

NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
38TH CONSTITUTION REGULAR SESSION, 2017



Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

BANKING (AMENDMENT) ACT 2017

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BANKING (AMENDMENT) ACT 2017

AN ACT to amend Title 17, Chapter 1 of the Marshall Islands Revised Code to provide for: (a) the protection of depositors funds; (b) licensing regulation, and supervision of banks and financial services providers in and from the Republic; (c) protection against, and penalties for transaction in money-laundering and (d) for matters connected therewith or incidental thereto.

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

§101. Short title.

This Chapter may be cited as Banking (Amendment) Act 2017.

§102. Amendments:

- (1) Section 101 of the Banking Act is hereby amended to read as follows:
"This Chapter may be cited as the *Banking and Financial Services Providers Act 2017*"
- (2) Section 102 of the Banking Act is hereby amended as follows:
 - (j) "designated non-financial businesses and professions (DNFBP) or non-financial services provider" means:
 - (i) Casinos
 - (ii) Real estate agents.
 - (iii) Dealers in precious metals.
 - (iv) Dealers in precious stones.

- (v) Lawyers, notaries, other independent legal professionals and accountants – this refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to ‘internal’ professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to AML/CFT measures.
- (vi) Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere under the FATF Recommendations, and which as a business, provide any of the following services to third parties:
 - (a) acting as a formation agent of legal persons;
 - (b) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
 - (c) providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
 - (d) acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement;
 - (e) acting as (or arranging for another person to act as) a nominee shareholder for another person.
- (s) “**non-resident**” means an individual, corporation, or other juridical person or any unincorporated body not included in the definition of “resident”;
- (t) “financial services providers” means any person who carries on a business as a domestic financial institution other than a bank, or cash dealer as defined in section 102(e), including a person who offers financial products, which may include virtual assets, or advises, provides mediation services, provides reinsurance mediation services, or moneylenders or acts as an authorized agent in respect of financial product such as fund managers, pension or retirement funds, credit unions, financial advisers, insurers,

development finance institutions privately operated or government-owned, finance companies;

- (u) “person” means an individual, company, corporation, partnership or any-body incorporate or unincorporated and includes every director, manager, agent or secretary of such person;

- (3) Section 108(2)(i) of the Banking Act is hereby amended as follows:

§108. Applications for license.

- (2) foreign bank in the case of an application for a license by a foreign bank:

- (4) Section 110 of the Banking Act is hereby amended as follows:

§110. Banking license.

- (1) In granting a license to a bank (which license shall be in writing) the Commissioner, with the approval of Cabinet:

- (a) shall specify and confirm the bank’s engagement in local banking business; and
(b) may specify any terms and conditions which shall be complied with by the bank.

...

- (5) A domestic license granted under this Section shall remain valid unless revoked in accordance with Section 113.

- (5) Section 111 of the Banking Act is hereby amended as follows:

§111. License fees.

- (1) Every bank shall pay to the Commissioner prior to the end of each fiscal year or by September 30 of each year an annual license fee including other associated fees in accordance with the Regulatory Fee Schedule issued by the Commissioner from time to time and as specified by Regulation.
- (2) The Commissioner may issue new fees under the Regulatory Fee Schedule for the purpose of providing sufficient funds to finance its operations as may be needed from time to time.
- (6) Section 112 of the Banking Act is hereby amended as follows:

§112. Approval of the Commissioner for any change.

The prior approval in writing of the Commissioner shall be required:

- (b) for a licensed domestic bank to open a branch, agency, or office in any place outside the Republic;
 - (d) for a licensed domestic bank to acquire the business of another bank or of any branch of another bank;
- (7) Section 118 of the Banking Act is hereby amended as follows:

§118. Transitional provisions

- (3) Where a bank, DNFBP, or financial services provider, upon the coming into effect of this Chapter, is applying for a domestic license, or at the time of application, has been operating without a valid license in accordance with the conditions imposed by this Chapter, the Cabinet may, upon application and in special circumstances, grant an extension or by a grace period of up to one (1) year for completion of the outstanding requirements unless stated otherwise in this Chapter.

- (8) Section 119 of the Banking Act is hereby amended as follows:

§119. Subsidiary corporations.

