NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
43RD CONSTITUTIONAL REGULAR SESSION, 2022

Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

MARSHALL ISLANDS RESILIENCE AND ADAPTATION TRUST FUND ACT 2022

Index

Section		Page
§101.	Short title	3
§102.	Definitions.	3
§103.	Financial Year	4
I.	ESTABLISHMENT AND PURPOSE	4
§104.	Establishment of the Fund	4
§105.	Purpose and Objectives of the Fund	4
II.	FUND CAPITALIZATION AND CONTRIBUTIONS	5
§106.	Fund Status and Sources.	5
§107.	Initial Capitalization of the Fund	5
§108.	Additional Contributions by Government	5
§109.	Innovative Financing Mechanisms	6
§110.	Partner Contributions and Process	6
III.	MANAGEMENT OF FUND RESOURCES	7
§111.	Fund Investment and Management Policy	7
§112.	Prudent Management of Fund Resources	7
IV.	DISTRIBUTION OF FUND RESOURCES	7
§113.	Reinvestment and Distribution Policy	7
§114.	Income and Appreciation of the Fund	8
§115.	Distribution Process	8
V.	GOVERNANCEOF THE FUND	8
§116.	Board of Directors	8
§117.	Advisory Committee	10
VI.	FUND ADMINISTRATION	11
§118.	Fund Administrator	11

§119. Establishment Budget 12
§120. Annual Administrative Budget 12
§121. Service Providers 12
VII. REPORTING AND AUDITS 13
§122. Annual Report to Government 13
§123. Annual Audits 13
VIII. LIABILITY AND LEGAL PROVISIONS 13
§124. Limitation of Liability 13
§125. Legal Provisions 13
IX. TERMINATION 14
§126. Termination and Distribution of Assets 14
§127. Effective Date. 15

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MARSHALL ISLANDS RESILIENCE AND ADAPTATION TRUST FUND ACT 2022

AN ACT to create and provide the governance, management, legal, and financial provisions for a Marshall Islands Resilience and Adaptation Trust Fund.

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

§101. Short title.

This Act may be cited as the Marshall Islands Resilience and Adaptation Trust Fund Act 2022.

§102. Definitions.

(a) "Adaptation" refers to adjustments in ecological, social, or economic systems in response to actual or expected climatic stimuli and their effects or impacts. It refers to changes in processes, practices, and structures to moderate potential damage associated with climate change, as well as current conditions and existing vulnerability to natural hazards and climatic events;

(b) "Advisory Committee" means the Advisory Committee of the Fund established under Section 117 of this Act;

(c) "'Board" means the Board of Directors of the Fund established under Section 116 of this Act;

(d) "Climate change" refers to a change in the state of the climate that can be identified (e.g. by scientific observation) by changes in the mean and/or the variability of its properties, and that persists for an

extended period, typically decades or longer. It refers to any change in climate over time, whether due to natural variability or as a result of human activity;

(e) "Fund" means a fund other than the General Fund established by Act of Nitijela;

(f) "Government" means the Government of the Republic of the Marshall Islands.

(g) "Republic" means the Republic of the Marshall Islands.

§103. Financial Year.

The financial year of the Fund shall begin on 1 October and end on 30 September in each year.

PART I. ESTABLISHMENT AND PURPOSE

§104. Establishment of the Fund

(1) There shall be established a Marshall Islands Resilience and Adaptation Trust Fund (hereinafter, "the fund"), which shall be governed by the provisions of this Act and its regulations.

(2) The fund is not a public fund or account within the meaning of Article VIII, Section 3(2) of the Constitution.

§105. Purpose and Objectives of the Fund

(1) The Fund will help ensure that the people, Government, and the Republic adapt and build resilience to the impacts of climate change and endure and survive as a viable and recognized people, Government, and nation into the future.

(2) The Fund will achieve this by supporting the Republic's long-term climate change adaptation and resilience-building efforts, by:

(a) collecting, catalyzing, and growing financial resources dedicated solely to adaptation and resilience;

(b) providing steady supplementary and complementary financing for adaptation and resilience investments and initiatives;

(c) supporting and supplementing both Government resources and public expenditure as well as external assistance provided by diplomatic and development partners; and

(d) enhancing the capacity of Government to effectively plan and manage its national adaptation and resilience programs and processes.

PART II. FUND CAPITALIZATION AND CONTRIBUTIONS

§106. Fund Status and Sources.

(1) The resources of the Fund shall be held in trust and governed by the Board and used only for the purpose of and in accordance with this Act, the Fund Investment and Management Policy, and the Fund Reinvestment and Distribution Policy as set out in Sections 111 and 113 respectively.

