TITLE 17 – BANKS AND FINANCIAL INSTITUTIONS
CHAPTER 1 - BANKING

Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

BANKING ACT 1987

Arrangement of Sections

Section **Page**

PART I - PRELIMINARY **5**

§101. Short title. 5
§102. Interpretation. 5
§103. Use of the words "bank", "banking", "savings" or "savings and loan". 11

PART II- COMMISSIONER OF BANKING **11**

§104. Commissioner. 11
§105. Disqualifications: 12
§106. Delegation 12

PART III - BANKING LICENSES **12**

§107. Requirement of license. 12
§108. Applications for license. 13
§109. Grant or refusal of license. 15
§110. Banking license. 15
§111. License fee. 16
§112. Approval of the Commissioner for any change. 17
§113. Suspension, revocation or variation of license. 17
§114. Power to give directions. 19
§115. Cessation of business. 20
§116. Transacting banking business without a license 20
§117. Penalty. 20
§118. Transitional. 21

PART IV - RESTRICTIONS ON THEFORMATION OF SUBSIDIARY

CORPORATIONS **22**

§119. Subsidiary corporations. 22

PART V - CAPITAL REQUIREMENTS, RESERVE FUNDS AND LIQUID ASSETS OF DOMESTIC LICENSED BANKS **22**

§120. Capital requirements. 22
§121. Reserve fund. 23
§122. Liquid assets. 23

PART VI – LICENSING REGIME FOR FINANCIAL SERVICES PROVIDERS **24**

§123. Requirement of license and prudential supervision of financial services provider. 24
§124. Grant or refusal of license. 24
§125. Financial Services Provider license. 25
§126. License fee 26
§127. Approval of the Commissioner for any change. 26
§128. Suspension, revocation or variation of license. 27

PART VII - LIMITATIONS ON CREDIT OPERATIONS **28**

§129. Principles governing restrictions. 28
§130. Lending restrictions. 28
§131. Interest rates 30

PART VIII - FINANCIAL STATEMENTS, AUDIT, INFORMATION ANDINSPECTION **31**

§132. Financial statements. 31
§133. Provision for bad debts. 31
§134. Auditors. 31
§135. Publication of the financial statements. 33
§136. Extension of time 33
§137. Reports 33
§138. Information and inspection. 34

PART IX - DIRECTORS AND OFFICERS **34**

§139. Directors. 34
§140. Change of directors and officers. 35
§141. Officers. 35
§141A. Other requirements 36

PART X - RESTRICTIONS **36**

§142. Unsound or unsafe practices. 36
§143. Directions by the Commissioner. 36
§144. Maximum percentage of shares. 37
§145. Accommodations. 37
§146. Business restrictions. 37
§147. Payment of dividends on profits. 38

PART XI- GENERAL **38**

§148. Issuance and transfer of capital stock. 38
§149. Changes in corporate structure. 39
§150. Minimum capital ratios. 39
§151. Insurance of deposits. 39
§152. Declaration of interest. 40
§153. Trust business. 40
§154. Secrecy 40
§155. Immunity. 41
§156. Regulations. 41
§157. Liability of directors. 42
§158. Failure to comply with the provisions of this Chapter. 42
§159. Willfully making false entries. 42
§160. Declaration by the Commissioner. 43
§161. Bank disclosure of interest and fees. 43
§162. Lending Requirements with respect to Domestic Deposits Received. 44
§163. Reserved [added by P.L. 1994-85,§2, former Section 163 "Minimum Term for Certain Loans and Credit Facilities" was repealed by P.L. 1994-75, §3 on 27 April 1998.] 44

PART XII- PENALTIES AND EXCEPTIONS **44**

§164. Offenses relating to this Chapter 44
§165. Exceptions 45

PART XIII – ANTI – MONEY LAUNDERING OFFENSES **45**

§166. Money laundering offenses and penalties. 45
§167. Commissioner's authority in prohibiting money laundering activity 46
§168. Banks, DNFBPs and Financial Services Providers to verify customers identity. 48
§169. Banks, DNFBPs, Financial Services Providers to establish and maintain customer records. 49
§170. Banks, DNFBPs, and Financial Services Provider to report suspicious transactions. 50
§170A. Reporting of suspicious transactions and activities related to terrorist financing. 51

§171. Seizure and detention of suspicious imports or exports of currency. 52
§172. Application for confiscation order. 53
§173. Notice of application. 54
§174. Confiscation order on conviction. 54
§175. Effect of confiscation order. 56
§176. Payment instead of a confiscation order. 56
§177. Application of procedure for enforcing fines. 57
§178. Immunity where suspicious transaction reported. 57
§179. Immunity where official powers or functions exercised in good faith. 58
§180. Currency Transaction Reports. 58
§181. Assessment of Civil Money Penalties 58
§182. Financial Intelligence Unit and the Director. 59
§183. National Anti-Money Laundering & Combating the Financing or Terrorism Council. 59
§184. Power to Examine. 60
PART XV –FUND 61
§185. Banking Commission Fund. 61
§186. Effective Date 63

TITLE 17 – BANKS AND FINANCIAL INSTITUTIONS
CHAPTER 1 - BANKING

Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

BANKING ACT 1987

AN ACT to provide for: (a) the protection of depositors; (b) the licensing, regulation and supervision of banks operating in and from within the Republic; (c) protection against, and penalties for transactions in money-laundering and (d) for matters connected therewith or incidental thereto.

Commencement:			*March 20, 1987*
Source:			*P.L. 1987-9*
Amended By:	*P.L. 1993-59*	*P.L. 1994-85*	*P.L. 1995-128*
P.L. 1998-74	*P.L. 1998-75*	*P.L. 2000-20*	*P.L. 2002-59*
P.L. 2006-63	*P.L. 2009-20*	*P.L. 2011-57*	*P.L. 2019-114*

PART I - PRELIMINARY

§101. Short title.

This Chapter may be cited as the "Banking Act 1987".**[P.L. 1987-9, §1]**

§102. Interpretation.

In this Chapter

(a) "**accommodation**" means any loan, overdraft, advance or any commitment to grant any loan, overdraft or advance, including a commitment to accept a contingent liability;

(b) "**bank**" means any person or body of persons or a corporation engaged in banking business and includes savings and loan associations, but does not include a credit union;

(c) "**banking business**" means the business of receiving funds from the public through the acceptance of money deposits which may be withdrawn or repaid by check or order, and the use of such funds either in whole or in part for advances, investments, or any other operation either authorized by law or customary banking practice:

(d) "**branch**" means an office of a bank transacting banking business and maintaining its own accounting records;

(e) "**cash dealer**" means:

(i) a person who carries on business as an insurer, an insurance broker or intermediary, a securities dealer or futures broker;

(ii) a person who carries on a business of dealing in bullion, ofissuing, selling or redeeming travelers' checks, money orders or similar instruments, or of collecting, holding and delivering cash as part of a business of providing payroll services;

(iii) an operator of a gambling house, casino or lottery;

(iv) a person carrying on the business of currency dealer or exchanger.

(f) "**certificate of deposit**" means a document relating to money in any currency, which has been deposited with the issuer, recognizing an obligation to paya stated amount after a certain period of deposit, with or without interest;

(g) "**close relation**" means the spouse and dependent children;

(h) "**Commissioner**" means the Commissioner of Banking appointed under the provisions of this Chapter;

(i) "**corporation**" means a corporation incorporated or registered under the provisions of the Associations Law 52 MIRC Part I, and regulations made thereunder;

(j) **"designated non-financial businesses and professions (DNFBP) or non-financial services provider"** means:

(i) Casinos

(ii) Real estate agents.

(iii) Dealers in precious metals.

(iv) Dealers in precious stones.

(v) Lawyers, notaries, other independent legal professionals and accountants – this refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to 'internal' professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to AML/CFT measures.

(vi) Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere under the FATF Recommendations, and which as a business, provide any of the following services to third parties:

(a) acting as a formation agent of legal persons;

(b) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;

(c) providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;

(d) acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement;

(e) acting as (or arranging for another person to act as) a nominee shareholder for another person.

(k) "**domestic bank**" means a bank established or incorporated in the Republic;

(l) "**domestic license**" means a license issued to conduct banking business in the Republic;

(m) "**facilitating property**" means something that is used in or intended for use in any manner in the commission of a serious offense;

(n) "**financial institution**" means any person who carries on a business of:

(i) acceptance of deposits and other repayable funds from the public;

(ii) lending, including consumer credit, mortgage credit, factoring(with or without recourse) and financing of commercial transactions;

(iii) financial leasing;

(iv) money transmission services;

(v) issuing and administering means of payment (such as credit cards, travelers' checks and bankers' drafts); guarantees and commitments; trading for own account or for account of customers in money market instruments (such as checks, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate instruments, and transferable securities; underwriting share issues and participation in such issues; money-brokering; portfolio management and advice; safekeeping and administration of securities; credit reference services; safe custody services.

(o) "**foreign bank**" means a bank established or incorporated outside the Republic;

(p) "**international administrative authorities**" means any foreign organization national or multinational, whose responsibilities include, law enforcement, criminal investigation, financial monitoring and regulation, banking regulation or any associated tasks aimed at the prevention of international crime and prevention of money laundering;

(q) "**licensed bank**" means a bank licensed under the provisions of this Chapter;

(r) "**local banking business**" means conducting banking business in the Republic with a domestic license;

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

(t) "**financial services providers**" means any person who carries on a business as a domestic financial institution ,other than a bank, or cash dealer as defined in section 102(e), including a person who offers financial products, which may include virtual assets, or

advises, provides mediation services, provides reinsurance mediation services, or moneylenders or acts as an authorized agent in respect of financial product such as fund managers, pension or retirement funds, credit unions, financial advisers,insurers, development finance institutions privately operated or government-owned, finance companies;

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

(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;

(w) "**place of business**" means any branch or office of a licensed bank in the Republic including a mobile office;

(x) "**proceeds of crime**" means any property derived from or obtained, directly or indirectly through the commission of a serious offense.

