

## ACT 219

H.B. NO. 2483

A Bill for an Act Relating to Business Registration.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 428, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§428- Restated articles of organization.** (a) A limited liability company may at any time restate its articles of organization as amended.

(b) The restated articles of organization shall set forth all of the operative provisions of the articles of organization as amended, together with a statement that the restated articles of organization correctly set forth without change the corresponding provisions of the articles of organization as amended, and that the restated articles of organization supersede the original articles of organization and all amendments thereto.

(c) The restated articles of organization shall be delivered to the director for filing. The director may certify the restated articles of organization currently in effect, without including the information required to be filed by subsection (b).”

SECTION 2. Section 415-8, Hawaii Revised Statutes, is amended to read as follows:

**“§415-8 Corporate name.** The corporate name:

- (1) Shall contain the word “corporation”, “incorporated”, or “limited”, or shall contain an abbreviation of one of the words; and
- (2) Shall not be the same as, or substantially identical to, the name of any domestic corporation, [domestic] partnership, [domestic] limited liability company, or [domestic] limited liability partnership existing or

registered under the laws of this State, or any foreign corporation, [foreign] partnership, [foreign] limited liability company, or [foreign] limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in [the manner provided in this chapter, or the name of a corporation which has in effect a registration of its corporate name as provided in this chapter,] this State, except that this provision shall not apply if the applicant files with the director either of the following:

- (A) The written consent [of] from the [other corporation] entity or holder of a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name; or
- (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State.”

SECTION 3. Section 415-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as provided in this section, each corporation shall continuously maintain in [the] this State:

- (1) A registered office that may be the same as any of its places of business; and
- (2) A registered agent who shall be:
  - (A) An individual who resides in [the] this State and whose business office is identical to the registered office;
  - (B) A domestic corporation or not-for-profit domestic corporation whose business office is identical to the registered office; or
  - (C) A foreign corporation or not-for-profit foreign corporation authorized to transact business in [the] this State whose business office is identical to the registered office.”

SECTION 4. Section 415-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A corporation may change its registered office or registered agent by delivering to the director for filing a statement of change that sets forth:

- (1) The name of the corporation;
- (2) The street address of its current registered office;
- (3) If the current registered office is to be changed, the street address of the new registered office;
- (4) The name of its current registered agent;
- (5) If the current registered agent is to be changed, the name of the new registered agent [and the new agent’s written consent to the appointment. This consent may be indicated on or attached to the statement of change]; and
- (6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent shall be identical.”

SECTION 5. Section 415-12, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The [agency] appointment of the agent shall be terminated, and the registered office discontinued if so provided, thirty-one days after the date on which the statement was filed.”

SECTION 6. Section 415-14, Hawaii Revised Statutes, is amended to read as follows:

“**§415-14 Service of process on corporation.** (a) Service of any notice or process authorized by law issued against any corporation, whether domestic or foreign, by any court, judicial or administrative officer, or board, may be made in the manner provided by law upon any registered agent, officer, or director of the corporation who is found within the jurisdiction of the court, officer, or board; or if any registered agent, officer, or director cannot be found, upon the manager or superintendent of the corporation or any person who is found in charge of the property, business, or office of the corporation within the jurisdiction.

(b) If no officer, director, manager, superintendent, or other person in charge of the property, business, or office of the corporation can be found within the State, and in case the corporation[, if a foreign corporation,] has not filed with the director pursuant to sections 415-10, 415-11, 415-113, and 415-114, the name of a person upon whom legal notice and process from the courts of the State may be served, and likewise if the person so named is not found within the State, service may be made upon the corporation by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service using registered or certified mail is perfected at the earliest of:

- (1) The date the corporation receives the mail;
- (2) The date shown on the return receipt, if signed on behalf of the corporation; or
- (3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

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

SECTION 7. Section 415-54, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The articles of incorporation shall be delivered to and filed by the director and shall set forth:

- (1) The name of the corporation;
- (2) The aggregate number of shares which the corporation shall have authority to issue, and, if the shares are to be divided into classes, the number of shares of each class;
- (3) The mailing address of its initial or principal office and, if the corporation is required at the time of incorporation to have a registered office and registered agent in this State, the street address of the corporation’s initial registered office and the name of its initial registered agent at that office; provided that where no specific street address is available for the corporation’s initial or principal office or for the corporation’s registered office, the rural route post office number or post office box designated or made available by the United States Postal Service;
- (4) The number of directors constituting the initial board of directors and the names and [residence] addresses of the individuals who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualified; [provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service;] and
- (5) The name, title, and [residence] address of each officer[]; provided that where no specific street address is available, the rural route post office

number or post office box designated or made available by the United States Postal Service].”

SECTION 8. Section 415-74, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon receiving the approvals required by sections 415-71, 415-72, 415-72A, and 415-73, articles of merger or articles of consolidation shall be delivered to the director for filing and shall set forth:

(1) Either:

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

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

[(1)] (2) A statement that the plan of merger, or the plan of consolidation has been approved by the board of directors of each corporation involved in the merger or consolidation;

[(2)] (3) Either:

(A) A statement that the vote of shareholders is not required by virtue of section 415-73(e); or

(B) As to each corporation, the approval of whose shareholders is required, the number of shares outstanding and, if the shares of any class were entitled to vote as a class, the designation and number of outstanding shares of each class;

[(3)] (4) As to each corporation the approval of whose shareholders is required, the number of shares voted for and against the plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each class voted for and against the plan, respectively; and

[(4)] (5) A statement indicating the changes in the articles of incorporation of the surviving corporation to be effected by the merger or consolidation.”

SECTION 9. Section 415-75, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Articles of merger shall be delivered to the director for filing and shall set forth:

(1) The name and jurisdiction of incorporation of the subsidiary corporation, and the name and jurisdiction of incorporation of the corporation owning at least ninety per cent of its shares which is hereinafter designated as the surviving corporation;

[(1)] (2) A statement that the plan of merger has been approved by the board of directors of the surviving corporation;

[(2)] (3) The number of outstanding shares of each class of the subsidiary corporation and the number of shares of each class owned by the surviving corporation; and

[(3)] (4) The date a copy of the plan of merger is mailed to shareholders of the subsidiary corporation entitled to receive the plan.”

SECTION 10. Section 415-75.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Articles of merger shall be delivered to the director for filing and shall set forth:

- (1) The name and jurisdiction of incorporation of the parent corporation owning at least ninety per cent of the shares of the subsidiary corporation, the name and jurisdiction of incorporation of any nonsurviving subsidiary corporation, and the name and jurisdiction of the surviving subsidiary corporation;
- [(1)] (2) A statement that the plan of merger has been approved by the board of directors of the parent corporation;
- [(2)] (3) The number of outstanding shares of each class of any nonsurviving subsidiary corporation and the number of such shares of each class owned by the parent corporation; and
- [(3)] (4) The date a copy of the plan of merger is mailed to shareholders of any nonsurviving subsidiary corporation entitled to receive the plan.”

SECTION 11. Section 415-75.6, Hawaii Revised Statutes, is amended to read as follows:

“**[§415-75.6] Merger with or into domestic or foreign limited liability company.** (a) As used in this section, the terms “limited liability company” and “foreign limited liability company” shall have the meanings defined in section 428-101.

(b) One or more corporations or foreign corporations may merge with or into one or more limited liability companies or foreign limited liability companies if in the case of a domestic corporation the board of directors and the shareholders approve a plan of merger as provided in sections 415-71 and 415-73, and in the case of a foreign corporation it complies with section 415-77.

(c) In addition to the requirements of section 415-74, the plan of merger shall also set forth:

- (1) The name of each limited liability company and foreign limited liability company proposing to merge; and
- (2) If the surviving entity is a limited liability company or a foreign limited liability company:
  - (A) The manner and basis of converting the shares of each corporation or foreign corporation and the interests as members of each limited liability company or foreign limited liability company into interests as members of the surviving domestic limited liability company or foreign limited liability company pursuant to such merger, or a statement that such information is contained in the operating agreement proposed for such surviving entity;
  - (B) The contents of the articles of organization of the surviving entity pursuant to such merger in accordance with section 428-203 if a domestic limited liability company is the surviving entity, or in accordance with comparable provisions of applicable law if a foreign limited liability company is the surviving entity; and
  - (C) The contents of the operating agreement to be entered into among the persons who will be the members of the surviving entity pursuant to the merger, which shall, if not separately provided in the plan of merger, state the manner and basis for the conversion of the shares of each merging corporation or foreign corporation and the interests as members of each merging limited liability company or foreign limited liability company into interests as

members of the surviving entity and that notice of the approval of the merger will be deemed to be execution of the operating agreement by such persons.

(d) After a plan of merger is approved by the shareholders of each corporation and foreign corporation as provided in subsection (b), and by the members of each domestic limited liability company as provided in section 428-904, or as provided in comparable provisions of applicable law for each foreign limited liability company, the surviving entity shall deliver to the office of the director for filing articles of merger [complying with section 415-74,] executed on behalf of each party to the merger. The articles of merger shall:

- (1) Comply with section 415-74 if the surviving entity is a domestic or foreign corporation; or
- (2) Comply with section 428-905 if the surviving entity is a domestic or foreign limited liability company.

(e) Section 415-76 shall be applicable to each corporation that is a party to the plan of merger.

(f) If a foreign corporation is a party to the merger, section 415-77 shall apply to such foreign corporation.

(g) Section 428-906 shall apply to each domestic and foreign limited liability company that is a party to the plan of merger.”

