incorporation or bylaws that members, upon or subsequent to admission, must make capital contributions. Except as provided in the articles or bylaws, the amount shall be fixed by the board of directors.
- (b) The adoption or amendment of a capital contribution requirement shall not apply to a member who did not vote in favor of the adoption or amendment until thirty (30) days after the member has been given notice of the adoption of the amendment. A member that resigns their membership prior to the date that the capital contribution is required is not liable for the capital contribution.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 910. Debt and security interests.**

The board of directors may authorize a mortgage or pledge of, or the creation of a security interest in, all or any part of the property of the domestic nonprofit corporation, or any interest therein. Unless otherwise restricted in the articles of incorporation or bylaws, the vote or consent of the members shall not be required to make effective such action by the board.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

## Chapter 10 — Amending the Articles of Incorporation of a Palau Corporation

### § 1001. General authority to amend articles of incorporation.

- (a) A Palau corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles of incorporation. Notification of the content of the adopted amendments shall be made to the Registrar within thirty (30) days of their adoption.
- (b) A shareholder or member of a Palau corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, distributions, or purpose or duration of the corporation.
- (c) The articles may require any proposed amendment to the articles or bylaws to be approved in writing by a specified person or persons other than the board. Such an article provision may only be amended with the approval in writing of such person or persons.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 1002. Amendment before issuance of shares of domestic for profit corporations.

If a domestic for profit corporation has not yet issued shares, its board of directors or its incorporators if it has no board of directors, may adopt one or more amendments to the corporation's articles of incorporation.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 1003. Adoption of amendment by board of directors.

Unless the articles of incorporation provide otherwise, a Palau corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder or member approval:

- (1) to change the names, addresses, and other contact details of the existing directors and officers;
- (2) to remove an existing director or appoint a new director if such appointment or removal does not require shareholder approval under this chapter or under the articles of incorporation;
- (3) to remove an existing officer or appoint a new officer if such appointment or removal does not require shareholder approval under this chapter or under the articles of incorporation;

- (4) to provide updated information to the Registrar regarding contact details for the corporation;
- (5) to change the name and address of the initial registered agent or registered office and to file a statement of change with the Registrar;
- (6) in the case of a domestic for profit corporation that has only one class of shares outstanding:
  - (A) to change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or
  - (B) to increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;
- (7) in the case of a domestic for profit corporation, to reflect a reduction in authorized shares when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares; or
- (8) in the case of a domestic for profit corporation, to delete a class of shares from the articles of incorporation when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

##### Notes

The Code Commission has made technical changes to the designations within this section to conform to the Style of the Code.

### § 1004. Authorization to amend by shareholders, board of directors or members.

- (a) Amendment of the articles of incorporation for a domestic for profit corporation may be authorized by vote of the holders of a majority of all outstanding shares entitled to vote thereon at a meeting of shareholders or by written consent of all shareholders entitled to vote thereon.
- (b) Amendment of the articles of incorporation for a domestic nonprofit corporation may be authorized by:
  - (1) if the corporation has members, by the holders of a majority of all outstanding membership interests entitled to vote thereon at a meeting of members or by written consent of all members entitled to vote thereon; or
  - (2) if there are no members, by the board of directors, in which case the corporation shall provide notice of any meeting of directors at which an amendment is to be approved. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the articles and contain or be accompanied by a copy or summary of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

**§ 1005. Voting on amendments by voting groups of domestic for profit corporation.**

- (a) If a domestic for profit corporation has more than one class of shares outstanding, in addition to the authorization of any amendment by a vote of all the outstanding shares, the amendment must be authorized by a majority of the holders of the outstanding shares of a class entitled to vote if the proposed amendment would effect an exchange or reclassification of all or part of the shares of the class, increase or decrease the aggregate number of authorized shares or the par value of shares of such class, or in any way change the rights (including any preemptive rights), powers, preferences, distributions or limitations of all or part of the shares of the class.
- (b) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (a), the holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.
- (c) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1006. Articles of amendment.**

After an amendment to the articles of incorporation has been adopted and approved in the manner required by this chapter and by the articles of incorporation, the Palau corporation shall deliver to the Registrar, for filing on the prescribed form, articles of amendment, which shall set forth the name and registration number of the Palau corporation, the text of each amendment adopted, the date of each amendment's adoption, and all other prescribed information.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1007. Restated articles of incorporation.**

- (a) A Palau corporation's board of directors may restate its articles of incorporation at any time, with or without shareholder or member approval, to consolidate all amendments into a single document.
- (b) A corporation that restates its articles of incorporation shall deliver to the Registrar for filing articles of restatement on the prescribed form setting forth the name and registration number of the Palau corporation and the text of the restated articles of incorporation together with a statement which states that the restated articles consolidate all amendments into a single document.
- (c) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1008. Effect of amendment.**

An amendment to the articles of incorporation of a Palau corporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, any requirement or limitation imposed upon the corporation or any property held by it by virtue of any trust upon which such property is held by the corporation, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**§ 1009. Amendment of bylaws.**

- (a) A domestic for profit corporation's shareholders or a domestic nonprofit corporation's members, if any, may amend or repeal the Palau corporation's bylaws. Notification of the content of the adopted amendments shall be made to the Registrar within thirty (30) days of their adoption.
- (b) A Palau corporation's board of directors may amend or repeal the corporation's bylaws, unless
  - (1) the articles of incorporation reserve that power exclusively to the shareholders or members, if any, in whole or part; or
  - (2) the shareholders or members, if any, in amending, repealing, or adopting a bylaw expressly provide that the board of directors may not amend, repeal, or reinstate that bylaw.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**§ 1010. Bylaw increasing quorum or voting requirement for directors.**

- (a) A bylaw that increases a quorum or voting requirement for the board of directors or that requires a meeting of shareholders to be held at a place of a Palau corporation may be amended or repealed:
  - (1) if originally adopted by the shareholders or members, if any, only by the shareholders or members, unless the bylaw otherwise provides; or
  - (2) if adopted by the board of directors, either by the shareholders or members, or by the board of directors.
- (b) Action by the board of directors under subsection (a) to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors shall meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

## Chapter 11 — Mergers and Share Exchanges

### § 1101. Definitions applicable to mergers.

As used in this chapter:

- (1) “eligible for profit entity” includes any legal entity, other than a domestic or foreign nonprofit corporation, which is organized to conduct business for profit, including without limitation a general partnership, limited partnership, limited liability partnership, limited liability company, joint venture, joint stock company, business trust and the like.
- (2) “eligible nonprofit entity” includes any legal entity that is organized to conduct its business as a not-for-profit entity, without regard to form, including without limitation nonprofit corporations, incorporated societies, charitable associations, nonprofit cooperatives, charitable trusts and the like.
- (3) “merger” means a business combination pursuant to Section 1102.
- (4) “party to a merger” or “party to a share exchange” means any domestic or foreign for profit corporation or eligible entity that will:
  - (A) merge under a plan of merger;
  - (B) acquire shares or eligible interests of another corporation or an eligible entity in a share exchange; or
  - (C) have all of its shares or eligible interests or all of one or more classes or series of its shares or eligible interests acquired in a share exchange.
- (5) “share exchange” means a business combination pursuant to Section 1104.
- (6) “survivor” in a merger means the corporation or eligible entity into which one or more other corporations or eligible entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

##### Notes

The Code Commission has made technical changes to the designations within this section to conform to the Style of the Code.

### § 1102. Merger of domestic for profit corporations.

- (a) One or more domestic for profit corporations may merge with one or more domestic or foreign for profit corporations or eligible for profit entities pursuant to a plan of merger.
- (b) A foreign for profit corporation, or a foreign eligible for profit entity, may be a party to a merger with a domestic for profit corporation, or may be created by the terms of the plan of merger, only if the merger is permitted by the law governing the foreign for profit corporation or eligible for profit entity.
- (c) The plan of merger must include:

- (1) the name and registration number, if any, of each party to the merger that will merge and the name of the for profit corporation or eligible for profit entity that will be the survivor of the merger;
  - (2) the terms and conditions of the merger;
  - (3) the manner and basis of converting the shares of each merging corporation or the equity interests (however styled) of each merging eligible for profit entity into shares or other securities, obligations, rights to acquire shares, other securities or eligible interests, cash, other property, or any combination of the foregoing;
  - (4) the articles of incorporation of any for profit corporation, or the organizational documents of any eligible for profit entity, to be created by the merger, or any amendments to the survivor's articles of incorporation or organizational documents; and
  - (5) any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organizational document of any such party.
- (d) Terms of a plan of merger may be made dependent on facts outside the plan provided that those facts are objectively ascertainable. The term "facts" includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.
- (e) The plan of merger may include a provision that the plan may be amended prior to filing articles of merger, but if the shareholders of a domestic for profit corporation that is a party to the merger are required or permitted to vote on the plan then such shareholders must be permitted to vote on the amendment prior to filing articles of merger.
- (f) Property held in trust or for charitable purposes under the laws of the Republic of Palau by a party to the merger shall not be diverted by a merger from the objects for which it was donated, granted or devised, unless and until the entity holding the property obtains an order of the court specifying the disposition of the property.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 1103. Merger of domestic nonprofit corporations.