(y) "**property**" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;

(z) "**qualified auditor**" means a Certified Public Accountant, or firm of Accountants being a member of an institute approved or recognized by law possessing a certificate to practice as an Accountant issued by the council of such institute;

(aa) "**resident**" means:

(i) a citizen of the Republic residing in the Marshall Islands, or an individual domiciled therein;

(ii) a corporation incorporated in the Republic, a body corporate established under any written law of the Republic, or any firm, partnership or other organization formed in the Republic;

(iii) a branch, subsidiary, affiliate, extension, office, or any other unit of a corporation or other juridical person established under the laws of any foreign country, operating in the Republic.

(bb) "**Resident Agent**" means an agent, residing in Majuro, representing a bank holding an offshore license;

(cc) "**savings and loan association**" means a corporate or unincorporate savings association established for the primary purpose of making loans to members and others from the savings of contributors;

(dd) "**serious offense**" means an offense against a provision of:

(i) Any other law in the Republic of the Marshall Islands, for whichthe maximum penalty is imprisonment or other deprivation of liberty for a period of not lessthan 12 months;

(ii) a law of a foreign State, in relation to acts or omissions, which had they occurred in the Republic of the Marshall Islands, would have constituted an offense for which the maximum penalty imprisonment or other deprivation of liberty for a period of not less than 12 months.

(ee) "**substantial interest**":

(i) in relation to a corporation, means the holding of a beneficial interest by an individual or his close relation whether individually or taken together, in the shares thereof, exceeding twenty-five percent (25%) of the paid-up capital, or the existence of a guarantee or indemnity given by an individual or his close relation on behalf of such corporation;

(ii) in relation to a firm, means the beneficial interest held therein by an individual or his close relation, whether individually or taken together, exceeding twenty-five percent (25%) of the total capital subscribed by all the partners of the said firm, or the existence of a guarantee or indemnity given by an individual or his close relation on behalf of such firm.

(ff) "**tainted property**" means any property obtained in whole or in part from the proceeds of a criminal offense or from the proceeds of money laundering.

(gg) "**trust business**" means the business of acting for the benefit of another in a fiduciary capacity whether as trustee, executor, administrator or any similar capacity. **[P.L. 1987-9, §2.][paragraphs re-numbered to accommodate additional definitions added by P.L. 2000-20]][amended by P.L.2019-114].**

§103. Use of the words "bank", "banking", "savings" or "savings and loan".

(1) No corporation other than a licensed bank shall use as part of its name or its description any of the words "bank," "banking," "savings" or "savings and loan" or any of the derivatives or their equivalent in another language, and no licensed bank shall carry on the business of banking in the Republic unless it uses as part of its name at least one of such words.

(2) No person, firm, individual or group of individuals shall for the purpose of carrying on any business, use as part of it's or his name or description any of the words "bank," "banking,""savings" or "savings and loan" or any of the derivatives or their equivalent in another language. **[P.L. 1987-9, §3.]**

PART II- COMMISSIONER OF BANKING

§104. Commissioner.

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

(2) The Commissioner shall 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.

(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.]**

§105. Disqualifications:

A person shall be disqualified for appointment as the Commissioner if:

(a) he is a member of the Nitijela;

(b) he is a judicial officer;

(c) he is an officer of the Attorney-General's or Auditor-General's office; or

(d) he is a director, officer, employee or shareholder of any institution licensed under this Chapter. **[P.L. 198 7-9, §5]**

§106. Delegation.

The Commissioner may delegate any of his powers and duties to any other officer of his staff, who shall exercise or perform the powers or duties delegated to him subject to the general or special directions of the Commissioner.**[P.L. 1987-9, §6.]**

PART III - BANKING LICENSES

§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, with the approval of the Cabinet, authorizing the transaction of banking business in or from within the Republic.

(2) No corporation which has as part of its name or description any of the words "bank" "banking", "savings" or "savings and loan" shall be incorporated unless the approval in writing of the Commissioner is first obtained.

(3) Any person desirous of obtaining approval for incorporation in terms of subsection (2) above for the purpose of making application for grant of a license under Section 108 shall apply in writing to the Commissioner in such manner as he may specify.**[P.L. 1 98 7-9, §7,amended by P.L. 1998-74, §2.]**

§108. Applications for license.

An application for the grant of a license shall be made in writing to the Commissioner and shall in addition to the information that maybe required under the regulations, contain the following particulars:

(1) domestic bank in the case of an application for a license by a domestic bank:

(a) the name and the address of the registered office of the corporation and the principal office of business in the Republic;

(b) two certified copies of the articles of incorporation and the by-laws of the corporation;

(c) the amounts of authorized capital and paid-up capital, and the number and class of shares held by shareholders or subscribers;

(d) the full names, addresses, nationalities and occupations of the shareholders holding more than ten percent (10%) of the issued capital;

(e) details (as are required by the Commissioner) pertaining to the financial standing, banking experience and reputation of shareholders holding more than ten percent (10%) of the issued stock, directors and the principal officer;

(f) the full name, address, nationality, occupation and financial standing of each director, and including any banking experience;

(g) a balance sheet audited by an independent qualified auditor showing that the capital has been provided pursuant to Section 120 or 124 of this Chapter as applicable;

(h) the name, address and the professional qualification of the auditor;

(i) the date the financial year ends;

(j) a statement as to whether or not the bank is to exercise trust powers;

(k) the full names, addresses, nationalities and banking experience of the principal officer and his deputy:

(1) the name of each subsidiary corporation of the applicant, address of its registered office and principal place of business, and the type of business engaged in;]

(m) full particulars of the business and objectives of the applicant, including the specific type of banking business to be conducted by the bank, and the place in which the bank intends to do business;

(n) a letter or document from the Federal Deposit Insurance Corporation of the United States of America, or other approved body under Section 151 of this Chapter, indicating the current insurance covering deposits held;

(o) an initial non-refundable application fee of $500;

(p) such other particulars or information as may be required by the Commissioner under this Chapter or regulations made thereunder, (q) where the application is with respect to an offshore license, the name and address of the Resident Agent and a letter of authority addressed to the bank or banks holding cash as required pursuant to Section 124(l)(b) of this Chapter or an application for a waiver of this condition;

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

(a) particulars required in Paragraphs (a), (b), (c), (j), (l), (m), (n), (o), (p) and (q) of subsection (1) of this Section;

(b) the full names, addresses, occupations and nationalities of shareholders each owning more than ten percent (10%) of the issued stock of the bank, certified by the bank's secretary;

(c) a list of the names of directors and chief executive officer certified by the secretary;

(d) the full names and banking experience of the manager of the branch in the Republic, and his deputy;

(e) the latest annual report and audited financial statements of the bank, which financial statements shall provide two (2) years figures and show that the bank's capital complies with the requirements of either Section 120 or 124 of this Chapter as applicable;

(f) a letter from the **[central or state]** banking supervisory authority responsible in the country where the bank is chartered confirming that the applicant is being supervised on a consolidated basis indicating that there is no objection to the establishment of a branch of that bank in the Republic;

(g) a copy of the certificate of corporate registration in the Republic;

(h) evidence of insurance by the Federal Deposit Insurance Corporation of the United States of America, or other approved body under Section 151 of this Chapter, relating to deposits in the Republic; however, the Commissioner may, with the approval of the Cabinet, waive the requirement of such insurance, in the case of any bank of international repute, if there is no such requirement under the law of the country where such bank is incorporated.**[P.L. 1987-9, §8; amended in its entirety by P.L. 1995-128, §2.][para (i) deleted by P.L.2019-114].**

§109. Grant or refusal of license.

(1) On receipt of the complete set of documents required under section 108, 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 banking experience of the organizers can reasonably assure the safe and sound operations of the proposed banking operation, and that it can effectively serve the needs of the public.

(2) On completion of his investigation, the Commissioner, with the approval of the Cabinet, shall grant, or without assigning any reason therefore, refuse to grant a license.**[P.L. 1987-9, §9; amended in its entirety by P.L. 1995-128, §2.]**

§110. Banking license.

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

(a) shall specify and confirm the bank's engagement in local banking business; and

(b) may specify any terms and conditions which shall be complied with by the bank.

(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 referred to in Section 111 of this Chapter.

(4) A licensed bank shall not engage in any banking business other than the business specified in the license.

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

(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 bank under this Chapter shall be kept displayed conspicuously in all places of business of the bank in the Republic.

(8) The Commissioner may from time to time by notice in writing to a licensed bank:

(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 bank of his intention to do so and afford it a period of 14 days in which to make representations in that regard; the Commissioner will take into account any such representations in deciding whether to proceed with the issue of the notice.**[P.L. 198 7-9, §10, amended by P.L. 1998-74, §2.][amended by P.L.2019-114].**

§111. License fee.

(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.**[P.L. 1987-9, §11, amended by P.L. 1998-74, §2.][Subsections 1 and 2 deleted and inserted with new by P.L.2019-114].**

§112. Approval of the Commissioner for any change.

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

(a) for a licensed domestic bank 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 licensed domestic bank to open a branch, agency, or office in any place outside the Republic;

(c) for a bank to open a representative office or such type of office of business in the Republic;

(d) for a licensed domestic bank to acquire the business of another bank or of any branch of another bank;

(e) for a person, group of persons, partnership, company or corporation to acquire a substantial interest in a licensed bank incorporated in the Republic by or under any written law.**[P.L. 1987-9, §12.][amended by P.L.2019-114].**

§113. Suspension, revocation or variation of license.