SECTION 12. Section 415-77, Hawaii Revised Statutes, is amended to read as follows:

**“§415-77 Merger, consolidation, or share exchange between domestic and foreign corporations.** One or more foreign corporations and one or more domestic corporations may be merged or consolidated, or participate in a share exchange, in the following manner, if the merger, consolidation, or share exchange is permitted by the laws of the state under which each foreign corporation is organized:

- (1) Each domestic corporation shall comply with [the provisions of] this chapter with respect to the merger, consolidation, or share exchange, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized; and
- (2) If the surviving or new corporation in a merger or consolidation is to be governed by the laws of any state other than this State, it shall comply with [the provisions of] this chapter with respect to foreign corporations if it is to transact business in this State, and in every case it shall file with the director of this State:
  - (A) An agreement that it may be served with process in this State in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to the merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of the domestic corporation against the surviving or new corporation;
  - (B) An irrevocable appointment of a resident of this State as its agent to accept service of process in any such proceeding[;], and include the resident’s street address in this State; and
  - (C) An agreement that it will promptly pay to the dissenting shareholders of the domestic corporation the amount, if any, to which they shall be entitled under provisions of this chapter with respect to the rights of dissenting shareholders.”

SECTION 13. Section 415-83, Hawaii Revised Statutes, is amended to read as follows:

**“§415-83 Voluntary dissolution by consent of shareholders.** (a) A corporation may be voluntarily dissolved by the written consent of all of its shareholders.

(b) Upon the execution of the written consent, a statement of intent to dissolve shall set forth:

- (1) The name of the corporation;
- (2) The names and [respective residence] addresses of its officers;
- (3) The names and [respective residence] addresses of its directors; and
- (4) A statement that the written consent has been signed by all shareholders of the corporation, or signed in their names by their attorneys thereunto duly authorized.”

SECTION 14. Section 415-84, Hawaii Revised Statutes, is amended to read as follows:

**“§415-84 Voluntary dissolution by act of corporation.** A corporation may be dissolved by the act of the corporation, when authorized, in the following manner:

- (1) The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of the dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting;
- (2) Written notice shall be given to each shareholder [[of[]] record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders, and, that one of the purposes of the meeting is to consider the advisability of dissolving the corporation;
- (3) With respect to corporations incorporated on or after July 1, 1987, at such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. The resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon;
- (4) With respect to corporations incorporated before July 1, 1987, at such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. The resolution shall be adopted upon receiving the affirmative vote of the holders of three-fourths of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of three-fourths of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. The articles of incorporation may be amended by the vote set forth in the preceding sentence to provide for a lesser proportion of shares, or of any class or series thereof, than is provided in the preceding sentence, in which case the articles of incorporation shall control, provided that [said] the lesser proportion shall not be less than the proportion set forth in paragraph (3) [of this section]; and
- (5) Upon the adoption of the resolution, a statement of intent to dissolve shall set forth:

- (A) The name of the corporation;
- (B) The names and [respective residence] addresses of its officers;
- (C) The names and [respective residence] addresses of its directors;
- (D) The date[, time, and location] of the shareholders meeting;
- (E) The number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each class; and
- (F) The number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively.”

SECTION 15. Section 415-87, Hawaii Revised Statutes, is amended to read as follows:

“**§415-87 Procedure after filing of statement of intent to dissolve.** After the filing by the director of a statement of intent to dissolve:

- (1) The corporation shall immediately cause notice thereof to be mailed to each known creditor of the corporation;
- (2) The corporation [shall forthwith] may publish, once in each of four successive weeks (four publications) in a newspaper of general circulation published in the State, notice thereof to all creditors of the corporation[. The corporation, with the approval of the director, may omit the publication of the notice if the corporation has insufficient assets to pay for the publication];
- (3) The corporation shall proceed to collect its assets, convey, and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy, and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all of its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests; and
- (4) The corporation, at any time during the liquidation of its business and affairs, may make application to a court of competent jurisdiction within the State and judicial subdivision in which the principal office or principal place of business of the corporation is situated, to have the liquidation continued under the supervision of the court as provided in this chapter.”

SECTION 16. Section 415-88, Hawaii Revised Statutes, is amended to read as follows:

“**§415-88 Revocation of voluntary dissolution proceedings by consent of shareholders.** By the written consent of all of its shareholders, a corporation may, at any time prior to the filing of the articles of dissolution by the director, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

Upon the execution of such written consent, a statement of revocation of voluntary dissolution proceedings shall set forth:

- (1) The name of the corporation;
- (2) The names and [residence] addresses of its officers;
- (3) The names and [residence] addresses of its directors;
- [(4) A copy of the written consent signed by all shareholders of the corporation revoking the voluntary dissolution proceedings;] and



- [(5)] (4) That the written consent revoking the voluntary dissolution proceedings has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.”

SECTION 17. Section 415-89, Hawaii Revised Statutes, is amended to read as follows:

“**§415-89 Revocation of voluntary dissolution proceedings by act of corporation.** By the act of the corporation, a corporation may, at any time prior to the filing of the articles of dissolution by the director, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

- (1) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of the revocation be submitted to a vote at a special meeting of shareholders;
- (2) Written notice, stating that the purpose or one of the purposes of the meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each shareholder of record entitled to vote at the meeting within the time and in the manner provided in this chapter for the giving of notice of special meetings of shareholders;
- (3) At the meeting, a vote of the shareholders entitled to vote thereat shall be taken on a resolution to revoke the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of a majority of the shares entitled to vote thereon and shall be adopted in the same manner as the dissolution was authorized in section 415-84; and
- (4) Upon the adoption of the resolution, a statement of revocation of voluntary dissolution proceedings shall set forth:
  - (A) The name of the corporation;
  - (B) The names and [residence] addresses of its officers;
  - (C) The names and [residence] addresses of its directors;
  - (D) [A copy of] That the resolution revoking the voluntary dissolution proceedings was adopted by the shareholders [revoking the voluntary dissolution proceedings];
  - (E) The number of shares outstanding and, if the shares of any class are entitled to vote as a class, the designation and number of the outstanding shares of each class; and
  - (F) The number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each class voted for and against the resolution, respectively.”

SECTION 18. Section 415-92, Hawaii Revised Statutes, is amended to read as follows:

“**§415-92 Articles of dissolution.** If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities, and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution verified on oath by two officers shall set forth:

- (1) The name of the corporation;
- (2) That the director has theretofore filed a statement of intent to dissolve the corporation and the date on which the statement was filed;

- (3) The dates that notice of the filing of the statement of intent to dissolve the corporation was published, once in each of four successive weeks (four publications) in a newspaper of general circulation published in the State, or a statement that publication [of notice had been waived by the director;] was not made;
- (4) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;
- (5) That all of the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests; and
- (6) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.”

SECTION 19. Section 415-95, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Whenever the director certifies the name of a corporation as having given any cause for dissolution pursuant to section 415-94, the director may declare the corporation dissolved. Before the director may declare a corporation dissolved, the director shall:

- (1) Give] give notice of the ground or grounds for dissolution as provided in section 415-94, by mailing the notice to the corporation at its last known address appearing in the records of the director[:] and
- [(2) Give] may give [statewide] public notice of the intention to dissolve the corporation [once in each of three successive weeks].”

SECTION 20. Section 415-108, Hawaii Revised Statutes, is amended to read as follows:

“**§415-108 Corporate name of foreign corporation.** No certificate of authority shall be issued to a foreign corporation unless its corporate name:

- (1) Is not the same as, or substantially identical to, the name of any domestic corporation, [domestic] partnership, [domestic] limited liability company, or [domestic] limited liability partnership existing or registered under the laws of this State, or any foreign corporation, [foreign] partnership, [foreign] limited liability company, or [foreign] limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in [the manner provided in this chapter,] this State, except that this provision shall not apply if the foreign corporation applying for a certificate of authority files with the director any one of the following:
  - (A) The written consent [of such other corporation] from the entity or holder of a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name;
  - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign corporation to the use of the name in this State; or
  - (C) A copy of a certificate of registration of a trade name by the foreign corporation under which trade name that foreign corporation will transact business in this State; and

- (2) Is transliterated into letters of the English alphabet, if the name is not in English.”

SECTION 21. Section 415-110, Hawaii Revised Statutes, is amended as follows:

“**§415-110 Application for certificate of authority.** To procure a certificate of authority to transact business in this State, a foreign corporation [should make application therefor] shall apply to the director[, which]. The application shall set forth:

- (1) The name of the corporation and the jurisdiction in which it is incorporated;
- (2) The date of incorporation and the period of duration of the corporation;
- (3) The mailing address of the principal office of the corporation in the jurisdiction in which it is incorporated;
- (4) The street address of the proposed registered office of the corporation in this State, and the name of its proposed registered agent in this State at that address;
- (5) The primary specific purpose and such other purposes of the corporation which it proposes to pursue in the transaction of business in this State;
- (6) The names and [respective] addresses of the directors and officers of the corporation; and
- (7) Any additional information as may be necessary or appropriate to enable the director to determine whether the corporation is entitled to a certificate of authority to transact business in this State. The application shall be made on forms prescribed and furnished by the director which shall be delivered to the director for filing.”

SECTION 22. Section 415-119, Hawaii Revised Statutes, is amended to read as follows:

“**§415-119 Withdrawal of foreign corporation.** A foreign corporation authorized to transact business in this State may withdraw from the State upon procuring from the director a certificate of withdrawal. In order to procure a certificate of withdrawal, the foreign corporation shall deliver to the director an application for withdrawal, which shall set forth:

- (1) The name of the foreign corporation and the state or country under the laws of which it is incorporated;
- (2) That the foreign corporation is not transacting business in this State;
- (3) That the foreign corporation surrenders its authority to transact business in this State;
- (4) That the foreign corporation revokes the authority of its registered agent in this State to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this State during the time the corporation was authorized to transact business in this State may thereafter be made on the corporation by service thereof on the director;
- (5) The dates that notice of the foreign corporation’s intent to withdraw from the State was published, once in each of four successive weeks (four publications) in a newspaper of general circulation published in the State[. The foreign corporation, with the approval of the director, may omit the publication of the notice if the corporation has insuffi-

cient assets to pay for the publication;] or a statement that publication was not made;

- (6) That all taxes, debts, obligations, and liabilities of the foreign corporation in [the] this State have been paid and discharged or that adequate provision has been made therefor;
- (7) A mailing address to which the director may mail a copy of any process against the foreign corporation that may be served on the director; and
- (8) Such additional information as may be necessary or appropriate in order to enable the director to determine and assess any unpaid fees payable by the foreign corporation as in this chapter prescribed.

