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

Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

TRUST (AMENDMENT) ACT, 2020

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TRUST (AMENDMENT) ACT, 2020

AN ACT to amend Title 50, Chapter 1 of the Marshall Islands Revised Code to clarify certain provisions 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 Trust (Amendment) Act, 2020.

§102. Amendments.

(1) *Section 114(5) of the* Republic of the Marshall Islands Trust Act of 1994 *is hereby amended, and new subsections (7) and (8) are added as follows:*

§114. Duties of trustee.

. . .

(5) A trustee shall keep accurate accounts and records of his trusteeship. A trustee shall keep such accounts and records for a period of not less than six (6) years from the date of termination of the trust or the trusteeship, whichever occurs earlier.

. . .

(7) Every trustee of a trust governed by the laws of the Marshall Islands, and every trustee operating in or from within the Marshall Islands, shall obtain and hold:

(a) adequate, accurate, and current information on the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust; and

(b) basic information on other regulated agents of, and service providers to, the trust, including investment advisors or managers, accountants, and tax advisors.

(8) Information held pursuant to this subsection (7) shall be kept accurate and as up to date as possible, shall be updated on a timely basis, and shall be maintained for at least six (6) years after the trustee's involvement with the trust ceases.

(2) Section 122 of the Republic of the Marshall Islands Trust Act of 1994 *is hereby amended as follows:*

§122. Duty of trustee to provide information.

(1) A trustee shall, so far as is reasonable and within a reasonable time of receiving a request in writing to that effect, provide full and accurate information as to the state and amount of the trust property, including the accounts of the trust, and subject to subsection (2), the conduct of the trust administration to:

(a) the Court;

(b) subject to the terms of the trust, the settlor; and

(c) subject to the terms of the trust on the timing and method of informing beneficiaries of their entitlement under a trust, any beneficiary of the trust who is of full age and capacity, or if a minor, to his lawful guardian or representative.

(2) Subject to the terms of the trust and subject to any order of the Court, a trustee shall not be required to disclose to any person-any document which:

(a) discloses his deliberations as to the manner in which he has exercised a power or discretion or performed a duty conferred or imposed upon him; or

(b) discloses the reason for any particular exercise of such power or discretion or performance of duty or the material upon which such reason shall or might have been based; or

(c) relates to the exercise or proposed exercise of such power or discretion or the performance or proposed performance of such duty.

(3) The duty to inform as provided in this Section shall not arise if the trustee is in possession of information which reasonably demonstrates that those entitled to such information have already been informed or are already aware of such information.

(4) The trustee shall carry out the duty to inform to the best of his abilities and at the expense of the trust.

(3) Section 125 of the Republic of the Marshall Islands Trust Act of 1994 *is hereby amended as follows:*

§125. Dealings by trustee with third parties.

(1) A trustee must disclose his status to a third party when forming a business relationship or carrying out a transaction affecting the trust.

(2) Where in any transaction or matter affecting a trust a trustee informs a third party to the transaction or matter that he is acting as trustee, a claim by such third party in relation to that transaction or matter shall extend only to the trust property.

(3) Where in any such transaction or matter as is referred to in paragraph (1), a trustee fails to inform such third party that he is acting as trustee and that party is otherwise unaware of it, the trustee shall:

(a) be personally liable to such third party in respect thereof; and

(b) have a right of recourse to the trust property by way of indemnity against such personal liability, unless the trustee acted in breach of trust.

(4) For purposes of this Section, "third party" means any person who is not a settlor, a trustee, or a beneficiary of the trust and includes, but is not limited to, financial institutions and DNFBPs as defined in the *Banking Act 1987*, 17 MIRC Ch. 1.

(4) Section 161(1) and (2) of the Republic of the Marshall Islands Trust Act of 1994 *is hereby amended as follows:*

§161. Registration.

(1) No trust shall be registered as a trust until there has been filed with the Registrar:

(a) either,:

(i) a certificate from a trustee that the trust upon registration will be a Marshall Islands trust; a notice of the establishment of the trust; and a notice listing the address of the registered office of the trust as defined in section 164; or,

(ii) a copy of the trust instrument along with a notice listing the address of the registered office of the trust; and

(b) a notice listing the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust.

