

**NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
44TH CONSTITUTIONAL REGULAR SESSION, 2023**



Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

CRIMINAL CODE (AMENDMENT) ACT, 2023

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CRIMINAL CODE (AMENDMENT) ACT, 2023

AN ACT to amend Title 31, Chapter 1 of the Marshall Islands Revised Code to add certain provisions in line with the international standards for anti-money laundering and countering the financing of terrorism.

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

§101. Short title.

This Act may be cited as the Criminal Code (Amendment) Act, 2023.

§102. Amendments.

(1) Section 224.10 of the Republic of the Marshall Islands Criminal Code, 2011 is hereby amended as follows:

§224.10. Counterfeit Marks.

- (1) A person commits the offense of counterfeiting if the person knowingly, and with the intent to sell or distribute, manufactures, uses, displays, advertises, distributes, offers for sale, sells, or possesses any item or service bearing, or identified by, a counterfeit mark with knowledge that the mark is counterfeit.
- (2) Except as provided in paragraphs (a) and (b) of this Subsection, a violation of this Section constitutes a misdemeanor.
 - (a) A violation of this Section constitutes a felony of the third degree if:

- (i) the defendant has previously been convicted of one offense under this Section; or
 - (ii) the violation involves more than 100 but less than 1,000 items bearing a counterfeit mark or the total retail value of all items or services bearing or identified by a counterfeit mark is more than \$2,000, but less than \$10,000.
- (b) A violation of this Section constitutes a felony of the second degree if:
 - (i) the defendant has been previously convicted of two or more offenses under this Section;
 - (ii) the violation involves the manufacture or production of items bearing counterfeit marks; or
 - (iii) the violation involves 1,000 or more items bearing a counterfeit mark or the total retail value of all items or services bearing or identified by a counterfeit mark is more than \$10,000.
- (3) Any person convicted under this Section shall be fined in accordance with existing law or an amount up to three times the retail value of the items or services bearing or identified by a counterfeit mark, whichever is greater.
- (4) All items bearing a counterfeit mark, and all personal property, including but not limited to, any items, objects, tools, machines, equipment, instrumentalities or vehicles of any kind, employed or used in connection with a violation of this Section, shall be subject to forfeiture in accordance with laws of the Republic.
- (5) For purposes of this Section, a mark is counterfeit if:
 - (a) it is identical to, or substantially indistinguishable from, a trade mark registered or otherwise established under the laws of the Republic; and
 - (b) it is used on or in connection with the same type of goods or services for which the genuine trademark is registered or otherwise established.

- (2) The Republic of the Marshall Islands Criminal Code, 2011 is hereby amended to add a new Article 225 and new §§225.0 to 225.3as follows:

ARTICLE 225. MARKET TRADING OFFENSES

§225.0. Definitions.

- (1) In this Article, unless the context otherwise requires:
- (a) “disseminate,” in relation to information, includes making available, publishing, or circulating the information by letter, telephone, newspaper, radio or television broadcast, film, internet service, or any other form of communication;
 - (b) “financial market” is an exchange, market, or other facility within or outside the Republic through which offers to acquire, trade, or dispose of securities are regularly made or accepted;
 - (c) “generally available,” when used in the context of information about securities, means:
 - (i) the information:
 - (a) has been made known in a manner likely to bring it to the attention of persons who commonly invest in securities of a kind whose price might be affected by the information; and
 - (b) since being made known, has been available for a reasonable time for it to be disseminated among those persons;
 - (ii) the information likely can be readily obtained by persons who commonly invest in securities of a kind whose price might be affected by the information (whether by observation, use of expertise, purchase from other persons, or any other means); or
 - (iii) the information consists of deductions, conclusions, or inferences made or drawn from

either or both of the kinds of information referred to in paragraphs (i) or (ii);

- (d) "information" includes:
 - (i) matters of supposition and other matters that are insufficiently definite to warrant being made known to the public; and
 - (ii) matters relating to the intentions, or likely intentions, of a person;
 - (e) "inside information" means information in relation to particular securities which is material information and is not generally available;
 - (f) "material information" means information that:
 - (i) a reasonable person would expect, if it were generally available to the market, to have a material effect on the price or value of a security; and
 - (ii) relates to particular securities, rather than to securities or financial markets generally.
 - (g) "person" includes the government, as defined in §223.0(4) of this Act;
 - (h) "security" means a security, as defined in §102 of the Securities and Investment Act, 36 MIRC Ch. 1, that is traded on a financial market.
- (2) For purposes of this Article, a reasonable person would expect information to have a material effect on the price or value of a particular security only if the information likely would influence persons who commonly acquire securities in deciding whether or not to acquire or dispose of the security.

