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

Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION (AMENDMENT) ACT, 2024

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AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION (AMENDMENT) ACT, 2024

AN ACT to amend Title 48, Chapter 5 of the Marshall Islands Revised Code to authorize the Secretary of Finance to delegate of compliance audits to independent third-party auditors, increase available sanctions for non-compliance, and clarify certain provisions of the Chapter in line with international standards.

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

§101. Short title.

This Act may be cited as the Automatic Exchange of Financial Account Information (Amendment) Act, 2024.

§102. Amendments.

(1) Section 502 of the Republic of the Marshall Islands Automatic Exchange of Financial Account Information Act 2016 is hereby amended as follows:

§502. Interpretation.

(1) In this Chapter, unless the context otherwise requires:

(a) "agreement" means:

(i) the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended by the 2010 Protocol, and the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account

Information, which together provide for the exchange of information on an automatic basis as described in the Standard, signed by the Government of the Republic of the Marshall Islands, as amended from time to time; or

(ii) any other agreement or arrangement between the Government of the Republic of the Marshall Islands and the government of another country which makes provisions corresponding, or substantially similar, to that made by the agreement referred to in paragraph (1)(a)(i), including an intergovernmental agreement between the Government of the Republic of the Marshall Islands and the Government of the United States of America to implement FATCA;

(b) **"designated auditor"** means an independent third party designated by the Secretary to conduct audits to verify the compliance of reporting financial institutions with their obligations under the agreement, this Chapter, and any regulations made pursuant to this Chapter;

(c) **"designated person"** means, with respect to any function, the officer of the Ministry of Finance, or other government agency subject to that agency's consent, designated to carry out that function, and with respect to compliance audits, any designated auditor(s) designated by the Secretary to carry out that function;

(d) **"FATCA"** means the provisions commonly known as the Foreign Account Tax Compliance Act, within the United States of America Hiring Incentives to Restore Employment Act;

(e) **"information return"** means a report, setting out certain information as specified by regulations made under this Chapter, which a reporting financial institution is required to file with the Secretary;

(f) **"Minister"** means the Minister of Finance or his designee, including but not limited to the Secretary of Finance;

(g) **"Secretary"** means the Secretary of Finance;

(h) **"Standard" or "CRS"** means the Common Reporting Standard, including the Commentaries thereon, approved by the Council of the Organisation for Economic Co-operation and Development on 15 July 2014, which contains reporting and due diligence procedures for the exchange of information on an automatic basis, as amended from time to time.

. . .

(2) Section 508(3) of the Republic of the Marshall Islands Automatic Exchange of Financial Account Information Act 2016 is hereby amended as follows:

§508. Functions and powers of the Secretary.

. . .

(3) The Secretary may delegate, in writing, to any designated person any power or duty conferred on the Secretary by this Chapter. The Secretary may delegate, in writing, the performance of risk-based audits of reporting financial institutions under §508A to any designated auditor.

. . .

(3) The Republic of the Marshall Islands Automatic Exchange of Financial Account Information Act 2016 is hereby amended to add §508A as follows:

§508A. Audits.

(1) Risk-based audits shall be conducted to verify that reporting financial institutions comply with the agreement, this Chapter, and any regulations made pursuant this Chapter. The audits shall be

conducted by the Secretary or by a designated person or designated auditor pursuant to delegation by the Secretary.

(2) To be eligible for delegation by the Secretary as a designated auditor, a firm must demonstrate:

(a) that it is in good standing, is duly authorized to provide audit services, and conforms with any relevant standards of professional conduct and practice;

(b) that it has expertise with respect to the Standard and the obligations of reporting financial standards under the Standard and is otherwise competent to perform audits pursuant to this section;

(c) that it has the capacity to perform audits pursuant to this section as delegated by the Secretary;

(d) that it maintains adequate liability insurance; and

(e) that it satisfies any other criteria required by the Secretary.

(3) Designated auditors must be independent from the reporting financial institutions subject to audit under this section.

