NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
45TH CONSTITUTION REGULAR SESSION, 2024

Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

AILUK SUSTAINABLE DEVELOPMENT AUTHORITY 2024

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NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
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AILUK SUSTAINABLE DEVELOPMENT AUTHORITY 2024

AN ACT to enact a new Chapter 24 under Title 10 of the MIRC to create a sustainble development authority for Ailuk Atoll and its people

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

§101. Short title.

This Act may be cited as the Ailuk Sustainable Development Authority Act, 2024.

§102. Purpose

It is the intent of this legislation to create a vehicle by which the people of Ailuk Atoll may themselves:

(a) develop and implement sustainable programs and projects for social, economic and cultural betterment of Ailuk Atoll and its people;

(b) address the nuclear issues and other unmet hardship affecting the people of Ailuk, and;

(c) address the extraordinary needs of the Ailuk Community at Ailuk Atoll and other Ailuk Communities within the Republic of the Marshall Islands and United States of America, with responsible and appropriate review by the government of the Republic of the Marshall Islands to ensure fiscal responsibility and consistency with the development policies of the Government of the Republic and Ailuk Atoll Local Government.

§2303. RESERVED.

§2304. Interpretation.

In this Chapter, unless the context otherwise requires:

(a) "**the Government**" means the Government of the Republic of the Marshall Islands;

(b) "the Local Government" means Ailuk Atoll Local Government;

(b) "**the Authority**" means the Ailuk Sustainable Development Authority established under this Chapter also known as ASDA;

(c) "**the Board**" means the Board established under Section 2307 of this Chapter;

(d) "**Government Agency**" means any corporation or statutory body established by the Government for the purpose of development generally or with respect to any particular locality or subject including non-government Organization or NGO as partners under Memorandum of Understanding;

(e) "**a member of the Board**" includes the chairman of the Board; and

(f) "President" means the President of the Republic of the Marshal Islands.

§2305. Application of Article VII of the Constitution.

Article VII of the Constitution shall not apply or relate to the Authority, its Board or employees.

PART II - CONSTITUTION, ORGANIZATION AND MANAGEMENT

§2306. Constitution of the Authority.

(1) There is hereby established the Ailuk Sustainable Development Authority ("the Authority") also referred to as ASDA.

(2) The Authority:

(a) is a body corporate with perpetual succession;

(b) shall have a common seal;

(c) may acquire, hold, charge, and dispose of property; and

(d) may sue and be sued in its corporate name.

(3) Common Seal:

(a) all courts, judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to any document and shall presume that it was duly affixed;

(b) the common seal of the Authority shall be in the custody of the Authority;

(c) the common seal of the Authority may only be altered in such a manner as may be determined by the Authority;

(d) the common seal of the Authority shall not be affixed to any document except in the presence of (i) the Chairman of the Board, or (ii) a member of the Board or an officer of the Authority authorized by the Board to act on behalf of the Chairman.

(4) The provisions of the Associations Law, Title 52 MIRC, shall not apply or relate to the Authority.

§2307. Organization and Management.

(1) The powers and duties of the Authority are hereby vested in and shall be exercised by the Board. The Board shall consist of six (6) members as follows:

(a) The Nitijela member elected to represent the Ailuk Atoll in the Nitijela;

(b) The Mayor of the Ailuk Atoll Local Government;

(c) One representing the Ailuk traditional/customary leadership who is sitting in the council of Iroij to be chosen amongst the council members;

(d) One legal expertise;

(e) One member representing the community at large who shall be selected by the Board; and

(f) One Executive Director as ex officio (non-voting member) who shall be the secretariat.

(e) In the event the Board is unable to nominate the members provided for herein, the President shall appoint said Board members from among those persons considered for nomination to the Board.

(2) Meetings of the Board shall be held at such times and at such places as may be designated be the Board. At least one regular meeting every quarter, and special meetings any other time.