The application for withdrawal shall be made on forms prescribed and furnished by the director and shall be delivered to and filed by the director.”

SECTION 23. Section 415-125, Hawaii Revised Statutes, is amended to read as follows:

“**§415-125 Annual report of domestic and foreign corporations.** Each domestic corporation and each foreign corporation authorized to transact business in this State shall deliver to the director, within the time prescribed by this chapter, an annual report signed by any authorized officer, or an attorney-in-fact for an officer, or if the corporation is in the hands of a receiver or trustee, by the receiver or trustee setting forth:

- (1) The name of the corporation or foreign corporation and the state or country under the laws of which it is incorporated;
- (2) Where the corporation is required by law to have a registered office and registered agent in [the] this State, the street address of the domestic corporation’s or foreign corporation’s registered office in this State, and the name of its registered agent in this State at such address, and the mailing address of its principal office in the state or country under the laws of which it is incorporated; provided that if the mailing address of the principal office differs from the street address, or where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service;
- (3) A brief statement of the character of the business in which the corporation or foreign corporation is actually engaged in this State;
- (4) The names and [respective residence] addresses of the directors and officers of the corporation and the names and [respective] addresses of the directors and officers of the foreign corporation; [provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service];
- (5) A statement of the aggregate number of shares which a domestic corporation has authority to issue, itemized by classes [and series], if any[, within a class]; and
- (6) A statement of the aggregate number of shares issued by a domestic corporation, itemized by classes [and series], if any[, within each class].”

SECTION 24. Section 415-128, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The following fees shall be paid to the director upon the filing of corporate documents:

- (1) Articles of incorporation, \$100;

- (2) Articles of amendment, \$50;
- (3) Restated articles of incorporation, \$50;
- (4) Articles of conversion, merger, or consolidation, \$200;
- (5) Articles of merger (subsidiary corporation), \$100;
- (6) Articles of dissolution, \$50;
- (7) Annual report of domestic and foreign corporations organized for profit, \$25;
- (8) Any other statement, report, certificate, application, or other corporate document, except an annual report, of a domestic or foreign corporation, \$50;
- (9) Application for a certificate of authority, \$100;
- (10) Application for a certificate of withdrawal, \$50;
- (11) Reservation of corporate name, \$20;
- (12) Transfer of reservation of corporate name, \$20;
- (13) Good standing certificate, \$25;
- (14) Special handling fee for review of corporation documents, excluding articles of conversion, merger, or consolidation, \$50;
- (15) Special handling fee for review of articles of conversion, merger, or consolidation, \$150;
- (16) Special handling fee for certificates issued by the department, \$20 per certificate; [and]
- (17) Special handling fee for certification of documents, \$1 per page[.]; and
- (18) Agent's statement of change of registered office, \$50 for each affected domestic corporation or foreign corporation; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected domestic corporation or foreign corporation."

SECTION 25. Section 415A-8, Hawaii Revised Statutes, is amended to read as follows:

**"§415A-8 Corporate name.** The name of a professional corporation:

- (1) May be any name permitted by law expressly applicable to the profession in which the corporation is engaged or by a rule or regulation of the licensing authority of the profession; and
- (2) Shall not be the same as, or substantially identical to, the name of any domestic corporation, partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State, or any foreign corporation, partnership, limited liability company, or limited liability partnership authorized to transact business in [the] this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in [the manner provided in the Hawaii Business Corporation Act, chapter 415, or the name of a corporation which has registered its corporate name as provided in the Hawaii Business Corporation Act, chapter 415;] this State, except that this [section] provision shall not apply if the applicant files with the director either of the following:
  - (A) The written consent [of such other corporation] from the entity or holder of a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name; or
  - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State."

SECTION 26. Section 415A-14.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) The articles of incorporation [must] shall set forth:
- (1) A ~~[[corporate[]]~~ name for the corporation that satisfies the requirements of section 415A-8;
  - (2) The profession or professions that the corporation shall be authorized to practice and any other purpose allowed by the licensing laws and rules of [the] this State; [and]
  - (3) [The matters specified in section 415-54(a).] The mailing address of its initial or principal office; provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service;
  - (4) The number of directors constituting the initial board of directors and the names and addresses of the individuals who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualified;
  - (5) The name, title, and address of each officer; and
  - (6) The number of shares the corporation is authorized to issue, and if the shares are to be divided into classes, the number of shares of each class.”

SECTION 27. Section 415A-18, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Whenever it is established that a professional corporation has failed to comply with any provision of this chapter, the director may declare the corporation dissolved.

Before the director may declare a corporation dissolved, the director shall:

- (1) Give] give notice of the ground or grounds for dissolution as provided in section 415-94[,] by mailing the notice to the professional corporation at its last known address appearing in the records of the director[;], and
- [(2) Give statewide] may give public notice of the intention to dissolve the corporation [once in each of three successive weeks].”

SECTION 28. Section 415A-22, Hawaii Revised Statutes, is amended to read as follows:

“**§415A-22 Annual report of professional corporations.** The annual report of each professional corporation shall be delivered to the director for filing [pursuant to the Hawaii Business Corporation Act, chapter 415,] and shall [include a statement that all of the shareholders, not less than one-half of the directors, and all of the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.] set forth:

- (1) The name of the corporation;
- (2) The profession or professions that it is or are actually engaged in;
- (3) The mailing address of its principal office; provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service;
- (4) The names and addresses of the directors and officers of the corporation;
- (5) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, if any;

- (6) A statement of the aggregate number of shares issued by the corporation, itemized by classes, if any; and
- (7) A statement that all of the shareholders, not less than one-half of the directors, and all of the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.”

SECTION 29. Section 415B-7, Hawaii Revised Statutes, is amended to read as follows:

**“§415B-7 Corporate name.** The corporate name shall not be the same as, or substantially identical to, the name of any domestic corporation, partnership, limited liability company, or limited liability partnership[, or trade name] existing or registered under the laws of this State, or any foreign corporation, partnership, limited liability company, or limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in [the manner provided under the laws of this State, or the name of a corporation which has in effect a registration of its corporate name as provided under the laws of] this State, except that this provision shall not apply if the applicant [delivers to] files with the director [for filing] either of the following:

- (1) The written consent [of] from the [other corporation] entity or holder of a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name; or
- (2) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State.”

SECTION 30. Section 415B-8.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as provided in this section, each corporation shall continuously maintain in [the] this State:

- (1) A registered office that may be the same as any of its places of business; and
- (2) A registered agent who shall be:
  - (A) An individual who resides in [the] this State and whose business office is identical to the registered office;
  - (B) A domestic corporation or domestic profit corporation whose business office is identical to the registered office; or
  - (C) A foreign corporation or foreign profit corporation authorized to transact business in [the] this State whose business office is identical to the registered office.”

SECTION 31. Section 415B-8.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A corporation may change its registered office or registered agent by delivering to the director for filing a statement of change that sets forth:

- (1) The name of the corporation;
- (2) The street address of its current registered office;
- (3) If the current registered office is to be changed, the street address of the new registered office;
- (4) The name of its current registered agent;
- (5) If the current registered agent is to be changed, the name of the new registered agent [and the new agent’s written consent to the appoint-

ment. This consent may be indicated on or attached to the statement of change]; and

- (6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent shall be identical.”

SECTION 32. Section 415B-8.7, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The [agency] appointment of the agent shall be terminated, and the registered office discontinued if so provided, thirty-one days after the date on which the statement was filed.”

SECTION 33. Section 415B-9, Hawaii Revised Statutes, is amended to read as follows:

“**§415B-9 Service of process on corporation.** (a) Service of any notice or process authorized by law issued against any corporation, whether domestic or foreign, by any court, judicial or administrative officer, or board, may be made in the manner provided by law upon any registered agent, officer, or director of the corporation who is found within the jurisdiction of the court, officer, or board; [and in the event of failure to find any such] or if any registered agent, officer, or director[,] cannot be found, upon the manager or superintendent of the corporation or any person who is found in charge of the property, business, or office of the corporation within the jurisdiction.

(b) If[:

- (1) No] no officer, director, manager, superintendent, or other person in charge of the property, business, or office of the corporation can be found within the State[;], and
- [(2) The] in case the corporation[, if a foreign corporation,] has [neglected to deliver to] not filed with the director the name of a person upon whom legal notice and process from the courts of the State may be served [or], pursuant to sections 415B- 8.5, 415B-8.6, 415B-129, and 415B-130, and likewise if the person [so] named is not found within the State[;

then], service may be made upon the corporation by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service using registered or certified mail [shall be] is perfected at the earliest of:

- (1) The date the corporation receives the mail;
- (2) The date shown on the return receipt, if signed on behalf of the corporation; or
- (3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(c) Nothing in this section shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner [now or hereafter] permitted by law.”

SECTION 34. Section 415B-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each domestic corporation or foreign corporation authorized to conduct affairs in this State shall deliver to the director for filing, within the time prescribed by this chapter, an annual report setting forth:

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



- (2) Where the corporation is required by law to have a registered office and registered agent in [the] this State, the street address of the domestic corporation's or foreign corporation's registered office in this State, the name of its registered agent in this State at such address, and the mailing address of its principal office in the state or country under the laws of which it is incorporated; provided that if the mailing address of the principal office differs from the street address, or where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service;
- (3) A brief statement of the character of the affairs in which the corporation [is actually conducting,] or[, in the case of a] foreign corporation[, which the corporation] is actually conducting in this State; and
- (4) The names and [respective] addresses of the directors and officers of the corporation or foreign corporation [and, in the case of a domestic corporation, the names and residence addresses of the directors and officers of a domestic corporation].”