- (a) Subject to the limitations set forth herein, a domestic nonprofit corporation may merge into one or more domestic or foreign nonprofit corporations or eligible nonprofit entities if the plan of merger is approved or provided for herein.
- (b) The plan of merger must set forth:
- (1) the name and registration number, if any, of each party to the merger and the name of the survivor into which the parties shall merge;
  - (2) the terms and conditions of the planned merger;
  - (3) the manner and basis, if any, of converting the memberships of each public benefit or religious corporation into memberships of the survivor; and

- (4) if the merger involves a mutual benefit corporation, the manner and basis, if any, of converting memberships of each merging entity into memberships, obligations or securities of the survivor or into cash or other property in whole or part.
- (c) The plan of merger may set forth:
  - (1) any amendments to the articles of incorporation or bylaws, or other organizational document of the survivor to be effected by the planned merger; and
  - (2) other provisions relating to the planned merger.
- (d) At least twenty (20) days before consummation of any merger of a public benefit corporation or a religious corporation, notice, including a copy of the proposed plan of merger, must be delivered to the Attorney General and Registrar.
- (e) Without the prior approval of the court in a proceeding for which the Attorney General and Registrar have been given written notice, a public benefit or religious corporation may merge only with:
  - (1) other domestic nonprofit public benefit or religious corporations; or
  - (2) a foreign corporation that would qualify under this chapter as a public benefit or religious corporation.
- (f) Without the prior written consent of the Attorney General or of the court in a proceeding for which the Attorney General has been given notice, no member of a public benefit or religious corporation may receive or keep anything as a result of a merger other than a membership or membership in the surviving public benefit or religious corporation. The court shall approve the transaction if it is in the public interest.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 1104. Share exchange involving domestic for profit corporations.

- (a) Through a share exchange:
  - (1) a domestic for profit corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign for profit corporation, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange; or
  - (2) all of the shares of one or more classes or series of shares of a domestic for profit corporation may be acquired by another domestic or foreign for profit corporation or other for profit entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange.
- (b) A foreign corporation or eligible for profit entity may be a party to a share exchange only if the share exchange is permitted by the laws under which the foreign corporation or other for profit entity is organized or by which it is governed and in effecting the share exchange the

foreign corporation or other for profit entity complies with such laws and with its articles of incorporation or organizational documents.

- (c) The plan of share exchange must include:
- (1) the name of each for profit corporation or other for profit entity whose shares or interests will be acquired and the name of the corporation or other entity that will acquire those shares or interests;
  - (2) the terms and conditions of the share exchange;
  - (3) the manner and basis of exchanging shares or interests in the parties to the exchange whose interests will be acquired under the share exchange into shares or other securities, interests, obligations, rights to acquire shares, other securities, or interests, cash, other property, or any combination of the foregoing; and
  - (4) any other provisions required by the laws under which any party to the share exchange is organized or by the articles of incorporation or organic document of any such party.
- (d) The plan of share exchange may also include a provision that the plan may be amended prior to filing articles of share exchange, but if the shareholders of a domestic for profit corporation that is a party to the share exchange are required or permitted to vote on the plan, then such shareholders must be permitted to vote on the amendment prior to effectuating the share exchange.
- (e) This section does not limit the power of a domestic corporation to acquire shares of another corporation or interests in another entity in a transaction other than a share exchange.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### **§ 1105. Action on plan of merger or share exchange involving domestic for profit corporation.**

In the case of a domestic for profit corporation that is a party to a merger or share exchange:

- (1) The plan of merger or share exchange must be adopted by the board of directors.
- (2) After adopting the plan of merger or share exchange the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board must transmit to the shareholders the basis for that determination.
- (3) If the approval is to be given at a meeting of the shareholders, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan.
- (4) Unless the articles of incorporation requires a greater vote or a greater number of votes to be present, approval of the plan of merger or share exchange requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of

the votes entitled to be cast on the plan exists, and, if any class or series of shares is entitled to vote as a separate group on the plan of merger or share exchange, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the merger or share exchange by that voting group is present.

- (5) Subject to the articles of incorporation, separate voting by voting groups is required:
- (A) on a plan of merger, by each class or series of shares that:
    - (i) are to be converted under the plan of merger into other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, other property, or any combination of the foregoing; or
    - (ii) are entitled to vote as a separate group on a provision in the plan that constitutes a proposed amendment to articles of incorporation of a surviving corporation, that requires action by separate voting groups under Section 1005;
  - (B) on a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and
  - (C) on a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange.
- (6) If as a result of a merger or share exchange one or more shareholders of a domestic for profit corporation would become subject to owner liability for the debts, obligations or liabilities of any other person or entity, approval of the plan of merger or share exchange shall require the execution, by each such shareholder, of a separate written consent to become subject to such owner liability.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

##### Notes

The Code Commission has made technical changes to the designations within this section to conform to the Style of the Code.

### § 1106. Action on plan of merger involving domestic nonprofit corporation.

- (a) Unless this chapter, the articles, bylaws or members, acting pursuant to subsection (c), require a greater vote, a plan of merger involving a domestic nonprofit corporation to be adopted must be approved:
- (1) by the board;
  - (2) by the members (if the corporation has members) by two-thirds of the votes cast; and
  - (3) in writing by any person or persons whose approval is required by a provision of the articles for an amendment to the articles or bylaws.
- (b) If the corporation does not have members, the merger must be approved by a majority of the directors in office at the time the merger is approved. The corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with this chapter.

The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed merger.

- (c) If the domestic nonprofit corporation has members:
- (1) If the board seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance this chapter. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.
  - (2) If the board seeks to have the plan approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.
- (d) After a merger is adopted, and at any time before articles of merger are filed, the planned merger may be abandoned, subject to any contractual rights, without further action by members or other persons who approved the plan in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors.
- (e) Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance, that is or has been made to a participating domestic nonprofit corporation and that takes effect or remains payable after the merger, inures to the survivor unless the will or other instrument otherwise specifically provides.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### **§ 1107. Merger between parent and subsidiary or between subsidiaries of domestic for profit corporations.**

- (a) A domestic for profit corporation (the “parent”) that owns shares of a domestic or foreign subsidiary corporation that carry at least ninety percent (90%) of the voting power of each class and series of the outstanding shares of the subsidiary that have voting power may merge the subsidiary into itself or into another such subsidiary, or merge itself into the subsidiary, without the approval of the board of directors or shareholders of the subsidiary, unless the articles of incorporation of any of the corporations otherwise provide, and unless, in the case of a foreign subsidiary, approval by the subsidiary’s board of directors or shareholders is required by the laws under which the subsidiary is organized.

- (b) If under subsection (a) approval of a merger by the subsidiary's shareholders is not required, the parent corporation shall, within ten (10) days after the effective date of the merger, notify each of the subsidiary's shareholders that the merger has become effective.
- (c) Except as provided in subsections (a) and (b), a merger between a parent and a subsidiary shall be governed by the provisions of Chapter 11 applicable to mergers generally.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1108. Articles of merger or share exchange.**

- (a) After a plan of merger or share exchange has been adopted and approved as required by this chapter, articles of merger or share exchange in the prescribed form shall be signed on behalf of each party to the merger or share exchange by any officer or other duly authorized representative. The articles shall set forth:
  - (1) the names of the parties to the merger or share exchange and, if a registered entity, their registration number;
  - (2) the manner in which the merger or share exchange was authorized with respect to each constituent corporation and eligible entity;
  - (3) if the articles of incorporation of the survivor of a merger are amended, or if a new corporation is created as a result of a merger, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation; and
  - (4) such other matters as required by the prescribed form.
- (b) Articles of merger or share exchange shall be delivered to the Registrar for filing by the survivor of the merger or the acquiring corporation in a share exchange, and shall take effect when filed by the Registrar.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1109. Effect of merger or share exchange.**

- (a) When a merger becomes effective:
  - (1) the participant that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be;
  - (2) the separate existence of every participant that is merged into the survivor ceases;
  - (3) all property owned by, and every contract right possessed by, each participant that merges into the survivor is vested in the survivor without reversion or impairment;
  - (4) all liabilities of each participant that is merged into the survivor are vested in the survivor;
  - (5) the name of the survivor may, but need not be, substituted in any pending proceeding for the name of a participant whose separate existence ceased in the merger;

- (6) the articles of incorporation or organic documents of the survivor are amended to the extent provided in the plan of merger;
  - (7) the articles of incorporation or organic documents of a survivor that is created by the merger become effective; and
  - (8) the shares of each corporation that is a party to the merger, and the interests in an eligible entity that is a party to a merger, that are to be converted under the plan of merger into shares, eligible interests, obligations, rights to acquire securities, other securities, or eligible interests, cash, other property, or any combination of the foregoing, are converted, and the former holders of such shares or eligible interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under Chapter 13 or the organic law of the eligible entity.
- (b) When a share exchange becomes effective, the shares of each domestic for profit corporation that are to be exchanged for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under Chapter 13.
- (c) Any shareholder of a domestic corporation that is a party to a merger or share exchange who, prior to the merger or share exchange, was liable for liabilities or obligations of the corporation, shall not be released from such liabilities or obligations by reason of the merger or share exchange.
- (d) Upon a merger becoming effective, a foreign for profit or foreign nonprofit corporation, or a foreign eligible entity, as the case may be, that is the survivor of the merger is deemed to:
- (1) appoint the Registrar as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic for profit corporation that is a party to the merger who exercise appraisal rights; and
  - (2) agree that it will promptly pay the amount, if any, to which such shareholders are entitled under Chapter 13.
- (e) The merger or share exchange does not discharge or otherwise affect any owner liability under the organic law of the participant in which the person was a shareholder, member or interest holder to the extent any such owner liability arose before the effective time of the articles of merger or share exchange.

### Section Notes

#### Sources

RPPL 11-10 § 2, modified.

## Chapter 12 — Disposition of Assets

### § 1201. Disposition of assets of domestic for profit corporations not requiring shareholder approval.

- (a) A Palau domestic for profit corporation may under such conditions and as determined by the board of directors, without the approval of the shareholders and unless the articles of incorporation otherwise provide:
- (1) sell, lease, exchange, or otherwise dispose of all, or substantially all, of its assets in the usual and regular course of business;
  - (2) mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of its assets whether or not in the usual and regular course of business; or
  - (3) transfer any or all of the corporation's assets to one or more domestic or foreign corporations or other entities, all of the shares or interests of which are owned by the corporation; or
  - (4) distribute assets pro rata to the holders of one or more classes or series of the corporation's shares.
- (b) Unless the articles require it, approval of the shareholders or members, if any, or any other person of a transaction described in subsection (a) is not required.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 1202. Disposition of assets of domestic for profit corporation requiring shareholder approval.

