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 P.L. 2004-17

5 AN ACT

6 to amend certain sections of the Limited Partnership Act (the Act), to clarify certain provisions,
7 and to insert additional language to modernize the Limited Partnership Act.

8 BE IT ENACTED BY THE NITIJELA OF THE MARSHALL ISLANDS

9

10 Section 1. Short Title.

11 This Act may be cited as the Limited Partnership (Amendment) Act 2004.

12 Section 2. Amendments.

13 The Limited Partnership Act is hereby amended by amending the following sections as follows:

14 (a) Section 180 is amended to read in the following manner:

15 (1) *Filing of certificate.* In order to form a limited partnership, one (1) or more
16 persons (but not less than all of the general partners) must execute a certificate of limited
17 partnership. The certificate of limited partnership shall be filed with the appropriate
18 Registrar or Deputy Registrar of Corporations and set forth:

19 (a) The name of the limited partnership;

20 (b) The address of the registered office and the name and address of the
21 registered agent for service of process required to be maintained under subsection
22 (4) of this section;

23 (c) The name and the business, residence or mailing address of each
24 general partner; and

1 (d) Any other matters the partners determine to include therein.

2 (2) *Contents of certificate.* A limited partnership is formed at the time of the
3 filing of the initial certificate of limited partnership with the Registrar of Corporations or at
4 any later date or time specified in the certificate of limited partnership if, in either case, there
5 has been substantial compliance with the requirements of this section. A limited partnership
6 formed under this division shall be a separate legal entity, the existence of which as a
7 separate legal entity shall continue until cancellation of the limited partnership's certificate
8 of limited partnership.

9 (3) *Filing fee.* On filing the certificate, a fee shall be paid to such Registrar in
10 such amount as shall be provided from time to time by the Registrar.

11 (4) *Registered agent.* A limited partnership registered under subsection (1) of this
12 section, but not having a place of business in the Republic shall designate in the
13 certificate, filed pursuant to this section, a registered agent in the Republic upon whom
14 process or any notice or demand required or permitted by law to be served may be served.
15 The registered agent for a non-resident limited partnership shall be The Trust Company of
16 the Marshall Islands, Inc.

1 **(b)** Section 181 of the Act is hereby amended to read as follows;

2 A limited partnership may carry on any lawful business, purpose or activity with the
3 exception of the business of granting policies of insurance or assuming insurance risks or
4 banking.

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6 **(c)** Section 182 is amended to read in the following manner:

7 The contributions of a limited partner may be cash or other property or services.

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9 **(d)** Section 184 is amended to read in the following manner:

10 If a certificate contains a false statement, one who suffers loss by reliance on such
11 statement may hold liable any of the general partners who made the statement and who
12 knew the statement to be false:

13 (a) at the time any such general partner signed the certificate; or

14 (b) subsequently, but within a sufficient time before the statement was relied
15 upon to enable such general partner to cancel or amend the certificate or to file a petition
16 for its cancellation or amendment as provided in this division.

17
18 **(e)** Section 185 is amended to read in the following manner:

1 (1) A limited partner is not liable for the obligations of a limited partnership
2 unless he or she is also a general partner or, in addition to the exercise of the rights
3 and powers of a limited partner, he or she participates in the control of the business.
4 However, if the limited partner does participate in the control of the business, he or
5 she is liable only to persons who transact business with the limited partnership
6 reasonably believing, based upon the limited partner's conduct, that the limited partner is
7 a general partner.