(1) In the case of a licensed bank:

(a) which has failed to commence operations within six (6) months following the granting of the license;

(b) where the Commissioner is satisfied that the licensed bank has failed to comply with any of the terms and conditions of its license issued under Section 110 of this Chapter;

(c) where the bank has failed to pay its debts generally as they become due;

(d) where any custodian or receiver has been appointed under any bankruptcy or similar laws for the relief of or relating to deposits;

(e) where a licensed bank has ceased to do banking business;

(f) which violates any of the provisions of this Chapter or the regulations made thereunder;

(g) which fails to comply with any direction issued by the Commissioner as specified under this Chapter or the regulations made thereunder;

(h) which fails to pay the license fee when due;

(i) that knowingly gives any information to the Commissioner which is untrue or misleading;

(j) which fails to comply with the corporate law of the Republic;

(k) 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 to the interest of the depositors of the bank; or

(1) which is a branch of 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;

(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 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; orrevoke the license.

(2) A licensed bank may, within 30 days of the date of issue of notice of suspension of the license under subsection (l)(m) above, submit to the Commissioner reasons why the license should not be revoked or varied.

(3) The Commissioner shall, with the approval of the Cabinet, within 30 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) A licensed bank may, within 14 days of the date of the issue of the notice of intention to revoke the license under Subsection (1)(m)

above, submit to the Commissioner reasons why the license should not be revoked.

(5) The Commissioner shall, with the approval of the 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.

(6) Notwithstanding the provisions of Subsections (2) and (4) above, no notice of intention to suspend or revoke a license in the circumstances in Subsection (l)(c), (d), (k) and (1) shall be required; in such case notice to be given shall comprise notice of suspension or revocation effective forthwith.

(7) Forthwith upon revocation of a license under this Section, the licensed bank whose license is revoked shall cease to carry on banking business in any manner whatever while the revocation is in effect.**[P.L. 198 7-9, §13; amended by P.L. 1998-74, §2.][P.L. 2000-20, §2(B)]**

§114. Power to give directions.

(1) Where the Commissioner has given notice of suspension under Section 113 of this Chapter, he may give directions to the bank;

(a) prohibiting it from dealing with or disposing of its assets in any manner specified in the direction;

(b) prohibiting it from entering into any transaction or class of transaction so specified;

(c) prohibiting it from soliciting deposits; or

(d) requiring it to take certain steps or pursue a particular course of action.

(2) Where a licensed bank has failed to comply with the directions issued under Subsection(1)of this Section, the Commissioner may make an application in court directing such bank to forthwith cease business in or within the Republic and may upon such order take charge, or authorize an officer in writing to take charge on his behalf, of all its books, records and all other material.

(3) In the case where the Commissioner withdraws the suspension unconditionally, under Section 113 of this Chapter, he shall deliver or direct the officer authorized to deliver to such bank forthwith, the books, records, and all other material taken into his custody.

(4) Notwithstanding anything contrary to any other law, no action or proceeding may be instituted in any court against the Commissioner, an authorized officer, or the Government of the Marshall Islands, with respect to any loss or damage incurred, likely to be incurred, or alleged to be incurred by reason of any action done in good faith under Sections 113 and 114(1), (2) or (3) of this Chapter.**[P.L. 198 7-9, §14.]**

§115. Cessation of business.

(1) Where a license has, been revoked under Section 113 of this Chapter, the Commissioner shall direct the bank forthwith to cease business in and from within the Republic, and he or an officer authorized by him in writing, may take charge of all of its books, records and other material and take such measures as may be necessary to prevent the continuance of the business of banking by the bank, except for the purpose of winding up the business of such bank under the supervision of the Commissioner or an authorized officer within a period of three (3) months.

(2) Where revocation has been made with respect to a foreign bank the Commissioner shall forthwith inform the parent office of the bank to honor the obligations and liabilities incurred in the conduct of the business of the branch office in the Republic.**[P.L. 198 7-9, §15; amended by P.L. 1998-74, §2.]**

§116. Transacting banking business without a license.

If the Commissioner has reasonable ground to believe that any person is transacting banking business without a license he may examine, or authorize an officer in writing to examine, the books, accounts and records of such person for the purpose of ascertaining whether such person has contravened or is contravening any of the provisions of this Chapter. Any refusal by such person to submit such books, accounts or records to the Commissioner or authorized officer shall be prima facie evidence that such person is transacting banking business without a license.**[P.L. 1987-9, §16.]**

§117. Penalty.

(1) If any person referred to in Section 116 of this Chapter is transacting banking business without a license he shall be guilty of an offense and shall upon conviction be liable to a fine not exceeding $10,000.

(2) Any applicant who knowingly or recklessly furnishes any information which isfalse or misleading in a material particular in connection with an application under this Chapter, shall be guilty of an offense and shall upon conviction be liable to a fine not exceeding $10,000 or to a term of imprisonment not exceeding six (6) months, or both.**[P.L. 198 7-9, §17.]**

§118. Transitional.

(1) Upon the commencement of this Chapter, a bank holding a valid license under the *Business Licenses Act 1983* to conduct banking business within the Republic shall submit an application to the Commissioner two (2) months before the expiration date of the said license, for a license under the provisions of this Chapter. However, the initial application fee referred to in Section 108(1)(o) of this Chapter shall not be required.

(2) Each bank to which Subsection (1) of this Section applies shall be deemed to be licensed for the purpose of carrying on banking business pending a decision by the Commissioner on the application for the license under this Chapter.

(3) Where a bank, DNFBP, or financial services provider, upon the coming into effect of this Chapter, is applying for a domestic license is not, at the time of application, operating in accordance with the conditions imposed by this Chapter, the Cabinet may, upon application and in special circumstances, grant an extension of up to two (2) years 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.**[P.L. 198 7-9, §18.][amended by P.L.2019-114].**

PART IV - RESTRICTIONS ON THEFORMATION OF SUBSIDIARY CORPORATIONS

§119. Subsidiary corporations.

(1) A licensed domestic bank shall not have as its subsidiary a corporation which is not a licensed bank, provided that with the written permission of the Commissioner, it may have a subsidiary which:

(a) carries on the business only of providing training in all or any of the subjects of banking, accountancy, valuation, project and credit appraisal;

(b) carries on the business only of providing hire purchase service or sale by installment;

(c) carries on the business only of providing medium and long-term credit for development;

(d) carries on the business of factoring or leasing; or

(e) is formed only by reason of having had to acquire the shares of a corporation upon such licensed bank's capitalization of the capital and interest accrued and unpaid by the corporation to the bank on loans granted by the licensed bank.

(2) For the purpose of this Chapter a corporation shall be deemed to be a subsidiary if, but only if:

(a) the parent holds more than half (in nominal value) of the corporation's equity share capital; or

(b) the parent is a member of and controls the composition of the corporation's Board of Directors. **[P.L. 1987-9, §19.]**

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

§120. Capital requirements.

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

(2) A licensed bank shall not reduce its paid-up capital without the prior written approval of the Commissioner.

(3) Where the capital of a licensed bank has become deficient in terms of the provisions of the preceding Subsections, the Commissioner may grant a reasonable period of time for making good such deficiency. **[P.L. 1987-9, §20; amended by P.L. 1998-74, §2.]**

§121. Reserve fund.

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

(2) The reserve fund shall not be reduced or impaired, provided that the Commissioner may, by regulation, specify circumstances in which it may be reduced and, shall permit a reduction when a transfer is made for the purpose of increasing paid-up capital. **[P.L. 1987-9, §21.]**

§122. Liquid assets.

(1) Every domestic bank licensed to do local banking business shall maintain liquid assets in an amount which shall not, as a daily average each month, be less than such percentage of the total of its liabilities, less liabilities to shareholders as may be determined by the Commissioner from time to time, but shall not be less than twenty percent (20%) of deposit liabilities or the amount required by the Federal Deposit Insurance Corporation. Deposit liabilities of a bank shall be deemed to be its gross demand, time and savings account liabilities for the purpose of this Section.

(2) For the purpose of Subsection (1) above, liquid assets means all or any of the following:

(a) notes and coins in U.S. Dollars and in foreign currencies freely convertible into U.S. Dollars;

(b) net balance at all and at short notice not exceeding ninety (90) days, in U.S.Dollars, held with other banks conducting a domestic banking business in the Republic;

(c) net balance at call and at short notice not exceeding ninety (90) days, held with recognized financial institutions outside the Republic and denominated in U.S. Dollars or in foreign currencies freely convertible into U.S. Dollars;

(d) Treasury bills or other securities issued or guaranteed by the U.S. Government or a state of the United States and other foreign governments which are readily saleable in the money and capital markets;

(e) such other assets as are defined.**[P.L. 1987-9, §22.]**

PART VI – LICENSING REGIME FOR FINANCIAL SERVICES PROVIDERS

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

(1) No financial services provider shall be transacted in the Republic except by a corporation or entity which is in possession of a valid license issued by the Commissioner of Banking, authorizing the transaction of financial services business in or within the Republic.

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

(3) The Commissioner of Banking shall be authorized to conduct prudential supervision of all licensed financial services providers and issue new prudential standards by way of Regulations for this purpose.**[P.L. 1987-9, §23.][Subsection 1 repealed and replaced with new Subsectyions by P.L.2019-114].**

§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.**[previous subsections repealed and replaced by P.L.2019-114].**

§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.**[P.L. 1 98 7-9, §24.][previous Subsections repealed and replaced by P.L.2019-114].**

§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.[**P.L. 1987-9, §26][§126 repealed and inserted by P.L.2019-114].**

§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.**[P.L. 198 7-9, §27.][previous §127 repealed and replaced by P.L.2019-114].**

§128. Suspension, revocation or variation of license.

