NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
41ST CONSTITUTION REGULAR SESSION, 2020

Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

BANKING (AMENDMENT) ACT, 2020

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Republic of the Marshall Islands
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BANKING (AMENDMENT) ACT, 2020

AN ACT to amend Title 17, Chapter 1 of the Marshall Islands Revised Code to clarify certain requirements of the Chapter in line with 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 Banking (Amendment) Act, 2020.

§102. Amendments.

(1) Section 102(t), (dd), and (ff) of the Republic of the Marshall Islands Banking Act 1987 *are hereby amended as follows:*

§102. Interpretation.

. . .

(t) "**financial services providers**" means any person, other than a bank, who carries on a business as a domestic financial institution as defined in section 102(n) or who carries on a business as a 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 products such as fund managers, pension or retirement funds, credit unions, financial advisers, investment managers or providers,

insurers, development finance institutions privately operated or government-owned, finance companies;

. . .

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

(i) any law in the Republic for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than 12 months or imposition of a fine of $5,000 or more; or

(ii) a law of a foreign State, in relation to acts or omissions, which, had they occurred in the Republic, would have constituted an offense for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than 12 months or imposition of a fine of $5,000 or more.

. . .

(ff) "**tainted property**" means:

(i) property used, or intended to be used, in the commission of a serious offense, or in connection with the commission of a serious offense;

(ii) proceeds of crime, as defined in paragraph (x) of this section; or

(iii) property of corresponding value;

. . .

(2) Section 123 of the Republic of the Marshall Islands Banking Act 1987 *is hereby amended as follows:*

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

(1) No financial services provider business 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 provider 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.

(4) If the Commissioner has reasonable ground to believe that any person is transacting financial services provider business without a license, the Commissioner 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 financial services provider business without a license.

(5) Any person transacting financial services provider business without a license shall be guilty of an offense and shall upon conviction be liable to a fine not exceeding $10,000.

(3) Section 124 of the Republic of the Marshall Islands Banking Act 1987 *is hereby amended to add a new Subsection (3) as follows:*

§124. Grant or refusal of license.

. . .

(3) Any applicant who knowingly or recklessly furnishes any material information which is false or misleading in connection with an application for licensing as a financial services provider 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.

(4) Section 139 of the Republic of the Marshall Islands Banking Act 1987 *is hereby amended to amend Subsections (1) and (2) and add a new Subsection (3) as follows:*

§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 becomes bankrupt, suspends payment, or compounds with his creditors; or

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

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

...

(c) he is 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.

(3) No person shall be appointed or elected as a director of a licensed financial services provider if he is convicted of any act or thing which is of a fraudulent or illegal character. A director of a licensed financial services provider shall cease to be a director if convicted of such an offense.

(5) Section 141 of the Republic of the Marshall Islands Banking Act 1987 *is hereby amended to amend Subsection (1) add a new Subsection (3) as follows:*

§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:

...

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

(3) Notwithstanding anything contained in any other written law, a person shall be disqualified for employment or appointment as the manager or other official in a licensed financial services provider, and such manager or other official shall cease to be so employed, if he is convicted of any offense involving dishonesty or fraud.

(6) Section 141A of the Republic of the *Marshall Islands Banking Act 1987* is hereby amended as follows:

§141A. Other requirements

The Commissioner shall issue fit and proper requirements, in addition to those set forth under Sections 139, 140 and 141, for banks and financial services providers from time to time and as necessary.

(7) Section 166 of the Republic of the Marshall Islands Banking Act 1987 *is hereby amended as follows:*

§166. Money laundering offenses and penalties.

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

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

(b) converts or transfers property, knowing or having reason to believe that the property is the proceeds of crime, for the purpose of:

(i) concealing or disguising the illicit origin of that property; or

(ii) aiding and abetting any person who is involved in the commission of the predicate offense to evade the legal consequences of his or her action; or

(c) conceals or disguises the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing or having reason to believe that the property is the proceeds of crime.

(2) The intent and knowledge required to prove the offense of money laundering may be inferred from objective factual circumstances.

(3) Nothing in this Act shall prevent 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.

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

(5) 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.

(6) 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.

(7) 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.

(8) Section 167(1)(a) of the Republic of the Marshall Islands Banking Act 1987 *is hereby amended as follows:*

§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 banks, DNFBPs, and financial services providers pursuant to Section 170 and Section 170A of this Act;

. . .

(9) Section 170(4) of the Republic of the *Marshall Islands Banking Act 1987* is hereby amended as follows:

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

. . .

(4) Banks, DNFBPs, and financial services providers, and their employees, officers and 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, that a suspicion has been formed or that a suspicious transaction report or related information is being or has been provided in accordance with this section. Any person, 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 than 20 years, or both.

(10) Section 184 of the Republic of the Marshall Islands Banking Act 1987 *is hereby amended as follows:*

§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, DNFBP, or financial services provider for the purposes of ensuring compliance with Sections 168, 169, 170, 170A, and 180 of Part XIII of this Chapter.

§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: 09 was passed by the Nitijela of the Republic of the Marshall Islands on the 20th day of March 2020; and

2. That I am satisfied that Nitijela Bill No: 09 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 09th day of April 2020.

Attest:

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

Morean S. Watak
Clerk
Nitijela of the Marshall Islands