SECTION 35. Section 415B-34, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) One or more individuals may organize a corporation by signing and delivering articles of incorporation to the director pursuant to section 415B-10, which shall set forth:

- (1) The name of the corporation;
- (2) The period of the corporation's duration, which may be perpetual;
- (3) The purpose or purposes for which the corporation is organized;
- (4) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for the distribution of assets on dissolution or final liquidation;
- (5) The mailing address of the corporation's initial or principal office and, if the corporation is required at the time of incorporation to have a registered office and registered agent in this State, the street address of the corporation's initial registered office and the name of its initial registered agent at that office; provided that where no specific street address is available for the corporation's initial or principal office or for the corporation's registered office, the rural route post office number or post office box designated or made available by the United States Postal Service [may be listed];
- (6) The number of directors constituting the initial board of directors and the names and [residence] addresses of the individuals who are to serve as the initial directors and initial officers; and
- (7) If a corporation has no members, that fact shall be set forth.”

SECTION 36. Section 415B-40, Hawaii Revised Statutes, is amended to read as follows:

“**[[]§415B-40[]] Restated articles of incorporation.** (a) A domestic corporation at any time may restate [amended] its articles of incorporation as theretofore amended, by a resolution adopted by the board of directors.

(b) Upon the adoption of the resolution, restated articles of incorporation shall set forth all of the operative provisions of the articles[,], of incorporation as theretofore amended, together with a statement that the restated articles of incorporation correctly set forth without change the corresponding provisions of the arti-

cles[,] of incorporation as theretofore amended, and that the restated articles of incorporation supersede the original articles of incorporation and all [prior] amendments thereto.

(c) The restated articles of incorporation shall be delivered to [and filed by] the director [pursuant to section 415B-10.] for filing. The director may certify the restated articles of incorporation currently in effect, without including the information required to be filed by subsection (b).”

SECTION 37. Section 415B-40.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) A domestic corporation may at any time amend and restate its articles of incorporation by complying with the procedures and requirements [under] of sections 415B-37 and 415B-40.

(b) Upon [their] its adoption, the amended and restated articles of incorporation shall set forth:

- (1) All of the operative provisions of the articles of incorporation as theretofore amended;
- (2) The information required [under] by section 415B-38; and
- (3) A statement that the amended and restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.”

SECTION 38. Section 415B-84, Hawaii Revised Statutes, is amended to read as follows:

“**§415B-84 Articles of merger or consolidation.** (a) The articles of merger or articles of consolidation shall be delivered to the director for filing and shall set forth:

(1) Either:

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

(B) The names and jurisdictions of incorporation of the corporations proposing to consolidate, and the name and jurisdiction of incorporation of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

[(1) That] (2) A statement that the plan of merger or the plan of consolidation has been approved [and signed] by the board of directors of each corporation, in accordance with section 415B-83[, and a statement of the jurisdiction of incorporation if a foreign corporation is involved];

[(2)] (3) If the members of any merging or consolidating corporation are entitled to vote thereon, then as to each such corporation:

(A) A statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at the meeting, and that the plan received at least two-thirds of the votes which members present at the meeting or represented by proxy were entitled to cast; or

(B) A statement that the [amendment] plan was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

[(3)] (4) If any merging or consolidating corporation has no members, or no members entitled to vote thereon, then as to each such corporation a

statement of this fact, the date of the meeting of the board of directors at which the plan of merger or consolidation was adopted, and a statement of the fact that the plan received the vote of a majority of the directors in office; and

- [(4)] (5) A statement indicating the changes in the articles of incorporation of the surviving corporation to be effected by the merger or consolidation.

(b) After the articles of merger or articles of consolidation have been delivered to the director and filed, the certificate of merger or certificate of consolidation shall be issued by the director.”

SECTION 39. Section 415B-86, Hawaii Revised Statutes, is amended to read as follows:

“**§415B-86 Merger or consolidation of domestic and foreign corporations.** (a) One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner; provided that a merger or consolidation is permitted by the laws of the jurisdiction under which each such<sup>1</sup> corporation is organized:

- (1) Each domestic corporation shall comply with this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the laws of the jurisdiction under which it is organized; and
- (2) If the surviving or new corporation, as the case may be, is to be governed by the laws of any jurisdiction other than this State, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to conduct affairs in this State, and it shall deliver to the director for filing:
  - (A) An agreement that the surviving or new corporation may be served with process in this State in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to the merger or consolidation; and
  - (B) An irrevocable appointment of a resident of this State as the surviving or new corporation’s agent to accept service of process in any such proceeding[.], and include the resident’s street address in this State.

(b) The effect of the merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except where the surviving or new corporations are governed by laws other than those of this State, insofar as those laws otherwise provide.

(c) After approval by the members, or<sup>2</sup> if there are no members entitled to vote thereon, by the board of directors, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to any provisions therefor set forth in the plan of merger or consolidation.”

SECTION 40. Section 415B-91, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Upon the adoption of a resolution, a statement of intent to dissolve the corporation shall be delivered to the director for filing and shall set forth:

- (1) The name of the corporation;
- (2) The names and [respective residence] addresses of the corporation’s officers and directors;
- (3) The manner in which the resolution approving the dissolution was adopted; and

- (4) The number of votes by members or directors, as the case may be, cast in favor of the resolution.

(c) The corporation [shall] may publish once in each of four successive weeks in any newspaper of general circulation published in the State, a notice to all creditors of the corporation to present their claims at a place designated in the notice within ninety days from the first publication of the notice. The corporation shall mail[, within thirty days from the first publication of the notice, postage prepaid,] a [like] written notice to each creditor whose name and address is known to the corporation and who prior to the mailing of the notice, has not presented any claim. The notice shall provide a mailing address where the claim is to be sent and the deadline for receipt of the claim, which may not be less than ninety days after the date the written notice is received by the creditor, and that the claim will be barred if not received by the deadline. All claims, other than<sup>3</sup> tort claims, not so presented shall be forever barred. [The corporation, with the approval of the director, may omit the publication of the notice if the assets of the corporation are insufficient to pay for the publication.]”

SECTION 41. Section 415B-94, Hawaii Revised Statutes, is amended to read as follows:

“**§415B-94 Articles of dissolution.** If voluntary dissolution proceedings have not been revoked, when all debts, liabilities, and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been transferred, conveyed, or distributed pursuant to this chapter, articles of dissolution shall be delivered to the director for filing and shall be verified on oath and set forth:

- (1) The name of the corporation;
- (2) That all debts, obligations, and liabilities of the corporation have been paid and discharged, or that adequate provision has been made therefor;
- (3) A copy of any plan of distribution as adopted by the corporation, or a statement that no plan was so adopted;
- (4) That all of the remaining property and assets of the corporation have been transferred, conveyed, or distributed pursuant to this chapter;
- (5) That there are no actions pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against the corporation in any pending action;
- (6) The dates [on which the] that notice [required by section 415B-91(c)] of the filing of the statement of intent to dissolve the corporation was published[;], or a statement that publication was not made; and
- (7) The date that the director filed the statement of intent.”

SECTION 42. Section 415B-96, Hawaii Revised Statutes, is amended to read as follows:

“**§415B-96 Revocation of voluntary dissolution proceedings.** (a) At any time prior to the filing of the articles of dissolution by the director, a corporation may revoke the action theretofore taken to dissolve the corporation in the following manner:

- (1) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of revocation be submitted to a vote at an annual or special meeting of members entitled to vote thereon. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider the

advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at the meeting pursuant to this chapter. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes which members present at the meeting or represented by proxy are entitled to cast[.]; or

- (2) If there are no members or no members entitled to vote on the revocation of voluntary dissolution proceedings, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

[(3)] (b) Upon the adoption of the resolution, a statement of revocation of voluntary dissolution proceedings shall set forth:

[(A)] (1) The name of the corporation;

[(B)] (2) The names and [residence] addresses of its officers;

[(C)] (3) The names and [residence] addresses of its directors;

[(D)] (4) A copy of the resolution revoking the voluntary dissolution proceedings;

[(E)] (5) If adoption of the resolution is by the members entitled to vote on the revocation of voluntary dissolution proceedings, the number of members of the corporation and the number of members voting for and against the resolution, respectively; and, if the members of any class are entitled to vote as a class, the designation and number of members of each class and the number of members of each class voting for and against the resolution, respectively; and

[(F)] (6) If the adoption of the resolution is by the board of directors, the number of directors voting for and against the resolution, respectively.

(c) Upon the adoption of the resolution by the members, or by the board of directors where there are no members or no members entitled to vote thereon, the corporation may again conduct its affairs.”

SECTION 43. Section 415B-98, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Whenever the director certifies that a corporation has given any cause for dissolution pursuant to section 415B-97, the director may declare the corporation dissolved. Before the director may declare a corporation dissolved, the director shall[:

- (1) Give] give notice of the ground or grounds for dissolution as provided in section [415-94,] 415B-97, by mailing the notice to the corporation at its last known address appearing in the records of the director[;] and
- [(2) Give statewide] may give public notice of the intention to dissolve the corporation [once in each of three successive weeks].”

SECTION 44. Section 415B-98, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Within two years after the involuntary dissolution of a corporation under this section, the corporation may be reinstated by the director upon written application executed by any two officers of the corporation setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary dissolution, and the filing of all reports due and unfiled. Within the applicable reinstatement period, should the name of the corporation, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited liability company, or limited liability

partnership, or should such name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily dissolved corporation pursuant to the amendment provisions of this chapter.”