The Commissioner may suspend, revoke or vary license in the case of a licensed Financial Services Provider:

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

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

(c) where a licensed Financial Services Provider has ceased to do financial services business;

(d) which violates any of the provisions of this Chapter or the regulations made there under;

(e) which fails to comply with any direction issued by the Commissioner as specified under this Chapter or the regulations made there under;

(f) which fails to pay the license fee when due;

(g) that knowingly gives any information to the Commissioner which is untrue or misleading;

(h) which fails to comply with the corporate law of the Republic;

(i) which is, in the opinion of the Commissioner, carrying on business in or from within the Republic in a manner detrimental to the public interest; or

(j) which is owned, or has ownership in common with a financial institution incorporated outside the Republic whose license to carry on business in that country has been suspended or withdrawn by the appropriate authority outside the Republic;

(k) where the Commissioner is satisfied that there are reasonable grounds to believe that money laundering activity is taking place the Commissioner may, by notice given in writing, suspend the license and require the Financial Services

Provider to show cause why the license should not be revoked or varied; or revoke the license.

(2) A licensed Financial Services Provider may, within 15 days of the date of issue of notice of suspension or revocation of the license under subsection (l) above, submit to the Commissioner reasons why the license should not be revoked or varied.

(3) The Commissioner shall within 15 days of the receipt of the reasons referred to in subsection (2) above:

(a) revoke the license, (b) vary conditions of the license; or

(c) withdraw the suspension unconditionally.

(4) The Commissioner shall within 14 days of the receipt of the reasons referred to in Subsection (3) above, decide whether or not to proceed with the revocation.

(5) Notwithstanding the provisions of Subsections (2), (3) and (4) above, no notice of intention to suspend or revoke a license in the circumstances in Subsection (l)(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. **[P.L. 1987-9, §28.][previous §128 repealed and replaced by P.L.2019-114]**

PART VII - LIMITATIONS ON CREDIT OPERATIONS

§129. Principles governing restrictions.

The powers conferred on the Commissioner and the Cabinet by this Part shall be so exercised as to regulate banks holding domestic licenses, and the supply, availability, cost and character of bank credit in accordance with the national monetary policy as determined by the Cabinet. **[P.L. 1987-9, §29.]**

§130. Lending restrictions.

(1) A licensed domestic bank engaged in local banking business shall not:

(a) grant to any person, partnership, corporation or to any group of corporations or of persons which group is under the control or influence of one and the same person, any loan or credit facility, or incur any other liability on behalf of such person, partnership, corporation or group so that the total value of the loans, credit facilities, and other liabilities with respect to such person, partnership, corporation or group is at any time more than twenty-five percent (25%) of the sum of the unimpaired paid-up capital and surplus of the licensed bank;

(b) grant or permit to be outstanding unsecured loans or unsecured credit facilities of an aggregate amount in excess of two percent (2%) of the sum of the unimpaired capital and surplus of such licensed bank or twenty-five thousand dollars ($25,000), whichever is the greater, or incur any other liability in excess of such amount without security;

(i) to or on behalf of its directors, whether such loans, credit facilities, or other liabilities are obtained by or on account of such persons jointly or severally; or

(ii) to or on behalf of any partnership or private corporation in which any one or more of its directors, or officers, is interested as partner, director, officer or agent, or to or on behalf of any individual, partnership, or private corporation of which any one or more of its directors, or officers, is a guarantor.

For the purpose of this Subsection the term "director" or "officer" includes the spouse, or children of a director or officer;

(c) grant or permit to be outstanding to its officers and employees unsecured loans or unsecured credit facilities which in aggregate amount, for any one officer or employee, exceed one year's emoluments of such person.

(2) In Subsection (1)(b) and (c) of this Section the expression "unsecured loans or unsecured credit facilities" means loans or credit facilities granted without security or collateral, or, with respect to any loan or credit facility granted with security, and any part thereof which at any time exceeds the market value of the assets constituting that security or collateral.

(3) Any bank which is in contravention of the provisions of this Section upon the commencement of this Chapter shall report the details to the Commissioner without revealing the names of the persons so involved. Such bank shall within twelve (12) months, or such further time as the Cabinet may determine, comply with the requirements of this Section. **[P.L. 1987-9, §30.]**

§131. Interest rates.

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

(a) fixing the minimum rates of interest which banks may pay upon various classes of deposits; or

(b) fixing the maximum rates of interest which banks may charge for different types of loans or other credit operations.

(2) Subject as hereinafter provided, the rate of interest fixed by order under Subsection (1) of this Section shall apply in relation to any deposit, or to any loan or credit operation, as the case may be, completed before the date on which the order comes into force; provided, however, that nothing in any such order:

(a) shall apply in relation to any interest accrued before that date; or

(b) shall require or be deemed to require the increase of the rate of interest payable upon any deposit completed before that date if such increase will constitute a breach of the contract or agreement relating to such deposit

(3) In making an order under Subsection (1) of this Section the Commissioner shall, in consultation with licensed banks and subject to Subsection (4) of this Section, take into consideration the rates of interest charged or paid by banks in other countries prevalent at the time of making such order; and in any event the difference, if any, in the rates shall not exceed five percent (5%) of the prime rate of the New York money center.

(4) The maximum rate of interest a licensed bank may charge for loans and other credit operations shall be twenty-four percent(24%).

(5) The Commissioner shall review and make recommendations to the Cabinet every six (06) months on the maximum rates of interest

which banks may charge under Subsection (1)(b) of this Section.**[P.L. 1987-9, §31; P.L. 1995-128, §2 contains an amendment identical to the prior text.][New subsection (5) added by P.L. 2006-63].**

PART VIII - FINANCIAL STATEMENTS, AUDIT, INFORMATION ANDINSPECTION

§132. Financial statements.

At the expiration of each financial year every licensed bank, with respect to its operations in the Republic that year, shall publish in the local press as prescribed by the Commissioner a balance sheet as of the last working day of each financial year and a profit and loss account with respect to that year within four (4) months of the close of the year.**[P.L. 1987-9, §32; amended by P.L. 1995-128, §2.]**

§133. Provision for bad debts.

Every domestic bank shall:

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

(b) before any profit or loss is disclosed ensure that such provision is made. **[P.L. 1987-9, §33.]**

§134. Auditors.

(1) Every licensed bank shall, subject to the approval of the Commissioner, appoint annually an independent financial auditor, whose duties shall be to audit the financial statements of the bank.

(2) The audit of the financial statements shall be completed within three (3) months of the end of the financial year, and the auditor shall state that his examination was made in accordance with generally accepted auditing standards and in his opinion the financial statements present fairly the financial position of the bank at the date of the audit in conformity with the generally accepted accounting principles.

(3) If a licensed bank fails to appoint an auditor as required, the Commissioner shall have the power to appoint the auditor.

(4) The remuneration of the auditor, whether appointed by the licensed bank or by the Commissioner, shall be paid by the licensed bank and,

in the case of an auditor appointed by the Commissioner in terms of Subsection (3) of this Section, it shall be determined by the Commissioner.

(5) No person who is a director, officer, employee or agent of such licensed bank shall be eligible for appointment as auditor for the bank. Any person appointed as auditor who may, after such appointment, become a director, officer, employee, or agent of such licensed bank, shall forthwith cease to be such auditor.

(6) It shall be the duty of the auditor to report forthwith to the Commissioner information relating to the affairs of the licensed bank obtained in the course of an audit, if he is of the opinion that:

(a) the licensed bank is insolvent or likely to become unable to meet its obligations;or

(b) the licensed bank is carrying on its business in a manner detrimental to the interests of its depositors or its creditors; and

(c) the disclosure of that information is likely to assist, or be relevant to, the exercise by the exercise of the Commissioner of his powers under this Chapter.

(7) The Auditor may be required to discuss the audit directly with the Commissioner or be asked to provide additional information regarding the audit.

(8) The auditor shall, before disclosing any information to the Commissioner under subsections (6) and (7), take reasonable steps to inform the licensed bank of the intention to disclose the information and the nature of the information.

(9) No civil, criminal, or disciplinary proceedings shall lie against any auditor arising from the disclosure in good faith of information to the Commissioner pursuant to subsections (6) and (7).

(10) Any additional remuneration payable to the auditor performing additional duties under subsections (6) and (7) above shall be determined by the Commissioner and paid by the licensed bank.

(11) The Commissioner may, by notice in writing to a licensed bank, require it to submit a report, prepared by the auditor, on such matters as the Commissioner may determine which may include an opinion on asset quality, adequacy of provisions for losses, and the adequacy

of the accounting system and internal controls of the licensed bank.**[P.L. 198 7-9, §34, amended by P.L. 1998-74, §2.]**

§135. Publication of the financial statements.

(1) Every licensed bank shall transmit to the Commissioner and publish within four (4) months after the close of the financial year its audited financial statements which shall be made available throughout the following year in all places of business of the bank in the Republic.

(2) The Commissioner shall be provided with information he may reasonably require concerning a bank's financial statements and, with respect to the affairs of the bank, details of named individual accounts. The preceding provision shall include information which may be required from the auditor, through the bank, relating to the audited financial statements, and other affairs.**[P.L. 1987-9, §35.]**

§136. Extension of time.

Where any licensed bank has, in circumstances beyond its control, failed to comply with the provisions of Section 134 or 135 of this Chapter the Commissioner may, on an application made by such licensed bank, in his sole discretion, grant a reasonable period of time for compliance with the provisions of the Sections herein mentioned.**[P.L. 1987-9, §36.]**

§137. Reports.

(1) The Commissioner may from time to time, by notice in writing, require any bank or person engaged in a banking business in the Republic to submit such reports and returns as he may require for purposes of the administration and enforcement of the provisions of this Chapter and the regulations made thereunder.

(2) The Commissioner may vary the form of the statements and returns prescribed under subsection (1), and the dates when the information shall be submitted.