- (a) A sale, lease, or exchange or other disposition of assets, other than a disposition described in Section 1201, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. This is if it retains less than twenty five percent (25%) of total assets at the end of the most recently completed fiscal year and either (i) less than twenty five percent (25%) income from continuing operations before taxes or (ii) less than twenty five percent (25%) of revenues from continuing operations, for the most recently completed fiscal year.
- (1) To obtain the approval of the shareholders at a meeting under subsection (a), the board of directors may adopt a resolution recommending such disposition and directing the submission thereof to a vote at a meeting of shareholders entitled to vote thereon, which may be at either an annual or a special meeting. Such proposed disposition need not be adopted by the board of directors and may be directly submitted to any annual or special meeting of shareholders.
  - (2) The corporation shall give written notice of the meeting of shareholders to each shareholder, stating that the purpose, or one of the purposes, of such meeting is to consider disposition of assets of the corporation and the description of the disposition including its terms and conditions and the consideration to be received by the

corporation. Notice must be given within the time and in the manner provided for by this chapter or the articles of incorporation as regards notice of meetings of shareholders.

- (3) The authorization of the disposition shall require the affirmative vote of the holders of a majority of the outstanding shares entitled to vote on the dispositions, unless the articles or bylaws provide for a greater majority.
  - (4) After authorization by a vote of shareholders and before the disposition has been consummated, the board of directors, in its discretion, may abandon such disposition of assets, subject to contractual rights of third parties to the disposition, without further action or approval by shareholders.
- (b) A disposition of assets in the course of dissolution under this chapter is not governed by this section.

### Section Notes

#### Sources

RPPL 11-10 § 2, modified.

### **§ 1203. Disposition of assets of domestic nonprofit corporation not requiring member approval.**

- (a) Unless the articles of incorporation or bylaws otherwise provide, no approval of the members of a domestic nonprofit corporation is required:
- (1) to sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets:
    - (A) in the usual and regular course of its activities; or
    - (B) if the corporation, and any entities in which the corporation owns eighty percent (80%) or more of the outstanding interests, retain an activity that represented or was supported by at least thirty three percent (33%) of total assets at the end of the most recently completed fiscal year;
  - (2) to mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of the corporation's assets, whether or not in the usual and regular course of its activities; or
  - (3) to transfer any or all of the corporation's assets to one or more corporations or other entities all of the memberships or interests of which are owned by the corporation.

### Section Notes

#### Sources

RPPL 11-10 § 2, modified.

### **§ 1204. Disposition of assets of domestic nonprofit corporation requiring member approval.**

- (a) Except as provided in the articles of incorporation or bylaws, a sale, lease, exchange, or other disposition of assets, other than a disposition described in Section 1203 (disposition of assets not requiring members approval), requires approval of the members of a membership corporation.

- (b) A sale, lease, exchange, or other disposition that requires approval of the members under subsection (a) shall be approved in the following manner:
- (1) The board of directors must first approve the disposition.
  - (2) The disposition shall then be approved by the members. In submitting the disposition to the members for approval, the board of directors shall recommend that the members approve the disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall inform the members of the basis for its so proceeding.
  - (3) The board of directors may set conditions for the approval by the members of a disposition or the effectiveness of the disposition.
  - (4) If the approval of the members is to be given at a meeting, the corporation shall notify each member entitled to vote of the meeting of members at which the disposition is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the disposition and must contain a description of the disposition, including the terms and conditions of the disposition and the consideration to be received by the corporation.
  - (5) Unless the articles of incorporation or bylaws, or the board of directors acting pursuant to subsection (b)(3), requires a greater vote, or a greater number of votes to be present, the approval of a disposition by the members requires the approval of the members at a meeting at which a quorum exists, and, if any class of members is entitled to vote as a separate group on the disposition, the approval of each such separate voting group at a meeting at which a quorum of the voting group exists.
- (c) After a disposition has been approved by the members under subsection (b)(5), and at any time before the disposition has been consummated, it may be abandoned by the nonprofit corporation without action by the members, subject to any contractual rights of other parties to the disposition.
- (d) A disposition of assets in the course of dissolution under Chapter 14 (dissolution) is not governed by this section.
- (e) The assets of a corporation or other entity in which the nonprofit corporation owns eighty percent (80%) or more of the outstanding interests, directly or indirectly, shall be deemed to be the assets of the nonprofit corporation for the purposes of this section.
- (f) In addition to the approval of a disposition of assets by the board of directors and members as required by this section, the disposition must also be approved in a record by any person or group of persons whose approval is required under Chapter 10 to amend the articles of incorporation or bylaws.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

##### Notes

The Code Commission has changed the word “paragraph” to “subsection” in subsection (b)(5) and subsection (c) to conform to the Style of the Code.

## § 1205. Restrictions on disposition of assets of domestic nonprofit corporation.

- (a) Property held in trust or otherwise dedicated to a charitable purpose may not be diverted from its purpose by a transaction described in Section 1203 (disposition of assets not requiring member approval) or 1204 (member approval of certain dispositions) unless the nonprofit corporation obtains an appropriate order from the court to the extent required by and pursuant to the law of this jurisdiction on cy pres or otherwise dealing with the non diversion of charitable assets.
- (b) A person who is a member or otherwise affiliated with a charitable corporation may not receive a direct or indirect financial benefit in connection with a disposition of assets unless the person is a charitable corporation or an unincorporated entity that has a charitable purpose. This subsection does not apply to the receipt of reasonable compensation for services rendered.

### Section Notes

#### Sources

RPPL 11-10 § 2, modified.

## Chapter 13 — Appraisal Rights for Domestic for Profit Corporations

### § 1301. Right to appraisal and payment for shares.

- (a) Any shareholder of a domestic for profit corporation that owns shares as of the record date of the vote to be taken on any of the following corporate actions shall be entitled to dissent and receive payment of the fair value of their shares in accordance with this chapter:
- (1) any transaction in which the corporation is a party to a merger or share exchange where the merger or share exchange is submitted to a vote;
  - (2) any transaction involving a sale or exchange of all or substantially all of the property and assets of the corporation which is not made in the usual and regular course of its business, including a sale in dissolution, but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all the net proceeds of the corporation be distributed to the shareholders in accordance with their respective interests within one (1) year after the date of sale;
  - (3) an amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share;
  - (4) in all other cases, to the extent provided by the articles of incorporation, bylaws or a resolution of the board of directors;
  - (5) a record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder or a voting trust beneficial owner only if the record shareholder objects with respect to all shares of a class or series owned by the beneficial shareholder or the voting trust beneficial owner and notifies the corporation in writing of the name and address of each beneficial shareholder or voting trust beneficial owner on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders; and
  - (6) a beneficial shareholder and a voting trust beneficial owner may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:
    - (A) submits to the corporation the record shareholder's written consent to the assertion of such rights no later than sixty (60) days after the appraisal notice is sent;
    - (B) does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder or the voting trust beneficial owner.

## Section Notes

## Sources

RPPL 11-10 § 2, modified.

## Notes

The Code Commission moved “and” from paragraph (4) to paragraph (5), the penultimate item in the list.

**§ 1302. Procedure to exercise appraisal rights and receive payment for shares.**

- (a) Any shareholder shall be deemed a dissenting shareholder and entitled to appraisal under this section if the corporation concluded that appraisal rights are or may be available and such shareholder:
- (1) files with the domestic for profit corporation before or at a meeting of the shareholders a written objection to such corporate action described in Section 1301. The objection shall include a statement that the shareholder intends to demand payment for their shares if the action is taken. Such objection is not required from any shareholder to whom the domestic corporation failed to give notice of the meeting in accordance with this chapter or with the articles of incorporation or bylaws;
  - (2) does not vote or sign a consent in favor of the corporate action; and
  - (3) makes written demand on the corporation (or the surviving or new corporation in the case of a merger or share exchange) within twenty (20) days after the corporate action is effected for payment of the fair value of such shareholder’s shares as of the day before the date on which the vote approving the corporate action was taken. Such demand shall state the number and class of the shares owned by such dissenting shareholder.
- (b) Notwithstanding any contrary provision in this chapter, notice shall be given to each shareholder owning stock and entitled to appraisal rights as of the record date, if the corporate action is to be submitted to a vote at a meeting of shareholders, whether or not each such shareholder is entitled to vote. The notice shall be given in accordance with the chapter or with the procedures adopted by the -articles of incorporation or the bylaws. Such notice must be accompanied by (i) financial statements of the corporation that issued the shares that may be subject to appraisal, consisting of a balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the date of the notice, an income statement for that year, and a cash flow statement for that year; provided that, if such financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and (ii) the latest interim financial statements of such corporation, if any.
- (c) Any shareholder falling within the following categories shall be conclusively presumed to have consented to the corporate action and shall be bound by the terms thereof and shall not be deemed to be a dissenting shareholder:
- (1) a shareholder who fails to file a written objection prior to or at such meeting in accordance with subsection (a)(1) unless the corporate action was authorized by written consent of the shareholders without a meeting;
  - (2) fails to make demand within the twenty (20) day period; or

