

A Bill for an Act Relating to Business Registration.

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

SECTION 1. Chapter 425, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§425- **Activities not constituting transacting business.** (a) The activities of a foreign general partnership that do not constitute transacting business in this State within the meaning of this chapter include:

- (1) Maintaining, defending, or settling an action or proceeding;
- (2) Holding meetings of its partners or carrying on any other activity concerning its internal affairs;
- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign partnership’s own securities, or maintaining trustees or depositories with respect to those securities;
- (5) Selling through independent contractors;
- (6) Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside this State before they become contracts;
- (7) Creating or acquiring indebtedness, mortgages, or security interests in real or personal property;
- (8) Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
- (9) Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions of a like manner; and
- (10) Transacting business in interstate commerce.

(b) For purposes of this chapter, the ownership in this State of income-producing real property or income-producing tangible personal property, other than property excluded under subsection (a), constitutes transacting business in this State.

(c) This section shall not apply in determining the contracts or activities that may subject a foreign general partnership to service of process, taxation, or regulation under any other law of this State.”

SECTION 2. Section 414-274, Hawaii Revised Statutes, is amended to read as follows:

“§414-274 **Effect of conversion.** When a conversion becomes effective:

- (1) The converting entity shall continue to exist without interruption, but in the organizational form of the converted entity;
- (2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;
- (3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to the conversion;
- (4) The rights of creditors of the converting entity shall continue against the converted entity and shall not be impaired or extinguished by the conversion;

- (5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity without any need for substitution of parties;
- (6) The shares and other forms of ownership in the converting entity that are to be converted into shares, or other forms of ownership, in the converted entity as provided in the plan of conversion shall be converted, and if the converting entity is a domestic corporation, the former shareholders of the domestic corporation shall be entitled only to the rights provided in the plan of conversion or to the rights to dissent under section 414-342;
- (7) A shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that the shareholder, partner, member, or other owner:
 - (A) Agreed in writing to be liable for the debts or obligations;
 - (B) Was liable under applicable law prior to the effective date of the conversion, for the debts or obligations; or
 - (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity;
- (8) If the converted entity is a foreign corporation or other business entity[,] incorporated, formed, or organized under a law other than the law of this State, the converted entity shall file with the director:
 - (A) An agreement that the [surviving] converted entity 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;~~] the converting domestic corporation;
 - (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
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting [~~member,~~] shareholder, [~~or~~] partner, member, or other owner to receive payment for their interest against the [surviving] converted entity; and
- (9) If the converting entity is a domestic corporation, part XIV shall apply as if the converted entity were the survivor of a merger with the converting entity.”

SECTION 3. Section 414-403, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A corporation administratively dissolved under section 414-402 may apply to the department director for reinstatement within two years after the effective date of dissolution. The application [~~must;~~] shall:

- (1) Recite the name of the corporation and the effective date of its administrative dissolution;
- (2) Contain all reports due and unfiled;
- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate from the department of taxation [~~reciting~~] indicating that all taxes owed by the corporation have been paid[-], a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.”

SECTION 4. Section 414-433, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

- (1) The name of the foreign corporation or, if its name is unavailable for use in this State, a corporate name that satisfies the requirements of section 414-436;
- (2) The name of the state or country under whose law it is incorporated;
- (3) Its date of incorporation and period of duration;
- (4) The mailing address of the corporation’s [initial] principal office, the street address of its [initial] registered office in this State, and the name of its [initial] registered agent at its [initial] registered office[;] in this State; and
- (5) The names and usual business addresses of its current directors and officers.”

SECTION 5. Section 414D-207, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) A domestic corporation may adopt a plan of conversion and convert to a foreign corporation or any other business entity if:

- (1) The board of directors and members of the domestic corporation approve a plan of conversion in the manner prescribed by section 414D-202 and if the conversion is treated as a merger to which the converting entity is a party and not the surviving entity;
- (2) The conversion is permitted by and complies with the laws of the state or country in which the converted entity is to be incorporated, formed, or organized; and the incorporation, formation, or organization of the converted entity complies with [such] those laws;
- (3) At the time the conversion becomes effective, each member of the converting entity, unless otherwise agreed to by the member or directors, owns an equity interest or other ownership interest in, and is a shareholder, partner, member, [owner,] or other [security holder] owner of, the converted entity;
- (4) The members of the domestic corporation, as a result of the conversion, shall not become personally liable without the members’ consent, for the liabilities or obligations of the converted entity; and
- (5) The converted entity is incorporated, formed, or organized as part of or pursuant to the plan of conversion.