(3) Any such bank or person engaged in the banking business notified under subsection (1) shall comply with accurate and timely submissions or be subject to a fine prescribed by the Commissioner in an amount not to exceed $500 per diem until the correct information has been provided to the satisfaction of the Commissioner.

(4) The Commissioner may require any report or return submitted to him pursuant to this Section to be accompanied by a certificate of the bank's appointed auditor under this Chapter, giving an opinion on the correctness of the contents.

(5) The Commissioner may from time to time, by notice in writing, require banks to advise details of their training program to enhance the banking skills and knowledge of their Marshallese employees.**[P.L. 1987-9, §37, amended by P.L. . 1995-128, §2; amended by P.L. 1998-74, §2.]**

§138. Information and inspection.

(1) The Commissioner may, from time to time, cause an examination to be made by persons authorized as examining officers by the Commissioner of each licensed bank or any of its affiliates in the Republic, where in his judgment such examination is reasonably necessary or expedient in order to determine that such licensed bank is in a sound financial condition and that the requirements of the law have been complied with in the conduct of its business.

(2) Each licensed bank referred to in Subsection (1) of this Section shall provide for the inspection by an officer appointed by the Commissioner, at such time as the officer specifies, all books, minutes, accounts, cash, securities, documents and vouchers relating to its business and shall supply all information concerning its business as requested by such officer.

(3) If any books minutes, accounts, cash, securities, documents, and vouchers are not produced or information is not supplied, or if any item produced is false in any material particular, the defaulting bank or affiliate or both, shall be guilty of an offense and shall upon conviction be liable to a fine not exceeding $10,000.**[P.L. 1987-9, §38 amended by P.L. 1998-74, §2.]**

PART IX - DIRECTORS AND OFFICERS

§139. Directors.

(1) No person shall be appointed or elected as a director of a licensed domestic bank if:

(a) he is a member of the Nitijela;

(b) he has been a bankrupt, has suspended payment, or has compounded with his creditors; or

(c) he has been convicted of any offense involving dishonesty or fraud.

(2) A director of a licensed domestic bank shall cease to be a director if:

(a) he becomes subject to any disqualifications mentioned in Subsection (1) of this Section;

(b) he becomes permanently incapable of performing his duties; or

(c) he has been convicted of any act or thing which is of a fraudulent or illegal character, or which is manifestly opposed to the objectives and interests of the licensed bank. **[P.L. 1987-9, §39.]**

§140. Change of directors and officers.

Except with the prior approval of the Commissioner, no domestic licensed bank shall change its directors or principal officer. An application for such change shall be made in writing along with the information required in Section 108(l)(e) and (k) of this Chapter.**[P.L. 1987-9, §40.]**

§141. Officers.

(1) Notwithstanding anything contained in any other written law, a person shall be disqualified for employment or appointments as the manager or other official in a licensed bank, and such manager or other official shall cease to be so employed if:

(a) he becomes bankrupt, suspends payment, or compounds with his creditors; or

(b) if he convicted of any offense involving dishonesty or fraud

(2) No person who has been a director or a chief executive officer of a bank which has been wound up by the court shall, without the express authority of the Commissioner, act or continue to act as a director or the chief executive officer of a licensed domestic bank.**[P.L. 1987-9, §41.]**

§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. **[Inserted by P.L.2019-114].**

PART X - RESTRICTIONS

§142. Unsound or unsafe practices.

(1) Where the Commissioner is of the opinion that a licensed bank:

(a) is following unsafe or unsound practices in the conduct of its business such that it:

(i) is likely to jeopardize its obligations to its depositors; or

(ii) is likely to be unable to meet its obligations;

(b) has contravened or failed to comply with the provisions of this Chapter; or

(c) has contravened or failed to comply with any terms and conditions imposed on it in the license granted to it, the Commissioner may issue an order to such licensed bank to cease and desist from such practice or violation and further order the licensed bank to take necessary action to correct the conditions resulting from such practice or violation. Before the expiration of sixty (60) days after the issuance of such an order, the bank may appeal to the Cabinet, whose decision shall be rendered within fifteen (15) days after the appeal.

(2) A cease and desist order shall become effective thirty (30) days after the issuance of an order under Subsection (1) of this Section upon the licensed bank concerned, and shall remain effective except if and to the extent that the Cabinet decides otherwise, either before or after the effective date of the order.**[P.L. 1987-9, §42.]**

§143. Directions by the Commissioner.

The Commissioner may give directions to licensed banks, either to all or any category of licensed banks in particular as to the maximum amount of accommodation which, having regard to the paid-up capital, reserves and deposits of a licensed bank and other relevant considerations, may be made

by specified classes of licensed banks to any one company, firm, association of persons or individuals, their close relations, or a corporation or firm in which the licensed bank has a substantial interest. **[P.L. 1987-9, §43.]**

§144. Maximum percentage of shares.

The Commissioner may, with the approval of the Cabinet, regulate the maximum percentage which may be held by way of shares in a licensed 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.**[P.L. 1987-9, §44.]**

§145. Accommodations.

(1) The provisions of this Section shall apply only to a bank incorporated in the Republic that is licensed to do local banking business.

(2) No licensed bank shall grant a sum by way of accommodation against the security of:

(a) its own shares; or

(b) shares of a corporation in which the bank has a substantial interest. **[P.L. 1987-9, §45.]**

§146. Business restrictions.

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

(2) No licensed bank may issue bearer certificates of deposit.

(3) Without the prior written approval of the Commissioner, no licensed bank incorporated in the Republic holding a domestic license may pledge any of its assets as security for or guarantee any obligations of

others except for the issuance of its letters of credit in connection with the shipment of goods or letters of guarantee, bid bonds, performance bonds, or collateralization of deposits.

(4) No licensed bank incorporated in the Republic holding a domestic license shall purchase, acquire or lease real estate, except, as may be necessary for the purpose of conducting its business or housing its staff or providing amenities for its staff having regard to any reasonable requirements for future expansion of its business or staff; but in the event of a bank acquiring real estate in full or part satisfaction of a debt owing to it, the property shall be sold at the earliest suitable opportunity within a maximum period of one year or within such longer period as the Commissioner may allow in any particular case. **[P.L. 1987-9, §46.][amended by P.L.2019-114].**

§147. Payment of dividends on profits.

No licensed domestic bank shall pay any dividend on its shares until all its capitalized expenses including preliminary expenses and other items of expenditure not represented by tangible assets have been completely written off. **[P.L. 198 7-9, §47.]**

PART XI- GENERAL

§148. Issuance and transfer of capital stock.

(1) A domestic licensed bank shall issue shares only to registered and named holders, who shall be the beneficial owners, and the articles of incorporation and by-laws shall not permit the issuance of shares in bearer form.

(2) If shares are issued in the name of a corporate body or a partnership, the names of the shareholders or subscribers to the stock of that corporate body, or partners in the partnership, shall be supplied with personal details as required in Section l08(l)(d) and (e) of this Chapter and shall be subject to such investigation as the Commissioner deems necessary.

(3) Without the prior approval of the Commissioner, no domestic licensed bank shall agree to sell, transfer or dispose of its capital stock to any one person who, upon acquiring the stock, would hold in total

more than ten percent (10%) of the stock issued by the bank. At the time of application for approval of the sale, transfer or disposition, documentation shall be submitted pursuant to Section 108(1)(d) and (e) of this Chapter. In special circumstances, where the sale, transfer or disposition does not affect the control of the bank, the Commissioner may, at his discretion, waive provisions of the said documentation.**[P.L. 1987-9, §48.]**

§149. Changes in corporate structure.

(1) Within two (2) months of a bank making changes in its articles of incorporation or by-laws, such changes shall be furnished to the Commissioner in the form of a copy of the resolution authorizing the charge, certified by a director and secretary of the bank

(2) In the case where any licensed domestic bank intends to change its name or the authorized capital, such bank shall obtain the prior written approval of the Commissioner for such change.**[P.L. 1987-9, §49.]**

§150. Minimum capital ratios.

In the case of a domestic licensed bank conducting local banking business the Commissioner may, from time to time by order, prescribe the minimum ratios which the capital and surplus of banks shall bear to the total volume of their assets or liabilities or to any specified categories of such assets or liabilities.**[P.L. 1987-9, §50.]**

§151. Insurance of deposits.

(1) Every bank holding a domestic license shall insure all deposits held by the bank, and keep such deposits insured at all times, with the Federal Deposit Insurance Corporation of the United States, or in some other manner approved by the Commissioner as being equally as reliable. The amount of insurance shall be the maximum provided by the Federal Deposit Insurance Corporation to the banks.

(2) The Federal Deposit Insurance Corporation shall have the right to be subrogated to the rights of depositors in the case of a domestic licensed bank being closed or wound up where depositors are insured by the Corporation.**[amended by P.L.2019-114].**

(3) Notwithstanding Subsection (1), the Cabinet on the written recommendation of the Commissioner may, in the public interest, wave the requirement of deposit insurance. **[P.L. 1987-9, §51; amended by P.L. 1995-128, §2.]**

§152. Declaration of interest.

(1) Every director of a licensed domestic bank who is in any manner whatsoever, whether directly or indirectly, interested in any accommodation or proposed accommodation from the licensed bank shall, as soon as is practicable, declare the nature of his interest to its Board of Directors, and its secretary or manager shall cause the declaration to be circulated forthwith to all directors.

(2) A director shall not take part in any deliberation or decisions of the Board with regard to any business transacted or proposed to be transacted by a licensed domestic bank in which the director or a close relation of the director, or a concern in which the director has a substantial interest, is interested, and the director shall withdraw from the meeting of the Board at which such business is discussed or transacted while the deliberation is in progress or decision is being made. **[P.L. 1987-9,s 52.]**

§153. Trust business.