- (1) A licensed domestic bank shall not have as its subsidiary a corporation which is not a licensed bank, provided that with the written permission of the Commissioner, it may have a subsidiary which:
- (a) carries on business only of providing training in all or any of the subjects of banking accountancy, valuation, project and credit appraisals;
 - (b) carries on the business only of providing hire purchase service or sale by installment;
 - (c) carries on the business only of providing a medium and long-term credit for development;
 - (d) carries on the business of factoring or leasing; or
 - (e) is formed only by reason of having had to acquire the shares of a corporation upon such licensed bank's capital and interest accrued and unpaid by the corporation to the bank on loans granted by the licensed bank.
- (9) Part V – Capital Requirements, Reserve Funds and Liquid Assets of Domestic Licensed Banks provisions are hereby amended as follows:

"PART V – CAPITAL REQUIREMENTS, RESERVE FUNDS AND LIQUID ASSETS OF DOMESTIC LICENSED BANKS

§120. Capital requirements.

- (1) Every domestic bank licensed to do local banking business shall at all times maintain unimpaired issued capital stock in an amount not less than one million dollars originally paid up in cash; and shall also comply with any prescription made under Section 150.

§121 Reserve fund.

- (1) Every domestic bank licensed to do banking business shall maintain a reserve fund and shall, out of the net profits each year, before any dividend is declared or any profits are transferred elsewhere, transfer to such reserve fund a sum equivalent to not less than twenty-five percent (25%) of such profits until the amount of the said reserve fund is equal to the paid-up capital; provided, that an amount not less than twenty-five percent (25%) of the net profits is applied to writing off such intangible assets as required in Section 147 of this Chapter before such profits are transferred to the reserve fund.

§122 Liquid assets.

- (1) Every domestic bank licensed to do local banking business shall maintain liquid assets in an amount which shall not, as a daily average each month, be less than such percentage of the total of its liabilities, less liabilities to shareholders as may be determined by the Commissioner from time to time, but shall not be less than twenty percent (20%) of deposit liabilities or the amount required by the Federal Deposit Insurance Company. Deposit liabilities of a bank shall be deemed to be its gross demand, time and savings account liabilities for the purpose of this Section.
- (10) Part VI – Offshore Banking provisions are hereby repealed in their entirety and replace with new provisions as follows:

"PART VI - LICENSING REGIME FOR FINANCIAL SERVICES PROVIDERS

- §123. Requirement of license and prudential supervision of financial services provider.**

- (1) No financial services provider shall be transacted in the Republic except by a corporation or entity which is in possession of a valid license issued by the Commissioner of Banking, authorizing the transaction of financial services business in or within the Republic.
- (2) Any person desirous of obtaining approval for licensing as a financial services provider shall apply in writing to the Commissioner in such manner as the Commissioner may specify by Regulation.
- (3) The Commissioner of Banking shall be authorized to conduct prudential supervision of all licensed financial services providers and issue new prudential standards by way of Regulations for this purpose.

§124. Grant or refusal of license.

- (1) The Commissioner shall conduct an investigation of the application as deemed necessary to determine:
 - (a) that all the requirements of existing laws and regulations have been complied with; and
 - (b) whether the available financial resources, organization, controls, administration and integrity and financial services business experience of the organizers can reasonably assure the safe and sound operations of the proposed financial services business, and that it can effectively serve the needs of the Republic.
- (2) On completion of his investigation, the Commissioner, shall grant, or without assigning any reason therefore, refuse to grant a license.

§125. Financial Services Provider license.

- (1) In granting a license to a Financial Services Provider (which license shall be in writing) the Commissioner may specify any terms and conditions which shall be complied with by the Financial Services Provider.
- (2) No person may be granted a license in a name which, in the opinion of the Commissioner, is likely to mislead or confuse the persons for which it is intended to provide any or all of its services.
- (3) No license shall be issued or renewed except upon the payment of the license fee and other associated fees specified by Regulation.

- (4) A licensed Financial Services Provider shall not engage in any financial services provider business other than the business specified in the license.
- (5) A license granted under this Section shall remain valid unless revoked in accordance with Section 128.
- (6) The application for renewal shall be made prior to the expiration of the current license along with the license fee and providing such information as may be required by the Commissioner under this Chapter or the regulations made thereunder.
- (7) A copy of the license granted to a Financial Services Provider under this Chapter shall be kept displayed conspicuously in all places of business of the Financial Services Provider in the Republic.
- (8) The Commissioner may from time to time by notice in writing to a licensed Financial Services Business:
 - (a) impose new or additional conditions of a license; or
 - (b) vary or remove any existing condition of a license, or add to any such condition.
- (9) Where the Commissioner intends to issue a notice under subsection (8) he shall inform the licensed Financial Services Provider of his intention to do so and afford it a period of seven (7) days in which to make representations in that regard; the Commissioner will take into account any such representations in deciding whether or not to proceed with the issue of the notice.

