REPUBLIC OF THE MARSHALL ISLANDS
CONFIDENTIAL
C.M. 230 (2020)

FOR ACTION
Minister of Justice, Immigration, & Labor
Minister of Finance, Banking, & Postal Services

FOR INFORMATION
All Ministers

SUBJECT: Approve the Promulgation of the Proposed Draft United Nations Targeted Financial Sanctions (Terrorism & Proliferation) Regulations, 2020.

At its meeting on October 20, 2020, the Cabinet:

1. **approved** the promulgation of the proposed draft United Nations Targeted Financial Sanctions (Terrorism & Proliferation) Regulations, 2020.

David Kabua
President

Earlie Carter Bing
Clerk of the Cabinet

[Reference – C.P. 8575 (2020)]
Signed by the President on October 20, 2020

UNITED NATIONS TARGETED FINANCIAL SANCTIONS (TERRORISM & PROLIFERATION) REGULATIONS, 2020

The Republic of the Marshall Islands Minister of Justice promulgates the following regulations (the "Regulations") pursuant to the authority granted under §206 of the United Nations Sanctions Act, 2020, Chapter 2 of Title 15 of the Marshall Islands Revised Code ("MIRC").

PART I – **PRELIMINARY**

Section 1. Short Title and Principal Objects

(1) *Short Title.* These Regulations may be cited as the "United Nations Targeted Financial Sanctions (Terrorism & Proliferation) Regulations, 2020."

(2) *Principal Objects.* These Regulations are made for the purpose of giving effect to the following UNSC resolutions adopted under Article 41 of the Charter of the United Nations:

(a) **resolution 1267** (1999) of the UNSC, adopted on 15 October 1999;

(b) **resolution 1989** (2011) of the UNSC, adopted on 17 June 2011;

(c) **resolution 2253** (2015) of the UNSC, adopted on 17 December 2015;

(d) **resolution 1988** (2011) of the UNSC, adopted on 17 June 2011;

(e) **resolution 1373** (2001) of the UNSC, adopted on 28 September 2001;

(f) **resolution 1737** (2006) of the UNSC, adopted on 27 December 2006;

(g) **resolution 2231** (2015) of the UNSC, adopted on 20 July 2015;

(h) **resolution 1718** (2006) of the UNSC, adopted on 14 October 2006;

(i) **resolution 2087** (2013) of the UNSC, adopted on 22 January 2013;

(j) **resolution 2094** (2013) of the UNSC, adopted on 7 March 2013;

(k) **resolution 2270** (2016) of the UNSC, adopted on 2 March 2016;

(l) **resolution 2321** (2016) of the UNSC, adopted on 30 November 2016;

(m) **resolution 2375** (2017) of the UNSC, adopted on 11 September 2017; and

(n) successor resolutions.

Section 2. Definitions

(1) In these Regulations, unless the contrary intention appears:

(a) "**Act**" means the United Nations Sanctions Act, 2020, Chapter 2 of Title 15 of the MIRC;

(b) "**authorization**" means a permission granted by the Minister to engage in conduct that is otherwise prohibited by the Act or these Regulations, and can include conditions imposed on the permission;

(c) "**basic expense**" means an expense necessarily incurred for any of the following purposes:

i. obtaining foodstuffs;

ii. paying rent or mortgage;

iii. obtaining medicine or medical treatment;

iv. paying taxes;

v. paying insurance premiums;

vi. paying utility charges;

vii. paying reasonable professional fees;

viii. paying reasonable expenses associated with the provision of legal services;

ix. paying fees or service charges that are in accordance with the laws of the Republic for the routine holding or maintenance of a frozen asset;

x. other reasonable living expenses that do not violate the provisions of a resolution listed in Section 1;

(d) "**contractual obligation**" means an obligation whereby a payment is required under a contract or agreement made before the date of the person or entity's designation and where the payment required does not violate the provisions of a resolution listed in Section 1;

(e) "**control**" or "**controlled**" means exercising influence, authority or power over decisions about financial or operational matters, and includes control as a result of, or by means of, trusts, agreements, arrangements, understandings or practices, whether or not they have legal or equitable force and whether or not they are based on legal or equitable rights;