(b) Any foreign corporation or other business entity may adopt a plan of conversion and convert to a domestic corporation if the conversion is permitted by and complies with the laws of the state or country in which the foreign corporation or other business entity is incorporated, formed, or organized.”

SECTION 6. Section 414D-210, Hawaii Revised Statutes, is amended to read as follows:

“[H]§414D-210[.] Effect of conversion. When a conversion becomes effective:

- ~~[(a)]~~ (1) ~~[Upon an effective conversion, t]~~ The converting entity shall continue to exist without interruption, but in the organizational form of the converted entity[-];

- [(b)] (2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances[-];
- [(c)] (3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to the conversion[-];
- [(d)] (4) The rights of creditors of the converting entity shall continue against the converted entity and shall not be impaired or extinguished by the conversion[-];
- [(e)] (5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity without any need for substitution of parties[-];
- [(f)] (6) The shares and other forms of ownership in the converting entity that are to be converted into shares, or other forms of ownership, in the converted entity[-] as provided in the plan of conversion[-] shall be converted[-];
- [(g)] (7) A shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect; provided that the shareholder, partner, member, or other owner:
 - [(1)] (A) Agreed in writing to be liable for [sueh] the debts or obligations;
 - [(2)] (B) Was liable under applicable law prior to the effective date of the conversion for [sueh] the debts or obligations; or
 - [(3)] (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity.
- (8) If the converted entity is a foreign corporation or other business entity incorporated, formed, or organized under a law other than the law of this State, the converted entity shall file with the director:
 - (A) An agreement that the converted entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of the converting domestic corporation;
 - (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
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting shareholder, partner, member, or other owner to receive payment for their interest against the converted entity.”

SECTION 7. Section 414D-241, Hawaii Revised Statutes, is amended to read as follows:

“~~[(H)§414D-241(H)]~~ **Dissolution by incorporators, initial directors, and third persons.** ~~[(a)]~~ A majority of the incorporators or initial directors of a corporation that has no members[-] and has not commenced business, subject to any approval required by the articles or bylaws, may dissolve the corporation by delivering to the department director articles of dissolution[-]

~~(b) The corporation shall give notice of any meeting at which dissolution will be approved. The notice shall be in accordance with section 414D-145(c). The notice~~

must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation:

(e) ~~The incorporators or directors in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.]~~ that set forth:

- (1) The name of the corporation;
- (2) The date of its incorporation;
- (3) That the corporation has no members and that the corporation has not commenced business;
- (4) That a plan of dissolution, indicating to whom the assets owned or held by the corporation shall be distributed after all creditors have been paid, has been adopted; and
- (5) That a majority of the incorporators or initial directors authorized the dissolution.”

SECTION 8. Section 414D-250, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A corporation administratively dissolved under section 414D-249 may apply to the department director for reinstatement within two years after the effective date of dissolution. The application shall:

- (1) State the name of the corporation and the effective date of its administrative dissolution;
- (2) State that the ground or grounds for dissolution either did not exist or have been eliminated; and
- (3) Contain a certificate from the department of taxation ~~[reciting]~~ indicating that all taxes owed by the corporation have been paid[-], a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.”

SECTION 9. Section 415A-16.8, Hawaii Revised Statutes, is amended to read as follows:

“~~[E]~~**§415A-16.8** **Effect of conversion.** When a conversion becomes effective:

- (1) The converting entity shall continue to exist without interruption but in the organizational form of the converted entity;
- (2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;
- (3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to the conversion;
- (4) The rights of creditors of the converting entity shall continue against the converted entity and shall not be impaired or extinguished by the conversion;
- (5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity without any need for substitution of parties;
- (6) The shares and other forms of ownership in the converting entity that are to be converted into shares or other forms of ownership in the converted entity as provided in the plan of conversion shall be con-