8 (2) A limited partner does not participate in the control of the business within
9 the meaning of subsection (1) of this section by virtue of possessing or, regardless of
10 whether or not the limited partner has the rights or powers, exercising or attempting to
11 exercise 1 or more of the following rights or powers or having or, regardless of whether
12 or not the limited partner has the rights or powers, acting or attempting to act in one or
13 more of the following capacities:

14 (a) To be an independent contractor for or to transact business with,
15 including being a contractor for, or to be an agent or employee of, the limited
16 partnership or a general partner, or to be an officer, director or stockholder of a
17 corporate general partner, or to be a limited partner of a partnership that is a
18 general partner of the limited partnership, or to be a trustee, administrator,
19 executor, custodian or other fiduciary or beneficiary of an estate or trust which is a

1 general partner, or to be a trustee, officer, advisor, stockholder or beneficiary of a
2 business trust or a statutory trust which is a general partner or to be a member,
3 manager, agent or employee of a limited liability company which is a general
4 partner;

5 (b) To consult with or advise a general partner or any other person with
6 respect to any matter, including the business of the limited partnership, or to act or cause
7 a general partner or any other person to take or refrain from taking any action,
8 including by proposing, approving, consenting or disapproving, by voting or otherwise,
9 with respect to any matter, including the business of the limited partnership;

10 (c) To act as surety, guarantor or endorser for the limited partnership or a
11 general partner, to guaranty or assume 1 or more obligations of the limited partnership or
12 a general partner, to borrow money from the limited partnership or a general partner, to
13 lend money to the limited partnership or a general partner, or to provide collateral for the
14 limited partnership or a general partner;

15 (d) To call, request, or attend or participate at a meeting of the partners or
16 the limited partners;

17 (e) To wind up a limited partnership pursuant to section 201 of this
18 division;

1 (f) To take any action required or permitted by law to bring, pursue or
2 settle or otherwise terminate a derivative action in the right of the limited
3 partnership;

4 (g) To serve on a committee of the limited partnership or the limited
5 partners or partners or to appoint, elect or otherwise participate in the choice of a
6 representative or another person to serve on any such committee, and to act as a
7 member of any such committee directly or by or through any such representative
8 or other person;

9 (h) To act or cause the taking or refraining from the taking of any action,
10 including by proposing, approving, consenting or disapproving, by voting or
11 otherwise, with respect to 1 or more of the following matters:

12 (i). The dissolution and winding up of the limited partnership or an
13 election to continue the limited partnership or an election to continue the
14 business of the limited partnership;

15 (ii). The sale, exchange, lease, mortgage, assignment, pledge or
16 other transfer of, or granting of a security interest in, any asset or assets of
17 the limited partnership;

18 (iii). The incurrence, renewal, refinancing or payment or other
19 discharge of indebtedness by the limited partnership;

1 (iv). A change in the nature of the business;

2 (v). The admission, removal or retention of a general partner;

3 (vi). The admission, removal or retention of a limited partner;

4 (vii). A transaction or other matter involving an actual or potential
5 conflict of interest;

6 (viii). An amendment to the partnership agreement or certificate of
7 limited partnership;

8 (ix) The indemnification of any partner or other person;

9 (x) The making of, or calling for, or the making of other
10 determinations in connection with, contributions;

11 (xi). The making of, or the making of other determinations in
12 connection with or concerning, investments, including investments in
13 property, whether real, personal or mixed, either directly or indirectly, by
14 the limited partnership; or

15 (xii) Such other matters as are stated in the partnership agreement
16 or in any other agreement or in writing;

17 (i) To serve on the board of directors or a committee of, to consult with or
18 advise, to be an officer, director, stockholder, partner (other than a general partner of
19 a general partner of the limited partnership), member, manager, trustee, agent or

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1 employee of, or to be a fiduciary or contractor for, any person in which the limited
2 partnership has an interest or any person providing management, consulting,
3 advisory, custody or other services or products for, to or on behalf of, or otherwise
4 having a business or other relationship with, the limited partnership or a general
5 partner of the limited partnership; or

6 (j) Any right or power granted or permitted to limited partners under this
7 division and not specifically enumerated in this subsection.

8 (3) The enumeration in subsection (2) of this section does not mean that the possession or
9 exercise of any other powers or having or acting in other capacities by a limited partner constitutes
10 participation by him or her in the control of the business of the limited partnership.