(2) The Funds assets will consist of the following distinct sources:

(a) an initial capitalization contribution and additional contributions by the Government, under Section 107;

(b) contributions by the United States, under Section 107;

(c) contributions by other partners, under Section 108; and

(d) reinvested income and appreciation of the Fund, under Section 114.

§107. Initial Capitalization of the Fund

The Fund shall be initially capitalized through:

(a) an initial contribution by Government of $3,000,000 (Three Million Dollars), provided as a Special Appropriation through Nitijela.

§108. Additional Contributions by Government

(1) Beyond the initial capitalization phase, Government shall make additional contributions to the Fund from any of the following sources:

(a) fiscal savings and surplus resources;

(b) revenues derived from the establishment and/or operation of all sovereign international registries;

(c) resources derived from any other sovereign or strategic service; and

(d) any unanticipated windfall revenues realized by Government.

(2) The capitalization phase of the Fund shall continue until its balance has reached at least $20,000,000 cumulative.

(3) The target date for reaching this $20,000,000 level is no later than the end of calendar year 2026.

§109. Innovative Financing Mechanisms

The Government and the Fund Board shall work closely with diplomatic and development partners to actively pursue new and innovative financing mechanisms and ventures to generate additional resources for the Fund, in accordance with the Constitution and laws of the Republic.

§110. Partner Contributions and Process

(1) Government shall seek additional contributions to the Fund, in the form of grants from diplomatic and development partners of the Republic.

(2) Contributions by partners shall be facilitated through a formal instrument of agreement among and between the Government, the Board, and the partner contributor.

(3) The instrument of agreement shall define the terms and conditions of the contribution.

(4) Partner contributions shall be received by the Government as Special Revenue and simultaneously transferred from the Government to the Fund as Special Appropriations, via the Nitijela appropriation process, including, where necessary, through Supplemental Appropriation bills.

(5) Subject to the Fiscal Responsibility and Debt Management Act 2020, resources to be received by the Fund in the form of low-interest loans shall have their loan terms negotiated with partners through the Government, received as loan resources by the Government, and transferred to the Fund through an on-lending agreement between the Government and the Fund.

PART III. MANAGEMENT OF FUND RESOURCES

§111. Fund Investment and Management Policy

(1) Within 6 months of the effective date of this Act, the Board shall develop and approve a Fund Investment and Management Policy. As necessary, the Board shall revise the policy from time to time.

(2) The Fund Investment and Management Policy shall define the long-term financial objectives of the Fund, and the roles and responsibilities of investment advisors, money managers, and any other service providers necessary for the prudent management of Fund resources. As necessary, the Board shall revise the policy from time to time.

(3) The Fund Investment and Management Policy shall also define the specific types of qualified instruments in which Fund resources can be invested.

§112. Prudent Management of Fund Resources

(1) In governing the Fund, the Board shall ensure strict adherence to the principles of good governance, accountability, transparency, and prudent investment practices.

(2) The Fund Investment and Management Policy shall align with and reflect the generally accepted principles and practices endorsed by the International Forum of Sovereign Wealth Funds, known commonly as the Santiago Principles.

PART IV. DISTRIBUTION OF FUND RESOURCES

§113. Reinvestment and Distribution Policy

(1) Within 6 months of the effective date of this Act, the Board shall develop and approve a Reinvestment and Distribution Policy. As necessary, the Board shall revise the policy from time to time.

(2) Reinvestment shall mean the process whereby Fund returns, whether in the form of income or appreciation, become part of the capital of the Fund.

§114. Income and Appreciation of the Fund

(1) Investment income, appreciation in the value of the Fund's capital assets, and any other resources accruing from the operations and investments of the Fund, shall be reinvested through an annual approval process of the Board and in accordance with the Reinvestment and Distribution Policy.

(2) In deciding upon the amount of resources to be reinvested or distributed, the Board shall balance the provision of immediate additional revenue for recurrent expenditure related to the operation and administration of the Fund against the need to maintain, so far as possible, the value of the Fund's capital at not less than the real value of the initial capital of the Fund as increased by the real value of additional contributions.

§115. Distribution Process

(1) At the end of each financial year, the Board shall approve an amount to be distributed to the Government during the following financial year as Special Revenue to be available for financing priority adaptation and resilience related investments and initiatives, in accordance with this Act, and in line with the Republic's National Adaptation Plan, National Strategic Plan, and any other relevant national plan, and in accordance with the Reinvestment and Distribution Policy.