- (3) in the case of a shareholder owning voting stock as of such record date, a shareholder who votes or signs a consent in favor of the corporate action.
- (d) In a merger pursuant to Section 1102, the parent entity shall notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice shall be sent within ten (10) days after the corporate action became effective and include the materials described hereinafter, which must:
  - (1) supply a form that (i) specifies the first date of any announcement to shareholders made before the date the corporate action became effective of the principal terms of the proposed corporate action, and (ii) if such announcement was made, requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date, and (iii) requires the shareholder asserting appraisal rights to certify that such shareholder did not vote for or consent to the transaction as to the class or series of shares for which appraisal is sought;
  - (2) state:
    - (A) where the form shall be sent and where certificates for certificated shares shall be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date by which the corporation must receive the required form under subsection (d)(2)(B);
    - (B) a date by which the corporation shall receive the form, which date may not be fewer than forty (40) nor more than sixty (60) days after the date the appraisal notice is sent, and state that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date;
    - (C) the corporation's estimate of the fair value of the shares;
    - (D) that, if requested in writing, the corporation will provide, to the shareholder so requesting, within ten (10) days after the date specified in subsection (d)(2)(B) the number of shareholders who return the forms by the specified date and the total number of shares owned by them; and
    - (E) the date by which the notice to withdraw shall be received, which date shall be within twenty (20) days after the date specified in subsection (d)(2)(B); and
  - (3) be accompanied by a copy of this chapter.
- (e) If within thirty (30) days after the date on which such corporate action was effected the value of such shares is agreed upon between the dissenting shareholder and the corporation, or the surviving or new corporation in the case of a merger or share exchange, payment therefor shall be made in cash within ninety (90) days after the date on which such corporate action was effected, upon the surrender of the dissenting shareholder's share certificate or certificates. The corporation shall pay in cash within thirty (30) days after the form required by Section 1322(d)(2)(ii) is due, to those shareholders who complied with the requirement of this chapter, the amount the corporation estimates to be the fair value of their shares, plus interest. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in such shares or in the corporation. The payment to each shareholder must be accompanied by:

- (1) financial statements of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the date of payment, an income statement for that year, and a cash flow statement for that year; provided that, if such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information, and the latest interim financial statements of such corporation, if any;
  - (2) a statement of the corporation's estimate of the fair value of the shares, which estimate shall equal or exceed the corporation's estimate.
- (f) The right of a dissenting shareholder to be paid the fair value of such shareholder's shares as herein provided shall cease if and when the corporation shall abandon the corporate action.
- (g) When the remedy provided for in this section is available with respect to a corporate action, such remedy shall be the exclusive remedy of the shareholder as to that corporate action, except in the case of fraud or lack of authorization for the corporate transaction.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 1303. Judicial appraisal of shares.

#### (a) Court action:

- (1) If within such period of thirty (30) days the shareholder and corporation, or the surviving or new corporation in the case of a merger or share exchange, do not so agree, the dissenting shareholder may within sixty (60) days after the expiration of the thirty (30) day period, file a petition with the court asking for a finding and determination of the fair value of such shares, and shall be entitled to judgment against the corporation for the amount of such fair value as of the day prior to the date on which such vote was taken approving such corporate action, together with interest thereon to the date of such judgment.
- (2) The corporation shall make all shareholders, regardless of whether they are residents of this jurisdiction, whose demands remain unsettled parties to the proceeding as in an action against their shares, and all parties shall be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.
- (3) The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them, or in any amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.
- (4) Each shareholder made a party to the proceeding is entitled to judgment (i) for the amount, if any, by which the court finds the fair value of the shareholder's shares exceeds the amount paid by the corporation to the shareholder for such shares, plus interest, or (ii) for the fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment.

- (5) The judgment shall be payable only upon and simultaneously with the surrender to the corporation of the certificate or certificates representing said shares.
  - (6) Upon the payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares or in the corporation. Such shares may be held and disposed of by the corporation as it may see fit.
  - (7) Unless the dissenting shareholder shall file such petition within the time herein limited, such shareholder and all persons claiming under such shareholder shall be conclusively presumed to have approved and ratified the corporate action, and shall be bound by the terms thereof.
- (b) Court Costs and Expenses: The court in an appraisal proceeding commenced under this section shall determine all court costs of the proceeding, including the reasonable compensation and expenses of any appraisers appointed by the court. The court shall assess the court costs against the domestic for profit corporation, except that the court may assess court costs against all or some of the shareholders demanding appraisal, in amounts which the court finds equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.
- (c) If the court in an appraisal proceeding finds that the expenses incurred by any shareholder were of substantial benefit to other shareholders similarly situated and that such expenses should not be assessed against the corporation, the court may direct that such expenses be paid out of the amounts awarded to the shareholders who were benefited.
- (d) If the corporation fails to make a required payment under this section, the shareholder may sue directly for the amount owed, and to the extent successful, shall be entitled to recover from the corporation all expenses of the suit.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

#### § 1304. Other remedies limited.

- (a) The legality of a proposed or completed corporate action described in Section 1301 may not be contested, nor may the corporate action be enjoined, set aside or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.
- (b) Subsection (a) does not apply to a corporate action that:
  - (1) was not authorized and approved in accordance with the applicable provisions of:
    - (A) this chapter;
    - (B) the articles of incorporation or bylaws; or
    - (C) any resolution of the board of directors authorizing the corporate action;
  - (2) was procured as a result of fraud, a material misrepresentation, or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading;

- (3) is a transaction in which a director has a material financial interest, unless it has been recommended by the board of directors and approved by the shareholders as if the interested transactions were a director's conflicting interest transaction; or
  - (4) is approved by less than unanimous consent of the voting shareholders if the challenge to the corporate action is brought by a shareholder who did not consent and as to whom notice of the approval of the corporate action was not effective at least ten (10) days before the corporate action was effected, and the proceeding challenging the corporate action is commenced within ten (10) days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.
- (c) Any challenge to the corporate action under subsection (b) must be commenced within five (5) days after the effective date of the corporate action.

### Section Notes

#### Sources

RPPL 11-10 § 2, modified.

## Chapter 14 — Dissolution of Palau Corporations

### § 1401. Dissolution by board of directors.

A majority of the initial directors of a Palau corporation that has not issued shares or does not have members, or that has not commenced business may dissolve the Palau corporation by delivering to the Registrar for filing articles of dissolution on the prescribed form that set forth:

- (1) the name and registration number of the corporation;
- (2) that no debt of the corporation remains unpaid;
- (3) that the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued;
- (4) that a majority of the initial directors authorized the dissolution; and
- (5) such other information as must be on the prescribed form.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

##### Notes

The Code Commission has made technical changes to the designations within this section to conform to the Style of the Code.

### § 1402. Dissolution of domestic for profit by board and shareholders.

- (a) A domestic for profit corporation's board of directors may propose dissolution for submission to the shareholders.
- (b) For a proposal to dissolve to be adopted:
  - (1) The board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and
  - (2) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (d).
- (c) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.
- (d) Unless the articles of incorporation require a greater vote, a greater number of shares to be present, or a vote by voting groups, adoption of the proposal to dissolve shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast exists.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

**§ 1403. Dissolution of domestic nonprofit by directors, members and third parties.**

- (a) Unless this chapter, the articles or the bylaws require a greater vote, dissolution of a domestic nonprofit corporation is authorized if it is approved:
- (1) by the board;
  - (2) by the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and
  - (3) if applicable, in writing by any person or persons whose approval is required by a provision of the articles for an amendment to the articles or bylaws.
- (b) If the corporation does not have members, dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with this chapter. The notice must also state that the purpose of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.
- (c) If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with Section 705. The notice must state that the purpose of the meeting is to consider dissolving the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.
- (d) If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.
- (e) The plan of dissolution shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**§ 1404. Notice to Attorney General of certain domestic nonprofit dissolutions.**

- (a) A public benefit or religious corporation shall give the Attorney General and Registrar written notice that it intends to dissolve at or before the time it delivers articles of dissolution to the Registrar. The notice shall include a copy or summary of the plan of dissolution.
- (b) No assets shall be transferred or conveyed by a public benefit or religious corporation as part of the dissolution process until twenty (20) days after it has given the written notice required by subsection (a) to the Attorney General and Registrar or until the Attorney General has consented in writing to the dissolution, or indicated in writing that he or she will take no action in respect to, the transfer or conveyance, whichever is earlier.
- (c) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the Attorney General and Registrar a list showing those persons, other than creditors, to whom the assets were

transferred or conveyed. The list shall indicate the addresses of each person, other than a creditor, who received assets and indicate what assets each received.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1405. Articles of dissolution of Palau corporations.**

- (a) At any time after dissolution is authorized, a Palau corporation may dissolve by delivering to the Registrar for filing articles of dissolution in the prescribed form setting forth:
- (1) the name and registration number of the corporation;
  - (2) the date at which dissolution was authorized; and
  - (3) if dissolution was required to be approved by the shareholders or members, if any, a statement that the proposal to dissolve was duly approved by the shareholders or members in the manner required by this chapter and by the articles of incorporation;
  - (4) if approval of the shareholders or members was not required, a statement to that effect and a statement that dissolution was approved by a sufficient vote of the board of directors;
  - (5) if approval of dissolution by some person or persons other than the shareholders, members, or the board is required, a statement that the approval was obtained;
  - (6) if the corporation is a public benefit or religious corporation, a statement that the notice to the Attorney General has been given; and
  - (7) such other information as must be on the prescribed form.
- (b) A Palau corporation is dissolved upon the effective date of its articles of dissolution.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1406. Revocation of dissolution by Palau corporations.**

- (a) A Palau corporation may revoke its dissolution within one hundred twenty (120) days of its effective date.
- (b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without other approval.
- (c) After the revocation of dissolution is authorized, the Palau corporation may revoke the dissolution by delivering to the Registrar for filing articles of revocation of dissolution in the prescribed form, together with a copy of its articles of dissolution, that set forth:
- (1) the name and registration number of the corporation;
  - (2) the effective date of the dissolution that was revoked;
  - (3) the date that the revocation of dissolution was authorized; and

- (4) a statement as to the manner in which the revocation was approved. If shareholder approval is required, the statement must state that the revocation was permitted by the board of directors alone pursuant to an authorization by the shareholders.
- (d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution, which must be filed within one hundred twenty (120) days of the filing of the articles of dissolution.
- (e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