- verted, and if the converting entity is a professional corporation, the former shareholders of the professional corporation shall be entitled only to the rights provided in the plan of conversion or to the rights to dissent under section 415-80;
- (7) A shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that [such] the shareholder, partner, member, or other owner:
- (A) Agreed in writing to be liable for [such] the debts or obligations;
 - (B) Was liable under applicable law prior to the effective date of the conversion for [such] the debts or obligations; or
 - (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other business¹ owner of the converted entity;
- (8) If the converted entity is a foreign corporation or other business entity, incorporated, formed, or organized under a law other than the laws of this State, the converted entity shall [-] file with the director:
- (A) ~~[Appoint a resident of this State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of the converting domestic corporation; and] An agreement that the converted entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of the converting domestic corporation;~~
 - (B) ~~[Promptly pay the dissenting shareholders of the converting domestic corporation the amount, if any, to which they are entitled under section 415-81;] 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~~
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting shareholder, partner, member, or other owner to receive payment for their interest against the converted entity; and
- (9) If the converting entity is a professional corporation, ~~[sections 415-80 and 415-81] part XIV of chapter 414 shall apply as if the converted entity were the survivor of a merger with the converting entity.’’~~

SECTION 10. Section 415A-18, Hawaii Revised Statutes, is amended to read as follows:

“§415A-18 Administrative dissolution; reinstatement. (a) The director may commence a proceeding to dissolve a professional corporation administratively if the corporation fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual report for a period of two years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name or business address of the agent as required under this chapter.

Before the director may declare a corporation dissolved, the director shall give notice of the ground or grounds for dissolution by mailing the notice to the professional corporation at its last known address appearing in the records of the director.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the director that each ground determined by the

director does not exist within sixty days after the date of mailing of the director's written notice, the director shall administratively dissolve the corporation by signing a decree of dissolution that recites the ground for dissolution and its effective date. The decree shall be filed in the director's office. The administrative dissolution of a corporation ~~[does]~~ shall not terminate the authority of its registered agent.

(c) Parties of interest may petition a court of competent jurisdiction to appoint a trustee to settle the affairs of any professional corporation so dissolved. If a trustee is appointed, the trustee shall pay to the State out of any funds that may come into the trustee's hands as trustee, a sum equal to any penalty imposed under section 414-473. If a trustee is not appointed by a court of competent jurisdiction, the last directors of the dissolved corporation shall be and act as trustees for the creditors and shareholders of the dissolved professional corporation with full powers to settle its affairs.

(d) In each case where the director has given a professional corporation notice of intention to dissolve the corporation on the grounds that its articles of incorporation have been procured through fraud, the corporation shall be entitled to petition for an administrative hearing under chapter 91 and shall give written notice to the director thereof, before the director may declare the corporation dissolved under subsection (a) ~~[of this section]~~.

(e) Within two years after the ~~[involuntary]~~ administrative dissolution of a professional corporation under this section, the corporation may be reinstated by the director upon a written application executed by ~~[any two officers]~~ an officer of the corporation setting forth such information as the director may require, and contain a certificate from the department of taxation indicating that all taxes owed by the corporation have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation, the payment of all delinquent fees[,] and 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 professional corporation, or a name substantially identical thereto, be registered or reserved by another corporation, partnership, limited liability company, or limited liability partnership, or should the 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 professional corporation pursuant to the amendment provisions of this chapter.

(f) A professional corporation whose articles of incorporation have expired shall cease to exist by operation of law.

(g) If a professional corporation was dissolved due to the expiration of its period of duration, the professional corporation, at any time within two years of such dissolution, may amend its articles of incorporation to extend its period of duration; provided that, if the name of the professional corporation or a name substantially identical thereto is registered or reserved by another corporation, partnership, limited liability company, or limited liability partnership, or if the name or a name substantially identical thereto is registered as a trade name, trademark, or service mark, then the extension of corporate existence shall be allowed only upon the registration of a new name by the professional corporation pursuant to the amendment provisions of this chapter."

