

**NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
42ND CONSTITUTION REGULAR SESSION, 2021**



Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

NON-PROFIT ENTITIES (AMENDMENT) ACT 2021.

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NON-PROFIT ENTITIES (AMENDMENT) ACT 2021.

AN ACT to amend the Non-Profit Entities Act, 2021, Title 18 MIRC Chapter 2, to clarify that properly formed limited liability companies can qualify as non-profit entities.

BE IT ENACTED BY THE NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS

§101. Short title.

This Act may be cited as the Non-Profit Entities (Amendment) Act 2021..

§102. Amendment.

Section 102 of the Non-Profit Entities Act, 2020 is hereby amended as follows:

§102. Interpretation.

In this Act, unless the context otherwise requires, the term:

...

- (d) "Business Corporation Act" or "BCA" means the Business Corporation Act(52 MIRC Part I).
- (e) "bylaws" mean the rules that describe and govern a corporation's conduct and engagement in activities.
- (f) "corporation" means a corporation formed under the Business Corporation Act.
- (g) "corporate charter" means a legal document issued by the Registrar showing the entity has complied with the requirements of

incorporating an entity to conduct business or engage in activities in the Republic of the Marshall Islands, including a certificate of formation.

- (h) "director" means a member of the board of directors.
- (i) "dissolution" means the closing down, termination, or dismissal of a legal entity or official body either voluntarily or involuntarily.
- (j) "Distributed Ledger" means a Block chain (having the meaning as set forth in the Declaration and Issuance of the Sovereign Currency Act 2018, Title 15 MIRC Chapter 3) that is publicly accessible and its ledger of transactions is transparent.
- (k) "domestic non-profit entity" means a non-profit entity incorporated under this Act or formed under any other law of the Republic and existing on the effective date of this Act, including the Business Corporation Act and the Limited Liability Company Act.
- (l) "entity" as used in this Act refers to a group of individuals, a society, organization or association, organized, formally or informally, to engage in an activity or activities in the Republic of the Marshall Islands.
- (m) "fit and proper person" means an individual who can ensure or is likely to ensure, that charitable or other funds of similar nature, and tax reliefs are used only for its stated purpose(s).
- (n) "foreign non-profit entity" means a non-profit entity in a foreign jurisdiction which has been granted authority to engage in non-profit activities related to its Charter and Articles of Incorporation in the Republic of the Marshall Islands.
- (o) "incorporate" means the act or process of forming or creating a corporation or legal entity.
- (p) "incorporator" means any person or entity incorporating or forming a legal entity under this Act.
- (q) "inure" for the purposes of this Act means, to take effect or to come to the benefit of a person or to fix an interest therein.
- (r) "limited liability company" or "LLC" means a company formed under the Limited Liability Company Act.
- (s) "Limited Liability Company Act" or "LLC Act" means the Limited Liability Company Act (52 MIRC Chapter 4).

- (t) “limited liability company agreement” or “LLC agreement” means the rules that describe and govern a LLC’s conduct and engagement in activities.
- (u) “member” means a person in whose name or Distributed Ledger identifier a membership is registered on the records of the non-profit entity and who has the right to select or vote for the election of directors or to vote on any type of fundamental transaction.
- (v) “membership” means the rights and any obligation of a member in a non-profit entity.
- (w) “officers” means officers of the entity, including the president, vice-president, secretary and treasurer who shall be elected or appointed by the board of directors in a manner prescribed by the bylaws.
- (x) “person” means an individual, company, corporation, partnership or any body incorporated or unincorporated and includes every director, manager, agent or secretary of such person.
- (y) “non-governmental organization” or “NGO” means a voluntary group of individuals or organizations, independent of government involvement or approval, formed to jointly discuss ideas or common interests, or to provide a service(s) to the public, or to advocate a public policy.
- (z) “non-profit activity” means any activity set forth in 106 of the Act.
- (aa) “non-profit entity” or NPE means a domestic or authorized foreign entity, non-governmental organization, non-profit corporation, non-profit LLC, or any other non-profit association engaging in non-profit activities in the Republic that is not a cooperative association organized under the Cooperation Act of 1993 (18 MIRC Chapter 1).
- (bb) “Registrar” means the Registrar of Corporations responsible for resident domestic and authorized foreign entities.
- (cc) “Republic” means the Republic of the Marshall Islands.
- (dd) “smart contract” means an automated transaction or any substantially similar analogue, which is comprised of code, script or programming language that executes the terms of an agreement and which may include taking custody of and transferring an asset, administering membership interest votes with respect to a decentralized autonomous organization or issuing executable

instructions for these actions, based on the occurrence or non occurrence of specified conditions.

