



Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

BANKING (AMENDMENT) ACT 2016

Sponsored by:

HON. MINISTER BRENSON S. WASE

Approved:

HON. SPEAKER KENNETH A KEDI /s/

**NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
37TH CONSTITUTIONAL REGULAR SESSION, 2016**



Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

BANKING (AMENDMENT) ACT 2016

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NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
37TH CONSTITUTIONAL REGULAR SESSION, 2016



Republic of the Marshall Islands
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BANKING (AMENDMENT) ACT 2016

A BILL FOR AN ACT to provide for the establishment of the Banking Commission as an independent financial supervisory authority in the Republic to responsible for the licensing, regulation and supervision of banks and financial services providers in and from the Republic and for other 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 2016.

§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 2016”

(2) Section 102 of the Banking Act is hereby amended as follows:

(s) “**non-resident**” means an individual, corporation, or other juridical person or any unincorporated body not included in the definition of “resident”;

~~(t) “offshore banking business” means conducting banking business from within the Republic with nonresidents of the Republic;~~

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- (u) ~~“offshore license” means a license issued to conduct banking business from within the Republic with nonresidents of the Republic;~~
- (t) “financial services providers” means any person who carries on a business as a financial institution or cash dealer as defined in section 102(e), including a person who offers financial products, 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;
- (v) “person” means an individual, company, corporation, partnership or any body incorporate or unincorporate and includes every director, manager, agent or secretary of such person;

(3) A new Section 103A is hereby inserted to establish the Banking Commission as an independent entity as follows:

§103A. Establishment of the Republic of the Marshall Islands Banking Commission

- (1) There is hereby established, the Republic of the Marshall Islands Banking Commission (Banking Commission).
- (2) The Republic of the Marshall Islands Banking Commission is hereby established as an independent regulatory body corporate with full capacity under the laws of the Republic of the Marshall Islands, to possess its own seal, and in particular, is vested with the capacity to contract, to incur liabilities, to acquire and to dispose of movable and immovable property, and to be a party to legal proceedings in its own name.

§103B. Powers of the Commission.

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- (1) The Commission shall exercise all powers specifically granted by this Chapter and other applicable laws and regulations and such incidental powers as shall be reasonably necessary to carry out its powers under this Chapter, including:
- (a) the powers to hire and discipline its own employees, including the terms and conditions of employment of its employees;
 - (b) The power to hold and manage its own funds or accounts;
 - (c) The power to enter into contracts;
 - (d) The power to acquire and own movable or immovable property, either through purchase or lease agreement;
 - (e) And any other powers necessary to ensure the efficient administration of the affairs of the Commission;
- (2) The Republic of the Marshall Islands Banking Commission is authorized to invest in assets and securities issued by entities that are not subject to its direct supervision or any type of asset or security that will generate sufficient revenue to sustain its operations.
- (3) The operational independence of the Republic of the Marshall Islands Banking Commission shall be duly observed, and no person either in government, industry or the general public shall take any action that results in the interference of, or which compromises the operational independence of the Banking Commission.
- (4) In exercising its powers under Subsection (1)(a) above, the Commission shall promulgate its own rules and regulations and implement its own terms and condition of employment for its employees. Where it deems necessary, the Commission may adopt Rules and Regulations, and terms and conditions of employment akin to those Rules and Regulations, and terms and

conditions of employment, utilized by the Public Service Commission;

(5) The application of the provisions of Article VII of the Constitution of the Republic of the Marshall Islands are, in the context of the exercise of the powers set forth above, is hereby excluded.

§103C. Composition of the Republic of the Marshall Islands Banking Commission

The Republic of the Marshall Islands Banking Commission shall comprise of;

- (a) A Governing Board appointed as set out below;
- (b) A Banking Commissioner appointed by the Board, in consultation with the President as set out below; and
- (c) Staff, appointed by the Banking Commissioner, in accordance with the Rules and Regulations approved by the Governing Board.

§103D. Accountability.

- (1) The Banking Commission shall publish its objectives and be accountable and transparent on the discharge of its duties through its internal website and appropriate external media.
- (2) The Banking Commission shall have an effective internal governance and communication process that enables supervisory decisions to be taken at a level appropriate to the significance of the issue and timely decisions to be taken in the case of an emergency.

§103E. Adequate Resourcing.