§126. License fee

- (1) Every Financial Services Provider shall pay to the Commissioner an annual license fee and other associated fees according to the schedule set by the Commissioner from time to time by Regulation. Licenses are issued for Republic of the Marshall Islands Government fiscal year ending on the last day of September.
- (2) For license renewals, fees must be paid any time before September 30 of each year preceding the fiscal year to which the license relates. For new licenses, fees must be paid prior to the commencement of operations.
- (3) All fees paid to the Banking Commission shall be used for the purposes stated under Section 111(2) of this Chapter.

§127. Approval of the Commissioner for any change.

- (1) The prior approval in writing of the Commissioner shall be required:
 - (a) for a licensed Financial Services Provider to open or close a branch, agency or office in any part of the Republic or change the location of any existing place of business;
 - (b) for a Financial Services Provider to open a representative office or such type of office of business in the Republic;
 - (c) for a licensed domestic Financial Services Provider to acquire the business of another Financial Services Provider or of any branch of another Financial Services Provider;
 - (d) for a person, group of persons, partnership, company or corporation to acquire a substantial interest in a licensed Financial Services Provider incorporated in the Republic by or under any written law.

§128. Suspension, revocation or variation of license.

- (1) The Commissioner may suspend, revoke or vary license in the case of a licensed Financial Services Provider:
 - (a) where the Commissioner is satisfied that the licensed Financial Services Provider has failed to comply with any of the terms and conditions of its license issued under Section 125 of this Chapter;
 - (b) where the Financial Services Provider has failed to pay its debts generally as they become due;
 - (c) where a licensed Financial Services Provider has ceased to do financial services business;
 - (d) which violates any of the provisions of this Chapter or the regulations made there under;
 - (e) which fails to comply with any direction issued by the Commissioner as specified under this Chapter or the regulations made there under;
 - (f) which fails to pay the license fee when due;
 - (g) that knowingly gives any information to the Commissioner which is untrue or misleading;
 - (h) which fails to comply with the corporate law of the Republic;

- (i) which is, in the opinion of the Commissioner, carrying on business in or from within the Republic in a manner detrimental to the public interest; or
 - (j) which is owned, or has ownership in common with a financial institution incorporated outside the Republic whose license to carry on business in that country has been suspended or withdrawn by the appropriate authority outside the Republic;
 - (k) where the Commissioner is satisfied that there are reasonable grounds to believe that money laundering activity is taking place the Commissioner may, by notice given in writing, suspend the license and require the Financial Services Provider to show cause why the license should not be revoked or varied; or revoke the license.
- (2) A licensed Financial Services Provider may, within 15 days of the date of issue of notice of suspension or revocation of the license under subsection (1) above, submit to the Commissioner reasons why the license should not be revoked or varied.
- (3) The Commissioner shall within 15 days of the receipt of the reasons referred to in subsection (2) above:
- (a) revoke the license, (b) vary conditions of the license; or
 - (c) withdraw the suspension unconditionally.
- (4) The Commissioner shall within 14 days of the receipt of the reasons referred to in Subsection (3) above, decide whether or not to proceed with the revocation.
- (5) Notwithstanding the provisions of Subsections (2), (3) and (4) above, no notice of intention to suspend or revoke a license in the circumstances in Subsection (1)(c), (d), (k) and (1) shall be required; in such case notice to be given shall comprise notice of suspension or revocation effective forthwith.
- (6) Forthwith upon revocation of a license under this Section, the licensed Financial Services Provider whose license is revoked shall cease to carry on financial services business in any manner whatever while the revocation is in effect.

§129. Principles governing restrictions.

The powers conferred on the Commissioner and the Cabinet by this Part shall be so exercised as to regulate banks holding domestic licenses, and the supply, availability, cost and character of bank credit in accordance with the national monetary policy as determined by the Cabinet.

§130. Lending restrictions.

- (1) A licensed domestic bank engaged in local banking business shall not:
- (a) grant to any person, partnership, corporation or to any group of corporations or of persons which group is under the control or influence of one and the same person, an loan or credit facility, or incur any other liability on behalf of such person, partnership, corporation or group so that the total value of the loans, credit facilities, and other liabilities with respect to such person, partnership, corporation or group is at any time more than twenty-five percent (25%) of the sum of the unimpaired paid-up capital and surplus of the licensed bank;

...

- (3) Any bank which is in contravention of the provisions of this Section upon the commencement of this Chapter shall report the details to the Commissioner without revealing the names of the persons so involved. Such bank shall within twelve (12) months, or such further time as the Cabinet may determine, comply with the requirements of this Section.

§131. Interest rates.

- (1) The Commissioner may, with the approval of the Cabinet from time to time make an order.

...