SECTION 45. Section 415B-122, Hawaii Revised Statutes, is amended to read as follows:

“**§415B-122 Corporate name of foreign corporation.** No certificate of authority shall be issued to a foreign corporation unless its corporate name:

- (1) Is not the same as, or substantially identical to, the name of any [profit or nonprofit] domestic corporation, partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State, or any [profit or nonprofit] foreign corporation, [foreign] partnership, [foreign] limited liability company, or [foreign] limited liability partnership authorized to transact business or conduct affairs in this State, [or a corporate] or any trade name, trademark, or service mark [reserved or] registered [pursuant to the laws of] in this State[;], or a name the exclusive right to which is, at the time, reserved in this State, except that this provision shall not apply if the foreign corporation applying for a certificate of authority files with the director any one of the following:
  - (A) The written consent from the entity or holder of a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name;
  - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign corporation to the use of the name in this State; or
  - (C) A copy of a certificate of registration of a trade name by the foreign corporation under which trade name that foreign corporation will conduct affairs in this State; and
- (2) Is transliterated into letters of the English alphabet, if the name is not in English.”

SECTION 46. Section 415B-124, Hawaii Revised Statutes, is amended to read as follows:

“**§415B-124 Application for certificate of authority.** In order to procure a certificate of authority to conduct affairs in this State, a foreign corporation shall submit an application therefor to the director stating:

- (1) The name of the corporation and the jurisdiction under which it is incorporated;
- (2) The date of incorporation and the period of duration of the corporation;
- (3) The mailing address of the principal office of the corporation in the jurisdiction in which it is incorporated;
- (4) The address of the corporation’s proposed registered office in this State and the name of its proposed registered agent in this State at that address;
- (5) Any purpose of the corporation which it proposes to pursue in conducting its affairs in this State;
- (6) The names and [respective] addresses of the directors and officers of the corporation; and

- (7) Any additional information necessary or appropriate to enable the director to determine whether the corporation is entitled to a certificate of authority to conduct affairs in this State.”

SECTION 47. Section 415B-131, Hawaii Revised Statutes, is amended to read as follows:

**“§415B-131 Amendment to articles of incorporation of foreign corporation.** Whenever the [articles of incorporation of] name of a foreign corporation authorized to conduct affairs in this State [are amended to change its corporate name,] is changed by an amendment to its articles of incorporation, the foreign corporation, within thirty days after the amendment becomes effective, shall deliver to the director [for filing a copy of the amendment] a certificate evidencing the name change, duly [certified] authenticated by the proper officer of the [jurisdiction in] state or country under the laws of which [the corporation] it is incorporated. If the certificate is in a foreign language, a translation under oath of the translator shall accompany the certificate.”

SECTION 48. Section 415B-133, Hawaii Revised Statutes, is amended to read as follows:

**“§415B-133 Merger of foreign corporation authorized to conduct affairs in this State.** (a) Whenever a foreign corporation authorized to conduct affairs in this State is a party to a statutory merger permitted by the laws of the [jurisdiction in] state or country under the laws of which it is incorporated, and the corporation is the surviving corporation, [the foreign corporation] it shall [deliver to the director for filing], within [sixty] thirty days after the merger becomes effective, deliver to the director, a [copy of the articles of] certificate evidencing the merger duly [certified] authenticated by the proper officer of the [jurisdiction in] state or country under the laws of which the statutory merger was effected. [It shall not be necessary for the surviving corporation to obtain either a new or amended certificate of authority to conduct affairs in this State.] The certificate evidencing the merger shall be evidence of a change of name if the name of the surviving corporation is changed thereby. If the certificate is in a foreign language a translation under oath of the translator shall accompany the certificate.

(b) Whenever a foreign corporation authorized to conduct affairs in this State is a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and that corporation is not the surviving corporation, the surviving corporation, within thirty days after the merger becomes effective, shall deliver to the director for filing a certificate evidencing the merger in the form prescribed by subsection (a), together with an application for withdrawal of the merged foreign corporation in accordance with section 415B-134 executed by the surviving corporation on behalf of the merged foreign corporation.

(c) If the surviving corporation in a merger is to be governed by the laws of any state other than this State, it shall comply with this chapter with respect to foreign corporations if it is to conduct affairs in this State.”

SECTION 49. Section 415B-134, Hawaii Revised Statutes, is amended to read as follows:

**“§415B-134 Withdrawal of foreign corporation.** (a) A foreign corporation authorized to conduct affairs in this State may withdraw from this State by applying to the director for a certificate of withdrawal. In order to obtain a certificate of

withdrawal, a foreign corporation shall deliver to the director an application for withdrawal, which shall set forth:

- (1) The name of the corporation and the jurisdiction in which it is incorporated;
- (2) That the corporation is not conducting affairs in this State;
- (3) That the corporation surrenders its authority to conduct affairs in this State;
- (4) That the corporation revokes the authority of its registered agent in this State to accept service of process and consents that service of process in any action or proceeding based upon any cause of action arising in this State during the time the corporation was authorized to conduct affairs in this State may thereafter be made on such corporation by service thereof on the director;
- (5) The dates that notice of the foreign corporation's intent to withdraw from the State was published, once in each of four successive weeks (four publications) in a newspaper of general circulation published in the State[. The foreign corporation, with the approval of the director, may omit the publication of the notice if the corporation has insufficient assets to pay for the publication;], or a statement that publication was not made;
- (6) That all taxes, debts, obligations, and liabilities of the foreign corporation in [the] this State have been paid and discharged or that adequate provision has been made therefor; and
- (7) A post office address to which the director may mail a copy of any process against the corporation that may be served on the director.

(b) The application for withdrawal shall be made on forms prescribed and furnished by the director and shall be delivered to and filed by the director."

SECTION 50. Section 415B-155, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The following fees shall be paid to the director upon the filing of corporate documents:

- (1) Articles of incorporation, \$50;
- (2) Articles of amendment, \$20;
- (3) Restated articles of incorporation, \$20;
- (4) Articles of merger or consolidation, \$100;
- (5) Articles of conversion, \$200;
- (6) Articles of dissolution, \$20;
- (7) Annual report of nonprofit domestic [and] or foreign [corporations,] corporation, \$5;
- (8) Any other statement, report, certificate, application, or other corporate document, except an annual report, of a nonprofit domestic or foreign corporation, \$20;
- (9) Application for a certificate of authority, \$50;
- (10) Application for a certificate of withdrawal, \$20;
- (11) Reservation of corporate name, \$20;
- (12) Transfer of reservation of corporate name, \$20;
- (13) Good standing certificate, \$20;
- (14) Special handling fee for review of corporation documents, excluding articles of merger or consolidation, \$50;
- (15) Special handling fee for review of articles of conversion, merger, or consolidation, \$150;
- (16) Special handling fee for certificates issued by the department, \$20 per certificate; [and]



- (17) Special handling fee for certification of documents, \$1 per page[.]; and  
 (18) Agent's statement of change of registered office, \$20 for each affected domestic corporation or foreign corporation; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected domestic corporation or foreign corporation."

SECTION 51. Section 425-1, Hawaii Revised Statutes, is amended to read as follows:

**"§425-1 Registration and annual statements.** (a) Whenever any general partnership is formed under the laws of [the] this State to do business in [the] this State, or any general partnership formed under the laws of any other jurisdiction shall do business in [the] this State, such partnership shall file in the office of the director of commerce and consumer affairs the registration and annual statements hereinafter provided. A registration statement shall be filed by a partnership formed under the laws of [the] this State within thirty days after the partnership is formed and by a partnership formed under the laws of any other jurisdiction within thirty days after the commencement of business in [the] this State. An annual statement shall be filed on or before March 31 of each year, as of December 31 of the preceding year. Every such registration statement shall contain the following information:

- (1) The name of the partnership;
- (2) The name and [residence] address of each partner;
- (3) The street address of the chief executive office of the partnership in the State and, if the partnership is one formed under the laws of any other jurisdiction, the name of the jurisdiction and the street address of the partnership's chief executive office and of one office in this State, if there is one;
- (4) The date the partnership was formed and, if the partnership is one formed under the laws of any other jurisdiction, the date the partnership commenced business in [the] this State;
- (5) The fact that none of the partners is either a minor or an incompetent person;
- (6) In the case of a foreign general partnership, the designation of a person residing within [the] this State as agent for service of process and notice[;], and the person's street address; and
- (7) The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership, and may state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(b) Every such annual statement shall contain the information specified in paragraphs (1), (2), (3), (5),<sup>4</sup> (6) and a listing of the names of any partner admitted, withdrawn, or who has died during the year.

(c) The registration statement of a domestic partnership shall be certified by each partner, and the registration statement of a foreign partnership shall be certified by at least one partner. Each annual statement shall be certified as correct by any partner."

SECTION 52. Section 425-6, Hawaii Revised Statutes, is amended to read as follows:

**"§425-6 Partnership name.** (a) No statement or certificate of any partnership [having a name] shall be recorded by the director unless the name:

- (1) Is not the same as, or substantially identical to the name of any domestic corporation, partnership, limited liability company, or limited liability partnership existing or registered [to do business] under the laws of [the] this State, or any foreign corporation, partnership, limited liability company, or limited liability partnership authorized to transact business in this State, or [with] any trade name, [service mark, or] trademark [previously], or service mark registered [shall be recorded by the director.] in this State, or a name the exclusive right to which is, at the time, reserved in this State, except that this provision shall not apply if the partnership files with the director any one of the following:
- (A) The written consent from the entity or holder of a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name; or
  - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the partnership to the use of the name in this State.

(b) The acceptance of a statement or certificate of a partnership for registration by the director shall not abrogate or limit any common law or other right of any person to any corporation, partnership, limited liability company, or limited liability partnership name, trade name, trademark, or service mark.

(b)(c) The director may make, amend, and repeal such rules as may be necessary to carry out the purposes of this section.”