#### § 1407. Effect of dissolution on domestic for profit corporations.

- (a) A dissolved domestic for profit corporation that has dissolved continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:
  - (1) collecting its assets and minimizing its liabilities;
  - (2) disposing of its properties that will not be distributed in kind to its shareholders;
  - (3) discharging or making provision for discharging its liabilities;
  - (4) distributing its remaining assets among its shareholders according to their interests; and
  - (5) doing every other act necessary to wind up and liquidate its business and affairs.
- (b) Dissolution of a domestic for profit corporation does not:
  - (1) transfer title to the corporation's property;
  - (2) prevent transfer of its shares or securities, although the authorization to dissolve may require closing of the corporation's share transfer records;
  - (3) subject its directors or officers to standards of conduct different from those prescribed in Chapter 8;
  - (4) change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;
  - (5) prevent commencement of a proceeding by or against the corporation in its corporate name;
  - (6) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
  - (7) terminate the authority of the registered agent of the corporation.
- (c) A distribution in liquidation under this section may only be made by a dissolved corporation.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1408. Effect of dissolution on domestic nonprofit corporations.**

- (a) A dissolved nonprofit corporation continues its corporate existence but may not carry on any activities except those appropriate to wind up and liquidate its affairs, including:
- (1) preserving and protecting its assets and minimizing its liabilities;
  - (2) discharging or making provision for discharging its liabilities and obligations;
  - (3) disposing of its properties that will not be distributed in kind;
  - (4) returning, transferring or conveying assets held by the corporation upon a condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, in accordance with such condition;
  - (5) distributing, subject to any contractual or legal requirements, its assets and remaining property as provided in or authorized by its articles of incorporation or bylaws;
  - (6) if the corporation is a public benefit or religious corporation, and no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring, subject to any contractual or legal requirement, its assets to one or more public benefit or religious corporations;
  - (7) if the corporation is a mutual benefit corporation and no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring its assets to its members; and
  - (8) doing every other act necessary to wind up and liquidate its activities and affairs.
- (b) Dissolution of a domestic nonprofit corporation does not:
- (1) transfer title to the corporation's property;
  - (2) subject its directors or officers or members, to standards of conduct different from those prescribed in Chapter 8;
  - (3) change quorum or voting requirements for its board or members; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;
  - (4) prevent commencement of a proceeding by or against the corporation in its corporate name;
  - (5) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
  - (6) terminate the authority of the registered agent of the domestic nonprofit corporation.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1409. Known claims against Palau corporations.**

- (a) A dissolved Palau corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after its effective date.
- (b) The written notice must:
  - (1) describe information that must be included in a claim;
  - (2) provide a mailing address where a claim may be sent;
  - (3) state the deadline, which may not be fewer than ninety (90) days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and
  - (4) state that the claim will be barred if not received by the deadline.
- (c) A claim against the dissolved Palau corporation is barred:
  - (1) if a claimant who was given written notice under subsection (b) does not deliver the claim to the dissolved corporation by the deadline; or
  - (2) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety (90) days from the effective date of the rejection notice.
- (d) For purposes of this section, “claim” does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**§ 1410. Other claims against dissolved Palau corporations.**

- (a) A dissolved Palau corporation may also publish notice of its dissolution and request that creditors and persons with claims against the dissolved Palau corporation present them in accordance with the notice.
- (b) The notice must:
  - (1) be published at least once a week for four (4) successive weeks (i) in a newspaper of general circulation in the Republic of Palau; and (ii) on the corporation’s website if any; and (iii) on the bulletin board of either the Koror post office or the Supreme Court;
  - (2) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and
  - (3) state that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within three (3) years after the publication of the notice.
- (c) If the dissolved Palau corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within three (3) years after the publication date of the newspaper notice:
  - (1) a claimant who was not given written notice under Section 1410;

- (2) a claimant whose claim was timely sent to the dissolved corporation but not acted on;
  - (3) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.
- (d) A claim that is not barred by Section 1409(c) or Section 1410(c) may be enforced:
- (1) against the dissolved corporation, to the extent of its undistributed assets; or
  - (2) if the assets have been distributed in liquidation, against a shareholder or a member, of the dissolved Palau corporation to the extent of the shareholder's or member's pro rata share of the claim or the corporate assets distributed to the shareholder or member in liquidation, whichever is less, but a shareholder's or member's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder or member.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1411. Court proceedings.**

- (a) A dissolved corporation that has published a notice under Section 1410 may file an application with the court for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is barred or is reasonably anticipated to be barred under Section 1410(c).
- (b) Within ten (10) days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.
- (c) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.
- (d) Provision by the dissolved corporation for security in the amount and the form ordered by the court under Section 1411(a) shall satisfy the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a shareholder who received assets in liquidation.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1412. Director duties during dissolution.**

- (a) Directors shall cause the dissolved Palau corporation to discharge or make reasonable provision for the payment of claims and make distributions of assets after payment or provision for claims.
- (b) Directors of a dissolved corporation which has disposed of claims under Sections 1409 and 1410 shall not be liable for any breaches with respect to claims against the dissolved corporation that are barred or satisfied under Sections 1409 and 1410.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1413. Trustee or Receiver for dissolved Palau corporations.**

- (a) When any Palau corporation shall have been dissolved or shall have ceased to conduct business or exist, the court, upon application of any creditor, shareholder, member, director or any other person who shows good cause, and upon finding that the persons responsible for settling the affairs of the corporation either are not diligently pursuing such obligation or cannot be found, may appoint one or more persons to be trustees or receivers of and for the corporation, to do all acts that are necessary for the final settlement of the unfinished business of the corporation, upon such terms as the court directs.
- (b) The relief provided in this section shall be in addition to, and shall not limit or diminish, any remedies otherwise available under law.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1414. Grounds for administrative dissolution of Palau corporations.**

The Registrar may commence a proceeding under Section 1415 to administratively dissolve a Palau corporation if:

- (1) the corporation does not pay within sixty (60) days after they are due any fees, taxes, interest or penalties imposed by this chapter or other law;
- (2) the corporation does not deliver its annual report to the Registrar within sixty (60) days after it is due;
- (3) the corporation is without a registered agent or registered office in the Republic of Palau for thirty (30) days or more;
- (4) the corporation does not notify the Registrar within thirty (30) days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;
- (5) the corporation's period of duration stated in its articles of incorporation expires.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1415. Procedure and effect of administrative dissolution.**

- (a) If the Registrar determines that one or more grounds exist under Section 1414 and 1415 for dissolving a Palau corporation, the Registrar shall serve the corporation with written notice of such determination under Section 110(d).
- (b) If the Palau corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Registrar that each ground determined by the Registrar does not exist within thirty (30) days after notice has been provided, the Registrar shall administratively dissolve the corporation by filing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Registrar shall provide notice of the dissolution to the corporation under Section 110(d).
- (c) A Palau corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under Sections 1407 and 1408.
- (d) The administrative dissolution of a Palau corporation does not terminate the authority of its registered agent.
- (e) The name of a corporation administratively dissolved shall not be made available to another corporation or other entity registered with the Registrar for a period of two (2) years from the date of administrative dissolution, after which the name shall become available for use.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1416. Reinstatement of Palau corporations following administrative dissolution.**

- (a) A Palau corporation administratively dissolved under Section 1415 may apply to the Registrar for reinstatement within two (2) years after the effective date of dissolution in the prescribed form. The application must:
  - (1) recite the name and registration number of the corporation and the effective date of its administrative dissolution;
  - (2) state that the ground or grounds for dissolution either did not exist or have been eliminated;
  - (3) contain a certificate from the Bureau of Revenue and Taxation reciting that all taxes owed by the corporation have been paid; and
  - (4) provide such other information as is required on the prescribed form.
- (b) If the Registrar determines that the application contains the information required by subsection (a) and that the information is correct, the Registrar shall cancel the certificate of dissolution and file in the register the original of the certificate of reinstatement that recites such determination and the effective date of reinstatement, and serve a copy on the corporation under Section 110(d).
- (c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

- (d) The Registrar may, but is not required to, undertake investigations that the Registrar deems reasonable to confirm the identity of any officer, director, shareholder or member of a Palau corporation that seeks reinstatement.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**Notes**

The Code Commission has made technical changes to the designations within this section to conform to the Style of the Code.

**§ 1417. Appeal from denial of reinstatement.**

- (a) If the Registrar denies a Palau corporation's application for reinstatement following administrative dissolution, the Registrar shall serve the corporation under Section 504 with a written notice that explains the reason or reasons for denial, including that such application for reinstatement was made more than two (2) years after the effective date of the administrative dissolution.
- (b) The corporation is entitled to judicial review of the denial of reinstatement by the Registrar, pursuant to Section 147, Title 6 of the Palau National Code, Administrative Procedure Act. A copy of the petition as well as the Registrar's certificate of dissolution, the corporation's application for reinstatement and the Registrar's notice for denial, shall be served upon the Registrar and the Registrar may appear in the proceeding at his or her discretion.
- (c) Notwithstanding that the administrative dissolution may have occurred more than two (2) years in the past, the court may order the Registrar to reinstate the dissolved corporation or may take other actions the court considers appropriate.
- (d) In the event the dissolved corporation's name was reattributed to another corporation prior to the time the court grants reinstatement hereunder, the corporation applying for reinstatement must reinstate using a new name that complies with the requirements of Section 401.
- (e) The court's final decision may be appealed as in other civil proceedings, including by the Registrar if the Registrar appeared in the proceeding.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**§ 1418. Grounds for judicial dissolution of Palau corporations.**

- (a) The court may dissolve a Palau corporation:
- (1) in a proceeding by the Attorney General if it is established that:
    - (A) the corporation obtained its articles of incorporation through fraud; or
    - (B) the corporation has continued to exceed or abuse the authority conferred upon it by law or has continued to violate any section or section of the criminal law of the Republic of Palau;
  - (2) in a proceeding by a shareholder or a member if it is established that:

- (A) the directors are deadlocked in the management of the corporate affairs, the shareholders or members are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders or members generally, because of the deadlock;
  - (B) the directors or those in control of the Palau corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;
  - (C) the shareholders or members, are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or
  - (D) the corporate assets are being misapplied or wasted;
- (3) in a proceeding by a creditor if it is established that:
- (A) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the Palau corporation is insolvent; or
  - (B) the Palau corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or
- (4) in a proceeding by the Palau corporation to have its voluntary dissolution continued under court supervision.
- (5) in a proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.
- (6) the corporation is a public benefit corporation and is no longer able to carry out its purposes.
- (b) Prior to dissolving a Palau corporation, the court shall consider whether:
- (1) there are reasonable alternatives to dissolution;
  - (2) dissolution is in the public interest, if the corporation is a public benefit corporation; and
  - (3) dissolution is the best way of protecting the interests of members, if the corporation is a mutual benefit corporation.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 1419. Procedure for judicial dissolution of Palau corporations.

