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BRIEFING

UPDATED MARSHALL ISLANDS  
ASSOCIATIONS LAWS  
JANUARY 2018

NEW PROVISIONS FOR:

- RECORD-KEEPING
- SHAREHOLDER ACTION
- ELECTRONIC SIGNATURES
- SHARE ISSUANCE



Recent updated and more demanding standards (required by the Organization for Economic Co-operation and Development and the Financial Action Task Force on Money Laundering regarding the transparency and availability of ownership information for tax purposes) have resulted in a number of amendments to the Marshall Islands Business Corporations Act, Revised Partnership Act, Limited Partnership Act and Limited Liability Company Act of 1996 (the "Amendment").

A key provision in the Amendment is additional record keeping requirements. While many entities may know certain information, now the Amendment requires such information to be actively maintained.

**New Record-Keeping Requirements**

**Beneficial Ownership of Domestic Corporations, Partnerships, Limited Partnerships and Limited Liability Companies.**

The Amendment revised the Associations Law such that, in addition to the information previously required, Marshall Islands corporations, partnerships, limited partnerships and limited liability companies, other than publicly-traded entities, must use all reasonable efforts to obtain and maintain an up to date record of the names and addresses of all of their beneficial owners. Additionally, limited liability companies must use all reasonable efforts to obtain and maintain an up to date record of the names and addresses of all managers. Each entity must also use reasonable efforts in notifying the beneficial owners and, in the case of limited liability companies, the managers, of their obligation to provide such information.

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## NOVEMBER 9 DEADLINE TO COMPLY.

Each non-resident entity is required to produce such records or information upon demand of the registered agent or pursuant to a valid governmental request.

### Annual Attestation to Registrar

Upon formation or by November 9, 2018 (for existing entities), and annually thereafter, each Marshall Islands non-resident corporation, partnership, limited partnership and limited liability company, other than a publicly-traded entity, is required to make an attestation to the registrar that a list of its current directors and executive officers (in the case of corporations), beneficial owners (in the case of corporations, partnerships, limited partnerships and limited liability companies) and managers (in the case of limited liability companies), and its business or residence addresses, and its accounting records and underlying documentation, is being maintained or that such records are not being maintained. This is in addition to any other attestations previously required.

### Application and Penalties

- Corporations, partnerships, limited partnerships and limited liability companies incorporated or formed prior to November 14, 2017 have until November 9, 2018 to bring the entity into compliance with the above record-keeping requirements.
- Non-compliance by corporations with regards to beneficial ownership information may affect the validity of the issuance of registered and bearer shares, as well as the transfer of any bearer shares. Additionally, the provision of the required information related to bearer shares is a condition to holding the rights and privileges as a holder of such shares and, in the case of non-resident corporations, may result in the automatic cancellation of bearer share certificates.
- The penalty for knowingly or recklessly failing to keep, retain, maintain, produce, or attest to records of directors and officers (in the case of non-resident corporations), beneficial owners (in the case of non-resident corporations, partnerships, limited partnerships and limited liability companies) and managers (in the case of non-resident limited liability companies), or refusing to make the required attestations, is (i) a fine not exceeding \$50,000 and/or (ii) the revocation or cancellation of the entity's formational documents and dissolution. These penalties also apply to the willful retention, maintenance or production of false or misleading records and making false attestations.

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## THE PENALTY FOR FAILURE IS A FINE ... OR DISSOLUTION.

### Updated Requirements for Shareholder Action without a Meeting

Unless otherwise provided for in a corporation's articles of incorporation, shareholders of Marshall Islands corporations may now act without a meeting and without notice by the signed consent in writing of the holders of outstanding shares having the number of votes that would be necessary in order to authorize or take such action at a meeting at which all shares entitled to vote were present and voted. Prior to the Amendment, such consent was required from all shareholders. Amendments to articles of incorporation and approval of dissolution must still be approved by written consent of all shareholders entitled to vote thereon if not approved at a meeting.

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IF YOU HAVE TRANSFERRED OR RECEIVED BEARER SHARES, DON'T BE CAUGHT OUT BY WHAT MIGHT SEEM A LONG DEADLINE.

#### **Additional Information Required to be Maintained by Corporations that Issue Bearer Shares**

Bearer shares have for some time ceased to be regarded as generally acceptable by certain lending banks. The main reasons for this tend to be because they are an impediment to transparency of ownership, with most banks refusing to lend into bearer share structures due to the difficulty of complying with KYC requirements and/or for reputational reasons and/or due to the potential liability that may exist for taking pledges of bearer shares. Nevertheless, they are still used in various contexts. This amendment to MI law is likely an attempt to respond to the OECD report that listed the Marshall Islands as a jurisdiction that was not compliant with availability and access to information regarding ownership of entities.