- (1) An internal process shall be established to ensure that all staff hired into the Banking Commission have the credibility based on their academic qualification, professionalism, and integrity.

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(2) For the proper conduct of its affairs, the Banking Commission shall establish policies on how to avoid conflicts of interest and on the appropriate use of information obtained through work, with sanctions in place if these are not followed.

(3) The Banking Commission shall be provided with adequate resources for the conduct of effective supervision and oversight and financed in a manner that does not undermine its autonomy or operational independence. This includes:

(a) budget that provides for staff in sufficient numbers and with skills commensurate with the risk profile and systemic importance of banks including financial services providers under its supervision;

(b) salary scales and benefits package that allow it to attract and retain qualified staff;

(c) a budget that can enable it to commission external experts with the necessary professional skills and independence, and subject to necessary confidentiality restrictions to conduct supervisory tasks and other tasks assigned by the Cabinet;

(d) a training budget and programme that provide regular training for staff;

(e) a technology budget sufficient to equip its staff with the tools needed to review the financial sector and assess individual banks and financial services providers; and

(f) a travel budget that allows appropriate onsite work, effective cross-border cooperation and participation in domestic and international meetings of significant relevance.

103F. The Governing Board

(1) A Governing Board is hereby established to supervise and manage the conduct of the affairs of the Republic of the Marshall Islands Banking Commission by the

Banking Commissioner, in accordance with the provisions of this Chapter.

(2) The Governing Board shall consist of 5 voting members as follows:

(a) The Minister responsible, who shall serve as Chair of the Board;

(b) The Attorney General or his designee;

(c) The Police Commissioner or his designee;

(d) Two (2) members from the public at large with experience in the banking and financial sector, appointed by Cabinet;

(3) The Banking Commissioner shall serve as an ex-officio member of the Board, and Secretary to the Board;

(4) Persons who are officers, employees, or agents, of any banking institution in the Republic, or who represents the interests of the banking or financial institutions in the Republic are not eligible for appointment as members of the Board under Subsection (2) (d) above.

§103G. Powers and Functions of the Governing Board.

The Governing Board shall have the following powers:

(a) Approve policies for financial institutions' supervision and regulation as submitted by the Banking Commissioner;

(b) Approve the adoption of annual budgets for the operation of the Commission;

(c) to adopt the by-laws of the Commission and determine the policies applicable to the administration and operations of the Commission;

(d) to promulgate all regulations and adopt guidelines that necessary for the operations of the Commission;

(e) adopt regulations approving fees established by the Banking Commissioner under this Chapter;

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§107. Requirement of license.

(1) No banking business shall be transacted in the Republic except by a corporation which is in possession of a valid license issued by the Commissioner of Banking and approved by the Board cabinet, on the recommendation of the Commissioner, authorizing the transaction of banking business in or from within the Republic.

(6) 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:

(i) ~~in the case where the application is with respect to an offshore license, the name and address of the Resident Agent and a letter of authority as required in Section 124(1)(b) of this Chapter.~~

(7) Section 109(2) of the Banking Act is hereby amended as follows:

§109(2). Grant or refusal of license.

.....

(2) On completion of his investigation, the Commissioner, with the approval of the Board Cabinet, shall grant, or without assigning any reason therefore, refuse to grant a license.

(8) Sections 110(1)(A) and 110(5) 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 the Board Cabinet:

(a) shall specify the type of activities that ~~whether~~ the bank shall engage in. ~~local or offshore banking business;~~

.....

~~(5) A domestic license granted under this Section shall remain valid unless revoked in accordance with Section 113. An offshore license granted under this Section shall initially be valid from the date of issue to the end of December of the same year and the offshore license shall thereafter be issued for a period of twelve (12) months beginning on the first day of January of each succeeding year.~~

(9) Sections 111 of the Banking Act is hereby amended as follows:

§110. License fees.

~~(1) Every bank shall pay to the Commissioner an annual license fee according to the following schedule:~~

~~(a) domestic banking license: \$7,500;~~

~~(b) savings and loan association license: \$6,000;~~

~~(c) offshore banking license: \$10,000.~~

~~(2) Each branch of a bank licensed to operate in the Republic shall be considered a separate entity and shall pay an annual license fee of \$1,000.~~

(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.