SECTION 53. Section 425-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The following fees shall be paid to the director upon the filing of general partnership documents:

- (1) Partnership registration statement, \$25;
- (2) Partnership change of name statement, \$25;
- (3) Partnership dissolution statement, \$25;
- (4) Foreign general partnership registration statement, \$25;
- (5) Statement of change, \$25;
- (6) Application [for] certificate of withdrawal, \$10;
- (7) Statement of correction, \$25;
- (8) Reservation of name, \$20;
- (9) Transfer of reservation of name, \$20;
- (10) Annual statement for domestic or foreign general partnership, \$10;
- (11) Good standing certificate, \$25;
- (12) Articles of conversion, \$200;
- (13) Any other statement, certificate, or other document for a domestic or foreign general partnership, \$25;
- (14) Special handling fee for review of any general partnership document, \$20;
- (15) Special handling fee for certificates issued by the director, \$20 per certificate;
- (16) Special handling fee for certification of documents, \$1 per page; [and]
- (17) Special handling fee for review of articles of conversion, \$150[.]; and
- (18) Agent’s statement of change of address, \$25 for each affected foreign general partnership; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected foreign general partnership.”

SECTION 54. Section 425-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Within two years after the involuntary cancellation of a general partnership under this section, the registration statement of the general partnership may be reinstated by the director upon written application executed by any partner of the general partnership setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary cancellation, and the filing of all statements due and unfiled. Within the applicable reinstatement period, should the name of the general partnership, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited liability company, or limited liability partnership, or should such name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily canceled general partnership pursuant to the amendment provisions of this chapter.”

SECTION 55. Section 425-17, Hawaii Revised Statutes, is amended to read as follows:

“**§425-17 Withdrawal procedure for foreign general partnership.** (a) Any foreign general partnership which has qualified to transact business in this State may withdraw and surrender its right to engage in business within this State by securing from the director of commerce and consumer affairs a certificate of withdrawal. Any such general partnership shall file in the office of the director an application for withdrawal, certified and signed by a general partner, which shall set forth:

- (1) The name of the foreign general partnership, and the state or country under the laws of which it is formed;
- (2) That the foreign general partnership is not transacting business in this State;
- (3) That the foreign general partnership surrenders its authority to transact business in this State;
- (4) That the foreign general partnership revokes the authority of its registered agent in this State to accept service of process, and consents that service or<sup>5</sup> process in any action, suit, or proceeding based upon any cause of action arising in this State during the time the partnership was authorized to transact business in this State may thereafter be made on the partnership by service thereof on the director;
- [(5) The name and residence address of each general partner;
- (6)] (5) The dates that notice of the foreign general partnership’s intent to withdraw from the State was published, once in each of four successive weeks (four publications) in a newspaper of general circulation published in [the] this State[. The foreign general partnership, with the approval of the director may omit the publication of the notice if the partnership has insufficient assets to pay for the publication;], or a statement that publication was not made;
- [(7)] (6) That all taxes, debts, obligations, and liabilities of the foreign general partnership in [the] this State have been paid and discharged or that adequate provision has been made therefor;
- [(8)] (7) A mailing address to which the director may mail a copy of any process against the foreign general partnership that may be served on the director; and

[(9)] (8) Such additional information as may be necessary or appropriate to enable the director to determine and assess any unpaid fees payable by the foreign general partnership.

(b) Upon the filing of the application for withdrawal, and after the payment of a fee of \$10, the director shall issue a certificate of withdrawal, which shall be effective as of the date of the filing of the application for withdrawal, and the authority of the foreign general partnership to transact business in this State shall then cease. No such general partnership may withdraw from this State without complying with the aforesaid conditions and until such compliance, service of legal notices, and processes may be made on any agent of the general partnership within [the] this State, or if none can be found, service of such notices and processes upon the director of commerce and consumer affairs shall be deemed sufficient service of such notices and processes upon it.”

SECTION 56. Section 425-164, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No certificate of a limited liability partnership or registration for a foreign limited liability partnership shall be accepted by the director [if] unless the name of the domestic or foreign limited liability partnership:

- (1) Is not the same as, or substantially identical to, the name of any domestic corporation, [domestic] partnership, [domestic] limited liability company, or [domestic] limited liability partnership[,] existing or registered under the laws of [the] this State, or any foreign corporation, [foreign] partnership, [foreign] limited liability company, or [foreign] limited liability partnership authorized to transact business in [the] this State, or any trade name, [service mark, or] trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved[,] in this State, except that this provision shall not apply if the domestic or foreign limited liability partnership [applying for registration] files with the director either of the following:
  - (A) The written consent [of] from the entity or holder of [the registered or] a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name; or
  - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the domestic or foreign limited liability partnership to the use of the name in this State; and
- (2) In the case of a foreign limited liability partnership, is [not] transliterated into letters of the English alphabet, if the name is not in English.”

SECTION 57. Section 425-169, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The director shall collect the following fees for documents filed under this part:

- (1) For each change of partnership name or statement of dissolution filed, a fee of \$5 per partner, subject to a maximum fee of \$5,000;
- (2) For each annual statement filed, a fee of \$50;
- (3) For each limited liability partnership registered, a fee of \$100 for each partner, subject to a maximum fee of \$10,000;
- (4) For each foreign limited liability partnership registered, a fee of \$1,000 if the partnership has fewer than ten partners; \$5,000 if the partnership has ten or more but fewer than fifty partners; and \$10,000 if the partnership has fifty or more partners;

- (5) For each reservation or transfer of limited liability partnership name, a fee of \$100;
- (6) For each certificate of correction or certificate of amendment, a fee of \$100;
- (7) For each certificate of good standing, a fee of \$100;
- (8) For review of articles of conversion, a fee of \$200;
- (9) For any other certificate, statement, or document, a fee of \$100; [and]
- (10) For each certification of domestic or foreign partnership, a fee of \$100[.]; and
- (11) Agent's statement of change of address, \$100 for each affected foreign limited liability partnership; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected foreign limited liability partnership.'

SECTION 58. Section 425-171, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Within two years after the involuntary cancellation of a domestic [or foreign] limited liability partnership under this section, the registration statement of the domestic [or foreign] limited liability partnership may be reinstated by the director upon written application executed by any partner of the domestic limited liability partnership setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary cancellation, and the filing of all statements due and unfilled. Within the applicable reinstatement period, should the name of the domestic limited liability partnership, or a name substantially identical thereto[,] be registered or reserved by another corporation, partnership, limited liability company, or limited liability partnership, or should such name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily canceled domestic limited liability partnership pursuant to the amendment provisions of this chapter.’”

SECTION 59. Section 425-172, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any foreign limited liability partnership that has registered under section 425-155 to transact business in this State may withdraw and surrender its right to engage in business within this State by securing from the director a certificate of withdrawal. Any such partnership shall file in the office of the director an application for withdrawal, certified and signed by a partner, that shall set forth:

- (1) The name of the foreign limited liability partnership, and the jurisdiction in which, or in accordance with the laws of which, it is formed;
- (2) That the foreign limited liability partnership is not transacting business in this State;
- (3) That the foreign limited liability partnership surrenders its authority to transact business in this State;
- (4) That the foreign limited liability partnership revokes the authority of its registered agent in this State to accept service of process, and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this State during the time the partnership was authorized to transact business in this State may thereafter be made on the partnership by service thereof on the director;
- [(5) The name and resident address of each partner resident in Hawaii;
- (6) (5) The dates that notice of the foreign limited liability partnership's intent to withdraw from [the] this State was published, once in each of four successive weeks (four publications) in a newspaper of general

- circulation published in [the] this State[. The foreign limited liability partnership, with the approval of the director, may omit the publication of the notice if the partnership has insufficient assets to pay for the publication;], or a statement that publication was not made;
- [ (7) (6) That all taxes, debts, obligations, and liabilities of the foreign limited liability partnership in [the] this State have been paid and discharged or that adequate provision has been made therefor;
  - [ (8) (7) A mailing address to which the director may mail a copy of any process against the foreign limited liability partnership that may be served on the director; and
  - [ (9) (8) Additional information as may be necessary or appropriate to enable the director to determine and assess any unpaid fees payable by the foreign limited liability partnership.”

SECTION 60. Section 425D-102, Hawaii Revised Statutes, is amended to read as follows:

“**§425D-102 Name.** (a) The name of each limited partnership as set forth in its certificate of limited partnership:

- (1) May not contain the name of a limited partner unless:
  - (A) It is also the name of a general partner or the corporate name of a corporate general partner; or
  - (B) The business of the limited partnership had been carried on under that name before the admission of that limited partner;
- (2) Shall not be the same as, or substantially identical to, the name of any domestic corporation, [domestic] partnership, [domestic] limited liability company, or [domestic] limited liability partnership existing or registered under the laws of this State, or any foreign corporation, [foreign] partnership, [foreign] limited liability company, or [foreign] limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved[, or the name of a partnership which has in effect a registration of its partnership name as provided in this chapter,] in this State, except that this provision shall not apply if the applicant [filed] files with the director either of the following:
  - (A) The written consent [of] from the [other partnership] entity or holder of a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name; or
  - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State.

(b) The director may adopt, amend, and repeal such rules as may be necessary to carry out the purpose of this section.”

SECTION 61. Section 425D-201, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In order to form a limited partnership, a certificate of limited partnership [must] shall be executed and delivered to the office of the director for filing. The certificate shall set forth:

- (1) The name of the limited partnership;
- (2) The address of the principal office;
- (3) The name and the [residence] address of each general partner;

- (4) The name and address of each limited partner;
- (5) The latest date upon which the limited partnership is to dissolve; and
- (6) Any other matter the general partners determine to include therein.”

SECTION 62. Section 425D-203, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A certificate of limited partnership shall be canceled upon the dissolution and the commencement of winding up of the partnership or when there are no limited partners. A certificate of cancellation shall be delivered to the director for filing and shall set forth:

- (1) The name of the limited partnership;
- (2) The date of filing of its certificate of limited partnership;
- (3) The reason for filing the certificate of cancellation; and
- (4) The effective date, which shall be a date and time certain, of cancellation, if it is not to be effective upon the filing of the certificate[; and
- (5) Any other information the general partners filing the certificate determine].”