11 (4) A limited partner does not participate in the control of the business within the meaning
12 of subsection (1) of this section by virtue of the fact that all or any part of the surname of such
13 limited partner is included in the name of the limited partnership, provided that such surname is also
14 the surname of the general partner.

15 (5) This section does not create rights or powers of limited partners. Such rights and powers
16 may be created only by a certificate of limited partnership, a partnership agreement or any other
17 agreement or in writing, or other sections of this division.

18 (6) A limited partner does not participate in the control of the business within the
19 meaning of subsection (1) of this section regardless of the nature, extent, scope, number or

1 frequency of the limited partner's possessing or, regardless of whether or not the limited partner has
2 the rights or powers, exercising or attempting to exercise 1 or more of the rights or powers or having
3 or, regardless of whether or not the limited partner has the rights or powers, acting or
4 attempting to act in 1 or more of the capacities which are permitted under this section.

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6 (f) Section 186 is amended to read in the following manner:

7 After the formation of a limited partnership, additional limited partners may be admitted at
8 the time provided in and upon compliance with the partnership agreement.

9
10 (g) Section 187 is amended to read in the following manner:

11 A general partner shall have all the rights and powers and be subject to all the restrictions
12 and liabilities (except as set for in the partnership agreement with respect to restrictions or liabilities
13 to the partnership and to the other partners) of a partner in a partnership without limited partners,
14 except that without the written consent or ratification of the specific act by all the limited partners,
15 a general partner or all of the general partners have no authority to:

- 16 (a) do any act in contravention of the certificate;
- 17 (b) do any act which would make it impossible to carry on the ordinary
18 business of the partnership;
- 19 (c) confess a judgment against the partnership, unless the right to do so is given

1 in the partnership agreement;

2 (d) possess partnership property, or assign their rights in specific partnership
3 property, for other than a partnership purpose;

4 (e) admit a person as a general partner, unless the right to do so is given in the
5 partnership agreement;

6 (f) admit a person as a limited partner, unless the right to do so is given in the
7 partnership agreement;

8 (g) continue the business with partnership property on the death,
9 retirement or disability of a general partner, unless the right to do so is given in the
10 partnership agreement; or

11 (h) amend the partnership agreement, unless the right to do so is given in the
12 partnership agreement.

13
14 (h) Section 188 is amended to read in the following manner:

15 (1) *Disclosure and decree.* A limited partner shall have the same rights as a general
16 partner to:

17 (a) have the partnership books kept at the principal place of business of the
18 partnership, and, at the limited partner's cost, at all reasonable times, and for just and

1 reasonable purposes, to inspect and copy any of them, subject to any reasonable
2 provisions regarding confidentiality in the partnership agreement;

3 (b) have on demand true and full information of all things affecting the
4 partnership, and a formal account of partnership affairs whenever circumstances
5 render it just and reasonable, subject to any reasonable provisions regarding
6 confidentiality in the partnership agreement; and

7 (c) subject to any limitation set forth in the partnership agreement, have
8 dissolution and winding up by decree of court.

9 (2) *Profits and contributions.* A limited partner shall have the right to receive a share
10 of the profits or other compensation by way of income, and to the return of his contributions
11 as provided for in this division.

12
13 (i) Section 191 is amended to read in the following manner:

14 (1) *Financial Transactions.* A limited partner also may loan money to transact other business
15 with the partnership and, unless he is also a general partner, be treated with regard to such loans and
16 any other business as if he were an unrelated party in all dealings with the partnership.

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18 (j) Section 192 is amended to read in the following manner:

1 Where there are several limited partners the members may agree that one or more of the
2 limited partners shall have a priority over other limited partners as to the return of their contributions,
3 as to their compensation by way of income, or as to any other matter. If such an agreement is made
4 it shall be stated in the partnership agreement, but in the absence of such a statement all the limited
5 partners shall stand upon equal footing.