Corporations that issue bearer shares must now use all reasonable efforts to obtain and maintain an up to date record of the names, addresses, nationalities, and, in the case of natural persons, dates of birth of all holders and beneficial owners of such bearer shares. Corporations must also use reasonable to efforts to maintain a record of any transfer of bearer shares, including the date of the transfer and the names, addresses, nationalities and, in the case of natural persons, dates of birth of all new holders and beneficial owners of the transferred bearer shares. Non-resident corporations must record such information with its registered agent, and all corporations must use reasonable efforts in notifying their shareholders and beneficial owners of their obligation to provide such information.

The penalty for failure is a fine not exceeding \$50,000 and/or the revocation or cancellation of the entity's formational documents and dissolution. The deadline to comply for corporations, partnerships, limited partnerships and limited liability companies incorporated or formed prior to November 14, 2017 is November 9, 2018.

#### **Adoption of Electronic Transmission and Signature**

Electronically transmitted signatures are now acceptable on any instrument authorized to be filed with the Registrar of Corporations under Marshall Islands law. Additionally, the Amendment revised the Business Corporations Act to allow action by electronic transmission for several purposes, including:

- If authorized by the board of directors, shareholder ballot submission in director elections, provided that the electronic transmission includes or is submitted with information establishing that it was authorized by the shareholder or proxy holder.
- A demand by a shareholder for a special shareholder meeting, provided that the transmission includes information allowing the corporation to determine the date of the transmission and that it came from the shareholder.
- Notice of any meeting of directors or registered shareholders, as well as waiver of notice of any director or shareholder meeting.
- Consenting to action without a meeting, either by shareholders or directors, provided that the transmission includes information allowing the corporation to determine the date of the transmission and that it was transmitted by the proper person.
- Director grant or use of proxies.

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ELECTRONICALLY TRANSMITTED SIGNATURES ARE NOW ACCEPTABLE.

Similarly, the Revised Partnership Act, Limited Partnership Act and Limited Liability Company Act of 1996 were revised to allow for the following, unless the relevant partnership agreement or limited liability company agreement provides otherwise:

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- Meetings of partners, limited partners, members and managers may now be held by means of communications equipment that allows the participants to communicate with each other, and consent given by means of electronic transmission will be deemed written and signed.
  - Partners, limited partners, members and managers may now take action without a meeting and without prior notice or a vote if consented to or approved, in writing, by electronic transmission, and consent given by means of electronic transmission will be deemed written and signed.
  - Members and managers of limited liability companies may now grant proxies by means of electronic transmission.

#### **Adoption of Formula-Based Share Issuance**

The board of directors of a Marshall Islands corporation may now determine the amount of consideration for shares by setting a minimum amount or adopting a formula by which the amount or minimum amount may be determined. This formula may be made dependent on ascertainable facts outside of the formula, so long as the manner in which these facts operate on the formula is clearly and expressly set forth in the resolutions approving the formula or in the formula itself.

#### **Partly Paid Shares Allowed**

Marshall Islands corporations can now issue its shares, in whole or in part, as partly paid. Partly paid shares are subject to call for the remainder of the consideration due. The total amount of consideration to be paid, along with the amount already paid, must be stated on the face or back of each stock certificate issued to represent partly paid shares. In the case of uncertified shares, these amounts must be stated in the books and records of the corporation.

#### **Corporations Can Renounce Business Opportunities**

Subject to Marshall Islands statutes and any limitations provided in its articles of incorporation, a corporation now has the power to renounce in its articles of incorporation or by action of its board of directors any interest in, or expectancy of the corporation in, or being offered an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the corporation or to one or more of its officers, directors or shareholders.

#### **Public Company Exception to Dissenters' Rights in Sale of All or Substantially All Assets of a Public Corporation**

Pursuant to the Amendment, shareholders that were, at the applicable record date, either (i) listed on a securities exchange or admitted for trading on an interdealer quotation system, or (ii) held of record by more than 2,000 holders, are not entitled to receive fair value for their shares by dissenting from any sale or exchange of all or substantially all of the property and assets of the corporation not made in the usual course of business. This extends the previous statutory exception to dissenters' rights that was limited to mergers and consolidations.

#### **Conclusion**

The new requirements described above, especially regarding to information requirements and bearer shares, if not complied with, have potentially significant penalties and ramifications; companies should start obtaining the relevant information now so they do not miss deadlines or incur penalties.

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THE NEW REQUIREMENTS  
HAVE POTENTIALLY  
SIGNIFICANT PENALTIES  
AND RAMIFICATIONS.

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## FOR MORE INFORMATION

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Should you like to discuss any of the matters raised in this Briefing, please speak with one of the authors below or your regular contact at Watson Farley & Williams.



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