- (a) It is not necessary to make shareholders or members that are parties to a proceeding to dissolve a Palau corporation unless relief is sought against them individually.
- (b) The court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.
- (c) Within ten (10) days of the commencement of a proceeding to dissolve a for profit corporation under Section 1418 (a)(2), that has no shares listed on a national securities exchange or that is

regularly traded in a market, the corporation must send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under Section 1422.

- (d) A person other than the Attorney General who brings an involuntary dissolution proceeding against a public benefit or religious corporation shall forthwith give written notice of the proceeding to the Attorney General who may intervene.

#### **Section Notes**

##### **Sources**

RPPL 11-10 § 2, modified.

### **§ 1420. Receivership or custodianship of Palau corporations.**

- (a) Unless an election to purchase has been filed under Section 1422, a court in a judicial proceeding brought to dissolve a Palau corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court may appoint an individual or corporation registered to do business in the Republic as receiver or custodian. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has jurisdiction over the corporation and all of its property wherever located. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.
- (b) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:
- (1) the receiver may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and may sue and defend in his or her own name as receiver of the corporation in all courts of the Republic of Palau;
  - (2) the custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors. The receiver or custodian shall have such other powers and duties as the court may provide in the appointing order, which may be amended.
- (c) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.
- (d) The court from time to time during the receivership or custodianship may order compensation paid and expenses paid or reimbursed to the receiver or custodian from the assets of the corporation or proceeds from the sale of the assets.

#### **Section Notes**

##### **Sources**

RPPL 11-10 § 2, modified.

**§ 1421. Decree of dissolution of Palau corporations.**

- (a) If after a hearing the court determines that one or more grounds for judicial dissolution described in Section 1418 exist, it may enter a decree dissolving the Palau corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Registrar, who shall file it.
- (b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs, following the procedures set forth in Sections 1407 and 1408, and notify the claimants in accordance with Sections 1409 and 1410.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1422. Election to purchase in lieu of dissolution of domestic for profit corporation.**

- (a) In a proceeding under Section 1418(a)(2) to dissolve a domestic for profit corporation, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.
- (b) An election to purchase pursuant to this section may be filed with the court at any time within sixty (60) days after the filing of the petition under Section 1418(a)(2). If the election to purchase is filed by one or more shareholders, the corporation shall, within ten (10) days thereafter, give written notice to all shareholders, other than the petitioner. The notice must state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder. The notice must advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate must file notice of their intention to join in the purchase no later than thirty (30) days after the effective date of the notice to them, and thereafter become parties to the proceeding. After an election has been filed by the corporation or one or more shareholders, the proceeding under Section 1418(a)(2) may not be discontinued or settled.
- (c) If, within sixty (60) days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties. Upon entry of such order, the court shall dismiss the petition to dissolve the corporation, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded by the order of the court which shall be enforceable in the same manner as any other judgment.
- (d) If the parties are unable to reach an agreement as provided for in subsection (c), the court shall stay the Section 1418(a)(2) proceedings and determine the fair value of the petitioner's shares as of the day before the date on which the petition under Section 1418(a)(2) was filed or as of such other date as the court deems appropriate under the circumstances.
- (e) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include

payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. Upon entry of such order, the court shall dismiss the petition to dissolve the corporation, and the petitioning shareholders shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded by the order of the court which shall be enforceable in the same manner as any other judgment. The court shall thereafter enter an order directing the purchase of the shares upon such terms and conditions the court deems appropriate, including making an award of reasonable fees and expenses.

- (f) The purchase ordered pursuant to subsection (e) shall be made within ten (10) days after the date the order becomes final.

#### **Section Notes**

##### **Sources**

RPPL 11-10 § 2, modified.

### **§ 1423. Deposit with treasurer of Palau.**

Assets of a dissolved Palau corporation that should be transferred to a creditor, claimant or shareholder of the corporation who cannot be found or is not competent to receive them shall be reduced to cash and deposited with the National Treasury of the Republic of Palau for safekeeping. When the creditor, claimant or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the National Treasury shall pay them or their representative that amount, without interest. If no claim is made within seven (7) years, the assets revert to the Republic of Palau.

#### **Section Notes**

##### **Sources**

RPPL 11-10 § 2, modified.

## Chapter 15 — Foreign Corporations

### § 1501. Registration under this chapter required by all foreign corporations.

- (a) A foreign corporation may not transact business in the Republic of Palau until it obtains a certificate of registration as a foreign corporation under this chapter and complies with all other applicable laws including, but not limited to, the Foreign Investment Act or its equivalent.
- (b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a):
  - (1) maintaining, defending, or settling any proceeding;
  - (2) holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;
  - (3) maintaining bank accounts;
  - (4) maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;
  - (5) selling through independent contractors;
  - (6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside the Republic of Palau before they become contracts;
  - (7) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
  - (8) securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
  - (9) owning, without more, real or personal property;
  - (10) conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature; or
  - (11) transacting business pursuant to a contract with the Republic of Palau under which registration under this chapter is expressly waived.
- (c) The list of activities in subsection (b) is not exhaustive.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 1502. Consequences of transacting business without registration.

- (a) A foreign corporation transacting business in the Republic of Palau without a certificate of registration may not maintain a proceeding in any court in the Republic of Palau until it obtains a certificate of registration.
- (b) A foreign corporation is liable for a civil penalty of up to one thousand dollars (\$1,000) for each day it transacts business in the Republic of Palau without a certificate of registration. The Attorney General may collect all penalties due under this subsection.

- (c) Notwithstanding subsections (a) and (b), the failure of a foreign corporation to obtain a certificate of registration does not impair the validity of its corporate acts or prevent it from defending any proceeding in the Republic of Palau.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**§ 1503. Application for certificate of registration.**

- (a) A foreign corporation may apply for a certificate of registration by delivering an application on the prescribed form to the Registrar for filing. The application must set forth:
- (1) the name of the foreign corporation or a corporate name that satisfies the requirements of Section 1506;
  - (2) the name of the jurisdiction under whose law it is incorporated, its date of incorporation, registration number in its home jurisdiction and its period of duration;
  - (3) the name, business address, citizenship, and gender of the individuals who are the shareholders, directors and officers of the corporation;
  - (4) the street address of its principal office in its jurisdiction of incorporation;
  - (5) the address of its registered office in the Republic of Palau and the name of its registered agent at that office;
  - (6) the address of its intended principal place of business in the Republic of Palau;
  - (7) if a foreign nonprofit corporation, whether it would have been a public benefit, mutual benefit or religious corporation if incorporated in the Republic of Palau, and whether it has members; and
  - (8) such other information as is required on the prescribed form.
- (b) If the foreign corporation has more than ten (10) shareholders then only the ten (10) largest shareholdings must be listed under subsection (a)(3). If the foreign corporation is listed on a stock exchange, then only the name of the stock exchange must be provided to satisfy the requirement in subsection (a)(3) to list all shareholders.
- (c) The foreign corporation shall deliver with the completed application a certificate of existence of good standing (or a document of similar import) duly authenticated by the registrar or other official having custody of corporate records in the country under whose law it is incorporated that was issued no more than thirty (30) days prior to the application.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**§ 1504. Amended certificate of authority.**

- (a) A foreign corporation registered under this chapter must obtain an amended certificate of authority from the Registrar if it changes:
- (1) its corporate name;
  - (2) the period of its duration;

- (3) its principal place of business within the Republic of Palau;
  - (4) the country (and, if applicable, the state therein) of its incorporation and principal place of business in its country of incorporation; and
  - (5) any change in the shareholders, directors or officers of the corporation, including the appointment or cessation of a director or officer, or a change in the name or other details of an existing shareholder, director or officer, which must be submitted on the prescribed form within thirty (30) days of any such change.
- (b) If the foreign corporation has more than ten (10) shareholders then only the ten (10) largest shareholdings must be maintained under subsection (a)(5). If the foreign corporation is listed on a stock exchange, then the corporation need not comply with subsection (a)(5) as to its shareholders.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1505. Effect of certificate of registration.**

- (a) A certificate of registration is conclusive evidence of registration of a foreign corporation under this chapter and that it is authorized to transact business in the Republic of Palau subject, however, to further compliance with all other applicable laws including, but not limited to, the Foreign Investment Act in Title 28, and subject also to right of the Republic to revoke the certificate as provided in this chapter or under any other applicable law.
- (b) This chapter does not authorize the Republic of Palau to regulate the organization or internal affairs of a foreign corporation registered under this chapter. Provided, a foreign corporation shall maintain appropriate accounting records related to its activities occurring within or related to its business within the Republic of Palau.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1506. Corporate name of foreign corporations.**