6
7 **(k)** Section 193 is amended to read in the following manner:

8 A limited partner may receive from the partnership the share of the profits or the compensation by
9 way of income stipulated for in the partnership agreement, provided that after such payment is made,
10 whether from the property of the partnership or that of a general partner, the partnership assets shall
11 be in excess of all liabilities of the partnership except liability to limited partners on account of their
12 contributions, and to general partners.

13
14 **(l)** Section 194 is amended to read in the following manner:

15 **(1) *Limitations thereon.*** A limited partner shall not receive from a general partner or out
16 of partnership property any part of his contribution:

17 (a) unless all liabilities of the partnership, except liabilities to general partners and
18 limited partners on account of their contributions, have been paid or there remains property
19 of the partnership sufficient to pay them; and

1 (b) unless otherwise provided in the partnership agreement, the consent of all
2 members is had.

3 (2) *Return of contribution.* Subject to the provisions of subsection (1)(a) of this section and
4 the partnership agreement, a limited partner may rightfully demand the return of his contribution:

5 (a) on the dissolution of the partnership unless its business is continued
6 pursuant to the exercise by other partners of a right or power set forth in the certificate or
7 the partnership agreement, or

8 (b) after he has given six (6) months notice in writing to all other members, if no time
9 is specified in the partnership agreement either for the return of the contribution or the
10 dissolution of the partnership.

11 (3) *Cash.* In the absence of any statement in the partnership agreement to the contrary
12 or the consent of all members, a limited partner, irrespective of the nature of his
13 contributions, has only the right to demand and receive cash in return for his contributions.

14 (4) *Right to dissolution.* A limited partner may have the partnership dissolved and its
15 affairs wound up when:

16 (a) he rightfully but unsuccessfully demands the return of his contribution; or

17 (b) the other liabilities of the partnership have not been paid, or the
18 partnership property is insufficient for their payment, and the limited partner would
19 otherwise be entitled to the return of his contribution.

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(m) Section 195 is amended to read in the following manner:

(1) *Contributions.* A limited partner is liable to the partnership:

(a) for the difference between his contribution as actually made and that stated in the partnership agreement or the records of the limited partnership as having been made; and

(b) for any unpaid contributions which he agreed in the partnership agreement to make in the future at the time and on the conditions stated in the partnership agreement.

(2) *Waiver and compromise.* Unless otherwise provided in the partnership agreement, the liabilities of a limited partner as set forth in this section can be waived or compromised only by the consent of all members.

(3) *Rights of partnership.*

(a) A limited partnership shall not make a distribution to a partner unless all liabilities of the partnership, except liabilities to general partners and limited partners on account of their contributions, have been paid or remains property of the partnership sufficient to pay them.

(b) A limited partner who receives a distribution in violation of Section 194(1) or Section 195(3)(a) of this Act, and who knew at the time of the distribution that the distribution violated Section 194(1) or Section 195(3)(a) of this Act, shall be liable to

1 the limited partnership for the amount of the distribution. A limited partner who receives
2 a distribution in violation of Section 194(1) or Section 195(3)(a) of this Act, and who
3 did not know at the time of the distribution that the distribution violated Section 194(1)
4 or 195(3)(a) of this Act, shall not be liable for the amount of the distribution. Subject to
5 Section 194(1) or Section 195(3)(c) of this Act, this subsection shall not affect any
6 obligation or liability of a limited partner under an agreement or other applicable law for
7 the amount of a distribution.

8 (c) Unless otherwise agreed, a limited partner who receives a distribution from
9 a limited partnership shall have no liability under this division or other applicable law for
10 the amount of the distribution after the expiration of three (3) years from the date of the
11 distribution.

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13 **(n)** Section 197 is amended to read in the following manner:

14 (1) *Assignable.* A limited partner's interest is assignable. Unless otherwise
15 provided in a partnership agreement, a partner's interest in a limited partnership may be
16 evidenced by a certificate of partnership interest issued by the limited partnership. A
17 partnership agreement may provide for the assignment of any partnership interest
18 represented by such a certificate and make other provisions with respect to such
19 certificates.