(10) Sections 113(1), (3) and (5) of the Banking Act is hereby amended as follows:

§113. Suspension, revocation or variation of license.

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- (1) In the case of a licensed bank:
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- (m) where the Commissioner is satisfied that there are reasonable grounds to believe that money laundering activity is taking place the Commissioner may, with the approval of the Board Cabinet, by notice given in writing, suspend the license and require the bank to show cause why the license should not be revoked or varied; or revoke the license.
- (3) The Commissioner shall, with the approval of the Board Cabinet, within 30 days of the receipt of the reasons referred to in subsection (2) above:
- (5) The Commissioner shall, with the approval of the Board Cabinet, within 14 days of the receipt of the reasons referred to in subsection (4) above, decide whether or not to proceed with the revocation.

(11) 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, with the approval of the Board, authorizing the transaction of financial services business in or within the Republic.

1 (2) Any person desirous of obtaining approval for licensing as a
2 financial services provider shall apply in writing to the
3 Commissioner in such manner as the Commissioner may
4 specify by Regulation.

5 (3) The Commissioner of Banking shall be authorized to conduct
6 prudential supervision of all licensed financial services
7 providers and issue new prudential standards by way of
8 Regulations for this purpose.

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§124. Grant or refusal of license.

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(1) The Commissioner shall conduct an investigation of the
12 application as deemed necessary to determine:

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(a) that all the requirements of existing laws and
14 regulations have been complied with; and

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(b) whether the available financial resources, organization,
17 controls, administration and integrity and financial
18 services business experience of the organizers can
19 reasonably assure the safe and sound operations of the
20 proposed financial services business, and that it can
21 effectively serve the needs of the Republic.

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(2) On completion of his investigation, the Commissioner, shall
27 grant, or without assigning any reason therefore, refuse to
28 grant a license.

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§125. Financial Services Provider license.

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(1) In granting a license to a Financial Services Provider (which
34 license shall be in writing) the Commissioner may specify any
35 terms and conditions which shall be complied with by the
36 Financial Services Provider.

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(2) No person may be granted a license in a name which, in the
41 opinion of the Commissioner, is likely to mislead or confuse
42 the persons for which it is intended to provide any or all of its
43 services.

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(3) No license shall be issued or renewed except upon the
47 payment of the license fee and other associated fees specified
48 by Regulation.

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

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28 **§126. License fee**

- 29 (1) Every Financial Services Provider shall pay to the
30 Commissioner an annual license fee and other associated fees
31 according to the schedule set by the Commissioner from time
32 to time by Regulation. Licenses are issued for Republic of the
33 Marshall Islands Government fiscal year ending on the last
34 day of September.
- 35 (2) For license renewals, fees must be paid any time before
36 September 30 of each year preceding the fiscal year to which

1 the license relates. For new licenses, fees must be paid prior to
2 the commencement of operations.

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4 (3) All fees paid to the Banking Commission shall be used for the
5 purposes stated under Section 111(2) of this Chapter.
6

7 **§127. Approval of the Commissioner for any change.**

8 (1) The prior approval in writing of the Commissioner shall be
9 required:

10 (a) for a licensed Financial Services Provider to open or
11 close a branch, agency or office in any part of the
12 Republic or change the location of any existing place of
13 business;

14 (b) for a Financial Services Provider to open a
15 representative office or such type of office of business in
16 the Republic;

17 (c) for a licensed domestic Financial Services Provider to
18 acquire the business of another Financial Services
19 Provider or of any branch of another Financial Services
20 Provider;

21 (d) for a person, group of persons, partnership, company or
22 corporation to acquire a substantial interest in a
23 licensed Financial Services Provider incorporated in the
24 Republic by or under any written law.
25

26 **§128. Suspension, revocation or variation of license.**

27 (1) The Commissioner may suspend, revoke or vary license in the
28 case of a licensed Financial Services Provider :

29 (a) where the Commissioner is satisfied that the licensed
30 Financial Services Provider has failed to comply with
31 any of the terms and conditions of its license issued
32 under Section 125 of this Chapter;

33 (b) where the Financial Services Provider has failed to pay
34 its debts generally as they become due;