- (a) If the corporate name of a foreign corporation does not satisfy the requirements of Section 401, the foreign corporation to obtain or maintain a certificate of registration in the Republic of Palau:
- (1) may add to its corporate name for use in the Republic of Palau the word “corporation,” “incorporated,” “company,” or “limited,” or the abbreviation “corp.,” “inc.,” “co.,” or “ltd.”; or
  - (2) may use a fictitious name to transact business in the Republic of Palau if its real name is unavailable and it provides the fictitious name on the application for registration.
- (b) A foreign corporation may use the name, including the fictitious name, of another domestic or foreign corporation if the other corporation and the foreign corporation have merged and the foreign corporation is the survivor.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1507. Registered office and registered agent of foreign corporations.**

- (a) Each foreign corporation registered to transact business in the Republic of Palau must continuously maintain in the Republic of Palau:
  - (1) a registered office that may be the same as any of its places of business; and
  - (2) a registered agent, who may be an individual who resides in the Republic of Palau or a domestic corporation or domestic nonprofit corporation.
- (b) A foreign corporation may change its registered office or registered agent by filing with the Registrar a notice of designation of registered agent on the prescribed form which shall become effective ten (10) days after it is filed.
- (c) The registered agent may change its address or its name by giving notice to the corporation and by filing with the Registrar a notice of change of agent address or name on the prescribed form that supplies the new information. A change of agent address or name will become effective ten (10) days after it is filed with the Registrar.
- (d) A registered agent of a foreign corporation may resign upon filing a written notice thereof with the foreign corporation and filing with the Registrar a notice of resignation of registered agent on the prescribed form, and such notice will be effective ten (10) days after registration in the register.
- (e) Every foreign corporation shall maintain information for a director for the registered agent to be able to contact at all times.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**Notes**

The Code Commission has made technical changes to the designations within this section to conform to the Style of the Code.

**§ 1508. Service on a foreign corporation.**

- (a) The registered agent of a foreign corporation is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation, and the Registrar may provide notice to a foreign corporation.
- (b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown on the register if the foreign corporation:
  - (1) has no registered agent or its registered agent cannot with reasonable diligence be served;
  - (2) has withdrawn from transacting business in the Republic of Palau under Section 1510;  
or

- (3) has had its certificate of registration revoked under Section 1511.
- (c) Service is perfected under subsection (b) at the earliest of:
  - (1) the date the foreign corporation receives the mail;
  - (2) the date shown on the return receipt, if signed on behalf of the foreign corporation; or
  - (3) five (5) days after its deposit in the mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.
- (d) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1509. Alternative means of service on foreign corporations.**

- (a) Whenever a corporation subject to this title fails to maintain a registered agent in the Republic of Palau, or whenever said registered agent cannot with reasonable diligence be found at its business address, then the foreign corporation may be served by perfecting service upon the Registrar, who shall be an agent of such foreign corporation upon whom any process or notice or demand required or permitted by law to be served may be served.
- (b) Service on the Registrar as an agent of a corporation shall be made by delivery to the office of the Registrar duplicate copies of such process together with the applicable fee. The Registrar shall promptly send one of such copies by registered mail, return receipt requested, to such foreign corporation at the address of its registered agent, or if there is no such office, then the Registrar shall mail such copy in care of any director named in the articles of incorporation at his or her address stated therein or at the address of the corporation in its home jurisdiction, or in any other manner permitted by law.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1510. Withdrawal of foreign corporations.**

- (a) A foreign corporation registered under this chapter may not withdraw from the Republic of Palau until it obtains a certificate of withdrawal from the Registrar.
- (b) A foreign corporation may apply for a certificate of withdrawal by delivering an application on the prescribed form to the Registrar for filing. The application must set forth:
  - (1) the name of the foreign corporation and its registration number in the Republic of Palau;
  - (2) that it is not transacting business in the Republic of Palau and that it surrenders its certificate of registration;
  - (3) that it revokes the authority of its registered agent to accept service on its behalf and appoints the Registrar as its agent for service of process;

- (4) contact information concerning where the Registrar may provide a copy of any process served on the Registrar, which may be completed via electronic means;
  - (5) a commitment to notify the Registrar in the future of any change in its contact information; and
  - (6) any other information requested on the prescribed form.
- (c) The application shall be accompanied by proof satisfactory to the Registrar showing that:
- (1) within the last sixty (60) days it has advertised in a newspaper of general circulation in the Republic of Palau, once in each of four (4) successive weeks for a total of four (4) publications, a notice to all creditors of the corporation that it intends to apply, within sixty (60) days from the first publication of the notice, to the Registrar for a certificate of withdrawal and intends to withdraw from and surrender its certificate of registration and notifying all creditors of the corporation to present their claims;
  - (2) not less than fifteen (15) days have elapsed since the last publication of the notice;
  - (3) that all known creditors of the corporation, resident or located within the Republic of Palau, have been paid; and
  - (4) all of the taxes, fees, license fees, royalties, assessments and any other amounts previously levied upon, due or payable by the corporation to the Republic of Palau or any of its agencies have been fully paid and discharged.
- (d) Upon the filing of the completed application for withdrawal, the Registrar shall issue to the corporation a certificate of withdrawal stating that it has withdrawn and surrendered its certificate of registration.
- (e) After the withdrawal of the corporation is effective, service of process on the Registrar under this section is service on the foreign corporation.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**§ 1511. Grounds for revocation of registration.**

The Registrar may revoke the certificate of registration of a foreign corporation if:

- (1) the foreign corporation does not deliver its annual report to the Registrar within sixty (60) days after it is due;
- (2) the foreign corporation does not pay within sixty (60) days after they are due any fees, taxes, penalties, license fees, royalties, assessments and any other amounts previously levied upon, due or payable by the corporation to the Republic of Palau or penalties imposed by this chapter or other law;
- (3) the foreign corporation is without a registered agent or registered office in the Republic of Palau for thirty (30) days or more;
- (4) the foreign corporation does not inform the Registrar that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within thirty (30) days of the change, resignation, or discontinuance;

- (5) an incorporator, director, officer, or agent of the foreign corporation signed a document knowing it was false in any material respect with intent that the document be delivered to the Registrar for filing;
- (6) the foreign corporation procures its registration through fraud practiced upon the Republic of Palau;
- (7) the foreign corporation has continued to exceed or abuse the authority conferred upon it by law, or has continued to violate any section of the criminal law of the Republic of Palau after a written demand to discontinue the same has been delivered to the registered agent of the corporation;
- (8) if the foreign corporation dissolves, disappears as the result of a merger, or otherwise ceases to exist.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

##### Notes

The Code Commission has made technical changes to the designations within this section to conform to the Style of the Code.

### § 1512. Procedure and effect of revocation.

- (a) If the Registrar determines that one or more grounds exist under Section 1511 for revocation of a certificate of registration, the Registrar shall provide the foreign corporation with written notice of such determination under Section 110(d).
- (b) The authority of a foreign corporation to transact business in the Republic of Palau ceases on the date shown on the certificate revoking its certificate of registration and it may not carry on any business except that necessary to wind up its affairs in the Republic of Palau.
- (c) The name of a foreign corporation administratively dissolved shall not be made available to another corporation or other entity registered with the Registrar for a period of two (2) years from the date of administrative dissolution, after which the name shall become available for use.
- (d) Revocation of a certificate of authority does not terminate the authority of the registered agent. Provided, the revocation automatically also appoints the Registrar the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was registered under this chapter. Service of process on the Registrar under this subsection is service on the foreign corporation. Upon receipt of process, the Registrar shall forward a copy of the process to the foreign corporation by any means provided for under this chapter.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

**§ 1513. Appeal to the Registrar after revocation.**

- (a) A foreign corporation that has had its certificate of registration revoked may apply to the Registrar for reinstatement within one (1) year after the effective date of the revocation in the prescribed form. The application must:
- (1) recite the name and registration number of the corporation and the effective date of its revocation;
  - (2) state that the ground or grounds for revocation either did not exist or have been eliminated;
  - (3) contain a certificate from the Bureau of Revenue and Taxation reciting that all taxes owed by the corporation have been paid; and
  - (4) provide such other information as is required on the prescribed form.
- (b) If the Registrar determines that the application contains the information required by subsection (a) and that the information is correct, the Registrar shall cancel the certificate of revocation and file in the register a certificate of reinstatement that recites such determination and the effective date of reinstatement.
- (c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the revocation and the foreign corporation resumes carrying on its business as if the administrative dissolution had never occurred.
- (d) The Registrar may, but is not required to, undertake investigations deemed by the Registrar to be reasonable to confirm the identity of any officer, director, shareholder or member of a foreign corporation that seeks reinstatement.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**§ 1514. Appeal to Court from revocation.**

- (a) A foreign corporation may appeal the Registrar's revocation of its certificate of registration to the court within two (2) years after the certificate of revocation is filed. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of registration and the Registrar's certificate of revocation. A copy of the petition shall be served upon the Registrar, and the Registrar may appear in the proceeding at his or her discretion.
- (b) The appeal must provide satisfactory evidence that the ground or grounds for dissolution either did not exist or have been eliminated.
- (c) Notwithstanding that the administrative dissolution may have occurred more than two (2) years in the past, the court may order the Registrar to reinstate the dissolved corporation or may take other action the court considers appropriate.
- (d) In the event the corporation's name was reissued prior to the time the court grants reinstatement hereunder, the corporation applying for reinstatement must reinstate using a new name that complies with the requirements of Section 401.