A licensed bank may conduct trust business and act as a fiduciary, subject to the provisions of any Act relating to trust of fiduciary relationship which may be in force in the Republic at the time.**[P.L. 1987-9, §53.]**

§154. Secrecy.

(1) Except in the performance of his duties under this Chapter, every officer and employee of every licensed bank shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of the bank and of any clients of such bank that may come to his knowledge in the performance of his duties, and he shall, before entering upon his duties, sign a declaration pledging himself to observe strict secrecy with respect to such matters and not to reveal such matters except when required to do so:

(a) by a customer to whom such matters relate or by his personal representative;

(b) by a court of law in the Republic;

(c) in circumstances where in the interest of such bank it is necessary to reveal such matters; or

(d) in order to comply with the provisions of this Chapter and the provisions of any other written law.

(2) Except in the performance of his duties under this Chapter the Commissioner, and every officer or employee working under the Commissioner, shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any licensed bank, or of any of its clients that may come to his knowledge in the course of his business.

(3) Every person who contravenes the provisions of Subsection (1) or (2) above shall be guilty of an offense and shall upon conviction be liable to a fine not exceeding $5,000. **[P.L. 1987-9, §54.]**

§155. Immunity.

Neither the Cabinet nor the Commissioner nor any of the officers or employees working under the Commissioner shall be subject to any action, claim or demand by or liability to any person with respect to anything done or omitted to be done in good faith in pursuance of, or in execution, or intended execution of, or in connection with the execution of, any power conferred upon the Cabinet or the Commissioner, or an officer or employee under the Commissioner by this Chapter. **[P.L. 1987-9, §55.]**

§156. Regulations.

Notwithstanding the provisions of the *Administrative Procedure Act 1979*, 6 MIRC 1, the Commissioner may make regulations with respect to any matter affecting, or connected with, or incidental to, the proper carrying out of the provisions of this Chapter including the adoption and implementation of all core principles of the Basel Committee on Banking Supervision from time to time and as necessary, but not limited to, capital and liquidity adequacy, loan concentrations or other risk exposures and provisioning against doubtful credits, provided, however, the Commissioner shall, before the regulations are made, give adequate opportunity to the licensed banks to make representations on the intended regulations. **[P.L. 1987-9, §56; amended by P.L. 1995-128, §2.][amended by P.L.2019-114].**

§157. Liability of directors.

Where the person convicted of an offense under this Chapter is a body corporate, every person who at the time of the commission of the offense was a director or an officer of the body corporate shall be deemed to be guilty of that offense unless he proves that the offense was committed without his knowledge, or that he exercised all due diligence to avoid the commission of such offense.**[P.L. 1987-9, §57]**

§158. Failure to comply with the provisions of this Chapter.

Any person who, being a director or manager of a licensed bank who;

(a) fails to take reasonable steps to secure compliance by the bank with the requirements of this Chapter; or

(b) fails to take all reasonable steps to ensure the correctness of any statement submitted under the provisions of this Chapter, shall be guilty of an offense. **[P.L. 1987-9, §58.]**

§159. Willfully making false entries.

Any director, manager, trustee, auditor, employee or agent of any licensed bank who:

(a) willfully makes or causes to be made a false entry in any book or record or in any report, slip, document, or statement of the business, affairs, transactions, conditions, assets or liabilities or accounts of such bank;

(b) willfully omits to make an entry in any book or record or in any report, slip, document or statement of the business, affairs, transactions, condition, assets or liabilities or accounts of such bank or willfully causes any such entry to be omitted: or

(c) willfully alters, abstracts, conceals or destroys an entry in any book or record or in any report, slip, document or statement of the business, affairs, transactions, condition, assets or liabilities or accounts of such bank or willfully causes any such entry to be altered, abstracted, concealed or destroyed, shall be guilty of an offense and shall upon conviction be liable to a fine not exceeding $10,000 or to a term of imprisonment not exceeding one year, or both.**[P.L. . 198 7-9, §59]**

§160. Declaration by the Commissioner.

Notwithstanding anything to the contrary in any other Section of this Chapter, the Commissioner may, by order, from time to time:

(a) declare any person to be engaged in the banking business or to be a bank for the purpose of this Chapter, in which case the relevant provisions of this Chapter as prescribed by the Commissioner shall apply to such person; or

(b) make a declaration as under subsection (a) of this Section with respect to any agency of a licensed bank for the purposes of this Chapter.**[P.L. 1987-9, §60; amended by P.L. 1995-128, §2.]**

§161. Bank disclosure of interest and fees.

Each bank holding a domestic license shall:

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

(b) upon opening a checking account, inform the customer in simple and clear written language about all fees which may be charged;

(c) prior to the entering of a loan agreement, inform the customer in simple and clear written language about the rate of interest and the amount of interest which shall be payable if the loan is repaid according to contractual terms and the manner in which interest is calculated, provided that if the rate of interest is assessed on a base interest rate, subject to change, only the method of computation need be disclosed; also, the bank shall inform the customer in writing of any penalties and forfeitures relating to the loan agreement and any fees relating to the loan;

(d) upon receipt of shipping documents relating to the release of cargo, notify the cargo purchaser in simple and clear written language of all the fees and interest it may charge for holding or processing the documents; and

(e) maintain a list of fees and charges for services provided, such list to be available for inspection by customers upon request.**[P.L. 1987-9, §61 amended by P.L. 1998-74, §2.]**

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

(1) Subject to the capital, reserve and liquidity requirements and lending restrictions contained in this Chapter, banks shall make available for lending purposes in the Republic at least seventy percent (70%) of outstanding deposits held by residents of the Republic.

(2) Banks holding a domestic license shall publish annually an audited financial statement showing deposits and loans outstanding, and the Commissioner shall monitor on a quarterly basis the ration of loans to deposits of holding a domestic license. **[added by P.L. 1993-59, §2; amended by P.L. 1994-75, §2][amended by P.L.2019-114].**

§163. Reserved [added by P.L. 1994-85,§2, former Section 163 "Minimum Term for Certain Loans and Credit Facilities" was repealed by P.L. 1994-75, §3 on 27 April 1998.]

PART XII- PENALTIES AND EXCEPTIONS

§164. Offenses relating to this Chapter.

(1) Every person who contravenes or fails to comply with any of the provisions of this Chapter or any rule, regulation, order, direction or requirement made or given under this Chapter shall be guilty of an offense and shall upon conviction be liable to a fine not exceeding $10,000.

(2) Every person who is guilty of an offense for which no punishment is prescribed in the preceding provisions, shall upon conviction be liable to a fine not exceeding $10,000.

(3) Any person who attempts to commit, or does any act preparatory to the commission of any offense under this Chapter, shall be deemed to be guilty of such offense.

(4) This section does not apply to Part XIII of this Act.

(5) The Banking Commissioner shall refer all violations under this Chapter to the Office of the Attorney General for enforcement proceedings in the High Court of the Republic of the Marshall

Islands; and all monies collected under the authority of this paragraph shall be deposited into the Fund within the National Treasury of the Republic.**[P.L. 1987-9, §62.][(4) added by P.L. 2000-20, §2(C)][Subsection 5 is inserted by P.L.2019-114].**

§165. Exceptions.

The provisions of the *Business Licenses Act 1983* shall not apply to banks licensed under this Chapter. **[P.L. 1987-9, §63; note this section is now obsolete as the Business Licenses Act 1983, 20 MIRC 2, has been repealed.]**

PART XIII – ANTI – MONEY LAUNDERING OFFENSES

§166. Money laundering offenses and penalties.

(1) A person commits the offense of money laundering if the person:

(a) acquires, possesses or uses property, knowing or having reason to believe that the property is the proceeds of crime;

(b) knowing or having reason to believe that such property is the proceeds of crime, renders assistance to another person for:

(i) the conversion or transfer of property, with the aim of concealing or disguising the illicit origin of that property, to evade the legal consequences thereof; and

(ii) concealing or disguising the true nature, origin, location, disposition, movement or ownership of the property.

(c) nothing in this Act shall prevents a person that committed any other offense that generated the proceeds of crime from being convicted of an offense of money laundering in respect of those proceeds of crime;

(d) a person who attempts, facilitates, conspires, or aids and abets any other person to commit an offence of money laundering commits an offense and is liable on conviction to the penalties specified under this section;

(e) for the purpose of this section, when proving that property is the proceeds of crime, it is not necessary that a person is convicted of the serious offence that generated the proceeds of crime;

(f) for the purposes of this section, it is not necessary that the serious offense that generated the proceeds of crime was committed within the Marshall Islands.

(2) Where a person is convicted of any of the offenses specified under this Section, in the case of a natural person, such person shall be liable to imprisonment for a term of imprisonment not exceeding twenty (20) years or a fine not exceeding $2,000,000, or both, and in the case of a body corporate five (5) times such a fine or double the amount of money involved in the offense scheme, whichever is greater.**[amended by P.L. 2011-57]**

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

(1) The Commissioner, amongst other duties:

(a) shall receive, analyze, and disseminate reports of transactions issued by financial institutions or cash dealers pursuant to Section 170 and Section 170A of this Act.