- 1 (c) where a licensed Financial Services Provider has ceased
2 to do financial services business;
- 3 (d) which violates any of the provisions of this Chapter or
4 the regulations made there under;
- 5 (e) which fails to comply with any direction issued by the
6 Commissioner as specified under this Chapter or the
7 regulations made there under;
- 8 (f) which fails to pay the license fee when due;
- 9 (g) that knowingly gives any information to the
10 Commissioner which is untrue or misleading;
- 11 (h) which fails to comply with the corporate law of the
12 Republic;
- 13 (i) which is, in the opinion of the Commissioner, carrying
14 on business in or from within the Republic in a manner
15 detrimental to the public interest; or
- 16 (j) which is owned, or has ownership in common with a
17 financial institution incorporated outside the Republic
18 whose license to carry on business in that country has
19 been suspended or withdrawn by the appropriate
20 authority outside the Republic;
- 21 (k) where the Commissioner is satisfied that there are
22 reasonable grounds to believe that money laundering
23 activity is taking place the Commissioner may, with the
24 approval of the Board, by notice given in writing,
25 suspend the license and require the Financial Services
26 Provider to show cause why the license should not be
27 revoked or varied; or revoke the license.
- 28 (2) A licensed Financial Services Provider may, within 15 days of
29 the date of issue of notice of suspension or revocation of the
30 license under subsection (1) above, submit to the
31 Commissioner reasons why the license should not be revoked
32 or varied.
- 33 (3) The Commissioner shall, with the approval of the Board,
34 within 15 days of the receipt of the reasons referred to in
35 subsection (2) above:
- 36 (a) revoke the license,

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(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 Board 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 Board Cabinet.

§130. Lending restrictions.

(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 Board Cabinet may determine, comply with the requirements of this Section.

§131. Interest rates.

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

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§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, with the approval of the Board 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.

§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 Commissioner may fine any person who contravenes or fails to comply with any of the provisions of this Chapter or any rule, regulation, order, director or requirement made or given under this Chapter as a result of any examination, audit or inspection of any bank or financial services provider conducted by the Banking Commission.
- (6) The Commissioner may fine any person up to \$10,000 for each violation under this Chapter and proceeds collected shall be

1 payable and deposited to the accounts of the Banking
2 Commission.

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

6 (1) The Commissioner, amongst other duties:

- 7 (c) may upon prior notice, enter the premises of any banks
8 and financial services provider ~~financial institution or~~
9 ~~cash dealer~~ during ordinary business hours to inspect
10 any record and ask any question relating to such record,
11 make notes and take copies of the whole or any part of
12 the record;
- 13 (e) may instruct any banks and financial services provider
14 ~~financial institution or cash dealer~~ to take such steps as
15 may be appropriate to facilitate any investigation
16 anticipated by the Commissioner;
- 17 (f) may compile statistics and records, disseminate
18 information within the Republic of the Marshall Islands
19 or elsewhere, make recommendations arising out of any
20 information received; issue guidelines to banks and
21 financial services provider ~~financial institutions and~~
22 ~~cash dealers~~, and advise the appropriate officials;
- 23 (g) shall create training requirements and provide such
24 training for any banks and financial services provider
25 ~~financial institution and cash dealers~~ with respect to
26 transaction record-keeping and reporting obligations
27 provided for in this Act;
- 28 (i) shall have the authority to request additional
29 information from banks and financial services provider
30 ~~financial institutions and cash dealers~~ where the
31 Commissioner has reasonable ground to believe that
32 such information is essential in discovering money
33 laundering activity, proceeds of crime, and or the
34 financing of terrorism;
- 35 (l) shall have the authority and ability to apply for a
36 warrant to enter any premises belonging to or in the
37 possession or control of a bank, financial services

~~provider financial institution, cash dealer~~ 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 and Financial Services Providers ~~institutions and cash dealers~~ to verify customers identity.

- (1) A ~~bank or financial services provider institution or cash dealer~~ shall maintain accounts 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 or financial services provider institution or cash dealer~~ 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 to a ~~bank or financial services provider institution or cash dealer~~ 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 or financial services provider institution or cash dealer~~ shall take reasonable measure 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 or financial services provider ~~institution or a cash dealer~~ to which this Act applies;

§169. Banks and Financial Services Providers ~~institutions and cash dealers~~ to establish and maintain customer records.

(1) Every bank and financial services provider ~~institution or cash dealer~~ shall retain records for all transactions. These records shall be kept in a readily recoverable form.