(2) To enable Government to prepare its national budget and estimates for the following financial year, by July 30 each year the Board shall inform Government of the amount of resources from the Fund available for distribution in the following financial year.

PART V. GOVERNANCEOF THE FUND

§116. Board of Directors

(1) There shall be a Board of Directors of the Fund to be appointed by the President via formal Cabinet decision.

(2) In selecting Directors for appointment, the President shall ensure that Directors possess the requisite experience and formal qualifications in the fields of finance, business management, economics, public

administration, environmental management, climate change, or other relevant fields.

(3) The Board shall consist of six members, including a Chair, Vice-Chair, and four other members, one of whom will be from the National Council on the Environment established under Section 618(1) of the Ministry of Environment Act, 2018, and the other is the Minister of Finance or his or her designee, sitting as ex officio to the Board.

(4) The Board shall be collectively responsible for the investment and management decisions of the Fund and accountable to the Government for the safekeeping and performance of fund assets.

(5) Specific functions of the Board shall be to:

(a) govern and provide oversight of the Fund and its operations and management in accordance with this Act, any policies adopted by the Board, and all relevant laws and regulations of the Republic;

(b) select and provide oversight of the Fund Administrator;

(c) engage with the Government and partners on the initial capitalization of the Fund and any additional contributions;

(d) work with the Fund Administrator and Advisory Committee to screen and select an Independent Investment Advisor, fund managers, and any other service provider necessary for the prudent investment and management of Fund resources;

(e) make final decisions on the asset allocation and other investment and management decisions for Fund resources;

(f) make final decisions on the distribution of Fund resources to Government; and

(g) ensure that the Fund Administrator and staff keep all proper books and records of account of the assets, property, liabilities, income and expenditure and transactions to the Fund, and to produce these promptly in order to facilitate audit.

(6) The Board shall meet on a quarterly basis or more often, as necessary and reasonable.

(7) For the purposes of meetings of the Board, a minimum of four out of five Directors shall constitute a quorum.

(8) Decisions of the Board shall be made by a simple majority of votes of Directors present at the meeting.

(9) Board members shall be entitled to remuneration in the form of sitting fees for each Board meeting, provided that the Board shall not be compensated for more than six meetings per calendar year.

(10) The remuneration level for Board members shall be decided by the President via formal Cabinet decision unless a member works for the Government, including State-owned Enterprises.

(11) The Board shall establish its own Rules of Procedure.

§117. Advisory Committee

(1) There shall be an Advisory Committee to be appointed by the President on formal Cabinet decision.

(2) In selecting Advisory Committee members for appointment, the President shall ensure that members possess the requisite experience and formal qualifications in the fields of finance, business management, economics, public administration, environmental management, climate change, or other relevant fields.

(3) The Advisory Committee shall not include any elected officials of the Republic.

(4) The Advisory Committee shall consist of three members, consisting of a Chair and two regular members.

(5) The functions of the Advisory Committee shall be to:

(a) advise the Board on the progress of the Republic's adaptation and resilience-building efforts and specific investments that may be supported by the Fund;

(b) advise the Board on general asset allocation and other investment and management decisions over Fund resources;

(c) advise the Board on Fund distribution decisions;

(d) work with the Board and Fund Administrator to screen and select an Independent Investment Advisor, fund managers, and any other service provider necessary for the prudent investment and management of Fund resources;

(e) provide analysis and review on the performance of Fund for the Board; and

(f) provide analysis and guidance on all other matters as requested from time to time by the Board.

(6) The Advisory Committee shall meet on a quarterly basis or more often, as necessary and reasonable.

(7) Members of the Advisory Committee shall be entitled to remuneration in the form of sitting fees for each Advisory Committee meeting, provided that members shall not be compensated for more than six meetings per calendar year.

(8) The remuneration fee for the members shall be decided by the President unless a member works for the Government, including State-Owned Enterprises.

(9) The committee shall establish its own Rules of Procedure.

PART VI. FUND ADMINISTRATION

§118. Fund Administrator

(1) There shall be Fund Administrator to be appointed by the Board.

(2) In selecting the Fund Administrator, the Board shall ensure that the appointee possesses the requisite experience and formal tertiary qualifications in the fields of finance, business management, economics, or public administration.

(3) The responsibilities of the Fund Administrator shall be to:

(a) manage the operations of the Fund in accordance with this Act, any policies adopted by the Board, and all relevant laws and regulations of the Republic.