Section 104 of the Non-Profit Entities Act, 2020 is hereby amended as follows:

§104. Application of the Non-Profit Entity Act.

...

- (3) Unless otherwise specified in this Act, all other laws of general application to corporations and LLCs, including the BCA and the LLC Act shall apply to domestic and foreign non-profit entities. Unless otherwise specified in this Act or regulations, the form of instruments, filing, service of process, and registered agent provisions of the BCA or LLC Act, apply to this Act.

Section 105 of the Non-Profit Entities Act, 2020 is hereby amended as follows:

§105. Requirement to Hold a Bank Account.

Within 60 days of incorporation or otherwise becoming, subject to this Act, a non-profit entity if a corporation shall open and at all times thereafter hold, a bank account in one of the domestic banks operating in the Republic or, if a LLC, maintain a physical address in the Republic.

Section 108 of the Non-Profit Entities Act, 2020 is hereby amended as follows:

§108. Formation of Domestic Non-Profit Entity.

...

- (3) A corporate charter granted or a domestic non-profit entity incorporated under this Act shall be subject to all general laws applicable to corporations or LLCs, including general powers normally granted to corporations to:

...

Section 109 of the Non-Profit Entities Act, 2020 is hereby amended as follows

§109. Incorporators.

Any person or entity desiring to organize and incorporate or form a domestic non-profit entity under this Act may do so by filing with the Registrar, articles of incorporations and initial bylaws or LLC agreements, as applicable, and any other such documents or information as may be prescribed by regulations promulgated by the Registrar.

Section 110 of the Non-Profit Entities Act, 2020 is hereby amended as follows:

§110. Directors.

- (1) There shall be at least three initial directors required to form a domestic non-profit corporation under this Act. This section shall not apply to a domestic non-profit LLC, which shall be managed in accordance with its LLC agreement.
- (2) Subject to the articles of incorporation and bylaws, the term of office for each director shall be two (20) years

...

Section 111 of the Non-Profit Entities Act, 2020 is hereby amended as follows:

§111. Officers.

- (1) The officers of a domestic non-profit corporation shall consist of at least, a secretary and such officers, however designated, as may be prescribed by the articles of incorporation or bylaws. Such officers shall be appointed by the directors in a manner prescribed by the articles of incorporation or bylaws.
- (2) Subject to the articles of incorporation and bylaws, the term of office for each officer shall be two (2) years or otherwise determined by the board of directors.
- (3) Except to the extent inconsistent with this Act, the rights, obligations, and other provisions relating to officers under the BCA and the regulations promulgated there under shall apply to officers of domestic non-profit corporations under this Act.

Section 113 of the Non-Profit Entities Act, 2020 is hereby amended as follows:

§113. Articles of Incorporation.