(2) Banks and financial services providers ~~institutions and cash dealers~~ 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 or financial services provider ~~institution or cash dealer~~ to verify the identity of each such person;

(d) the type and identifying number of any account with the bank or financial services provider ~~institution or cash dealer~~ involved in the transaction;

(f) the name and address of the bank or financial services provider ~~institution or cash dealer~~, and of the officer, employee or agent of the bank or financial services provider ~~institution or cash dealer~~ who prepared the report;

(g) multiple transaction 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 twenty-four hour period. In such a case,

1 when a bank or financial services provider ~~institution or~~
2 ~~cash dealer~~, its employees, officers or agents have
3 knowledge of these transactions, they shall record these
4 transactions.

5 (4) Record required under Subsection (1) shall be kept by the bank
6 or financial services provider ~~institution~~ for a period of at least
7 six (6) years from the date the relevant business or transaction
8 was completed.

9 (5) A bank or financial services provider ~~institution or cash dealer~~,
10 its employees, officers or directors, wilfully violating the
11 requirement of Section 169 or 170 commits an offense
12 punishable by a fine of not more than \$2,000,000 or
13 imprisonment for not more than twenty (20) years, or both.

14
15 **§170. Banks and Financial Services Providers ~~institutions and cash~~**
16 **~~dealers to report suspicious transactions.~~**

17 (1) Banks and financial services providers ~~institutions and cash~~
18 ~~dealers~~ shall, within 3 days of the transaction, report to the
19 Commissioner all suspicious transactions, including but not
20 limited to those which are ten thousand dollars (\$10,000) or
21 more or multiple transactions which, altogether, exceed ten
22 thousand dollars (\$10,000) if they are undertaken by or on
23 behalf of any one person during any twenty-four hour period
24 or, complex or unusual transactions, whether completed or
25 not, and all unusual patterns of transactions, and otherwise
26 significant but periodic transactions, which have no apparent
27 economic or lawful purpose. The Commissioner may provide
28 additional information or criteria to be used in identifying
29 suspicious transactions under this subsection.

30
31 (2) A bank or financial services provider ~~institution or cash dealer~~
32 which has reported a suspicious transaction in accordance
33 with this Section shall, if requested to do so by the
34 Commissioner or Attorney-General, give such further
35 information as it has in relation to the transaction.

36 (3) The Commissioner, Attorney-General, banks and financial
37 services providers ~~institutions and cash dealers~~ shall maintain

reports required by this Section for a period of fifteen (15) years.

- (4) ~~Banks and financial services provider institutions and cash dealers~~, 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 or financial services provider institution or cash dealer 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 that 20 years, or both.

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

- (1) ~~Banks and financial services providers Institutions and cash dealers~~ 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 banks or financial services provider institution or cash dealer, 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 or financial services provider institution or cash dealer 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.

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§178. Immunity where suspicious transaction reported.

No action, suit or other proceedings shall lie against any bank or financial services provider ~~institution or cash dealer~~, 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, or financial services provider ~~institution or person~~ pursuant to this Act.

§180. Currency Transaction Reports

The Commissioner of Banking may prescribe a regulation that requires a bank or financial services provider ~~institution or cash dealer~~ 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 and financial services provider ~~institutions and cash dealers~~. 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 and financial services provider ~~institution and cash dealer~~, and any partner, director, officer, employee, or person participating in the conduct of the affairs of the bank or financial services provider ~~institution or cash dealer~~ 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 Banking Commission Account.

(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 or financial services provider ~~institution or cash dealer~~ 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.

(5) The Banking Commissioner may fine any bank or financial services provider up to \$10,000 for each violation of any provisions of Part XIII of this Chapter and all monies collected shall be deposited into the accounts of the Banking Commission.

§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.

(3) The position of the Director of the Unit shall be established, to be appointed by the Board.

(4) The Director of the Unit shall be responsible for the effective and efficient management of the affairs of the Unit and as specified under this Chapter.

1 (5) The Director will assist the Commissioner of Banking on any
2 matter relating to money laundering and the financing of
3 terrorism.