- (5) The Commissioner shall review and make recommendations to the Cabinet every six (06) months on the maximum rates of interest which banks may charge under Subsection (1)(b) of this Section."
- (11) Section 133 of the Banking Act is hereby amended as follows:

§133. Provision for bad debts.

Every domestic licensed bank shall:

- (a) maintain provision for its bad and doubtful debts, if any; and

- (b) before any profit or loss is disclosed ensure that such provision is made.
- (12) Part IX – Directors and Officers provision are hereby amended as follows:

“PART IX - DIRECTORS AND OFFICERS

§139. Directors.

- (1) No person shall be appointed or elected as a director of a licensed domestic bank if:
 - (a) he is a member of Nitijela;
 - (b) he has been a bankrupt, has suspended payment, or has compounded with his creditors; or
 - (c) he has been convicted of any offense involving dishonesty or fraud.
- (2) A director of a licensed domestic bank shall cease to be a director if:
 - (a) he becomes subject to any disqualifications mentioned in Subsection (1) of this Section;
 - (b) he becomes permanently incapable of performing his duties; or
 - (c) he has been convicted of any act or thing which is of a fraudulent or illegal character, or which is manifestly opposed to the objectives and interests of the licensed bank.

§140. Change of directors and officers.

Except with the prior approval of the Commissioner, no domestic licensed bank shall change its directors or principal officer. An application for such change shall be made in writing along with the information required in Section 108(1)(e) and (k) of this Chapter.

§141. Officers.

- (2) No person who has been a director or a chief executive officer of a bank which has been wound up by the court shall, without express authority of the Commissioner, act or continue to act as a director or the chief executive officer of a licensed domestic bank.

§141A. Other requirements.

The Commissioner shall issue fit and proper requirements, in addition to those set forth under Sections 139, 140 and 141, for bank directors, managers and officers from time to time and as necessary.

§142. Unsound or unsafe practices.

- (2) A cease and desist order shall become effective thirty (30) days after the issuance of an order under Subsection (1) of this Section upon the licensed bank concerned, and shall remain effective except if and to the extent that the Cabinet decides otherwise, either before or after the effective date of the order.

§144. Maximum percentage of shares.

The Commissioner may, with the approval of the Cabinet regulate the maximum percentage which may be held by way of shares in a licensed domestic bank incorporated in the Republic conducting local banking business, by a corporation or firm or individual or in the aggregate by an individual, his close relations and a corporation or firm in which his close relations have a substantial interest.

§146. Business restrictions.

- (1) Notwithstanding anything contained in any other written law or in any contract, no licensed domestic bank shall directly or indirectly deal in the buying or selling or bartering of goods, except in connection with the realization of security given to or held by it, or engage in any trade, or buy, sell or trade goods for others otherwise than in connection with bills of exchange received for collection or negotiation. This Subsection shall not apply to any such business as aforesaid which was in the course of being transacted at the commencement of this Chapter, provided that the said business shall be completed before the expiration of one year from such commencement.
- (2) No licensed domestic bank may issue bearer certificates of deposit.

§147. Payment of dividends on profits.

No licensed domestic bank shall pay any dividend on its shares until all its capitalized expenses including preliminary expenses and other items of expenditure not represented by tangible assets have been completely written off.

§148. Issuance and transfer of capital stock.

- (1) A domestic licensed bank shall issue shares only to registered and named holders, who shall be the beneficial owners, and the articles of incorporations and by-laws shall not permit the issuance of shares in bearer form.
- (3) Without the prior approval of the Commissioner, no domestic licensed bank shall agree to sell, transfer or dispose of its capital stock to any one person who, upon acquiring the stock, would hold in total more than ten percent (10%) of the stock issued by the bank. At the time of application for approval of the sale, transfer or disposition, documentation shall be submitted pursuant to Section 108(1)(d) and (e) of this Chapter. In special circumstances, where the sale, transfer or disposition does not affect the control of the bank, the Commissioner may, at his discretion, waive provisions of the said documentation.

§149. Changes to corporate structure.

- (2) In the case where any licensed domestic bank intends to change its name or the authorized capital, such bank shall obtain the prior written approval of the Commissioner for such change.

§150. Minimum capital ratios.

In the case of a domestic licensed bank conducting local banking business the Commissioner may, from time to time by order, prescribe the minimum ratios which the capital and surplus of banks shall bear to the total volume of their assets or liabilities or to any specified categories of such assets or liabilities.

§151. Insurance of deposits.