1 (2) *Substituted limited partner* A substituted limited partner is a person admitted
2 to all the rights of a limited partner who has died or has assigned his interest in a
3 partnership.

4 (3) *Assignee*. An assignee who does not become a substituted limited partner has
5 no right to require any information or account of the partnership transactions or to inspect
6 the partnership books; he is only entitled to receive the share of the profits or other
7 compensation by way of income, or the return of his contribution, to which his
8 assignor would otherwise be entitled.

9 (4) *Assignee as substituted limited partner*. An assignee becomes a substituted
10 limited partner at the time provided in and upon compliance with the partnership agreement
11 or, if the partnership agreement does not so provide, upon the consent of all of the partners
12 and at the time such assignee's permitted admission is reflected in the records of the limited
13 partnership.

14 (5) *Rights of substituted limited partner*. The substituted limited partner has all
15 the rights and powers, and is subject to all the restrictions and liabilities of his assignor
16 except those liabilities of which he was ignorant at the time he became a limited partner and
17 which could not be ascertained from the partnership agreement and except those liabilities
18 provided in Section 195.

1 (6) *Assignor's liability*. The substitution of the assignee as a limited partner does not
2 release the assignor from liability to the partnership when it would otherwise attach.

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4 **(o)** Section 198 is amended to read in the following manner:

5 The partnership shall be dissolved upon the occurrence of any of the following:

6 (1) upon the expiration of the term of the limited partnership as provided in the
7 partnership agreement;

8 (2) by the express will of all of the limited partners and general partners when
9 no term is provided in the partnership agreement;

10 (3) by the express will of all of the limited partners and general partners who
11 have not assigned their interests or suffered them to be charged for their separate debts,
12 before the expiration of any specified term in the partnership agreement;

13 (4) upon the retirement, bankruptcy or death of the sole remaining general
14 partner, provided, however, that if the general partner is replaced within 180 days of such
15 dissolution as provided in the partnership agreement, the dissolution shall cease and the
16 limited partnership's affairs shall not be wound up;

17 (5) upon the occurrence of any other events specified in the partnership
18 agreement; or

19 (6) on application by or for a general partner or a limited partner the High Court

1 may decree dissolution of the limited partnership whenever it is not reasonably
2 practicable to carry on the business in conformity with the partnership agreement.

3
4 **(p)** Section 200 subsection (2) is amended to read in the following manner:

5 (2) *Redemption.* Unless otherwise provided in the partnership agreement, the
6 interest may be redeemed with the separate property of any general partner, but may not be
7 redeemed with partnership property.

8
9 **(q)** Section 201 is amended to read in the following manner:

10 (1) *Order of payment.* In settling accounts after dissolution of the partnership the
11 liabilities of the partnership shall be entitled to payment in the following order:

12 (a) those to creditors, in the order of priority as provided by law, except
13 those to limited partners on account of their contributions, and to general partners;

14 (b) those to general partners and limited partners in the order of priority
15 provided for in the partnership agreement, provided that if the partnership agreement
16 does not provide for an order of priority payment shall be made in the following
17 order of priority;

18 (i) those to limited partners in respect to their share of the profits and other
19 compensation by way of income on their contributions.

- 1 (ii) those to limited partners in respect to the capital of their contributions;
- 2 (iii) those to general partners other than for capital and profits;
- 3 (iv) those to general partners in respect to profits; and
- 4 (v) those to general partners in respect to capital.

5 (2) *Sharing*. Subject to any statement in the partnership agreement, limited partners
6 share in the partnership assets in respect to their claims for capital, and in respect to their
7 claims for profits or for compensation by way of income on their contributions respectively,
8 in proportion to the respective amounts of such claims.

9
10 (r) Section 202 is amended to read in the following manner:

11 (1) *Cancellation*. The certificate shall be canceled when the partnership is dissolved or
12 all limited partners cease to be such.