(3) Every member of the Board shall, subject to Section 2309, hold office for a term of four (4) years and shall, unless removed from office, be eligible for re-appointment.

(4) The Chairman shall be appointed by the Board.

(5) Executive Officer of the Authority shall be sitting as an ex-officio, and carries out the secretary function for the Board.

§2308. Compensation.

(1) Any member of the board shall be entitled to receive sitting allowance, or per diem and travel expenses at such rates and upon such terms and conditions as may be determined by the Board; provided, however, that such rates shall in no event exceed the rates paid to Government employees.

(2) The rates of sitting allowance or per diems shall be prescribed in the Bylaws

§2309. Vacation of office.

(1) A member of the Board vacates his office:

(a) upon death;

(b) by submitting a letter of resignation as provided for in Subsection (2) of this Section;

(c) by ceasing to hold that elective office which was basis for his appointment; or

(d) by being removed from office as provided for in Subsection (3) of this Section.

(2) A resignation under Subsection 1(b) of this Section shall take effect when it is received by the President or on such later date as may be agreed by the President and the member concerned.

(3) The Board may, for cause, remove any member of the Board from office; provided, however, that in the event good cause exists, and the Board fails to take appropriate action, the President shall remove such member. The Board, or President, in the event the Board does not take appropriate action, may suspend any member of the Board from office pending a decision for removal as provided herein above.

(4) In the event the vacation of office be any member, the President may in accordance with Section 2307(1) of this Section, appoint another person in his or her place. Any person appointed in place of such member shall hold office during the period of the unexpired term of the member who he or she succeeds.

(5) If any member of the Board is temporarily unable to discharge the duties of his office on account of ill-health or absence from the country, or any other cause, the President, may appoint another person to act in his o her place.

(6) No act or proceeding of the Board shall be invalid by reason only of the existence of any vacancy among its members of any irregularity in the nomination or appointment of a member thereof.

§2310. Delegation by the Board.

(1) The Board may by written instrument, delegate any of its powers and functions except the power to make by-laws under Section 2314 of this Chapter, to any person.

(2) A delegation under Subsection (1) of this Section may relate:

(a) to the whole or any part of the Ailuk Atoll specified in the instrument of delegation; or

(b) to all activities conducted by the Authority or in which the Authority is concerned, or to such of them as are specified in the instrument of delegation.

(3) A delegation under Subsection (1) of this Section, may be made subject to limitations and conditions.

(4) a delegation under this Section shall be revocable at will by written instrument, and no such delegation shall prevent the exercise or performance of any power or function by the Board.

§2311. Procedures of the Board.

Subject to this Chapter and the by-laws made under Section 2314 of this Chapter, the Board shall determine its own procedures.

§2312. Disclosure of, and disqualification for, interest.

(1) If a member of the Board has any personal interest in the subject matte of any question before a meeting of the Board:

(a) he or she shall disclose such interest at the meeting; and

(b) he or she shall not participate in the deliberations (except as directed by the Board), or in the decision of the Board on the question.

(2) A disclosure under Subsection (1) of this Section shall be recorded in the minutes.

(3) Unless the RMI Representative for cause otherwise directs, failure to comply with the requirements of Subsection (1) or (2) of this Section shall not invalidate any act or proceedings of the Board.

§2313. Misconduct in public office.

A failure to comply with Section 2312 of this Chapter shall be deemed to be misconduct in public office within the meaning of 31 MIRC §146.

§2314. By-laws.

(1) Subject to this Chapter, the Board shall adopt by-laws to govern and regulate the operations of the Authority and the Board. The Board shall approve such Bylaws.

(2) The by-laws shall provide for:

(a) the quorum at, and the conduct of, meetings of the Board;

(b) the appointment and duties of officers of the Board; and

(c) any other matters relating to the Board and the operations of the Authority which the Board may deem appropriate.

§2315. Staff of the Authority.