- (1) Every bank holding a domestic license shall insure all deposits held by the bank, and keep such deposits insured at all times, with the Federal Deposit Insurance Corporation of the United States, or in some other manner approved by the Commissioner as being equally as reliable. The amount of insurance shall be the maximum provided by the Federal Deposit Insurance Corporation to the banks.
- (2) The Federal Deposit Insurance Corporation shall have the right to be subrogated to the rights of depositors in the case of a domestic licensed bank being closed or wound up where depositors are insured by the Corporation.

§152. Declaration of interest.

- (1) Every director of a licensed domestic bank who is in any manner, whatsoever, whether directly or indirectly, interested in any accommodation or proposed accommodation from the licensed bank shall, as soon as practicable, declare the nature of his interest to its Board of Directors, and its secretary or manager shall cause the declaration to be circulated forthwith to all directors.
- (2) A director shall not take part in any deliberation or decisions of the Board with regard to any business transacted or proposed to be transacted by a licensed domestic bank in which the director or a close relation of the director, or a concern in which the director has a substantial interest, is interested, and the director shall withdraw from the meeting of the Board at which such business is discussed or transacted while the deliberation is in progress or decision is being made.

§156. Regulations and Adoption of the Basel Principles on Bank Supervision.

Notwithstanding the provisions of the *Administrative Procedure Act 1979*, 6 MIRC 1, the Commissioner, may make regulations with respect to any matter affecting, or connected with, or incidental to, the proper carrying out of the provisions of this Chapter including the adoption and implementation of all core principles of the Basel Committee on Banking Supervision from time to time and as necessary, but not limited to, capital and liquidity adequacy, loan concentrations or other risk exposures and provisioning against doubtful credits, provided, however, the Commissioner shall, before the regulations are made, give adequate opportunity to the licensed banks to make representations on the intended regulations.

§161. Bank disclosure of interest and fees.

Each bank holding a domestic license shall:

- (a) upon opening a savings account of whatever nature or issuing a certificate of deposit, inform the customer in simple and clear written language about the manner in which interest is calculated, the periods for which the circumstances under which interest is and is not payable, the rate of interest, and the penalties and forfeitures, if any;

§162. Lending Requirements with respect to Domestic Deposits Received.

- (1) Subject to capital, reserve and liquidity requirements and lending restrictions contained in this Chapter, banks shall make available for lending purposes in the Republic at least seventy percent (70%) of outstanding deposits held by residents of the Republic.
- (2) Banks holding a domestic license shall publish annually an audited financial statement showing deposits and loans outstanding, and the Commissioner shall monitor on a quarterly basis the ration of loans to deposits of holding a domestic license.

§164. Offenses relating to this Chapter.

- (1) Every person who contravenes or fails to comply with any of the provisions of this Chapter or any rule, regulation, order, direction or requirement made or given under this Chapter shall be guilty of an offense and shall upon conviction be liable to a fine not exceeding \$10,000.
- (2) Every person who is guilty of an offense for which no punishment is prescribed in the preceding provisions, shall upon conviction be liable to a fine not exceeding \$10,000.
- (3) Any person who attempts to commit, or does any act preparatory to the commission of any offense under this Chapter, shall be deemed to be guilty of such offense.
- (4) This section does not apply to Part XIII of this Act.
- (5) The Banking Commissioner shall refer all violations under this Chapter to the Office of the Attorney General for enforcement proceedings in the High Court of the Republic of the Marshall Islands; and all monies collected under the authority of this paragraph shall be deposited into the Fund within the National Treasury of the Republic.

§167. Commissioner's authority in prohibiting money laundering activity.

- (1) The Commissioner, amongst other duties:
 - (c) may upon prior notice, enter the premises of any banks and financial services provider during ordinary business hours to inspect any record and ask any question relating to such

record, make notes and take copies of the whole or any part of the record;

- (e) may instruct any banks, DNFBPs and financial services providers financial to take such steps as may be appropriate to facilitate any investigation anticipated by the Commissioner;
- (f) may compile statistics and records, disseminate information within the Republic of the Marshall Islands or elsewhere, make recommendations arising out of any information received; issue guidelines to banks, DNFBPs, and financial services providers;
- (g) shall create training requirements and provide such training for any banks, DNFBPs, and financial services providers financial institution and cash dealers with respect to transaction record-keeping and reporting obligations provided for in this Act;
- (i) shall have the authority to request additional information from banks, DNFBPs, and financial services providers where the Commissioner has reasonable grounds to believe that such information is essential in discovering money laundering activity, proceeds of crime, and/or the financing of terrorism;
- (l) shall have the authority and ability to apply for a warrant to enter any premises belonging to or in the possession or control of a bank, DNFBPs, and financial services providers or any officer or employee thereof, and to search the premises and remove any documents, materials, or other things therein for the purposes of preventing money laundering activity, the financing of terrorism, or tracing the proceeds of crime, as so ordered by the High Court and specified in the warrant other than as authorized in Subsection (c) and (i) above.