13 (2) *Amendment to the Certificate*. A certificate shall be amended when:

- 14 (a) there is a change in the name of the partnership;
- 15 (b) a person is admitted as a general partner;
- 16 (c) a general partner retires, dies or becomes disabled and the business is
17 continued;
- 18 (d) there is a change in the location of the principal place of business;
- 19 (e) there is a false or erroneous statement in the certificate;

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1 (f) the general partners desire to make a change in any other statement in the
2 certificate .

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5 (s) Section 203 is amended to read in the following manner:

6 (1) *Amendment to the Certificate.* The writing to the amend a certificate shall:

7 (a) conform to the requirements of section 180 of this Act as far as necessary to set
8 forth clearly the change in the certificate which it desires to make; and

9 (b) be signed and sworn to by all general partners.

10 Any amendment substituting a general partner or adding a general partner shall be signed
11 and sworn to also by the general partner to be substituted or added.

12 (2) *Cancellation.* The writing to cancel a certificate shall be signed and sworn to by
13 all general partners.

14 (3) *When amended or canceled.* A certificate is amended or canceled when the
15 provisions of subsections (1) and (2) of this section have been complied with and such
16 document is filed in the office of the appropriate Registrar of Corporations referred to in
17 section 4 of the Business Corporations Act.

18 (4) *Amendment certificate.* After the certificate has been duly amended in accordance
19 with this section, the amended certificate shall thereafter be for all purposes the certificate
20 provided for by this division..

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1 (5) *Amendment to the partnership agreement.* An amendment to the partnership
2 agreement of a limited partnership under this Act shall require the unanimous vote of all
3 of the partners, unless otherwise provided in the partnership agreement.

4
5 **(t)** Section 206 is amended to read in the following manner:

6 (1) *Common Law.* The rule that statutes in derogation of the common law are to be
7 strictly construed, shall have no application to this division. It is the policy of this Act to give
8 maximum effect to the principle of freedom of contract and to the enforceability of
9 partnership agreements.

10 (2) *Construction.* Insofar as it does not conflict with any other provisions of this
11 division, or any other law of the Republic of the Marshall Islands, the non-statutory law of
12 the State of New York and those of other states of the United States of America with
13 substantially similar legislative provisions shall be referred to when appropriate, as
14 precedent.

15 (3) *Impairment of obligations.* This division shall not be so construed as to impair the
16 obligations of any contract existing when this division takes effect, nor to affect any action
17 or proceeding begun or right accrued before this division takes effect.

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(u) Section 208 is hereby amended to read in the following manner:

(1) *Prior Limited Partnership*. A limited partnership heretofore formed prior to the adoption of this division shall become a limited partnership under this division by complying with the provisions of Section 180 of this Act.

(2) The provisions of this division, or its repeal shall not affect or impair any act done or right accrued, acquired or established by a limited partnership formed prior to its adoption.

Section 3. Effective Date

This Act shall take effect upon certification, in accordance with Article IV Section 21 of the Constitution and the Rules of Procedures of the Nitijela.

CERTIFICATE

I hereby Certify:

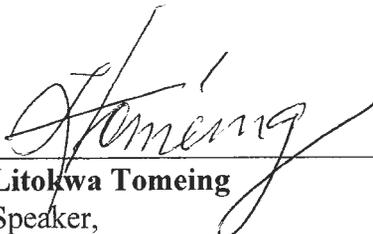
(1) that the above Nitijela Bill No:28ND1 was passed by the Nitijela of the Marshall Islands on the 25th day of October 2004; and

(2) that I am satisfied that Nitijela Bill No:28ND1 was passed in accordance with the provisions of the Constitution and the Rules of Procedures of the Nitijela.

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I hereby place my signature before the Clerk of the Nitijela this 22nd day
November 2004.

ATTEST



Litokwa Tomeing
Speaker,
Nitijela of the Marshall Islands



Joe E Riklon
Clerk,
Nitijela of the Marshall Islands