SECTION 11. Section 425-1, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Whenever any general partnership is formed under the laws of this State to do business in this State, or any general partnership formed under the laws of any other jurisdiction shall do business in this State, [such] the partnership shall file in the office of the director of commerce and consumer affairs the registration and annual

statements [~~hereinafter provided.~~] prescribed in this chapter. A registration statement shall be filed by a partnership formed under the laws of 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 this State. Every [~~such~~] registration statement shall contain the following information:

- (1) The name of the partnership;
- (2) The name and address of each partner;
- (3) The mailing address of the partnership's [~~initial~~] principal office, the street address of the partnership's [~~initial~~] registered office in [~~the~~] this State, and the name of its [~~initial~~] registered agent at its [~~initial~~] registered office in [~~the~~] this State; provided that if the partnership is one formed under the laws of any other jurisdiction, the name of the jurisdiction shall also be [~~set forth;~~] specified;
- (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 this State; and
- (5) The fact that none of the partners is either a minor or an incompetent person.

(b) Every domestic and foreign partnership shall file an annual statement with the director which shall contain the information specified in subsection (a)(1), (2), (3), [~~(4);~~] and (5) and a listing of the names of any partner admitted, withdrawn, or who has died during the year; provided that the information provided to satisfy the requirements of subsection [~~(a)(4)~~] (a)(3) shall indicate the current registered office and agent. A domestic or foreign partnership that has filed with the department director a statement of qualification or statement of foreign qualification to register as a limited liability partnership or foreign limited liability partnership shall file the annual report prescribed in section 425-163 in lieu of the annual statement required in this section. The annual statement shall be filed within the time periods prescribed in subsections (c) and (d)."

SECTION 12. Section 425-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Within two years after the [~~involuntary~~] administrative 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. The application shall:

- (1) Recite the name of the general partnership and the effective date of its [~~involuntary~~] administrative cancellation;
- (2) Contain all statements due and unfiled;
- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate from the department of taxation [~~reciting~~] indicating that all taxes owed by the general partnership have been paid[-], a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation."

SECTION 13. Section 425-158, Hawaii Revised Statutes, is amended to read as follows:

"**§425-158 Statement of foreign qualification.** A statement of foreign qualification shall contain:

- (1) The name of the foreign limited liability partnership, which name complies with:

- (A) The law of the state or other jurisdiction under which the foreign limited liability partnership is formed; and
- (B) Section 425-151;
- (2) A statement that the partnership elects to be a foreign limited liability partnership; and
- (3) The mailing address of the partnership's [initial] principal office, the street address of the partnership's [initial] registered office in [the] this State, and the name of its [initial] registered agent at its [initial] registered office in [the] this State."

SECTION 14. Section 425-163, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every limited liability partnership and foreign limited liability partnership authorized to transact business in this State shall file an annual report in the office of the director that contains:

- (1) The name of the limited liability partnership or foreign limited liability partnership;
- (2) The mailing address of the partnership's principal office, the street address of the partnership's registered office in [the] this State, and the name of its registered agent at its registered office in [the] this State[-]; provided that if the partnership is formed under the laws of any other jurisdiction, the name of the other jurisdiction shall also be specified;
- (3) The name and address of each partner; and
- (4) The fact that none of the partners is either a minor or an incompetent person.”

SECTION 15. Section 425-164, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A partnership whose statement of qualification or statement of foreign qualification has been administratively revoked may apply to the director for reinstatement within two years after the effective date of the revocation. The application shall:

- (1) Recite the name of the partnership and the effective date of the revocation;
- (2) Contain all reports due and unfiled;
- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate from the department of taxation [~~reciting~~] indicating that all taxes owed by the partnership have been paid[-], a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.”

SECTION 16. Section 425-195, Hawaii Revised Statutes, is amended to read as follows:

- “**§425-195 Effect of conversion.** When a conversion becomes effective:
- (1) The converting entity shall continue to exist without interruption, but in the organizational form of the converted entity;
 - (2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;