(4) Designated auditors must carry out audits in accordance with the instructions of the Secretary and are obliged to:

(a) submit an audit report to the Secretary, which must be truthful and include all material facts, within the time prescribed by the Secretary;

(b) comply with all principles and guidelines established by the Secretary for audits pursuant to this section;

(c) provide to the Secretary, upon request and within the time prescribed by the Secretary:

(i) all working papers prepared as part of an audit pursuant to this section; and

(ii) all information, records, and other documents the Secretary requires to carry out his or her functions under the agreement and this Chapter; and

(d) make audit documents and data available in the Republic of the Marshall Islands for ten (10) years following the completion of an audit.

(5) Designated auditors are subject to the confidentiality obligations and penalties under §509, except that fines may be up to $50,000 for violations by designated auditors.

(6) The fees for audits by designated auditors must be paid by the reporting financial institutions being audited. Upon request, a designated auditor must provide a fee estimate before commencing an audit. The fees must be reasonable, based on relevant market rates, and proportionate to the audit performed.

(7) Reporting financial institutions must grant the Secretary, or any designated person or designated auditor performing an audit pursuant to this section, unrestricted access to the information and premises specified under §508(4) and any regulations made pursuant to this Chapter to the extent necessary for the audit.

(4) Section 510 of the Republic of the Marshall Islands Automatic Exchange of Financial Account Information Act 2016 is hereby amended as follows:

§510. Penalties.

(1) Every reporting financial institution that fails to file an information return as and when required under this Chapter or under the regulations made under this Chapter is liable to a penalty of up to $2,500 for each such failure, and the product obtained when $25 is multiplied by the number of days, not exceeding 100 days, during which the failure continues.

(2) Every person who makes a false statement or omission in respect of any information required to be included on an information return, under this Chapter or under the regulations made under this Chapter, is liable to a penalty of up to $10,000 for each such failure

(3) Every person who makes a false statement or omission in respect of information in a self-certification made for the purposes of the due diligence procedures described in the Standard is liable to a penalty of up to $10,000 for each such failure.

(4) Every person who does not comply with the requirement of the Secretary or a designated person in the exercise or performance of the Secretary or designated person's powers or duties under this Chapter or under regulations made under this Chapter, or who impedes or prevents the proper conduct of an audit pursuant to§508A, is liable to a penalty of up to $5,000 for each such failure.

(5) Every designated auditor that:

(a) makes untrue statements or conceals material facts in an audit report or otherwise in connection with an audit under §508A is liable to a penalty for each such failure of up to $25,000 if wilful, or $10,000 if negligent;

(b) fails to provide information or documents to the Secretary as required under §508A is liable to a penalty for each such failure of up to $10,000 if wilful, or $5,000 if negligent; and

(c) fails to submit an audit report as required under §508A or fails to comply with the audit principles and guidelines established by the Secretary under §508Ais liable to a penalty for each such failure of up to $10,000 if wilful, or $5,000 if negligent.

(6) Every person who fails to comply with a duty or obligation imposed by this Chapter or under regulations made under this Chapter that is not otherwise described in this section is liable to a penalty of up to $5,000 for each such failure.

(5) Section 516 of the Republic of the Marshall Islands Automatic Exchange of Financial Account Information Act 2016 is hereby amended as follows:

§516. Anti-avoidance.

If a person enters into any arrangements or engages in a practice, the main purpose or one of the main purposes of which can reasonably be considered to be to avoid an obligation imposed under this Chapter or regulations made pursuant to this Chapter then the Chapter and regulations have effect as if the person had not entered into the arrangement or engaged in the practice.

§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: 11 was passed by the Nitijela of the Republic of the Marshall Islands on the 12th day of April 2024; and

2. That I am satisfied that Nitijela Bill No: **11** 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 29th day of April 2024.

Brenson S. Wase
Speaker
Nitijela of the Marshall Islands

Attest:

Morean S. Watak
Clerk
Nitijela of the Marshall Islands