§168. Banks, DNFBPs and Financial Services Providers to verify customer's identity.

- (1) A bank, DNFBP, or financial services provider shall maintain accounts and/or records in the name of the account holder. They shall not open or keep anonymous accounts or accounts which are in fictitious or incorrect names.

- (2) A bank, DNFBP, or financial services provider shall record and verify the identity, representative capacity, domicile, legal capacity, occupation or business purpose of persons, as well as other identifying information on those persons, whether they be occasional or usual clients, through the use of documents providing convincing evidence of their legal existence and the powers of their legal representative, or any other official or private documents, especially when opening new accounts or passbooks, entering into fiduciary transactions, renting of safe deposit boxes, or performing cash transactions over an amount pursuant to the requirement outlined in paragraph 1 of Section 170 (1) of the Act.
- (3) If it appears that an applicant requesting it to enter into any transaction, whether or not in the course of a continuing business relationship, is acting on behalf of another person, the bank, DNFBP, or financial services provider shall take reasonable measures to establish the true identity of any person on whose behalf or for whose ultimate benefit the applicant may be acting in the proposed transaction, whether as trustee, nominee, agent or otherwise.
- (4) Nothing in this Section shall require the production of any evidence of identity where:
 - (a) the applicant is itself a bank, DNFBP, or financial services provider to which this Act applies;

§169. Banks, DNFBPs, Financial Services Providers to establish and maintain customer records.

- (1) Every bank, DNFBP, and financial services provider shall retain records for all transactions. These records shall be kept in a readily recoverable form.
- (2) Banks, DNFBPs, and financial services providers shall maintain records on customer identification, account files and business correspondence for six (6) years after the account has been closed, and all records necessary to reconstruct financial transactions for six (6) years after the conclusion of the transactions.
- (3) Records regarding financial transactions shall contain particulars sufficient to identify the following:
 - (a) name, address and occupation (or where appropriate business or principal activity) of each person:

- (ii) if known, on whose behalf the transaction is being conducted as well as the method used by the bank, DNFBP, or financial services provider to verify the identity of each such person;
 - (d) the type and identifying number of any account with the bank, DNFBP, or financial services provider involved in the transaction;
 - (f) the name and address of the bank, DNFBP, or financial services provider, and of the officer, employee or agent of the bank, DNFBP, or financial services provider who prepared the report;
 - (g) multiple transactions which, altogether, exceed ten thousand dollars, shall be treated as single transaction if they are undertaken by or on behalf of any one person during any 24-hour period. In such a case, when a bank, DNFBP, or financial services provider, its employees, officers or agents have knowledge of these transactions, they shall record these transactions.
- (4) Record required under Subsection (1) shall be kept by the bank, DNFBP, or financial services provider for a period of at least six (6) years from the date the relevant business or transaction was completed.
- (5) A bank, DNFBP, or financial services provider, its employees, officers or directors, wilfully violating the requirement of Section 169 or 170 commits an offense punishable by a fine of not more than \$2,000,000 or imprisonment for not more than twenty (20) years, or both.

§170. Banks, DNFBPs, and Financial Services dealers to report suspicious transactions.

- (1) Banks, DNFBPs, and financial services providers shall, within 3 days of the transaction, report to the Commissioner all suspicious transactions, including but not limited to those which are ten thousand dollars (\$10,000) or more or multiple transactions which, altogether, exceed ten thousand dollars (\$10,000) if they are undertaken by or on behalf of any one person during any twenty-four hour period or, complex or unusual transactions, whether completed or not, and all unusual patterns of transactions, and otherwise significant but periodic transactions, which have no

apparent economic or lawful purpose. The Commissioner may provide additional information or criteria to be used in identifying suspicious transactions under this subsection.

- (2) A bank, DNFBP, or financial services provider which has reported a suspicious transaction in accordance with this Section shall, if requested to do so by the Commissioner or Attorney-General, give such further information as it has in relation to the transaction.
- (3) The Commissioner, Attorney-General, banks, DNFBPs, financial services providers shall maintain reports required by this Section for a period of fifteen (15) years.
- (4) Banks, DNFBPs, and financial services provider, its employees, officers or directors, shall not notify any person or entity other than the Commissioner or Attorney-General, a court of competent jurisdiction upon process issued, or other person as may be authorized by law, of the information, record, or report that has been prepared, or otherwise referred or furnished to the Commissioner, Attorney-General or court of competent jurisdiction, or other lawfully authorized person. Any person or bank, DNFBP, or financial services provider who improperly discloses such information commits an offense, punishable by a fine of not more than \$2,000,000.00 or imprisonment for not more than 20 years, or both.