(f) "**deal**" or "**dealt**" when used in relation to an asset, includes the sale, supply, lease, transfer, conversion, disposition, movement or use of the asset;

(g) "**DNFBP**" has the meaning set forth in §102 of the Banking Act 1987, Chapter 1 of Title 17 of the MIRC;

(h) "**extraordinary expense**" means an expense that is not a basic expense, a contractual obligation, or a legal obligation, and which has been approved by the UNSC or its Committees;

(i) "**financial institution**" has the meaning set forth in §102 of the Banking Act 1987, Chapter 1 of Title 17 of the MIRC;

(j) "**financial or related service**" means any service that involves an activity described in the definitions of "financial institution" or "DNFBP" regardless of whether the service is provided pursuant to a license, registration, or other regulatory approval;

(k) "**legal obligation**" means an obligation whereby a payment is required to satisfy a judicial, administrative, or arbitral lien or judgement that was made before the date that the person or entity was designated;

(l) "**national**" means a citizen or permanent resident;

(m) "**owned**" means having a legal entitlement, either directly or indirectly, to 25% or more of an entity;

(n) "**Unit**" means the Financial Intelligence Unit established under §182 of the Banking Act 1987, Chapter 1 of Title 17 of the MIRC;

(o) "**UNSC**" means the United Nations Security Council.

(2) Unless otherwise specified, if another term used in these Regulations is defined in the Act, the term in these Regulations has the same meaning as defined in the Act.

PART II – **DESIGNATION AND APPEAL**

Section 3. Grounds for Designation by the Minister

(1) For §208(1) of the Act, the Minister must designate a person or entity if the Minister has reasonable grounds to believe that the person or entity meets the criteria for designation in a resolution listed in Section 1.

(2) To avoid doubt, the Minister may designate a person or entity in the absence of a criminal investigation or other proceedings against that person or entity.

Section 4. Procedure for Designation by the Minister

(1) For §208(1) of the Act, the Minister may designate a person or entity on his or her own motion or after considering a request from a foreign country.

(2) The Minister must expediently consider a request for designation from a foreign country.

(3) The Minister must provide information regarding a designation under §208(1) of the Act, including identifying information and information supporting the designation, to a foreign country if the Minister believes that any of the following persons, entities, or assets may be located in that foreign country:

(a) a designated person or entity;

(b) a person or entity owned or controlled by a designated person or entity;

(c) a person or entity acting on behalf of, or at the direction of, a person or entity mentioned in paragraphs (a) or (b);

(d) an asset owned or controlled by a person or entity mentioned in paragraphs (a) to (c).

Section 5. Procedure for Designation Proposals to the UNSC

(1) For §212(1) of the Act, the Minister may propose a designation to the UNSC or its Committees if the Minister has reasonable grounds to believe that the criteria for designation in a resolution listed in Section 1 has been met.

(2) If proposing a designation under §212(1) of the Act, the Minister must:

(a) follow the procedures, including using the standard forms for listing, specified by the UNSC or its Committees;

(b) provide a statement of case, including as much identifying and supporting information as possible, and information on any connection with a person or entity already designated; and

(c) specify if the UNSC or its Committees may make known the Republic's status as a designating country.

Section 6. Procedures for Appeal to the UNSC

(1) The Minister may make a request to the UNSC or its Committees to de-list a person or entity designated under §207(1) of the Act if the Minister believes that the designated person or entity does not meet, or no longer meets, the criteria for designation.

(2) The request must be submitted to the UNSC or its Committees or to any other body, including a Focal Point, as specified by, and in accordance with, procedures adopted for such purposes by the UNSC or its Committees.

(3) When considering whether to make a request, the Minister:

(a) may take into consideration any relevant and credible information from any relevant and credible source, either foreign or domestic; and

(b) must consult with other relevant countries and United Nations entities.

(4) A request by the Minister under subsection (1) may be made:

(a) on the Minister's own motion;

(b) at the request of a designated person if that person is a national of the Republic; or

(c) at the request of a designated entity if that entity is incorporated under a law of the Republic.