- (3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to the conversion;
- (4) The rights of creditors of the converting entity shall continue against the converted entity and shall not be impaired or extinguished by the conversion;
- (5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity[;] without any need for substitution of parties;
- (6) The partnership interests[;] and other forms of ownership in the converting entity that are to be converted into partnership interests, or other forms of ownership, in the converted entity as provided in the plan of conversion shall be converted;
- (7) A shareholder, partner, member, or other owner of the converted entity, shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that such shareholder, partner, member, or other owner:
 - (A) Agreed in writing to be liable for such debts or obligations;
 - (B) Was liable under applicable law prior to the effective date of the conversion for such debts or obligations; or
 - (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity;
- (8) If the converted entity is a foreign general partnership, limited liability partnership, or other business entity[;] incorporated, formed, or organized under a law other than the law of this State, the converted entity shall [appoint a resident of the State as its agent, for service of process in a proceeding to enforce any obligation or rights of dissenting partners of the converting domestic partnership or limited liability partnership; and] file with the director:
 - (A) An agreement that the converted entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of the converting domestic general partnership;
 - (B) An irrevocable appointment of a resident of this State including the resident's street address, as its agent to accept service of process in any such proceeding; and
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting shareholder, partner, member, or other owner to receive payment for their interest against the converted entity; and
- (9) If the converting partnership is a domestic general partnership, or limited liability partnership, section 425-203 shall apply as if the converted entity were the survivor of a merger with the converting entity.”

SECTION 17. Section 425-204, Hawaii Revised Statutes, is amended to read as follows:

“**§425-204 Articles of merger.** (a) After approval of the plan of merger, unless the merger is terminated, articles of merger shall be signed on behalf of each general partnership [~~or limited liability partnership~~], and each entity that is a party to the merger and delivered to the director for filing. The articles shall set forth:

- (1) The name and jurisdiction of formation or organization of each entity that is a party to the merger, and the name, address, and jurisdiction of organization of the entity with or into which they propose to merge, which is hereinafter designated as the surviving entity;
- (2) A statement that the plan of merger was approved by each entity that is a party to the merger;
- (3) A statement indicating any changes in the organizing articles of the surviving entity to be given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger;
- (4) The future effective date (which shall be a date certain) of the merger if it is not to be effective upon the filing of the articles of merger; provided that the effective date shall not be more than thirty days from the filing date; and
- (5) A statement that includes:
 - (A) An agreement that the surviving entity 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 as its agent to accept service of process in any [sueh] proceeding[;] pursuant to this paragraph, that includes 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.
- (b) If the articles of merger provide for a future effective date, and:
 - (1) The plan of merger is amended to change the future effective date;
 - (2) The plan of merger permits the amendment of the articles of merger to change the future effective date without an amendment to the plan of merger; or
 - (3) The plan of merger is amended to change any other matter contained in the articles of merger so as to make the articles of merger inaccurate in any material respect, prior to the future effective date; then the articles of merger shall be amended by filing with the director a certificate of amendment that identifies the articles of merger and sets forth the amendment to the articles of merger.

If the articles of merger provide for a future effective date and if the plan of merger is terminated prior to the future effective date, the articles of merger shall be terminated by filing with the director a certificate of termination that identifies the articles of merger and states that the plan of merger has been terminated.

~~[(e) Articles of merger shall operate as an amendment to the general partnership's or limited liability partnership's organizing articles.~~

~~[(d) Articles of merger shall act as a statement of dissolution or as an application for withdrawal for the respective domestic or foreign general partnership or domestic or foreign limited liability partnership that is not the surviving entity in the merger.]”~~

SECTION 18. Section 425E-810, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A limited partnership that has been administratively dissolved may apply to the director for reinstatement within two years after the effective date of dissolution. The application shall be delivered to the director for filing and:

- (1) State the name of the limited partnership and the effective date of its administrative dissolution;
- (2) State that the grounds for dissolution either did not exist or have been eliminated;
- (3) State that the limited partnership's name satisfies the requirements of section 425E-108; and
- (4) Include a certificate from the department of taxation [reciting] indicating that all taxes owed by the limited partnership have been paid[-], a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.”