SECTION 63. Section 425D-203.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§425D-203.5**~~]]~~ **Annual statement.** (a) Every limited partnership shall file an annual statement on or before March 31 of each year as of December 31 of the preceding year containing the following information:

- (1) The name of the limited partnership;
  - (2) The name and [residence] address of each general partner;
  - (3) The name and address of each limited partner;
  - ~~[(4)~~ The nature of the limited partnership business;
  - ~~[(5)]~~ ~~(4)~~ The location of the principal place of business of the limited partnership in this State; and
  - ~~[(6)]~~ ~~(5)~~ The fact that none of the partners is either a minor or an incompetent person.
- (b) Each annual statement shall be certified as correct by any general partner.”

SECTION 64. Section 425D-902, Hawaii Revised Statutes, is amended to read as follows:

“**§425D-902 Registration.** Before transacting business in this State, a foreign limited partnership shall register with the director. In order to register, a foreign limited partnership shall submit to the director an application for registration as a foreign limited partnership, certified and signed by a general partner and setting forth:

- (1) The name of the foreign limited partnership;
- (2) The state and date of its formation;
- (3) The name and street address of any qualified agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent [must] shall be an individual resident of this State or a domestic corporation;
- (4) The address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;
- (5) The name and [residence] address of each general partner; and

- (6) The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with a written commitment on the part of the foreign limited partnership that it will keep those records until the registration of the foreign limited partnership in this State is canceled or withdrawn.”

SECTION 65. Section 425D-904, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No registration for a foreign limited partnership shall be accepted by the director [if] unless the name of such foreign limited partnership:

- (1) Is not the same as, or substantially identical to, the name of any domestic corporation, [domestic] partnership, [domestic] limited liability company, or [domestic] limited liability partnership existing or registered [to do business] under the laws of this State, or any foreign corporation, [foreign] partnership, [foreign] limited liability company, or [foreign] limited liability partnership authorized to transact business in this State, or any trade name, [service mark, or] trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved[,] in this State, except that this provision shall not apply if the foreign limited partnership [applying for registration] files with the director either of the following:
- (A) The written consent [of] from the entity or holder of [the registered or] a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name; or
- (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign limited partnership to the use of the name in this State; and
- (2) Is [not] transliterated into letters of the English alphabet, if the name is not in English.”

SECTION 66. Section 425D-906, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A foreign limited partnership registered to transact business in this State may withdraw from [the] this State upon procuring from the director a certificate of withdrawal. In order to procure a certificate of withdrawal, the foreign limited partnership shall deliver to the director an application for withdrawal, certified and signed by a general partner, which shall set forth:

- (1) The name of the foreign limited partnership and the state or country under the laws of which it is formed;
- (2) That the foreign limited partnership is not transacting business in this State;
- (3) That the foreign limited partnership surrenders its authority to transact business in this State;
- (4) That the foreign limited partnership revokes the authority of its registered agent in this State to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this State during the time the partnership was authorized to transact business in this State may thereafter be made on the partnership by service thereof on the director;
- (5) The name and [residence] address of each general partner;
- (6) The dates that notice of the foreign limited partnership’s intent to withdraw from [the] this State was published, once in each of four successive weeks (four publications) in a newspaper of general circula-



tion published in [the] this State[. The foreign limited partnership, with the approval of the director, may omit the publication of the notice if the partnership has insufficient assets to pay for the publication;], or a statement that publication was not made;

- (7) That all taxes, debts, obligations, and liabilities of the foreign limited partnership in [the] this State have been paid and discharged or that adequate provision has been made therefor;
- (8) A mailing address to which the director may mail a copy of any process against the foreign limited partnership that may be served on the director; and
- (9) Such additional information as may be necessary or appropriate in order to enable the director to determine and assess any unpaid fees payable by the foreign limited partnership.”

SECTION 67. Section 425D-906.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§425D-906.5**~~]]~~ **Annual statement.** (a) Every foreign limited partnership registered in this State shall file an annual statement on or before March 31 of each year as of December 31 of the preceding year containing the following information:

- (1) The name of the limited partnership;
- (2) The name and [residence] address of each general partner;
- (3) The name and address of each limited partner;
- ~~[(4)~~ The nature of the limited partnership business;
- ~~(5)]~~ (4) The name of the jurisdiction where the limited partnership was formed and the location of the principal place of business of the partnership; and
- ~~[(6)]~~ (5) The fact that none of the partners is either a minor or incompetent.

(b) Each annual statement shall be certified as correct by any general partner.”

SECTION 68. Section 425D-1107, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The following fees shall be paid to the director upon the filing of limited partnership documents:

- (1) Certificate of limited partnership, \$50;
- (2) Any certificate of amendment, restatement, or correction, \$20;
- (3) Certificate of cancellation, \$20;
- (4) Annual statement for domestic or foreign limited partnership, \$10;
- (5) Any other certificate or document of domestic or foreign limited partnership, \$20;
- (6) Application for registration as a foreign limited partnership, \$100;
- (7) Any certificate of amendment or agent change for foreign limited partnership, \$20;
- (8) Application for certificate of withdrawal of foreign limited partnership, \$20;
- (9) Reservation of name, \$20;
- (10) Transfer of reservation of name, \$20;
- (11) Good standing certificate, \$20;
- (12) Filing articles of conversion, \$200;
- (13) Special handling fee for review of articles of conversion, \$150;
- (14) Special handling fee for review of any limited partnership document, \$50;

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- (15) Special handling fee for certificates issued by the director, \$20 per certificate; [and]
- (16) Special handling fee for certification of documents, \$1 per page[.]; and
- (17) Agent's statement of change of address, \$20 for each affected foreign limited partnership; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected foreign limited partnership."

SECTION 69. Section 428-105, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Except as authorized by subsections (c) and (d), the name of a limited liability company [must] shall not be the same as, or substantially identical to:

- (1) The name of any domestic corporation, partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State;
- (2) The name of any foreign corporation, [foreign] partnership, [foreign] limited liability company, or [foreign] limited liability partnership authorized to transact business in this State;
- (3) A name the exclusive right to which is reserved under the laws of this State;
- (4) A fictitious name approved under section 428-1005 for a foreign limited liability company authorized to transact business in this State because its real name is unavailable; or
- (5) Any trade name, [service mark, or] trademark, or service mark registered in this State."

SECTION 70. Section 428-203, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Articles of organization of a limited liability company [must] shall set forth:

- (1) The name of the company;
- (2) The street address of the initial designated office, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service;
- (3) The name and street address of the initial agent for service of process;
- (4) The name and address of each organizer;
- (5) Whether the duration of the company is for a specified term and, if so, the period specified;
- (6) Whether the company is to be manager-managed, and:
  - (A) If so, the name and [residence street] address of each initial manager, [or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service,] and the number of initial members; or
  - (B) If not, the name and [residence street] address of each initial member[, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service]; and
- (7) Whether the members of the company are to be liable for its debts and obligations under section 428-303(c)."

SECTION 71. Section 428-204, Hawaii Revised Statutes, is amended to read as follows:

**“[[§428-204] Amendment or restatement of articles of organization.**

(a) Articles of amendment. A limited liability company may amend its articles of organization [of a limited liability company may be amended at any] from time [by delivering articles of amendment to the director for filing.] to time, in any and in as many respects as may be desired, so long as its articles of organization as amended contain only those provisions which may be lawfully contained in original articles of organization at the time of making the amendment. The articles of amendment shall [contain the following:] be delivered to the director for filing and shall set forth:

- (1) The name of the limited liability company; and
- (2) The amendment to the articles of organization, referencing specifically the provisions being amended.

[(b) A limited liability company at any time may restate its articles of organization as theretofore amended. Restated articles of organization shall be signed and filed in the same manner as articles of amendment. Restated articles of organization shall set forth all of the operative provisions of the articles of organization as theretofore amended, together with a statement that, except for the amendments specifically referenced therein, the restated articles of organization correctly set forth without change the corresponding provisions of the articles of organization as theretofore amended, and that the restated articles of organization supersede the original articles of organization and all amendments thereto.]”

SECTION 72. Section 428-204.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A limited liability company may at any time [may] amend and restate its articles of organization by complying with the procedures and requirements of [section] sections 428-204[.] and 428-\_\_\_\_\_.”

SECTION 73. Section 428-210, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each limited liability company and each foreign limited liability company authorized to transact business in this State shall deliver to the director for filing an annual report that sets forth:

- (1) The name of the company and the state or country under whose law it is organized;
- (2) The street address of its designated office and the name and street address of its agent for service of process in this State, provided that if no street address is available the rural post office number or post office box designated or made available by the United States Postal Service;
- (3) The street address of its principal office, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service; and
- (4) Whether the company is manager-managed, and:
  - (A) If so, the name and [residence street] address of each manager, [or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service,] and the number of members; or
  - (B) If not, the name and [residence street] address of each member[, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service].”

SECTION 74. Section 428-805, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) At any time after dissolution and winding up, and when all debts, liabilities, and obligations of the limited liability company have been paid and discharged, or adequate provision has been made therefor, and all remaining property and assets of the limited liability company, if any, have been distributed to its members, a limited liability company may terminate its existence by delivering for filing with the director articles of termination stating:

- (1) The name of the company;
- (2) The dates the notice of intent to terminate was published pursuant to section 428-808 and the name of the newspaper publishing the notice[;], or a statement that publication was not made;
- (3) That all debts, obligations, and liabilities of the limited liability company have been paid and discharged or that adequate provision has been made therefor;
- (4) That all of the remaining property and assets of the limited liability company, if any, have been distributed among its members in accordance with their respective rights and interests;
- (5) That there are no suits pending against the limited liability company in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit; and
- (6) That the company’s business has been wound up and the legal existence of the company has been terminated.”