§170A. Reporting of suspicious transactions and activities related to terrorist financing.

- (1) Banks, DNFBPs, and financial services providers must report any transaction, attempted transaction or other activity where they suspect or have reasonable grounds to suspect that the transaction, attempted transaction or other activity may be related to terrorism, terrorist acts, a terrorist organization, an individual terrorist, terrorist property or financing of terrorism.
- (4) A bank, DNFBP, financial services provider, its employees, officers or directors wilfully violating the requirements of this section commits an offence punishable by a fine of not more than \$2,000,000 or imprisonment for not more than twenty (20) years, or both.
- (5) Where a person is employed by a bank, DNFBP, or financial services provider and his or her employer has an established procedure for

the reporting of suspicious, it is a defense for him to prove that he reported his suspicion in accordance with that procedure.

§178. Immunity where suspicious transaction reported.

No action, suit or other proceedings shall lie against any bank, DNFBP, or financial services provider, or any officer, employee or other representative of the institution acting in the ordinary course of the person's employment or representation, in relation to any action taken in good faith by that bank, DNFBP, or financial services provider or person pursuant to this Act.

§180. Currency Transaction Reports

The Commissioner of Banking may prescribe a regulation that requires a bank, DNFBP, financial services provider involved in a transaction for the payment, receipt or transfer of currency to file a report on the transaction with the Commissioner's office and collect and maintain supporting documentation pertaining to such transaction. The requirements for a when a currency transaction report must be filed may include, but are not limited to, a currency transaction that exceeds \$10,000 or involves multiple transactions, taken by or on behalf of a single person within a 24-hour period and, when aggregated, exceeds \$10,000. The Commissioner of Banking may also prescribe under the regulation the right to exempt certain transactions, including a class of transactions, from the filing requirement by the use and maintenance of an exemption registry by banks, DNFBPs, and financial services provider. The Commissioner has the authority to revoke any exemption granted under the regulation.

§181. Assessment of Civil Money Penalties

- (1) In addition to any criminal penalties or fines authorized by Part XIII of the Banking Act, 1987, each bank, DNFBP, and financial services provider, and any partner, director, officer, employee, or person participating in the conduct of the affairs of the bank, DNFBP, or financial services provider who violates any provision of Part XIII, or any regulation promulgated by the Banking Commissioner implementing any provision of Part XIII shall be liable for a civil money penalty of not more than \$10,000 per violation.
- (2) Collection: The Banking Commissioner shall refer all violations under subsection (1) above to the office of the Attorney-General for enforcement proceedings in the High Court of the Republic of the Marshall Islands; and

- (a) all monies collected under the authority of this paragraph shall be deposited into the Fund within the National Treasury.
- (3) The resignation, termination of employment or termination of participation in the affairs of any partner, director, officer, employee, or person participating in the conduct of the affairs of a bank, DNFBP, or financial services provider shall not affect the jurisdiction of the court to issue judgement against such person or entity within six years of their resignation, termination of employment or termination of participation in the affairs of the bank or financial services provider institution or cash dealer.

§182. Financial Intelligence Unit and the Director

- (1) This Section hereby establishes the Financial Intelligence Unit which shall be referred to as the Unit in this Act.
- (2) The Unit shall be responsible for prohibiting money laundering with the instruction of the Commissioner of Banking as outlined under Section 167 of this Chapter.
- (12) Part XII – Money Laundering provision are hereby amended as follows:

§183. National Anti-Money Laundering & Combating the Financing of Terrorism Council

- (1) This Section hereby establishes the National Anti-Money Laundering and Combating the Financing of Terrorism Council, which shall be referred to as the National AML/CFT Council in this Act, consisting of:
 - (a) the Attorney General or his designee;
 - (b) the Banking Commissioner;
 - (c) the Unit, Banking Commission;
 - (d) the Police Commissioner;
 - (e) the Division of Customs and Revenue;
 - (f) the Auditor General or a designee; and
 - (g) the Registrar of Corporations for Resident Domestic Entities, Non-Resident Domestic Entities, and Foreign Investments.
- (2) The Council may invite other persons to attend a meeting but such persons shall have no right to vote.