SECTION 19. Section 425E-902, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A foreign limited partnership 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 state:

- (1) The name of the foreign limited partnership and, if the name does not comply with section 425E-108, an alternate name adopted pursuant to section 425E-905(a);
- (2) The name of the state or other jurisdiction under whose law the foreign limited partnership is organized;
- (3) The mailing address of the foreign limited partnership's [initial] principal office, the street address of its [initial] registered office in this State, and the name of its [initial] registered agent at its [initial] registered office[;] in this State;
- (4) The name and address of each general partner;
- (5) Whether the foreign limited partnership is a foreign limited liability limited partnership; 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 20. Section 425E-1105, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~425E-1105] **Effect of conversion.** When a conversion becomes effective:

- (1) The converting entity shall continue to exist without interruption, but in the organizational form of the converted entity;
- (2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;
- (3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to the conversion;
- (4) The rights of creditors of the converting entity shall continue against the converted entity and shall not be impaired or extinguished by the conversion;

- (5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity[;]² without any need for substitution of parties;
- (6) The partnership interests and other forms of ownership in the converting entity that are to be converted into partnership interests, or other forms of ownership, in the converted entity[;] as provided in the plan of conversion³ shall be converted;
- (7) A shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that [such] the shareholder, partner, member, or other owner:
 - (A) Agreed in writing to be liable for such debts or obligations;
 - (B) Was liable under applicable law prior to the effective date of the conversion for such debts or obligations; or
 - (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity;
- (8) If the converted entity is a foreign limited partnership or other business entity[;]³ incorporated, formed, or organized under a law other than the law of this State, the converted entity shall ~~[appoint a resident of this State as its agent for service of process in a proceeding to enforce any obligation or rights of dissenting limited partners of the converting domestic limited partnership; and]~~ file with the director:
 - (A) An agreement that the converted entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of the converting domestic limited partnership;
 - (B) An irrevocable appointment of a resident of this State including the resident's street address, as its agent to accept service of process in any such proceeding; and
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting shareholder, partner, member, or other owner to receive payment for their interest against the converted entity; and
- (9) If the converting partnership is a domestic limited partnership, section 425E-1106 shall apply as if the converted entity were the survivor of a merger with the converting entity.’’

SECTION 21. Section 428-811, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A limited liability company administratively terminated may apply to the director for reinstatement within two years after the effective date of termination. The applicant shall:

- (1) Recite the name of the company and the effective date of its administrative termination;
- (2) State that all delinquent annual reports have been filed and that all delinquent fees, penalties, assessments, and costs have been paid; and
- (3) Contain a certificate from the director of taxation reciting that all taxes owed by the company have been paid[-], a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.’’

SECTION 22. Section 428-903, Hawaii Revised Statutes, is amended to read as follows:

“**§428-903 Effect of conversion.** When a conversion becomes effective:

- (1) The converting entity shall continue to exist without interruption, but in the organizational form of the converted entity;
- (2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;
- (3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to the conversion;
- (4) The rights of creditors of the converting entity shall continue against the converted entity and shall not be impaired or extinguished by the conversion;
- (5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity without any need for substitution of parties;
- (6) The shares and other forms of ownership in the converting entity that are to be converted into shares, or other forms of ownership, or other securities in the converted entity as provided in the plan of conversion shall be converted, and if the converting entity is a domestic limited liability company, the former members of the domestic limited liability company shall be entitled only to the rights provided in the plan of conversion or to the rights to dissent under section 414-342;
- (7) A shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that such shareholder, partner, member, or other owner:
 - (A) Agreed in writing to be liable for [sueh] the debts or obligations;
 - (B) Was liable under applicable law prior to the effective date of the conversion, for [sueh] the debts or obligations; or
 - (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity; and
- (8) If the converted entity is a foreign limited liability company or other business entity[;] incorporated, formed, or organized under a law other than the law of this State, such converted entity shall [appoint a resident of this State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting members of the converting domestic limited liability company.] file with the director:
 - (A) An agreement that the converted entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of the converting domestic limited liability company;
 - (B) An irrevocable appointment of a resident of this State, including the resident's street address, as its agent to accept service of process in any such proceeding; and
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting shareholder, partner, member, or other owner to receive payment for their interest against the converted entity.”

ACT 235

SECTION 23. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.⁴

SECTION 24. This Act shall take effect on January 1, 2007.

(Approved June 23, 2006.)

Notes

1. Should be underscored.
2. Prior to amendment, no comma appeared here.
3. Prior to amendment, a comma appeared here.
4. Edited pursuant to HRS §23G-16.5.