NITIJELA OF THE MARSHALL ISLANDS

23rd CONSTITUTIONAL REGULAR SESSION, 2002 BILL NO: 102 N.D.1

P.L. 2002-66

AN ACT

to provide for the manner and form in which evidence obtained from outside the Republic of the Marshall Islands may be admissible in proceedings in the Republic of the Marshall Islands, and for related purposes.

Section 1. **Short title.**

This Act shall be known and may be cited as the "Foreign Evidence Act, 2002"

Section 2. **Commencement**

This Act shall take effect on the date of certification in accordance with Article IV, section 21 of the Constitution.

Section 3. **Purpose.**

The purpose of this Act is to provide for the admissibility of evidence obtained from a foreign country, in civil and criminal proceedings in the Republic of the Marshall Islands.

Section 4. **Jurisdiction.**

The provisions of this Act shall apply to the Republic of the Marshall Islands.

Section 5. **Definitions.**

In this Act, unless the context otherwise requires:

(1) "Attorney General" means the Attorney General of the RMI;

(2) "authorized officer" means:

(a) the Attorney General of the RMI;

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(8) "related civil proceedings", in relation to a criminal proceeding, means any civil proceedings arising from the same subject matter from which the criminal proceeding arose;

(9) "RMI" means the Republic of the Marshall Islands;

(10) "RMI law" means a law of or in force in the RMI;

(11) "High Court" means the High Court of the RMI.

Section 6. **Application.**

This Act applies to:

(1) a proceeding before the High Court that is:

(a) a criminal proceeding under the law of the RMI; or

(b) a related civil proceeding;

(2) testimony obtained as a result of a request made by or on behalf of the Attorney General to a foreign country for the testimony of a person pursuant to the Mutual Assistance in Criminal Matters Act, 2002; and

(3) any exhibit annexed to any such testimony.

Section 7. **Admissibility requirements for testimony.**

(1) To be admissible under this Act, testimony must be taken before a court:

(a) on oath or affirmation; or

(b) under such caution or admonition as would be accepted by courts in the foreign country concerned, for the purposes of giving testimony proceedings before those courts.

(2) The testimony may be taken in camera.

Section 8. **Form of testimony.**

(b) a person appointed by the Attorney General, as an authorized officer for the purposes of this Act;

(3) "civil proceeding" means a proceeding other than a criminal proceeding;

(4) "criminal proceeding" includes:

(a) a prosecution of an offense;

(b) a proceeding for the sentencing of a person convicted of an offense;

(5) "foreign law" means a law (whether written or unwritten) of or in force in a foreign country;

(6) "foreign country" means:

(a) any country other than the RMI; and

(b) every constituent part of such Country or country, including a territory, dependency or protectorate, or political subdivision which administers its own laws relating to evidence;

(7) "foreign material" means:

(a) the testimony of a person that:

(i) was obtained as a result of a request of a kind referred to in section 7 of the Mutual Assistance in Criminal Matters Act, 2002., and

(ii) complies with the requirements of section 7 of this Act;

(b) any exhibit annexed to any such testimony;

(c) any part of any such testimony or exhibit;

(1) The testimony may be recorded:

(a) in writing;

(b) on audio tape;

(c) on video tape; or

(d) by any other electronic or mechanical means.

(2) The writing need not:

(a) be in the form of an affidavit; or

(b) constitute a transcript of a proceeding in a foreign court.

(3) The testimony must be endorsed with, or accompanied by, a certificate stating that:

(a) it is an accurate record of the evidence given; and

(b) it was taken in a manner specified in section 8.

(4) The certificate must:

(a) be signed or certified by a judge, magistrate or court officer of the foreign country to which the request was made; and

(b) bear an official or public seal of:

(i) the foreign country; or

(ii) an authority of the foreign country responsible for matters relating to justice, being a Secretary, Minister, or Minister of State, a Department or Ministry of Government, or an officer in or of the Government.

Section 9. **Introduction of foreign material as evidence.**

(1) Subject to subsection (2), foreign material may be introduced as evidence in

a proceeding to which this Act applies.

(2) The foreign material will be excluded from evidence if:

(a) it appears to the satisfaction of the court, at the hearing of the proceeding, that the person who gave the testimony concerned is present in the RMI and is able to testify at the hearing;

(b) the evidence would not have been admissible had it been introduced by the person giving the testimony at the hearing in the RMI; or

(c) it appears to the court that the interests of justice would not be served by admitting the evidence.

(3) Foreign material introduced under this Act shall not be excluded from evidence on the basis that such material is hearsay evidence under the Rules of Evidence in force in the RMI, if the court is satisfied as to the reliability and authenticity of the material.

(4) In reaching a decision pursuant to subsection (2)(c), the court shall take into account:

(a) the extent to which the foreign material provides evidence that would not otherwise be available;

(b) the probative value of the foreign material with respect to any issue that is likely to be determined in the proceeding;

(c) the extent to which statements contained in the foreign material were subject, at the time they were made, to challenge by cross-examination of the persons who made them;

(d) whether exclusion of the foreign material would cause undue expense

or delay;

(e) whether exclusion of the foreign material would unfairly prejudice:

(i) any party in the criminal proceeding; or

(ii) any party to related civil proceedings; and

(f) the reliability of the foreign material.

Section 10. **Proof of service of documents abroad.**

The service of documents in a foreign country may be proved by affidavit of the person who served it.

Section 11. **Certificates relating to foreign material.**

(1) An authorized officer may certify that specified foreign material was obtained as a result of a request made to a foreign country by or on behalf of the Attorney General of the RMI.

(2) There shall be a rebuttable presumption that the foreign material specified in the certificate was obtained as a result of that request.

Section 12. **Operation of other laws.**

This Act does not limit the ways in which a matter may be proved, or evidence may be introduced or admitted under any other law of the RMI.

CERTIFICATE

I hereby certify;

(1). that the above Nitijela Bill No. 102 ND1 was passed by the Nitijela of the Marshall Islands on the 9th day of October 2002; and

(2). that I am satisfied that Nitijela Bill No. 102 ND1 was passed in accordance with

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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 of the Nitijela on this 1/th day of November 2002.

Attest:

Litokwa Tomeing
Speaker
Nitijela of the Marshall Islands

Joe Riklon
Clerk
Nitijela of the Marshall Islands