- (1) Contents of Articles of Incorporation. In addition to the initial by-laws or LLC agreement, as applicable, a domestic non-profit entity shall file with the Registrar, articles of incorporation setting forth, among other things:
 - a. the name of the domestic non-profit entity;
 - b. the name and address (mailing and physical) of the domestic non-profit entity's registered agent and principal office;
 - c. that the domestic non-profit entity is incorporated under this Act;
 - d. the period of duration of the domestic non-profit entity if other than perpetual;
 - e. the purpose or purposes for which the domestic non-profit entity is organized;
 - f. authority and powers;
 - g. non-profit statement, including a statement in which the domestic non-profit entity elects to set forth the regulation of the internal affairs of the entity in its bylaws or LLC agreement and the distribution of assets upon dissolution or liquidation;
 - h. a statement confirming the domestic non-profit entity will carry out its activities in a lawful manner and will comply with the provisions of this Act, and other laws of the Republic.;
 - i. if a corporation, the names and addresses of the initial officers; and
 - j. if a corporation, the names and addresses of the initial directors.
- (2) Execution and filing of Articles of Incorporation. Articles of Incorporation shall be signed by the incorporator, notarized by a notary public, and filed with the Registrar in accordance with §5 of the BCA or §9 of the LLC Act.
- (3) Amendment of Articles of Incorporation. The articles of incorporation of a domestic non-profit entity may be altered or amended in the manner and for the purposes prescribed by the BCA for resident domestic corporations or the LLC Act for resident domestic LLCs.

Section 114 of the Non-Profit Entities Act, 2020 is hereby amended as follows:

§114. Bylaws or LLC Agreement.

- (1) Bylaws or the LLC Agreement, as applicable, shall set out the rules and procedures governing the organizational structure and operations of the domestic non-profit entity, and shall be filed with the Registrar. The bylaws or LLC Agreement may define these rules in a Smart Contract on a Distributed Ledger.
- (2) Power to make bylaws or enter into a LLC Agreement. A domestic non-profit entity shall adopt initial bylaws or a LLC Agreement at a meeting organized by the incorporator, or initial directors or officers, or members of the entity. The initial bylaws or LLC Agreement shall be filed along with the articles of incorporation at the time of formation with the Registrar. Except as otherwise provided in the articles of incorporation, bylaws or the LLC Agreement may be amended, repealed or adopted by a vote of a majority of the members of the entity. If permitted by the LLC Agreement, such vote may be executed via a Smart Contract. If so provided in the articles of incorporation or a bylaw adopted by the initial directors, officers or members, bylaws may also be amended, repealed or adopted by the board of directors, but any bylaw adopted by the directors may be amended or repealed by a majority of the members entitled to vote. Any such amendments shall be filed with the Registrar.
- (3) Scope. The bylaws or LLC Agreement may contain any provision relating to the activities of the domestic non-profit entity, the conduct of its affairs, its rights or powers or the rights or powers of its members, directors and officers (if applicable), not inconsistent with this Act or any other law of the Republic or its articles of incorporation.

Section 117 of the Non-Profit Entities Act, 2020 is hereby amended as follows:

§117. Non-Profit Entity Records.

- (1) Each domestic non-profit entity shall keep reliable, up-to-date and complete records of the following:
 - (a) its articles of incorporation as currently in effect;
 - (b) its bylaws or its LLC Agreement, as applicable, as currently in effect;
 - (c) all accounting records and financial statements;
 - (d) minutes of all meetings, and records of all actions taken without a meeting by, its members, its board of directors, and any committees thereof, as applicable;
 - (e) the names and businesses addresses of its current directors and officers, as applicable;
 - (f) the names and addresses or Digital Ledger identifier of all members;
 - (g) all beneficial ownership information where appropriate and the entity is a corporation; and
 - (h) any other information as may be prescribed in this Act or in regulation promulgated by the Registrar, with the approval of the Attorney General and Cabinet.

Section 119 of the Non-Profit Entities Act, 2020 is hereby amended as follows:

§119. Admission.

...

- (4) Except as provided in its articles of incorporation or bylaws or the LLC Agreement, a domestic non-profit entity may admit members for no consideration or for such consideration as is determined by the board of directors or members, as applicable. The consideration may take any form, including promissory notes, intangible property, or past or future services. Payment of this consideration may be made at such times and upon such terms as are set forth in or authorized by the articles of incorporation, bylaws, LLC Agreement or action of the board.

Section 120 of the Non-Profit Entities Act, 2020 is hereby amended as follows:

§120. Rights and Obligations of Members.