(5) A designated person or entity may submit a request for de-listing to the UNSC or its Committees, or to any other body so specified, including a Focal Point, without requiring a request by the Minister to be made under subsection (1).

PART III – **COMMUNICATION**

Section 7. Communicable Information

For the purpose of this Part, "communicable information" means information relating to:

(a) the designation of a person or entity by the Minister or the UNSC or its Committees pursuant to a resolution listed in Section 1;

(b) the de-listing of a person or entity by the Minister or the UNSC or its Committees pursuant to a resolution listed in Section 1; and

(c) a notice of a false match under Section 18(2).

Section 8. Notification to Financial Institutions and DNFBPs

(1) The Minister must provide notification of communicable information by any means it determines necessary to:

(a) financial institutions and DNFBPs; and

(b) any other person or entity that is in possession of, or is suspected to be in possession of, freezable assets.

(2) A notification under subsection (1) must be made within a matter of hours from the time of the designation, de-listing, or determination of a false match.

(3) The Minister may make an advanced notification of the imminent designation of a person or entity to one or more persons or entities listed in paragraph (1)(a) or (1)(b) if the Minister believes that an advanced notification is necessary to avoid the dissipation of freezable assets.

Section 9. Publication of Communicable Information

The Minister must make communicable information, other than a notice of a false match, publicly available within a matter of hours from the time of the designation or de-listing.

Section 10. Order of Communication

To avoid doubt in the interpretation of §214 of the Act and Section 8 and Section 9 of these Regulations, communication by the Minister must occur in the following sequence:

(a) firstly, notification of communicable information, including advanced notification, under Section 8 within a matter of hours;

(b) secondly, publication of communicable information, other than a notice of a false match, under Section 9 within a matter of hours; and

(c) finally, written notice of designation to a designated person or entity under §214 of the Act within a reasonable time after the date of the designation and after sufficient time has been allowed for targeted financial sanctions to be applied.

PART IV – **PROHIBITIONS**

Section 11. Prohibition Against Dealing with Assets

(1) No person or entity must knowingly or recklessly deal with any of the following assets:

(a) assets that are wholly or jointly, directly or indirectly, owned or controlled by:

i. a designated person or entity; or

ii. a person or entity acting on behalf of, or at the direction of, a designated person or entity;

(b) assets derived or generated from assets listed in paragraph (a);

(c) vessels designated as freezable assets by the UNSC or its Committees under resolution 2270, resolution 2321, or successor resolutions on the basis that the vessels are owned or controlled by a designated person or entity.

(2) To avoid doubt:

(a) an asset does not need to be tied to a particular act, plot, or threat in order to be a freezable asset; and

(b) the prohibition in this section is not subject to:

i. communication of a designation under Part III; or

ii. verification by the Minister under Section 14.

Section 12. Prohibition Against Making Assets Available

(1) No person or entity must knowingly or recklessly make available an asset, directly or indirectly, wholly or jointly, to or for the benefit of:

(a) a designated person or entity;

(b) a person or entity owned or controlled by a designated person or entity; or

(c) a person or entity acting on behalf of, or at the direction of, a designated person or entity.

(2) Subsection (1) does not apply if a payment, including by way of interest or other earnings, is made to an account containing frozen assets in order to fulfil a contract entered into prior to the designation of the person or entity if that payment is also frozen.

Section 13. Prohibition Against Making Financial or Related Services Available

No person or entity must knowingly or recklessly make available a financial or related service, directly or indirectly, wholly or jointly, to or for the benefit of:

(a) a designated person or entity;

(b) a person or entity owned or controlled by a designated person or entity; or

(c) a person or entity acting on behalf of, or at the direction of, a designated person or entity.

Section 14. Verification by the Minister

(1) A person or entity may make a request to the Minister to help verify whether an asset in their possession or control is a freezable asset.

(2) The request must be made in any form or manner specified by the Minister.

(3) The Minister must respond to a request made under subsection (1) as soon as reasonably practicable.