(b) shall send any such report to the appropriate law enforcement authorities, if there are reasonable grounds to suspect that the transaction is suspicious;

(c) may upon prior notice, enter the premises of any banks and financial services providers 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;

(d) shall send to the appropriate law enforcement authorities, any information derived from an inspection carried out pursuant to Subsection (1) (c) of this Section, if it gives the Commissioner reasonable grounds to suspect that a transaction involves money laundering, proceeds of a crime, and or the financing of terrorism;

(e) may instruct any banks, DNFBPs and financial services provider to take such steps as may be appropriate to facilitate any investigation anticipated by the Commissioner;

(f) may compile statistics and records, disseminate information within the Republic of the Marshall Islands or elsewhere, make recommendations arising out of any information received;

issue guidelines to Banks, DNFBPs, and financial service providers and advise the appropriate officials;

(g) shall create training requirements and provide such training for any banks, DNFBPs, and financial services provider with respect to transaction record-keeping and reporting obligations provided for in this Act;

(h) may consult with any relevant person, institution or organization for the purpose of exercising its powers or duties under Subsections (1) (e), (f), (g) or (1) of this Section;

(i) shall have the authority to request additional information from banks, DNFBPs, and financial services provider 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;

(j) shall have the authority and ability to exchange information between international administrative authorities;

(k) shall have the authority and ability to facilitate and assist international administrative authorities in conducting proceeds of crime, money laundering, and or the financing of terrorism investigations;

(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 banks, DNFBPs and financial services provider 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;

(m) shall have the authority and ability to obtain information under this Section notwithstanding any secrecy or other restrictions on disclosure of information imposed by this Act; and

(n) shall conduct, in association with law enforcement authorities, investigations into the proceeds of crime, money laundering, and or the financing of terrorism, only where the Commissioner has reasonable grounds to suspect money the

proceeds of crime, money laundering activity, and or the financing of terrorism is occurring.

(o) shall prepare annually, a report of the activities of the Domestic Financial Intelligence Unit that shall include statistics, typologies and trends as well as information regarding the activities of the Domestic Financial Intelligence Unit, which shall be submitted to Cabinet before the end of each financial year. **[paragraphs (a), (d), (i), (k), (l) and (n) amended by P.L.2009-20; amended by P.L. 2011-57.][amended by P.L.2019-114].**

§168. Banks, DNFBPs and Financial Services Providers to verify customers identity.

(1) A banks, DNFBPs and financial service providers 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 banks, financial service providers 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, DNFBP, or financial services provider 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, thank bank, DNFBP, or financial services provider 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, DNFBP, or financial services provider to which this Act applies; or

(b) there is a transaction or a series of transactions taking place in which the applicant has already produced satisfactory evidence of identity. **[subsection (2) and paragraph (4)(b) amended by P.L. 2002-59][amended by P.L.2019-114].**

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

(1) Every bank, DNFBP, and financial services provider shall retain records for all transactions. These records shall be kept in a readily recoverable form.

(2) Banks, DNFBPs, and financial services providers shall maintain records on customer identification, account files and business correspondence for six (6) years after the account has been closed, and all records necessary to reconstruct financial transactions for six (6) years after the conclusion of the transactions.

(3) Records regarding financial transactions shall contain particulars sufficient to identify the following:

(a) name, address and occupation (or where appropriate business or principal activity) of each person:

(i) conducting the transaction; or

(ii) if known, on whose behalf the transaction is being conducted as well as the method used by the bank, DNFBP, or financial services provider to verify the identity of each such person;

(b) nature and date of the transaction;

(c) type and amount of currency involved;

(d) the type and identifying number of any account with the bank, DNFBP, or financial services provider involved in the transaction;

(e) if the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee (if any), the amount and date of the instrument, the

number (if any) of the instrument and details of any endorsements appearing on the instrument;

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

(g) multiple 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, DNFBP, or financial services provider its employees, officers or agents have knowledge of these transactions, they shall record these transactions.

(4) Record required under Subsection (1) shall be kept by the bank, DNFBP, or financial services providers for a period of at least six (6) years from the date the relevant business or transaction was completed.

(5) A bank, DNFBP, or financial services provider, its employees, officers or directors, willfully 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.**[P.L. 2002-59][amended by P.L.2019-114].**

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

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

(2) A bank, DNFBP, or financial services provider which has reported a suspicious transaction in accordance with this Section shall, if requested to do so by the Commissioner or Attorney-General, give such further information as it has in relation to the transaction.

(3) The Commissioner, Attorney-General, banks, DNFBPs, financial services provider shall maintain reports required by this Section for a period of fifteen (15) years.

(4) Banks, DNFBPs, and financial services provider, its employees, officers or directors, shall not notify any person or entity other than the Commissioner or Attorney-General, a court of competent jurisdiction upon process issued, or other person as may be authorized by law, of the information, record, or report that has been prepared, or otherwise referred or furnished to the Commissioner, Attorney-General or court of competent jurisdiction, or other lawfully authorized person. Any person or bank, DNFBP, or financial services provider who improperly discloses such information commits an offense, punishable by a fine of not more than $2,000,000.00 or imprisonment for not more that 20 years, or both.**[amended by P.L.2019-114].**

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

(1) Banks, DNFBPs, and financial services provider 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.

(2) All suspicious transactions, attempted transactions and other activities that may be related to terrorism, terrorist acts, a terrorist organization, an individual terrorist, terrorist property or financing of terrorism must be reported regardless of the amount involved in the transaction, attempted transaction or activity.

(3) Such suspicion must be reported in writing to the Banking Commissioner as soon as reasonably practicable and in any event within three days of the forming of such suspicion.

(4) A bank, DNFBP, or financial services provider, its employees, officers or directors willfully violating the requirements of this section commits an offence punishable by a fine of not more than $2,000,000 or imprisonment for not more than twenty (20) years, or both.

(5) Where a person is employed by a bank, DNFBP, or financial services provider and his or her employer has an established procedure for the reporting of suspicious, it is a defense for him to prove that he reported his suspicion in accordance with that procedure.

(6) For the purposes of this section the "financing of terrorism" shall have the same meaning as financing of terrorism prohibited in §120 of Counter Terrorism Act (15 MIRC Ch.1). **[§170A added by P.L.2009-20].[amended by P.L.2019-114].**

§171. Seizure and detention of suspicious imports or exports of currency.

(1) The Commissioner or Attorney-General may seize and, in accordance with this Section detain, any currency which is being imported into or exported from the Republic of the Marshall Islands, if:

(a) he or she has reasonable grounds for suspecting that it is:

(i) property derived from a serious offense; or

(ii) intended by any person for use in the commission of a serious offense.

(2) Currency detained under Subsection (1) of this Section shall not be detained for more than twenty-four (24) hours after seizure, unless a judge orders its continued detention for a period not exceeding three (3) months from the date of seizure, upon being satisfied that:

(a) there are reasonable grounds for the suspicion referred to in Subsection (1) (a) of this Section; and

(b) its continued detention is justified while:

(i) its origin or derivation is further investigated; or

(ii) consideration is given to the institution in the Republic of the Marshall Islands or elsewhere of criminal proceedings against any person for an offense with which the currency is connected.

(3) A judge may subsequently order continued detention of the currency if satisfied of the matters mentioned in Subsection (2) of this Section,

but the total period of detention shall not exceed two (2) years from the date of the order made under that Subsection.

(4) Subject to Subsection (5) of this Section, currency detained under this Section may be released in whole or in part to the person on whose behalf it was imported or exported:

(a) by order of a judge that its continued detention is no longer justified, upon application by or on behalf of that person and after considering any views of the Attorney-General to the contrary; or

(b) by the Commissioner and Attorney-General, if satisfied that its continued detention is no longer justified.

(5) No currency detained under this Section shall be released where:

(a) an application is made under Section 172 of this Act for the purpose of:

(i) the confiscation of the whole or any part of the currency; or

(ii) its restraint pending determination of its liability to confiscation; or

(b) proceedings are instituted in the Republic of the Marshall Islands or elsewhere against any person for an offense with which the currency is connected, unless and until the proceedings relating to the relevant application or the proceedings for the offense have been concluded.

§172. Application for confiscation order.

(1) Where a person is convicted of a serious offense, the Commissioner or Attorney-General may, not later than six (6) months after the conviction, apply to the High Court for the following order:

(a) a confiscation order against property that is tainted property inrespect of the offense.

(2) An application under Subsection (1) may be made in respect of one or more than one offense.

(3) Where an application under this Section is finally determined, no further application for a confiscation order may be made in respect of the offense for which the person was convicted without the leave of

the High Court.The High Court shall not give such leave unless it is satisfied that:

(a) the property to which the new application relates was identified after the previous application was determined;

(b) necessary evidence became available after the previous application was determined; or

(c) it is in the interest of justice that the new application be made.

§173. Notice of application.

(1) Where the Commissioner or Attorney-General applies for a confiscation orderagainst property in respect of the person's conviction of a serious offense:

(a) the Commissioner or Attorney-General must give no less thanfourteen (14) days written notice of the application to the person and to any other person who the Commissioner or Attorney-General has reason to believe may have an interest in the property;

(b) the person and any other person who claims an interest in the property may appear and adduce evidence at the hearing of the application; and

(c) the High Court may, at any time before the final determination of the application, direct the Commissioner or Attorney-General to:

(i) give notice of the application to any person who, in the opinion of the High Court, appears to have an interest in the property;

(ii) publish in a newspaper published and circulating in the Marshall Islands, a notice of the application.

§174. Confiscation order on conviction.

(1) Where upon application by the Commissioner or Attorney-General, the High Court is satisfied that property is tainted property in respect of a serious offense of which a person has been convicted, or a person charged who dies or absconds, the High Court may order that specified property be confiscated.

(2) In determining whether property is tainted property the High Court may infer, in the absence of evidence to the contrary:

(a) that the property was used in or in connection with the commission of the offense if it was in the person's possession at the time of, or immediately after the commission of the offense for which the person was convicted; and

(b) that the property was derived, obtained or realized as a result ofthe commission of the offense if it was acquired by the person before, during or within a reasonable time after the period of the commission of the offense of which the person was convicted, and the High Court is satisfied that the income of that person from sources unrelated to criminal activity of that person cannot reasonably account for the acquisition of that property.

(3) Where the High Court orders that property, other than money, be confiscated, the High Court shall specify in the order the amount that it considers to be the value of the property at the time when the order is made.