- (e) The court's final decision may be appealed as in other civil proceedings, including by the Registrar if the Registrar appeared in the proceeding.
- (f) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the revocation and the foreign corporation resumes carrying on its business as if the administrative dissolution had never occurred.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

## Chapter 16 — Records and Reports

### § 1601. Corporate records to be maintained.

- (a) A Palau corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, all resolutions of its board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, any communications with or notices to shareholders, its articles of incorporation and all amendments to them, its bylaws and all amendments to them, and a record of any actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.
- (b) A Palau corporation shall maintain appropriate accounting records sufficient to allow for the preparation of a balance sheet and a statement of profits and losses, its most recent annual report delivered to the Registrar and all annual financial statements prepared for the corporation for its last three (3) fiscal years or since its existence if inferior to three (3) years.
- (c) A Palau corporation or its agent shall maintain a record of its shareholders' names and addresses and their shareholdings, or their members' names and addresses and their membership interests. The records must be maintained in the Republic of Palau in a form that permits preparation of a list of the names and addresses of all such shareholders or members. The records shall reflect all share or membership transactions during the preceding five (5) years.
- (d) A Palau corporation shall maintain information related to any beneficial ownership of its shares or membership interests, and make that information accessible to the Registrar upon request free of charge and without the need for a court order.
- (e) A Palau corporation shall maintain a list of the names and business addresses of its current directors and officers.
- (f) A Palau corporation shall maintain its records in a form allowing for inspection within a reasonable time; it includes physical documents, electronic records, or any other form capable of conversion into paper.
- (g) As used in this section, the term "beneficial owner" means a natural person or persons who ultimately owns or controls a share or membership interest or who exercises ultimate effective control over a legal person or arrangement affecting shares or membership interests.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 1602. Inspection of records by members of a nonprofit corporation.

- (a) A member may appoint an agent or attorney to exercise the member's inspection and copying rights.
- (b) The nonprofit corporation may, if reasonable, satisfy the right of a member to copy records by furnishing to the member copies by such means as are chosen by the corporation, including furnishing copies through electronic delivery.

- (c) The nonprofit corporation may comply at its expense with a member's demand to inspect the record of members by providing the member with a list of members that was compiled no earlier than the date of the member's demand.
- (d) The nonprofit corporation may impose a reasonable charge to cover the costs of providing copies of documents to the member, which may be based on an estimate of those costs.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1603. Inspection of records by shareholders of a domestic for profit corporation.**

- (a) A shareholder of a domestic for profit corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office or such other reasonable location, or to receive via electronic transmission if so requested and if so possible, any of the records of the corporation described in Section 1601 except minutes of meetings or records of actions taken without a meeting by the corporation's board of directors, if (i) the shareholder gives the corporation a signed written notice of the shareholder's demand at least five (5) days before the date on which the shareholder wishes to inspect and copy; (ii) the shareholder's demand is made in good faith and for a proper purpose; (iii) the demand describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and (iv) the records are directly connected with the shareholder's purpose. However, the corporation may impose reasonable restrictions on the confidentiality, use or distribution of these records.
- (b) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws, and extends to a shareholder's agent or attorney.
- (c) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder.
- (d) If a corporation does not allow a shareholder complying with this section, to inspect and copy any records of the corporation listed in Section 1601, the court may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder. The court may impose reasonable restrictions on the confidentiality of the records, use or distribution by the demanding shareholder.
- (e) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on the shareholder's behalf.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1604. Inspection of records by directors.**

- (a) A director of a Palau corporation is entitled to inspect and copy the books, records and documents of the corporation, and any wholly-owned subsidiary, at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including

duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation. Such inspection by a director may be made in person or by agent or attorney, and the right of inspection includes the right to make copies of the books, records and documents of the corporation, or extracts.

- (b) The court may order inspection and copying of the books, records and documents at the corporation's expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.
- (c) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's expenses incurred in connection with the application. Moreover, without consent of the board of directors, a membership list of a nonprofit corporation may not be obtained or used by any person for any purpose unrelated to a member's interest as a member.

#### **Section Notes**

##### **Sources**

RPPL 11-10 § 2, modified.

### **§ 1605. Financial statements for shareholders of domestic for profit corporation.**

- (a) A Palau corporation shall prepare annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.
- (b) Within one hundred and twenty (120) days after the close of each fiscal year, the corporation shall make available the annual financial statements to each shareholder. Thereafter, upon written request from any shareholder, the corporation shall send such shareholder the latest financial statements within five (5) business days of delivery of such written request to the corporation, failing which the requesting shareholder may apply to the court for an order requiring delivery of or access to the requested financial statements. A corporation may fulfill its responsibilities under this section by delivering the specified financial statements via an electronic transmission, including email, if the articles of incorporation or bylaws allow or if the shareholder has otherwise agreed to receive such reports via electronic means.
- (c) The corporation may, if it reasonably determines that the shareholder's request is not made in good faith or for a proper purpose, decline to deliver or make available such financial statements to that shareholder.

#### **Section Notes**

##### **Sources**

RPPL 11-10 § 2, modified.

**§ 1606. Financial statements for members of domestic nonprofit corporation.**

- (a) On demand in a record from a member, a nonprofit corporation must furnish that member with financial statements for its latest completed fiscal year within one hundred and twenty (120) days after the close of each fiscal year. The financial statements may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year and a statement of operations for the year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.
- (b) If the annual financial statements are reported upon by a certified public accountant, the accountant's report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the nonprofit corporation's accounting records:
  - (1) stating the reasonable belief of the president or other person as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and
  - (2) describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1607. Annual report to Registrar.**

- (a) Every corporation incorporated or registered in Palau shall deliver to the Registrar for filing an annual report on the prescribed form that sets forth:
  - (1) the name and registration number of the corporation in the Republic of Palau;
  - (2) the address of its registered office and the name of its registered agent at that office in the Republic of Palau;
  - (3) the address of its principal office;
  - (4) a confirmation of the names and business addresses of its shareholders, directors and principal officers that is then shown on the records of the register;
  - (5) a brief description of the nature of its business;
  - (6) for profit corporations, the total number of authorized shares by class and series and the total number of issued and outstanding shares itemized by class and series; and
  - (7) any other information required on the prescribed form.
- (b) The annual report shall be dated within the month during which the report is required to be delivered to the Registrar and the information required to be contained in it shall be compiled as of that date. Provided, no annual report shall be required in the calendar year in which a corporation was incorporated or a foreign corporation obtained its certificate of registration. The first and successive annual reports shall be delivered to the Registrar of Corporations in the month of the anniversary of the date upon which the corporation was registered.

- (c) If an annual report does not contain the information required by this section, the Registrar shall promptly notify the reporting domestic or foreign corporation in writing and request a resubmission of the annual report. If the report is corrected to contain the information required by this section and delivered to the Registrar within thirty (30) days after the effective date of notice, it is deemed to be timely filed.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

RPPL 11-24 § 27 amends subsection (b).

## Chapter 17 — Transition Period

### § 1701. Application of law to existing corporation.

- (a) The provisions of this chapter shall apply to:
- (1) any existing corporation incorporated or registered in the Republic on the effective date of this chapter; and
  - (2) all corporations to be incorporated or registered in the Republic after the effective date of this chapter.
- (b) Corporations incorporated or registered in the Republic after the effective date of this chapter shall comply with the registration requirements of this chapter.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

##### Notes

The Code Commission has made technical changes to the designations in subsection (a) to conform to the Style of the Code.

### § 1702. Application of registered domestic corporation for re-registration under this chapter.

- (a) An existing domestic corporation must apply for re-registration under this chapter.
- (b) An application for re-registration must be filed with the Registrar within one (1) year after the effective date of this chapter; and in the prescribed form.
- (c) The application must specify, in respect of the company once re-registered:
- (1) the name of the corporation (which must comply with Section 401) together with its registration number; and
  - (2) all of the information required under Section 202(a); and
  - (3) may contain any of the information under Section 202(b).
- (d) There is no fee payable for re-registration.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

### § 1703. Failure of existing domestic corporation to re-register.

An existing domestic corporation that has not applied for re-registration in accordance with Section 1702 shall be administratively dissolved. A corporation administratively dissolved under this section must follow the procedure set forth in Section 1416 and, if applicable, Section 1417 in order to be reinstated in the Register.

#### Section Notes

##### Sources

RPPL 11-10 § 2, modified.

**§ 1704. Application for re-registration of existing foreign corporations.**

- (a) An existing foreign corporation registered in the Republic as of the effective date of this chapter must apply for re-registration under this chapter.
- (b) An application for re-registration of an existing foreign corporation must be filed with the Registrar within one (1) year after the effective date of this chapter; and in the prescribed form.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**§ 1705. Failure of existing foreign corporation to re-register.**

A foreign corporation that has not applied for re-registration within one (1) year shall have its certificate of registration revoked. A foreign corporation that has had its certificate of registration revoked under this section must follow the procedure set forth in Section 1513 and, if applicable, Section 1514 in order to be reinstated in the Register.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**§ 1706. Certificate of re-registration; effect.**

- (a) The Registrar must, without delay on receiving an application for re-registration of an existing domestic corporation or existing foreign corporation that complies with Section 1704 or 1705:
  - (1) enter the corporation on the Palau register; and
  - (2) issue to the corporation a certificate in the prescribed form of its re-registration.
- (b) A certificate of re-registration issued under subsection (a)(1) is conclusive evidence that:
  - (1) all the requirements for re-registration have been complied with; and
  - (2) on and from the date of re-registration stated in the certificate, the corporation is a corporation or foreign corporation registered under this chapter.
- (c) The re-registration of an existing Palau corporation or existing foreign corporation under this section does not create a new legal entity or affect the property, rights, or obligations of the corporation except as provided by this chapter, or affect pending proceedings by or against the corporation.

**Section Notes****Sources**

RPPL 11-10 § 2, modified.

**§ 1707. Savings provisions.**

- (a) Except as provided in subsection (b), the repeal of a statute by this chapter does not affect:
  - (1) the operation of the statute or any action taken under it before its repeal;
  - (2) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

- (3) any pending prosecution or violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation of the statute before its repeal;
  - (4) any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.
- (b) If a penalty or punishment imposed for violation of a statute repealed by this chapter is reduced by this chapter, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.

**§ 1708. Severability.**

If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of the chapter are severable.

**Section Notes**

**Sources**

RPPL 11-10 § 2, modified.