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
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Republic of the Marshall Islands
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BANKING (AMENDMENT) ACT 2016

Index

Section                                      Page

BANKING (AMENDMENT) ACT 2016                  1

BILL NO.51                                      ERROR! BOOKMARK NOT DEFINED.

§101. Short title. ...........................................................................................................5

§102. Amendments:.........................................................................................................5

“PART IX - DIRECTORS AND OFFICERS”                20

“PART XIV – INDEPENDENCE, ACCOUNTABILITY AND RESOURCING”  31

“PART XV – FUND”                                 33

§103. Transitional provisions.................................................................34

§104. Effective Date.................................................................34
§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;
(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.
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;

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.

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.

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.
(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;
(f) to promulgate staff regulations on the internal organization and job classification in the Commission and rules on the rights, duties, and obligations of the employees of the Commission;

(g) to approve the remuneration package of the Banking Commissioner and staff of the Commission;

(h) general oversight of the affairs of the Commission;

(4) Section 104(4) of the Banking Act is hereby amended as follows:

§104. Banking Commissioner.

(1) There shall be appointed by the President Board, with the concurrence of the Cabinet, a Banking Commissioner (Commissioner) who shall be in charge of the day to day administration and the enforcement of the provisions of this Chapter and the regulations made thereunder.

(2) The Commissioner be an employee of the government and shall not hold any office other than those that may be empowered under any other written law or assigned to him by the Cabinet.

(3) In addition to the provisions of Subsection (2) above, the office of the Commissioner shall perform, upon assignment, the functions and duties of Registrar of Corporations, in which event such functions and duties shall not be in the office of the Attorney-General notwithstanding the provisions of the Corporations, Partnerships and Associations Act, 52 MIRC Parts I, II, II and IV–2

(4) The Commissioner shall be paid such remuneration as may be fixed by the Public Service Commission and shall function under the Minister of Finance who will act in consultation with the Cabinet. [P.L. 1987-9, §4.]

(5) Section 107(1) of the Banking Act is hereby amended as follows:
§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(l)(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 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.
(1) In the case of a licensed bank:

........

(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.
(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, with the approval of the Board, 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 (l) above, submit to the Commissioner reasons why the license should not be revoked or varied.

(3) The Commissioner shall, with the approval of the Board, 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 (l) 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.

...
(5) The Commissioner shall review and make recommendations to the Board Cabinet every six (06) months on the maximum rates of interest which banks may charge under Subsection (1)(b) of this Section.”

(12) Part IX – Directors and Officers provision are hereby amended as follows:

“PART IX - DIRECTORS AND OFFICERS

§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 Board 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 Board 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.
§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
§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 financial institution or cash dealer 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 and financial services provider financial institution or cash dealer 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 and financial services provider financial institutions and cash dealers, and advise the appropriate officials;

(g) shall create training requirements and provide such training for any banks and financial services provider 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 and financial services provider financial institutions and cash dealers where the Commissioner has reasonable ground 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, 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:
§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,
when a bank or financial services provider institution or cash dealer, 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 or financial services provider institution for a period of at least six (6) years from the date the relevant business or transaction was completed.

(5) A bank or financial services provider institution or cash dealer, 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 and Financial Services Providers institutions and cash dealers to report suspicious transactions.

(1) Banks and financial services providers institutions and cash dealers 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 or financial services provider institution or cash dealer 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 and financial 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.
§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.
(5) The Director will assist the Commissioner of Banking on any
matter relating to money laundering and the financing of
terrorism.

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

§183. National Financial Crimes Deterrence Council

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

(a) the Attorney General, as Chairperson;
(b) the Commissioner of Banking;
(c) the Director of the Unit;
(d) the Commissioner of Police;
(e) the Deputy Secretary of Customs and Revenue;
(f) the Auditor General;
(g) the Deputy Registrar Non-Domestic Corporation, Trust
Company of the Marshall Islands; and
(h) the Secretary of the Ministry of Finance.

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

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

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

(4) The functions of the Council are:

(a) to advise, assist, and recommend to the Commissioner
of Banking, the Director of the Unit, and the Board on
any matters, strategies, or policies relating to the
deterrence of money laundering or other financial
crimes in the Republic;
(b) to assist the Commissioner of Banking, the Director of the Unit, and the Board in effective coordination between various Government ministries and agencies with respect to deterrence of money laundering and other financial crimes in the Republic;

(c) to ensure timely rectification of weaknesses and deficiencies identified in the Republic's country evaluation reports and assessments conducted by the Financial Action Task Force, Organization for Economic Cooperation and Development, Egmont, the United Nations and other international or regional organization responsible for setting international standards and rules to deter money laundering and other financial crimes;

(d) to properly coordinate technical assistance and training programs for the respective members with the aim of developing internal capacity of respective members and staff to deter money laundering and other financial crimes;

(e) to properly coordinate the collection of intelligence data by the Commissioner of Banking and Director of the Unit from members of the Council and other Ministries and agencies for the purpose intelligence analysis performed by the Unit and dissemination of such information to relevant law enforcement authorities and as outlined under Section 167 of this Chapter;

(f) to properly coordinate the completion of required reports by the Financial Action Task Force, Organization of Economic Cooperation and Development, Egmont, the United Nations and other international or regional organization responsible for setting international standards and rules to deter money laundering and other financial crimes; and

(e) to properly coordinate all tasks and duties with respect to the deterrence of money laundering and other financial crimes in the Republic.
§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.
(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.


(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.

(2) For the proper conduct of its affairs, the Banking Commissioner 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) 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.

(15) 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 Fund is hereby established. The Fund is a separate fund from the General Fund to be administered by the Commission.

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

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

(4) Payments into the Fund shall include:

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

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

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

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

(5) Payments Out of the Fund shall be made only to support the 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

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

BANKING (AMENDMENT) ACT 2016

SIGNATURES

DATE: _AUG 24.16_  INTRODUCED BY  HON.MIN.AMENTA MATTHEW_/S/

Print Name  

Signature