§225.1. Prohibited Conduct by Insider.

- (1) A person commits a felony of the second degree if the person:
 - (a) possesses inside information;
 - (b) knows that the inside information is material information and is not generally available; and

- (c) engages in conduct, as principal or agent, that directly or indirectly results in the person:
 - (i) applying for, acquiring, or disposing of securities to which the inside information relates, or agreeing to do so; or
 - (ii) procuring another person to apply for, acquire, or dispose of securities to which the inside information relates, or agreeing to do so.
- (2) A person commits a felony of the second degree if the person:
 - (a) possesses inside information;
 - (b) knows that the inside information is material information and is not generally available;
 - (b) engages in conduct that directly or indirectly communicates the inside information, or causes the inside information to be communicated, to another person; and
 - (c) knows that the other the person would, or would be likely to:
 - (i) apply for, acquire, or dispose of securities to which the inside information relates, or agree to do so; or
 - (ii) procure another person to apply for, acquire, or dispose of securities to which the inside information relates, or agree to do so.
- (3) Subsection (1) does not apply if:
 - (a) the application, acquisition, or disposal of securities:
 - (i) is done in the name of the person or in the name, or on behalf, of the person's spouse or child; and
 - (ii) complies with any requirements of an entity authorised to regulate acquiring or disposing of securities for personal gain; or
 - (b) the securities are applied for or acquired as a result of a takeover offer made by the person in accordance with the law.

§225.2. Market Manipulation.

A person commits a felony of the second degree if the person directly or indirectly carries out, or otherwise takes part in, one or more transactions that the person knows will have, or are likely to have, the effect of:

- (a) creating an artificial price for trading in security on a financial market; or
- (b) maintaining at a level that is artificial (whether or not it was previously artificial) a price for trading in securities on a financial market.

§225.3. False Trading.

- (1) A person commits a felony of the second degree if the person:
 - (a) engages in conduct that has or is likely to have the effect of creating, or causing the creation of, a false or misleading appearance:
 - (i) with respect to the extent of active trading in particular securities; or
 - (ii) with respect to the supply of, demand for, price for trading in, or value of particular securities; and
 - (b) knows that the conduct will have, or is likely to have, that effect.
- (2) Without limiting Subsection (1)(a), a person is presumed to have created a false or misleading appearance of active trading in financial securities if the person directly or indirectly enters into, or carries out, a transaction that purports to acquire or dispose of the particular securities, but does not actually involve any change to the beneficial ownership of the securities.
- (3) For Subsection (2), a transaction that purports to acquire or dispose of the particular securities, but does not actually involve any change to the beneficial ownership of the securities happens if:

- (a) a person who had an interest in the securities before the transaction has an interest in the securities after the transaction; or
- (b) an associate of a person referenced in paragraph (a) has an interest in the securities after the transaction.

§225.4. Market Rigging.

A person commits a felony of the second degree if:

- (a) the person knowingly enters into, or engages in, a fictitious or artificial transaction or device;
- (b) the transaction or device will result, or is likely to result, in:
 - (i) maintenance, inflation, or depreciation of the price for trading in particular securities; or
 - (ii) fluctuations in the price for trading in particular securities; and
- (c) the transaction or device has that result.

§225.5. False or Misleading Statements.

A person commits a felony of the second degree if:

- (a) the person makes a statement or disseminates information that is false in a material particular or is materially misleading;
- (b) the statement or information is likely:
 - (i) to induce a person to apply for, acquire, or dispose of securities;
 - (ii) to have the effect of increasing, reducing, maintaining, or stabilising the price for trading in a particular security; or
 - (iii) to induce a person to exercise a voting right attached to a security in a particular way, or to abstain from exercising such a right; and
- (c) when the person makes the statement, or disseminates the information:

- (i) the person is recklessly indifferent as to whether the statement or information is true or false; or
- (ii) the person knows or should know that the statement or information is false in a material particular or is materially misleading.

§103. Effective Date.

This Bill, and all Acts contained herein, shall take effect in accordance with the Constitution and the Rules of Procedures of the Nitijela.

CERTIFICATE

I hereby certify:

1. That Nitijela Bill No: 122 was passed by the Nitijela of the Republic of the Marshall Islands on the 28th day of September 2023; and
2. That I am satisfied that Nitijela Bill No: 122 was passed in accordance with the relevant provisions of the Constitution of the Republic of the Marshall Islands and the Rules of Procedures of the Nitijela.

I hereby place my signature before the Clerk this 25th day of October 2023.

Hon. Kenneth A. Kedi
 Speaker
 Nitijela of the Marshall Islands

Attest:

Carl Alik
 Assistant Clerk
 Nitijela of the Marshall Islands