(2) Upon receipt of a certificate or trust instrument and notices referred to in subsection (1) of this section, the Registrar may at the discretion of the Registrar, register that trust upon the Register of Trusts kept for that purpose and issue a certificate of registration in the prescribed form.

. . .

(5) *Section 162(2) of the* Republic of the Marshall Islands Trust Act of 1994 *is hereby amended as follows:*

§162. Annual certificate of registration.

. . .

(2) Application for renewal of registration may be made by a trustee upon:

(a) filing with the Registrar an application for renewal of registration in the prescribed form;

(b) filing with the Registrar an updated notice listing the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust; and

(c) payment of the prescribed fee.

. . .

(6) *Section 166 of the* Republic of the Marshall Islands Trust Act of 1994 *is hereby amended as follows:*

§166. Power to require information.

(1) Notwithstanding any other provision of this Chapter, the Registrar or the Commissioner of Trust Companies appointed under the *Trust Companies Act 1994*, 50 MIRC Ch. 2(the "Commissioner") may, by notice in writing, require any person who is or was acting, or who appears to be or to have been acting, as a trustee to furnish to the Registrar or Commissioner, at such time and place and in such form as it may specify, such information and documentation as it may require with respect to any such activities, including information required to be held pursuant to Section 114 of this Chapter.

(2) Where the person required to provide information or documentation under subsection (1) does not have the relevant information or documentation, the person shall disclose to the Registrar or the Commissioner where, to the best of the person's knowledge, that information or documentation is, and the Registrar or the Commissioner may require any person who appears to be in possession of that information or documentation, to provide it.

(3) The provisions of this Section shall apply to all information or documentation notwithstanding any law relating to privilege or professional secrecy or any duty of confidentiality.

(4) The Registrar may provide any documents or information filed with it pursuant to this Chapter, and the Registrar or the Commissioner may exercise the powers granted to them by virtue of this Section, at the request of or for the purposes of assisting a foreign regulatory authority:

(a) where the assistance is required by the foreign regulatory authority for the purposes of the exercise of one or more of its regulatory functions;

(b) where so required within the terms of the Marshall Islands' international commitments; or

(c) where so required within the terms of undertakings assumed in bilateral or multilateral agreements for the exchange of information and other forms of collaboration with foreign regulatory authorities including a request under a

memorandum of understanding concluded with the Registrar or the Commissioner.

(7) Section 169 of the Republic of the Marshall Islands Trust Act of 1994 *is hereby amended as follows:*

§169. Confidentiality.

All judicial proceedings, other than criminal proceedings relating to a Marshall Islands trust shall, unless ordered otherwise, be heard in camera and no details of the proceedings shall be published by any person without leave of the Court or person presiding.

(8) The Republic of the Republic of the Marshall Islands Trust Act of 1994 is hereby amended to add a new §171 as follows:

§171. Offenses and penalties.

(1) Any person who contravenes or fails to comply with any provision of this Chapter, or any requirement made or given under any provision of this Chapter, shall be guilty of an offense.

(2) Any person who, for the purposes of, or pursuant to, any provision of this Chapter or any requirement made or given under any provision of this Chapter, knowingly or recklessly furnishes information or documentation that is inaccurate, false, or misleading in any material respect shall be guilty of an offense.

(3) Any person who, with intent to avoid detection of the commission of an offense under this Chapter, removes, destroys, conceals, or fraudulently alters any book, document, or other paper shall be guilty of an offense.

(4) Any person who intentionally obstructs a person exercising rights conferred by this Chapter shall be guilty of an offense.

(5) Any person who is guilty of an offense under this Section shall be liable on conviction to a fine not exceeding $10,000, a term of imprisonment not exceeding one (1) year, or both.

§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: 28 was passed by the Nitijela of the Republic of the Marshall Islands on the 16th day of November 2020; and

2. That I am satisfied that Nitijela Bill No: 28 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 11th day of December 2020.

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

Attest:

Morean S. Watak
Clerk
Nitijela of the Marshall Islands