(4) The response by the Minister must state whether the Minister considers that:

(a) it is likely that the asset is a freezable asset;

(b) it is unlikely that the asset is a freezable asset; or

(c) it is unknown whether the asset is a freezable asset.

PART V – **OBLIGATIONS**

Section 15. Obligation to Report

(1) A person or entity that is in possession or control of a freezable asset must make a report of the freezable asset and any attempted transactions related to the freezable asset to the Unit in any form and manner specified by the Unit.

(2) A person or entity that is requested to provide a financial or related service in contravention of Section 13 must make a report of that request to the Unit in any form and manner specified by the Unit.

(3) A report required under this section must be made as soon as reasonably practicable, and in any event within two (2) working days after a reportable event has occurred.

(4) A person or entity must provide any other information related to the report or to the freezable asset if requested by the Unit.

Section 16. Compliance Obligations on Financial Institutions and DNFBPs

(1) Every financial institution and DNFBP must adopt policies and procedures suitable to the size and business of the financial institution or DNFBP to promote compliance with the Act and these Regulations.

(2) Without limiting subsection (1), every financial institution and DNFBP must implement procedures to:

(a) screen new and existing customers against lists of designated persons and entities, names of de-listed persons and entities, and persons and entities who are the subject of a notice of a false match;

(b) incorporate compliance with the Act and these Regulations into customer on-boarding processes and on-going customer due diligence processes, including to determine whether a customer is owned or controlled by, or acting on behalf of, or at the direction of, a designated person or entity;

(c) incorporate compliance with the Act and these Regulations into transaction monitoring processes, including to determine whether a transaction involves a designated person or entity, or a person or entity owned or controlled by, or acting on behalf of, or at the direction of, a designated person or entity.

(3) Procedures and policies adopted under this section must not be risk-based, but financial institutions and DNFBPs should:

(a) identify customers and transactions that pose a higher risk; and

(b) subject higher risk customers and transactions to enhanced due diligence measures.

PART VI – AUTHORIZATIONS AND OTHER RELIEF

Section 17. Rights of Bona Fide Third Parties

(1) A person or entity may apply to the Minister for the release of an asset on the basis that they are a bona fide third party affected by the prohibition in Section 11.

(2) The Minister may issue an order to release an asset to a bona fide third party if the Minister is satisfied that the asset will not be made available to, or for the benefit of, a designated person or entity.

(3) The Minister must use his or her best endeavors to expediently provide relief to a bona fide third party.

Section 18. Resolving False Matches

(1) A person or entity may apply to the Minister for the release of an asset on the basis that the asset was inadvertently frozen as a result of a false match against the name or other identifying details of a designated person or entity.

(2) The Minister may issue a notice of a false match requiring the release of assets related to the false match if the Minister can verify that the applicant under subsection (1) is not a designated person or entity.

(3) The Minister must use his or her best endeavors to expediently resolve false matches.

Section 19. Authorizations

(1) A person or entity may apply to the Minister to deal with an asset or to make available an asset or financial or related service.

(2) The Minister may grant an authorization on the following grounds:

(a) the asset is required to meet a basic expense, contractual obligation, legal obligation, or extraordinary expense; or

(b) the authorization would be consistent with another exception provided in a resolution listed in Section 1.

(3) Prior to granting an authorization under subsection (2), the Minister must:

(a) make any notifications required to the UNSC or its Committees;

(b) obtain any approvals required from the UNSC or its Committees; and

(c) conducted any verifications required by the UNSC or its Committees.

(4) The Minister may impose conditions on any authorization granted under this section.

(5) The Minister may vary or revoke any authorization granted under this section.

PART VII – **MISCELLANEOUS**

Section 20. Minister to Specify Forms and Procedures

The Minister may specify such forms and procedures as may be required to perform the Minister's functions under these Regulations.

Section 21. Delegation of Authority

The Minister may, by written instrument, delegate any of his or her powers or functions under these Regulations to a senior government employee.

Section 22. Effective Date

The requirements of these Regulations enter into effect on [XXXX].