- (1) Except as otherwise provided in the articles of incorporation or bylaws or LLC Agreement, as applicable, each member of a domestic non-profit entity has the same rights and obligations as every other member with respect to voting, dissolution, membership transfer, and other matters.
- (2) Except as provided in the articles of incorporation or bylaws or LLC Agreement, as applicable, a member of a domestic non-profit entity may not transfer a membership or any right arising there from. Where the right to transfer a membership has been provided, a restriction on that right shall not 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 affected member.
- (3) A member of a domestic non-profit entity is not personally liable for the acts, debts, liabilities or obligations of the entity.
- (4) A domestic non-profit entity may levy dues, assessments, and fees on its members to the extent authorized in the articles of incorporation, or bylaws or LLC Agreement, as applicable. The amount and method of collection of dues, assessments, and fees may be fixed in the articles of incorporation, bylaws or LLC Agreement or the articles, bylaws or LLC Agreement may authorized the board of directors or members to fix the amount and method of collection. The articles of incorporation, bylaws or LLC Agreement may provide reasonable means, such as termination and reinstatement of membership, to enforce the collection of dues, assessments, and fees.

Section 121 of the Non-Profit Entities Act, 2020 is hereby amended as follows:

§121. Resignation and Termination.

...

- (2) A membership in a domestic non-profit entity may be terminated or suspended for the reasons and in the manner provided in the articles of incorporation, bylaws or LLC Agreement. 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 123 of the Non-Profit Entities Act, 2020 is hereby amended as follows:

§123. Meetings of Members.

Except as provided in the articles of incorporation, or bylaws or LLC Agreement, members of domestic non-profit entities shall meet at least twice a year

Section 124 of the Non-Profit Entities Act, 2020 is hereby amended as follows:

§124. Members’ Inspection Rights.

Except as provided in the bylaws or LLC Agreement, members shall be accorded the right to inspect books and records at the annual general meeting held by the domestic non-profit entity.

Section 125 of the Non-Profit Entities Act, 2020 is hereby amended as follows:

§125. Voluntary Dissolution.

- (1) A domestic non-profit entity may be dissolved voluntarily by a resolution of two-thirds majority of its membership in a meeting called specifically for the purpose of dissolving the non-profit entity, or by a resolution signed by two-thirds majority showing consent to dissolve the domestic non-profit entity without a meeting, or in accordance with its by-laws or LLC Agreement, as applicable.
- (2) Subject to the articles of incorporation and bylaws or LLC Agreement, a domestic non-profit entity shall file Articles of Dissolution with the Registrar in the same manner as prescribed in §5 of the BCA or as prescribed in §46 of the LLC Act and the contents shall be prescribed through regulations promulgated by the Registrar.

Section 127 of the Non-Profit Entities Act, 2020 is hereby amended as follows:

§127. Sanctions for Violations.

...

- (4) If a domestic non-profit entity abuses, or misuses its corporate powers, privileges or agreements, including activities stated in this Act and its regulations, the Registrar may issue a proclamation declaring, that the domestic non-profit entity’s articles of incorporation have been revoked and the domestic non-profit entity dissolved as of the date stated in the proclamation. The proclamation

of the Registrar shall be filed and the date of revocation and dissolution of the non-profit entity named in the proclamation. Notice of such shall be given to the last recorded registered agent and the affairs of the domestic non-profit entity shall be wound up in accordance with §105 of the BCA or §48 of the LLC Act.

§103. Effective Date.

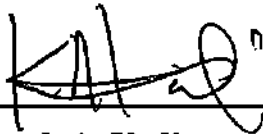
This Chapter shall take effect on the date of certification in accordance with Article IV, Section 21 of the Constitution.

CERTIFICATE

I hereby certify:

1. That Nitijela Bill No: 53ND1 was passed by the Nitijela of the Republic of the Marshall Islands on the 12th day of November 2021; and
2. That I am satisfied that Nitijela Bill No: 53ND1 was passed in accordance with the relevant provisions of the Constitution of the Republic of the Marshall Islands and the Rules of Procedures of the Nitijela.

I hereby place my signature before the Clerk this 30th day of November 2021.



Kenneth A. Kedi
 Speaker
 Nitijela of the Marshall Islands

Attest:



Moran S. Watak
 Clerk
 Nitijela of the Marshall Islands