SECTION 75. Section 428-807, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A dissolved limited liability company shall notify its known claimants in writing of the intent to terminate [within thirty days from the first publication of the notice of intent to terminate published pursuant to section 428-808]. The notice shall:

- (1) Specify the information required to be included in a claim;
- (2) Provide a mailing address where the claim is to be sent;
- (3) State the deadline for receipt of the claim, which may not be less than one hundred twenty days after the date the written notice is received by the claimant; and
- (4) State that the claim will be barred if not received by the deadline.”

SECTION 76. Section 428-808, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A dissolved limited liability company that intends to terminate [shall] may publish notice of its intent to terminate and request persons having claims against the company to present them in accordance with the notice[; provided that a dissolved limited liability company, with the approval of the director, may omit the publication of the notice if the limited liability company has insufficient assets to pay for publication].”

SECTION 77. Section 428-810, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

“(a) If the director determines that a ground exists to terminate administratively[,] a limited liability company, the director may declare the company terminated. Before the director declares a limited liability company terminated, the director shall mail a notice of the grounds for termination to the company and [shall publish] may give public notice of the intention to terminate the limited liability company [once in each of three successive weeks (three publications) in a newspaper of general circulation in this State].

(b) If the company does not correct each ground for termination or demonstrate to the reasonable satisfaction of the director that each ground determined by the director does not exist within sixty days after mailing of the notice [and the last publication date of the notice] of intention to terminate the limited liability company, the director shall administratively terminate the company by signing a decree of termination that recites the ground or grounds for termination and its effective date.

(c) A company administratively terminated continues its existence temporarily but may carry on only business necessary to wind up and liquidate its business and affairs under section 428-802 and to notify claimants under [sections] section 428-807 [and 428-808]. The company ceases existence upon the completion of these matters.’’

SECTION 78. Section 428-905, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) After approval of the plan of merger under section 428-904(c) [and compliance with section 428-908, if applicable], unless the merger is abandoned under section 428-904(d), articles of merger shall be signed on behalf of each limited liability company and each other entity that is a party to the merger and delivered to the director for filing. The articles shall set forth and contain:

- (1) The name and jurisdiction of formation or organization of each of the entities that are parties to the merger[;], and the name, address, and jurisdiction of organization of the limited liability company into which they propose to merge, which is hereinafter designated as the surviving company;
- (2) A statement that the plan of merger was approved by each entity that is a party to the merger;
- (3) As to each entity, the total authorized votes and the number voted for and against the plan;
- (4) [The name and address of the surviving company;] A statement indicating the changes in the articles of organization of the surviving company to be effected by the merger;
- (5) The effective date and time of the merger, which shall be not earlier than the date and time of filing of the articles of merger and not later than thirty days after the filing of the articles of merger; and
- (6) If the surviving [entity] company is a foreign limited liability company, it shall file with the director:
  - (A) An agreement that the surviving [entity] company may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;
  - (B) An irrevocable appointment of a resident of this State [including the street address,] as its agent to accept service of process in any such proceeding[;], and include the resident’s street address in this State; and
  - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving [entity; and
- (7) A statement of compliance with section 428-908, if applicable.] company.

(b) If a foreign limited liability company is the surviving [entity] company of a merger, it shall not do business in this State until an application for that authority is filed with the director.’’

SECTION 79. Section 428-1002, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A foreign limited liability company may apply for a certificate of authority to transact business in this State by delivering an application to the director for filing. The application shall set forth:

- (1) The name of the foreign limited liability company or, if its name is unavailable for use in this State, a name that satisfies the requirements of section 428-1005;
- (2) The name of the state or country under whose law it is organized;
- (3) The street address of its principal office, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service, and a representation and warranty that a list of the names of and addresses of all members and their respective capital contributions are kept and will be kept at this principal office until cancellation, in accordance with section 428-1007, of the foreign limited liability company’s authority to transact business in this State;
- (4) The street address of its initial designated office in this State or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service;
- (5) The name and street address of its initial agent for service of process in this State;
- (6) Whether the duration of the company is for a specified term and, if so, the period specified;
- (7) Whether the company is manager-managed, and:
  - (A) If so, the name and [residence street] address of each manager[, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service]; or
  - (B) If not, the name and [residence street] address of each member[, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service];
- (8) Whether the members of the company are to be liable for its debts and obligations under a provision similar to section 428-303(c); and
- (9) Any additional information as may be necessary or appropriate to enable the director to determine whether the foreign limited liability company is entitled to obtain authority to transact business in this State.”

SECTION 80. Section 428-1005, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Except as authorized by subsections (c) and (d), the name, including a fictitious name, of a foreign limited liability company shall not be the same as, or substantially identical to:

- (1) The name of any domestic corporation, partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State;
- (2) The name of any foreign corporation, [foreign] partnership, [foreign] limited liability company, or [foreign] limited liability partnership authorized to transact business in this State;
- (3) A name[,] the exclusive right to which is reserved under the laws of this State;

- (4) The fictitious name of another foreign limited liability company authorized to transact business in this State; or
- (5) Any trade name, [service mark, or] trademark, or service mark registered in this State.”

SECTION 81. Section 428-1007, Hawaii Revised Statutes, is amended to read as follows:

“**§428-1007 Cancellation of authority.** (a) A foreign limited liability company may cancel its authority to transact business in this State by obtaining a certificate of cancellation. Cancellation does not terminate the authority of the director to accept service of process on the company for claims for relief arising out of the transactions of business in this State. In order to obtain a certificate of cancellation, the foreign limited liability company shall deliver to the director for filing an application for cancellation, which shall set forth:

- (1) The name and jurisdiction of formation or organization of the foreign limited liability company;
- (2) A statement that the foreign limited liability company is not transacting business in this State;
- (3) A statement that the foreign limited liability company surrenders its authority to transact business in this State;
- (4) A statement that the foreign limited liability company revokes the authority of its agent for service of process in this State and consents that the service of process for any claim for relief arising out of the transactions of business in this State may be made on such foreign limited liability company by service upon the director;
- (5) The address to which a person may mail a copy of any process against the foreign limited liability company;
- (6) The dates the notice of cancellation was published pursuant to subsection (b) and the name of the newspaper publishing the notice[;], or a statement that publication was not made; and
- (7) A statement that all taxes, debts, obligations, and liabilities of the foreign limited liability company in this State have been paid and discharged or that adequate provision has been made therefor.

(b) A foreign limited liability company intending to cancel its authority to transact business in this State [shall] may publish notice of its cancellation and request persons having claims against the company to present them in accordance with the notice. The notice shall:

- (1) Be published at least once in each of four successive weeks (four publications) in a newspaper of general circulation in this State; and
- (2) Describe the information required to be contained in a claim and provide a mailing address where the claim may be sent.

(c) After the filing of the application for cancellation, the director shall issue a certificate of cancellation which shall be effective as of the date of the filing of the application for cancellation, and the authority of the foreign limited liability company to transact business in this State shall cease.

[(d) A cancellation does not terminate the authority of the director to accept service of process on a foreign limited liability company with respect to causes of action arising out of the transaction of business in this State.

(e) The foreign limited liability company, with the approval of the director, may omit the publication of the notice if the foreign limited liability company has insufficient assets to pay for the publication.]”

SECTION 82. Section 428-1301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The following fees shall be paid to the director upon the filing and issuance of records under this chapter:

- (1) Articles of organization, \$100;
- (2) Articles of amendment, \$50;
- (3) Restated articles of organization, \$50;
- (4) Articles of merger or conversion, \$200;
- (5) Statement of dissociation, \$50;
- (6) Articles of termination, \$50;
- (7) Application for reinstatement for administratively terminated limited liability company, \$50;
- (8) Annual report, \$25;
- (9) Statement of change of designated office or agent for service of process, or both, for limited liability company or foreign limited liability company, \$50;
- (10) [Statement of resignation of agent for service of process, \$50;] Agent’s statement of change of address, \$50 for each affected domestic limited liability company or foreign limited liability company; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected domestic limited liability company or foreign limited liability company;
- (11) Any other statement or document of a domestic or foreign limited liability company, \$50;
- (12) Application for certificate of authority for foreign limited liability company, \$100;
- (13) Application for cancellation of authority of foreign limited liability company, \$50;
- (14) Reservation of name, \$25;
- (15) Good standing certificate, \$25;
- (16) Any other record not otherwise covered in this part, \$50;
- (17) Certified copy of any record relating to a limited liability company or foreign limited liability company, 25 cents per page, and \$10 for the certificate and affixing the seal thereto;
- (18) Special handling fee for review of any record other than articles of merger or conversion, \$80;
- (19) Special handling fee for review of articles of merger or conversion, \$200;
- (20) Special handling fee for certificate<sup>6</sup> issued by the director not otherwise covered by this [part,] section, \$10 per certificate;
- (21) Special handling fee for certification of record, \$1 per page; and
- (22) Any service of notice, demand, or process upon the director as agent for service of process of a limited liability company or foreign limited liability company, \$50, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.”

SECTION 83. Section 482-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) It shall be unlawful for any person to adopt or use a print, label, trademark, service mark, or trade name which is identical to or confusingly similar with any registered print, label, trademark, service mark, or trade name, or the name of any [partnership,] corporation, partnership, limited liability company, or limited liability partnership existing or registered, or authorized to transact business, in



accordance with the laws of this State, on [partnerships,] corporations, partnerships, limited liability companies, or limited liability partnerships[.], or a name the exclusive right to which is, at the time, reserved in this State.”

SECTION 84. Section 428-908, Hawaii Revised Statutes, is repealed.

SECTION 85. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>7</sup>

SECTION 86. This Act shall take effect July 2, 2000.

(Approved June 14, 2000.)

**Notes**

1. Prior to amendment “foreign” appeared here.
2. Prior to amendment “;” appeared here.
3. Prior to amendment “than” appeared here.
4. Prior to amendment “and” appeared here.
5. Prior to amendment “of” appeared here.
6. Prior to amendment “certificates” appeared here.
7. Edited pursuant to HRS §23G-16.5.