4

5 (12) Part XII – Money Laundering provision are hereby amended as
6 follows:

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§183. National Financial Crimes Deterrence Council

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10 (1) This Section establishes the National Financial Crimes
11 Deterrence Council, which shall be referred to as the Council
12 in this Act, consisting of-

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(a) the Attorney General, as Chairperson;

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(b) the Commissioner of Banking;

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(c) the Director of the Unit;

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(d) the Commissioner of Police;

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(e) the Deputy Secretary of Customs and Revenue;

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(f) the Auditor General;

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(g) the Deputy Registrar Non-Domestic Corporation, Trust
20 Company of the Marshall Islands; and

21

(h) the Secretary of the Ministry of Finance.

22

(2) The Council may invite other persons to attend a meeting but
23 such persons shall have no right to vote.

24

(3) The Council may elect other officers such as a Vice Chairman
25 and Secretary of the Council for the orderly conduct of its
26 meetings and shall at the minimum meet every quarter.

27

(4) Members of the Council shall be entitled to a fixed fee for
28 attendance during regular meetings but subject to the
29 approval of the Board.

30

(4) The functions of the Council are:

31

(a) to advise, assist, and recommend to the Commissioner
32 of Banking, the Director of the Unit, and the Board on
33 any matters, strategies, or policies relating to the
34 deterrence of money laundering or other financial
 crimes in the Republic;

- 1 (b) to assist the Commissioner of Banking, the Director of
2 the Unit, and the Board in effective coordination
3 between various Government ministries and agencies
4 with respect to deterrence of money laundering and
5 other financial crimes in the Republic;
- 6 (c) to ensure timely rectification of weaknesses and
7 deficiencies identified in the Republic's country
8 evaluation reports and assessments conducted by the
9 Financial Action Task Force, Organization for Economic
10 Cooperation and Development, Egmont, the United
11 Nations and other international or regional
12 organization responsible for setting international
13 standards and rules to deter money laundering and
14 other financial crimes;
- 15 (d) to properly coordinate technical assistance and training
16 programs for the respective members with the aim of
17 developing internal capacity of respective members and
18 staff to deter money laundering and other financial
19 crimes;
- 20 (e) to properly coordinate the collection of intelligence data
21 by the Commissioner of Banking and Director of the
22 Unit from members of the Council and other Ministries
23 and agencies for the purpose intelligence analysis
24 performed by the Unit and dissemination of such
25 information to relevant law enforcement authorities and
26 as outlined under Section 167 of this Chapter;
- 27 (f) to properly coordinate the completion of required
28 reports by the Financial Action Task Force,
29 Organization of Economic Cooperation and
30 Development, Egmont, the United Nations and other
31 international or regional organization responsible for
32 setting international standards and rules to deter money
33 laundering and other financial crimes; and
- 34 (e) to properly coordinate all tasks and duties with respect
35 to the deterrence of money laundering and other
36 financial crimes in the Republic.
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§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.

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

**“PART XIV – INDEPENDENCE, ACCOUNTABILITY
AND RESOURCING**

§185. Operational Independence.

- (1) The Banking Commission shall possess full operational independence in the conduct of its affairs in relation to financial management, human resource management and other key responsibilities required of it under this Chapter.
- (2) The Banking Commission is authorized to invest in assets and securities issued by entities that are not subject to its direct supervision or any type of asset or security that will generate sufficient revenue to sustain its operations.
- (3) There shall be no government or industry interference which compromises the operational independence of the Banking Commission.
- (4) The Commissioner of Banking shall have full discretion to take any supervisory action or decisions on banks and financial services providers under its supervision and as authorized under this Chapter.

§186. Accountability.

- (1) The Banking Commission shall publish its objectives and be accountable and transparent on the discharge of its duties through its internal website and appropriate external media.

1 (2) The Banking Commission shall have an effective internal
2 governance and communication process that enables
3 supervisory decisions to be taken at a level appropriate to the
4 significance of the issue and timely decisions to be taken in the
5 case of an emergency.

6
7 **§187. Adequate Resourcing.**

8 (1) An internal process shall be established to ensure that all staff
9 hired into the Banking Commission have the credibility based
10 on their academic qualification, professionalism, and integrity.

11 (2) For the proper conduct of its affairs, the Banking
12 Commissioner shall establish policies on how to avoid
13 conflicts of interest and on the appropriate use of information
14 obtained through work, with sanctions in place if these are not
15 followed.