- (3) Except for the purpose of performing duties or in the exercise of functions under this Act or when lawfully required to do so by any court, a member of the National AML/CFT Council shall not disclose any information or matter which has been obtained in the performance of his duties or in the exercise of his functions under this Act, except:
- (a) for the detection, investigation or prosecution of a serious offense, a money laundering offense or an offense of financing of terrorism; or
 - (b) for the enforcement of the *Proceeds of a Crime Act 2002*.
- (4) The functions of the Council are:
- (a) to advise the Minister on any matters relating to the prevention of money laundering or the financing of terrorism;
 - (b) to make recommendations to the Minister and Cabinet on any matters relating to the prevention of money laundering or the financing of terrorism;
 - (c) to assist the Unit and the Minister and Cabinet in the formulation of policies or strategies relating to the prevention of money laundering or the financing of terrorism; and
 - (d) to assist the Banking Commission in the coordination between various Government ministries, agencies and other statutory entities on matters relating to the prevention of money laundering or financing of terrorism.

§184. Power to Examine.

The Banking Commissioner or any person authorized in writing by the Commissioner may examine the records and inquire into the business and affairs of any bank or financial services provider for the purposes of ensuring compliance with Sections 168, 169, 170, 170A, and 180 of Part XIII of this Chapter.

- (13) A new Part XV is inserted on Independence, Accountability and Resourcing as follows:

PART XV –FUND

§188. Banking Commission Fund.

- (1) The Republic of the Marshall Islands Banking Commission Special Revenue Fund ("Fund") is hereby established. The Fund shall be a revolving fund within the National Treasury and under the control and supervision of the Ministry of Finance, which shall provide for its administration in accordance with the *Financial Management Act 1990*.
- (2) The Commission shall maintain all transaction records made under the Fund and shall produce all records to the Office of the RMI Auditor General at the end of each financial year for audit purposes.
- (3) The Commissioner, with the approval of the Minister, may invest monies of the Fund which:
 - (a) have not been allocated or encumbered for any other purpose;
 - (b) in the Commissioner's judgment, are in excess of the amounts necessary for meeting the immediate requirements for the operational budget of the current fiscal; and
 - (c) in the Commissioner's judgment will not impede or hamper the necessary financial operations of the Commission.
- (4) Any such investments shall be subject to the same term of maturity as provided for under section 119 of the *Financial Management Act 1990* and any income derived therefrom may be reinvested or paid into the Fund.
- (5) Payments into the Fund shall include:
 - (a) Any money appropriated by the Nitijela for the operations of the Commission;
 - (b) All fees, fines, and sums paid to and collected by the Commission for or with respect to any violations under this Act;
 - (c) All grants and gifts, other than funds appropriated by the Nitijela, received by the Commission to assist in its functions under this Act;
 - (d) All dividends from any investments undertaken by the Commission;
- (6) Payments Out of the Fund shall be made only to support the operations of the Commission, including, but not limited to:

- (a) fees, costs, dues and contributions required of regional and international organizations membership fees and travel expenses incurred in relation to attendance of such organizations' meetings;
 - (b) costs in relation to approved investments referred to under Subsection 3 of this Section; and
 - (c) any other costs in relation to the overall operations of the Commission.
- (7) The Commission shall, in advance of each financial year, prepare and present a budget to the Minister, for the expenditure of monies out of the Fund for that financial year. The budget, with the approval of the Minister, may be revised from time to time as the Commission deems necessary. Approved budgets shall be forwarded to the Secretary of Finance and the Secretary of Finance shall assure that sufficient funds are retained to meet such costs.
- (8) The Secretary Finance shall cause to be maintained, accounts and records of the following in accordance with generally accepted accounting principles for government funds, as adopted and occasionally amended by the Government Accounting Standards Board:
 - (a) the Fund;
 - (b) the disposition of money paid out of the Fund;
 - (c) the property purchased with money from the Fund; and
 - (d) the Fund's investment portfolio and all transactions thereto.
- (9) The accounts and records referred to in subsection 8 of this Section are subject to audit pursuant to Article VIII, Section 15 of the Constitution.
- (10) The Fund and related transactions are not subject to any tax, rate, charge or impost under any other law.

§103. Effective Date.

This Act shall come into force in accordance with Article V, Section 21, of the Constitution and the Rules of Procedures of the Nitijela.

CERTIFICATE

I hereby certify:

1. That Nitijela Bill No: 94ND2 was passed by the Nitijela of the Republic of the Marshall Islands on the 25th day of September 2019; and
2. That I am satisfied that Nitijela Bill No: 94ND2 was passed in accordance with the relevant provisions of the Constitution of the Republic of the Marshall Islands and the Rules of Procedures of the Nitijela.

I hereby place my signature before the Clerk this 1st day of October 2019.



Hon. Kenneth A. Kedi

Speaker

Nitijela of the Marshall Islands

Attest:



Morean S. Watak

Clerk

Nitijela of the Marshall Islands