(1) The Authority:

(a) shall employ an executive director who shall be a person with a sound knowledge and experience of commerce, industry, administration, or business management; and

(b) may employ such other employees, agents, consultants, attorneys, accountants, or advisers as may be necessary to carry out the purpose of the Authority.

(2) persons referred to in Subsection (1) of this Section shall be employed on such terms and conditions as may be determined by the Board.

§2316. Application of bribery law.

Every member of the Board and employee of the Authority shall be subject to the provisions of 31 MIRC §240.1 with respect to any act in the performance of his duties under the Authority, and any such act shall be deemed to be an official act within the meaning of the aforementioned provisions of the Marshall Islands Revised Code herein referred to.

§2317. Immunity for official acts.

(1) No suit or prosecution shall lie:

(a) against the Authority for any act which in good faith is done, or purported to be done, by the Authority under this Chapter, or any regulation made under this Chapter; or

(b) against any member of the Board, officer, servant, or agent of the Authority for any act which in good faith is done, or purported to be done, by him under this Chapter, or any regulations made under this Chapter, or on the direction of the Authority.

(2) Any expenses incurred by the Authority in any suit or prosecution brought by or against the Authority before any court shall be paid out of the Fund (as defined in §2321 of this Chapter) of the Authority, and any costs paid to or recovered by the Authority in any such suit or prosecution shall be credited to the Fund (as defined in §2321 if this Chapter) of the Authority.

(3) Any expenses incurred by any such person as is referred in Subsection 1(b) of this Section in any suit or prosecution brought against him or her before any court in respect of any act which is done or purported to be done by him or her under this Chapter, or any regulations made under this Chapter, or in the direction of the Authority shall, if the court holds that such act was done in good faith, be paid out of the Fund (as defined in §2321 if this Chapter) of the Authority unless such expenses are recovered by him or her in such prosecution.

(4) No writ against person or property shall be issued against a member of the Board in any action brought against the Authority.

PART III - POLICIES, POWERS, AND FUNDS OF THE AUTHORITY

§2318. Policies of the Authority.

Subject to this Chapter, the Authority shall be responsible for determining its own policies for carrying out its functions; provided, however, that such policies shall be in conformity with the development policies of the Government.

(1) The primary functions of the Authority under this Chapter shall be:

(a) to investigate, study, develop, implement, and aid in the financing of social, economic and cultural development programs and projects for the better of the inhabitants of the Ailuk Atoll by itself or jointly with other government or NGO or private organizations or agencies; and

(b) to develop and implement a comprehensive Ailuk Atoll Development Plan to develop and improve the quality of life on Ailuk, as well as any other islands in the RMI and USA .

(2) For the purposes stated in Subsection (1) of this Section, the Authority shall encourage or develop, and may conduct or manage activities of social, economic and cultural importance of the inhabitants of the Ailuk Atoll as well as any other Ailuk people in the RMI or USA.

(3) In the conduct of any activity under Subsection (2) of this Section, the Authority shall comply with sound business and accounting practices. In the conduct of any activity authorized by this Chapter,

the Authority shall not compete with the Government except with the approval of the Cabinet.

(4) The Authority shall also perform any other function as required by law.

§2320. Powers of Authority.

(1) Subject to this and any other law, the Authority shall have any power as are necessary or convenient for carrying out its purposes.

(2) Without prejudice to the generality of the powers conferred by Subsection (1) of this Section, the Authority may:

(a) identify, promote, assist, or engage in any new or existing economic development projects designated to increase the economic welfare of the inhabitants of Ailuk Atoll ;

(b) acquire by lease, sublease, easement, or as otherwise allowed by the law, any improved or unimproved land or interest in land, within the Ailuk Atoll , for the purpose of development, conservation, or rehabilitation;

(c) acquire by purchase, lease, sublease, easement, or otherwise allowed by law, any improved or unimproved land or interest in land situated outside the Republic of the Marshall islands for investment purposes;

(d) erect any building or structure required or property belonging to or administered by the Authority;