16 (3) The Banking Commission shall be provided with adequate
17 resources for the conduct of effective supervision and
18 oversight and financed in a manner that does not undermine
19 its autonomy or operational independence. This includes:

20 (a) a budget that provides for staff in sufficient numbers
21 and with skills commensurate with the risk profile and
22 systemic importance of banks including financial
23 services providers under its supervision;

24 (b) salary scales and benefits package that allow it to attract
25 and retain qualified staff;

26 (c) a budget that can enable it to commission external
27 experts with the necessary professional skills and
28 independence, and subject to necessary confidentiality
29 restrictions to conduct supervisory tasks and other tasks
30 assigned by the Cabinet;

31 (d) a training budget and programme that provide regular
32 training for staff;

33 (e) a technology budget sufficient to equip its staff with the
34 tools needed to review the financial sector and assess
35 individual banks and financial services providers; and

1 (f) a travel budget that allows appropriate onsite work,
2 effective cross-border cooperation and participation in
3 domestic and international meetings of significant
4 relevance.

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

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PART XV – FUND

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§188. Banking Commission Fund.

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(1) The Republic of the Marshall Islands Banking Commission
11 Fund is hereby established. The Fund is a separate fund from
12 the General Fund to be administered by the Commission.

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(2) The Fund must be administered in accordance with the
14 relevant provisions of the Financial Management Act, and as
15 such, is auditable at the end of each financial year by the Office
16 of the RMI Auditor General.

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(3) The Commission shall maintain all transaction records to
18 enable the audit of the Fund at the end of each financial year.

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(4) Payments into the Fund shall include:

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(a) All monies appropriated by the Nitijela for the
22 operations of the Commission;

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(b) All fees charged by the Commission as authorized
24 under this Act;

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(c) All Grants provided to the Commission to assist the
27 Commissioner in the discharge of functions under the
28 Act;

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28

(d) All dividends from any investment undertaken by the
29 Commission;

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30

(5) Payments Out of the Fund shall be made only to support the
30 operations of the Commission.

§103. Transitional provisions

(3) Where a bank ~~or financial services provider~~, upon 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 Board ~~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.

(4) ~~An offshore license granted to a bank under the Banking Regulations Act 1985, shall, unless suspended or revoked, be considered valid under this Chapter until December 31, 1987. Two (2) months prior to the expiration date of the said license, an application for a renewal of the license may be made.~~

§104. 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.

NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
37TH CONSTITUTIONAL REGULAR SESSION, 2016

BANKING (AMENDMENT) ACT 2016

BILL SUMMARY

This Bill proposes to amend the existing Banking Act of 1987, in order to establish the Banking Commission as an independent financial supervisory authority in the Republic which shall be responsible for::

- (a) the protection of depositors and safety and soundness of the financial system;
- (b) the licensing, regulation and supervision of banks and financial services providers operating in and from within the Republic;
- (c) the administration and enforcement of the Usury Act of 1989 for all banks and financial services providers conducting lending operation in the Republic;
- (d) protection of the Republic's financial system against, and penalties for transactions in money-laundering;
- (e) the establishment of the Financial Intelligence Unit and provide for its functions;
- (f) the establishment of the Financial Crimes Deterrence Council; and (dg) for matters connected therewith or incidental thereto.

The Republic of the Marshall Islands (RMI) has been found deficient in its efforts to adhere to its international obligations with respect to Anti-Money Laundering (AML), Counter-Terrorist Financing (CTF), and Anti-corruption (AC), collectively referred to as Financial Crimes Deterrence (FCD). Among the deficiencies cited with RMI's FCD program is the failure to adopt legislation which incorporates prevailing international standards for FCD. Said standards incorporates strengthened AML, CTF and AC provisions, augmented reporting requirements, inclusion of financial services providers, deletion of off shore banking provisions, licensing regime for these providers, and independence, accountability and resourcing of the Banking Commission.

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Non-compliance does not only interfere with international relations, but has also threatened RMI's access to international financial services. The proposed amendments in this Bill are developed to incorporate minimum standards of RMI's international operations.

1 NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
2 37TH CONSTITUTIONAL REGULAR SESSION, 2016

BANKING (AMENDMENT) ACT 2016

3 **SIGNATURES**

4 **DATE:** *_AUG 24.16_* **INTRODUCED BY** *HON.MIN.AMENTA MATTHEW /S/*
5 *Print Name* *Signature*

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