(4) In considering whether a confiscation order should be made under Subsection (1) of this Section, the High Court shall have regard to:

(a) the rights and interests, if any, of third party owners of the property, provided the third party establishes no unlawful involvement or benefit from the transaction in which the person convicted was involved;

(b) the gravity of the offense concerned;

(c) any hardship that may reasonably be expected to be caused to any victim or third party by the operation of the order, provided the victim or third party establishes no unlawful involvement or benefit from the transaction in which the person convicted was involved; and

(d) the use that is ordinarily made of the property, or the use to whichthe property was intended to be put.

(5) Where the High Court makes a confiscation order, the High Court may give such directions as are necessary or convenient for giving effect to the order.

§175. Effect of confiscation order.

(1) Subject to Subsection (2) of this Section, where a Court makes a confiscation order against any property, the property vests absolutely in the Republic of the Marshall Islands by virtue of the order.

(2) Where property ordered to be confiscated is registered property:

(a) the property vests in the Republic of the Marshall Islands in equity, but does not vest in the Republic of the Marshall Islands at law until the applicable registration requirements have been complied with;

(b) the Republic of the Marshall Islands is entitled to be registered as owner of the property;

(c) the Commissioner or Attorney-General has power on behalf of the Republic of the Marshall Islands to do or authorize the doing of anything necessary or convenient to obtain the registration of the Republic of the Marshall Islands as owner, including the execution of any instrument to be executed by a person transferring an interest in property of that kind.

(3) Where the High Court makes a confiscation order against property:

(a) the property shall not, except with the leave of the High Court and in accordance with any directions of the High Court, be disposed of, or otherwise dealt with, by or on behalf of the Republic of the Marshall Islands before the relevant appeal date; and

(b) if, after the relevant appeal date, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the direction of the Commissioner and Attorney-General.

§176. Payment instead of a confiscation order.

(1) Where the High Court is satisfied that a confiscation order should be made in respect of the property of a person convicted of a serious offense, but that the property or any part thereof or interest therein cannot be made subject to such an order and, in particular:

(a) cannot, on the exercise of due diligence be located;

(b) has been transferred to a third party in circumstances which do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding the confiscation of the property;

(c) is located outside of the Marshall Islands;

(d) has been substantially diminished in value or rendered worthless; or

(e) has been commingled with other property that cannot be divided without difficulty the High Court may, instead of ordering the property or part thereof or interest therein to be confiscated, order the person to pay to the Marshall Islands an amount equal to the value of the property, part or interest.

§177. Application of procedure for enforcing fines.

(1) Where the High Court orders a person to pay an amount under Section 176, that amount shall be treated as if it were a fine imposed upon him or her in respect of a conviction for a serious offense, and the High Court shall:

(a) Where a person is convicted of any of the offenses specified in Subsection (1), in the case of a natural person, such person shall be liable to imprisonment for a term of imprisonment not exceeding twenty (20) years or a fine not exceeding $2,000,000, or both, and in the case of a body corporate five (5) times such a fine or double the amount of money involved in the offense scheme, whichever is greater.

(b) direct that the term of imprisonment imposed pursuant to Subsection (a) be served consecutively to any other form of imprisonment imposed on that person, or that the person is then serving.

§178. Immunity where suspicious transaction reported.

No action, suit or other proceedings shall lie against any bank, DNFBP, or financial services provider, or any officer, employee or other representative of the institution acting in the ordinary course of the person's employment or representation, in relation to any action taken in good faith by that bank, DNFBP, or financial services provider or person pursuant to this Act.**[amended by P.L.2019-114].**

§179. Immunity where official powers or functions exercised in good faith.

No suit, prosecution or other legal proceedings shall lie against the Government, or any officer or other person in respect of anything done by or on behalf of that person, with due diligence and in good faith, in the exercise of any power or the performance of any function under this Act or any rule of order made thereunder.**[P.L. 2000-20]**

§180. Currency Transaction Reports.

The Commissioner of Banking may prescribe a regulation that requires a bank, DNFBP, financial services provider involved in a transaction for the payment, receipt ortransfer 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 bank, DNFBPs, and financial services provider. The Commissioner has the authority to revoke any exemption granted under the regulation.**[P.L. 2002-59][amended by P.L.2019-114].**

§181. Assessment of Civil Money Penalties

(1) In addition to any criminal penalties or fines authorized by Part XIII of the Banking Act, 1987, each bank, DNFBP, and financial services provider, and any partner, director, officer, employee, or person participating in the conduct of the affairs of the financial 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 Treasury of the Republic.

(3) The resignation, termination of employment or termination of participation in the affairs of any partner, director, officer, employee, or person participating in the conduct of the affairs of a bank, DNFBP, or financial services provider shall not affect the jurisdiction of the court to issue judgement against such person or entity within six years oftheir resignation, termination of employment or termination of participation in the affairs of the financial institution or cash dealer.

(4) The Banking Commissioner may prescribe regulations establishing criteria and procedures not inconsistent with these provisions as may be necessary to carry out the provisions of this Part XIII.**[P.L. 2002-59][sections 66 to 82 re-numbered to conform with style and format of the Code. Subsection (4) herein was incorrectly numbered as (5) in P.L. 2002-59][amended by P.L.2019-114].**

§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.**[inserted by P.L.2019-114].**

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

(1) This Section hereby establishes the National Anti-Money Laundering and Combating the Financing of Terrorism Council, which shall be referred to as the National AML/CFT Council in this Act, consisting of:

(a) the Attorney General or his designee;

(b) the Banking Commissioner;

(c) the Unit, Banking Commission;

(d) the Police Commissioner;

(e) the Division of Customs and Revenue;

(f) the Auditor General or a designee; and

(g) the Registrar of Corporations for Resident Domestic Entities, Non-Resident Domestic Entities, and Foreign Investments.

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

(3) Except for the purpose of performing duties or in the exercise of functions under this Act or when lawfully required to do so by any court, a member of the National AML/CFT Council shall not disclose any information or matter which has been obtained in the performance of his duties or in the exercise of his functions under this Act, except:

(a) for the detection, investigation or prosecution of a serious offense, a money laundering offense or an offense of financing of terrorism; or

(b) for the enforcement of the *Proceeds of a Crime Act 2002*.

(4) The functions of the Council are:

(a) to advise the Minister on any matters relating to the prevention of money laundering or the financing of terrorism;

(b) to make recommendations to the Minister and Cabinet on any matters relating to the prevention of money laundering or the financing of terrorism;

(c) to assist the Unit and the Minister and Cabinet in the formulation of policies or strategies relating to the prevention of money laundering or the financing of terrorism; and

(d) to assist the Banking Commission in the coordination between various Government ministries, agencies and other statutory entities on matters relating to the prevention of money laundering or financing of terrorism.**[inserted by P.L.2019-114].**

§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.**[inserted as new by P.L.2019-114].**

PART XV –FUND

§185. Banking Commission Fund.

(1) The Republic of the Marshall Islands Banking Commission Special Revenue Fund ("Fund") is hereby established. The Fund is a separate fund from the General Fund to be administered by the Commission. The Fund shall be a revolving fund within the National Treasury and under the control and supervision of the Ministry of Finance, which shall provide for its administration in accordance with the *Financial Management Act 1990*.

(2) The Commission shall maintain all transaction records made under the Fund and shall produce all records to the Office of the RMI Auditor General at the end of each financial year for audit purposes.

(3) The Commissioner, with the approval of the Minister, may invest monies of the Fund which:

(a) have not been allocated or encumbered for any other purpose;

(b) in the Commissioner's judgment, are in excess of the amounts necessary for meeting the immediate requirements for the operational budget of the current fiscal; and

(c) in the Commissioner's judgment will not impede or hamper the necessary financial operations of the Commission.

(4) Any such investments shall be subject to the same term of maturity as provided for under section 119 of the *Financial Management Act 1990* and any income derived therefrom may be reinvested or paid into the Fund.

(5) Payments into the Fund shall include:

(a) Any money appropriated by the Nitijela for the operations of the Commission;

(b) All fees, fines, and sums paid to and collected by the Commission for or with respect to any violations under this Act;

(c) All grants and gifts, other than funds appropriated by the Nitijela, received by the Commission to assist in its functions under this Act;

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

(6) Payments Out of the Fund shall be made only to support the operations of the Commission, including, but not limited to:

(a) fees, costs, dues and contributions required of regional and international organizations membership fees and travel expenses incurred in relation to attendance of such organizations' meetings;

(b) costs in relation to approved investments referred to under Subsection 3 of this Section; and

(c) any other costs in relation to the overall operations of the Commission.

(7) The Commission shall, in advance of each financial year, prepare and present a budget to the Minister, for the expenditure of monies out of the Fund for that financial year. The budget, with the approval of the Minister, may be revised from time to time as the Commission deems necessary. Approved budgets shall be forwarded to the Secretary of Finance and the Secretary of Finance shall assure that sufficient funds are retained to meet such costs.

(8) The Secretary Finance shall cause to be maintained, accounts and records of the following in accordance with generally accepted accounting principles for government funds, as adopted and occasionally amended by the Government Accounting Standards Board:

(a) the Fund;

(b) the disposition of money paid out of the Fund;

(c) the property purchased with money from the Fund; and

(d) the Fund's investment portfolio and all transactions thereto.

(9) The accounts and records referred to in subsection 8 of this Section are subject to audit pursuant to Article VIII, Section 15 of the Constitution.

(10) The Fund and related transactions are not subject to any tax, rate, charge or impost under any other law.**[inserted as new by P.L.2019-114].**

§186. Effective Date

This Chaptershall take effect in accordance with Article VI, Section 21 of the Constitution. **[Sections 166 -183 re-numbered to accommodate new provisions and to conform to new Code format P.L. 2002-59[Rev2003]**