(e) alter or reconstruct any building or property belonging to or administered by the Authority;

(f) construct any residential building on land belonging or administered by the Authority;

(g) dispose of by sale, lease, sublease, or easement, any building or interest therein;

(h) dispose of by lease, sublease, or easement any land or interest therein;

(i) acquire by purchase, lease, or sublease any personal property or license which the Authority considers necessary or convenient for carrying out its purposes;

(j) dispose of by sale, or any other manner allowed by law, any personal property or license of the Authority;

(k) borrow money and accept advances, contributions, gifts, or other assistance in accordance with Section 2325 of this Chapter;

(l) lend money, invest or reinvest its funds from time to time and take and hold any property as security for the payment of funds loaned or invested;

(m) insure or provide for the insurance of any property, project, or operation against any or all risks;

(n) expend funds for the study and implementation of programs and projects determined by the Authority to be of social, economic or cultural benefit to the inhabitants of the Ailuk Atoll ;

(o) appoint agents, attorneys or accountants in the Marshall Islands or abroad; and

(p) make contracts and other instruments that the Board may consider necessary or convenient for the exercises and performance of the powers and duties of the Authority.

PART IV - FINANCE

§2321. Ailuk Sustainable Development Authority Fund.

(1) There shall be established the Ailuk Sustainable Development Authority Fund (in this Chapter also referred to as "the Fund").

(2) the Fund shall be a fund other than the Marshall Islands General Fund as same is defined in Article VIII, Section 3 of the Constitution.

(3) the fund shall be held in any bank or trust company as may be determined by the Board from time to time.

(4) Notwithstanding anything to the contrary, there shall be paid into the Fund:

(a) any money received by the Government under the Compact of Free Association between the Government of the Republic of the Marshall Islands and the Government of the United States of America (the Compact);

(b) any money appropriated by the Nitijela for the purposes of the Authority, either generally or relating to any particular purposes;

(c) any money received by the Authority through loans, advances, contributions, gifts, or assistance in accordance with Section 2321 of this Chapter; and

(d) any money received by the Authority as profits, dividends or raised by the Authority through sale, mortgage, lease, sublease, easement, or otherwise from any other source, including repayment of loans and income from any business or other enterprise.

(5) The Authority shall separately account for each of the sources of money referred to in Subsection (4) of this Section.

§2322. Funds to be Paid Promptly.

Funds received by the RMI under Section 2321, and any and all other Compact Funds intended for ASDA shall be promptly transferred by the RMI to the special Fund.

§2323. Payments out of the Fund.

(1) Payments may be made out of the Fund for the following:

(a) to carry out the purposes of the Authority;

(b) to pay the costs of any expenses of the Authority;

(c) to provide working capital, petty cash, and similar purposes; and

(d) to pay the costs of administering this Chapter and any other Act that confers any power or duty on the Authority.

(2) No money shall be withdrawn from the fund except:

(a) in accordance with the law and duly adopted by-laws of the Authority; and

(b) with the approval of the Board which shall satisfy itself that the withdrawal is made in accordance with the law and the duly adopted by-laws of the Authority.

§2324. Limitation on the Use of Funds.

No money shall be withdrawn from the Fund to pay for fuel or other expenses of the generation of electricity for public sale or use, unless the Board approves otherwise.

§2325. Borrowing, etc.

(1) With the approval of the Cabinet, and subject to such conditions and with such limits as the Cabinet may impose, and subject to Subsections (3) and (4) of this Section, the Authority may borrow money from the Government, a bank, or any other lending institution or individual necessary and convenient to carry out its purposes.

(2) Except as provided in Subsection (3) of this Section, the Authority may accept advances, grants, contributions, gifts, and other forms of financial assistance to carry out its purposes from any person or organization in the Marshall Islands and abroad.

(3) No money may be borrowed nor may any advance, grant, contribution, gift and other assistance be accepted by the Authority from the Government of the United States or any of its agencies, or from any other source outside the Marshall Islands, except with the consent of the Government.