(b) serve as Secretariat during Board meetings, including scheduling and arranging meetings and ensuring proper meeting records are kept;

(c) work with the Board and Advisory Committee to screen and select an Independent Investment Advisor, fund managers, and any other service provider necessary for the prudent investment and management of Fund resources;

(d) report to the Board on the progress of the Fund's investment management and performance;

(e) advise the Board, along with the Advisory Committee, on investment management and distribution decisions;

(f) work with the Board to select and hire a Finance Officer and Executive Assistant for the Fund; and

(g) Perform any other tasks as may be required by the Board from time to time.

§119. Establishment Budget

(1) An initial budget shall be appropriated by Nitijela to cover the establishment costs of the Fund and its first financial year of operation.

(2) The establishment budget shall finance the initial costs related to establishing the Fund office, bank accounts, information and communication systems, and financial management systems, as well as to cover staff salaries and benefits, Board and Advisory Committee remuneration, and any other administrative costs.

(3) The Board shall arrange for the preparation of an annual administrative budget by June 1 of each year for the following financial year.

§120. Annual Administrative Budget

(1) For the second year of Fund operations and every year thereafter, the Board shall arrange for the preparation of an annual administrative budget by June 1 of each year to cover the administrative costs for the Fund in each of the following financial years.

(2) The Annual Administrative Budget shall be financed by the Fund's own resources starting in the second year of the Fund's operations.

§121. Service Providers

(1) An Investment Adviser shall be contracted by the Board and Fund Administrator to provide independent advice and recommendations on the investment of the Fund's resources.

(2) One or more money managers shall be contracted by the Board and Fund Administrator to invest the assets of the Fund.

(3) The money managers shall provide quarterly reports on the value and disposition of the resources of the Fund.

(4) The remuneration and expenses of the Investment Advisor and money managers shall be met by the Fund.

PART VII. REPORTING AND AUDITS

§122. Annual Report to Government

An Annual Report of the Fund shall be provided to the President and Nitijela by 31 January of each year, covering the operations, accounts, and performance of the Fund during the previous financial year.

§123. Annual Audits

(1) At the end of each financial year, the accounts of the Fund shall be audited by the Republic Auditor General or any qualified auditor to be appointed by the Republic Auditor General.

(2) The Board and Administrator of the Fund shall ensure that the accounts have been properly prepared in accordance with standard accounting practices and provide information adequate for the purposes and processes of the audit.

(3) The balance sheet and income and expenditure account of the Fund shall give a true and fair view of the Fund's financial position.

(4) The audit report shall be submitted to the Board, President, and Nitijela.

PART VIII. LIABILITY AND LEGAL PROVISIONS

§124. Limitation of Liability

No party or contributor to the Fund shall be liable for acts or obligations of the Fund.

§125. Legal Provisions

(1) The Fund shall possess juridical personality and, in particular, capacity to:

(a) contract;

(b) acquire and dispose of immovable and movable property; and

(c) institute legal proceedings.

(2) The Fund shall be exempt from any exchange control regulations, restrictions or moratoria.

(3) Within the scope of its official activities, the Fund, its property, and assets shall be exempt from all direct taxation.

(4) The Government shall treat all moneys received by it from the Fund as public moneys of the Republic of the Marshall Islands and as such subject to Nitijela appropriation and scrutiny.

PART IX. TERMINATION

§126. Termination and Distribution of Assets

(1) The Fund's operations shall be terminated only upon a repeal of this Act, with the Government giving notice of termination to the Board.

(2) This Act shall not be repealed and the operations of the Fund shall not be terminated until final settlement of the obligations of the Fund and the distribution of its assets, in accordance with this Section ~~79~~, are complete. Until then, the Fund shall remain in existence and all rights and obligations of the Fund shall continue.

(3) Upon termination of operations, the Fund shall immediately cease all activities, except that incidental to the orderly realization and conservation of its assets and the settlement of its obligations.

(4) No distribution of assets shall be made until all liabilities to creditors have been discharged.

(5) Subsequently, the assets of the Fund shall be distributed as follows:

(a) the real value of contributions made by the Government shall be paid to that Government; and

(b) any remaining assets of the Fund shall be distributed to any other contributors proportional to the share of their contributions.

PART X. MISCELLANEOUS

§127. RESERVED.

§128. Regulation.

The Board shall promulgate Regulations in accordance with the Administrative Procedures Act.

§129. Effective Date.

This Act 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: **82ND2** was passed by the Nitijela of the Republic of the Marshall Islands on the **25th** day of **November** 2022; and

2. That I am satisfied that Nitijela Bill No: 82ND2 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 **7th** day of **December** 2022.

Attest:

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

Morean S. Watak
Clerk
Nitijela of the Marshall Islands