(4) where any money is borrowed or any advance, grant, contribution, gift, or assistance is received for a specific purpose, or subject to any conditions as to it use, it may be expended or used only for that purpose or subject to those conditions.

§2326. Bank accounts.

(1) The authority shall open an account, or accounts with a banking institution:

(a) member of the United States Federal Deposit Insurance Corporation; or

(b) the United States Federal Savings & Loan Insurance corporation; or

(c) other banking institution which the Board decides.

(2) Separate accounts shall be maintained for each of the following:

(a) each business, enterprise, project, or program in which the Authority is actively engaged; and

(b) any other function which the Authority may perform and which involves expenditures by the authority.

(3) The accounts and record referred to in Section 2326 of this Chapter and Subsection (1) of this Section.

§2327. Accounts and records.

(1) The Authority shall maintain proper accounts and records, in a form satisfactory to the Secretary of Finance, for the following:

(a) the Fund;

(b) the expenditures of money from the fund; and

(c) the property and financial transactions of the Authority.

(2) The accounts and records referred to in Section 2326 of this Chapter and Subsection (1) of this Section shall be audited by the Auditor-General as provided for in Article VII, Section 15, of the Constitution.

§2328. Investment.

With the approval of the Board, money in the Fund, or withdrawn from the Fund in accordance with Section 2323(2) of this Chapter, and not immediately expended, may be invested as follows:

(a) on deposits or on call with a bank or other financial institution as provided for in this Chapter; or

(b) in any other manner authorized by the Constitution or law for investment of the Marshall Islands General Fund.

§2329. Reports.

(1) The Board shall, as soon as practicable after each thirtieth day of June occurring after the commencement of this Chapter, prepare and furnish to the Cabinet a report on the operations of the Authority during the preceding year, together with financial statements for that year in such form as the Secretary of Finance approves.

(2) The Authority shall also submit a copy of the report, referred to in Subsection (1) of this Section to the Auditor-General who shall report to the Cabinet as to:

(a) whether the statements are based on proper accounts and records;

(b) whether the statements are in agreement with the accounts and records and show fairly the financial operations and state of the affairs of the Authority;

(c) whether the receipts, expenditures, and investment of money, and the acquisition and disposal of assets by the Authority during the previous year have been in accordance with this Chapter; and

(d) such other matters as the Auditor-General considers appropriate.

(3) The Cabinet shall cause the report and financial statements of the Board, together with the report of the Auditor-General, and its own comments to be submitted to the Nitijela within fifteen (15) session days of the Nitijela after receipt by the Cabinet.

§2330. Other reports.

Notwithstanding Section 2329 of this Chapter, the Cabinet may require the Authority to submit to it a report in such a form and as to such matter as the Cabinet deems appropriate.

§2331. Tax exemption.

(1) Subject to Subsection (2) of this Section, the income, Gross Revenue Tax, property, and transactions of the Authority shall not be subject to any tax, rate, charge, or impost under any law.

(2) Subsection (1) of this Section shall not apply in respect to any licensing fee or similar fee that is reasonably in proportion to the administrative expenses involved.

PART V - MISCELLANEOUS

§2332. Compliance with other laws.

The Authority, and any business or enterprise in which the Authority is engaged, shall comply with all laws, including licensing, to be prescribed in the regulations for carrying this Chapter into effect.

§2333. Effective date.

This Chapter shall take effect on the date of certification in accordance with Article IV, Section 21 of the constitution.

CERTIFICATE

I hereby certify:

1. That Nitijela Bill No: 24 was passed by the Nitijela of the Republic of the Marshall Islands on the 2nd day of October 2024; and

2. That I am satisfied that Nitijela Bill No: 24 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 8th day of October 2024.

Brenson S. Wase
Speaker
Nitijela of the Marshall Islands

Attest:

Morean S. Watak
Clerk
Nitijela of the Marshall Islands