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**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

Index

| Section | Page |
|---------------------------|-------------|
| §101. Short title..... | 3 |
| §102. Amendments..... | 3 |
| §103. Effective Date..... | 9 |

1
2
3

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

A BILL FOR 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, ~~other than a bank,~~ 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 other law in the Republic of the Marshall Islands,~~ 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 ~~of the Marshall Islands,~~ 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 any property obtained in whole or in part from the proceeds of a criminal offense or from the proceeds of money laundering.:~~

- (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.

- 1 (2) Any person desirous of obtaining approval for licensing as a financial
2 services provider shall apply in writing to the Commissioner in such
3 manner as the Commissioner may specify by Regulation.
- 4 (3) The Commissioner of Banking shall be authorized to conduct
5 prudential supervision of all licensed financial services providers and
6 issue new prudential standards by way of Regulations for this
7 purpose.
- 8 (4) If the Commissioner has reasonable ground to believe that any
9 person is transacting financial services provider business without a
10 license, the Commissioner may examine, or authorize an officer in
11 writing to examine, the books, accounts and records of such person
12 for the purpose of ascertaining whether such person has contravened
13 or is contravening any of the provisions of this Chapter. Any refusal
14 by such person to submit such books, accounts or records to the
15 Commissioner or authorized officer shall be prima facie evidence that
16 such person is transacting financial services provider business
17 without a license.
- 18 (5) Any person transacting financial services provider business without a
19 license shall be guilty of an offense and shall upon conviction be
20 liable to a fine not exceeding \$10,000.
- 21 (3) *Section 124 of the Republic of the Marshall Islands Banking Act 1987 is*
22 *hereby amended to add a new Subsection (3) as follows:*

23 **§124. Grant or refusal of license.**

24 ...

- 25 (3) Any applicant who knowingly or recklessly furnishes any material
26 information which is false or misleading in connection with an
27 application for licensing as a financial services provider shall be
28 guilty of an offense and shall upon conviction be liable to a fine not
29 exceeding \$10,000 or to a term of imprisonment not exceeding six (6)
30 months, or both.
- 31 (4) *Section 139 of the Republic of the Marshall Islands Banking Act 1987 is*
32 *hereby amended to amend Subsections (1) and (2) and add a new Subsection*
33 *(3) as follows:*
- 34
- 35

§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 ~~has been a~~ becomes bankrupt, ~~has suspended~~ payment, or ~~has compounded~~ with his creditors; or
- (c) he is ~~has been~~ 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 ~~has been~~ 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) ~~if~~ 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.

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

3 **§141A. Other requirements**

4 The Commissioner shall issue fit and proper requirements, in addition to
5 those set forth under Sections 139, 140 and 141, for banks and financial
6 services providers ~~directors, managers and officers~~ from time to time and as
7 necessary.

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

10 **§166. Money laundering offenses and penalties.**

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

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

15 (b) converts or transfers property, knowing or having reason to
16 believe that ~~such~~ the property is the proceeds of crime, renders
17 assistance to another person for the purpose of:

18 (i) ~~the conversion or transfer of property, with the aim of~~
19 ~~concealing or disguising the illicit origin of that~~
20 ~~property, to evade the legal consequences thereof; and~~
21 ~~or~~

22 (ii) ~~concealing or disguising the true nature, origin,~~
23 ~~location, disposition, movement or ownership of the~~
24 ~~property; aiding and abetting any person who is~~
25 involved in the commission of the predicate offense to
26 evade the legal consequences of his or her action; or

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

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

33 (e3) ~~Nothing~~ in this Act shall prevents a person that committed any
34 other offense that generated the proceeds of crime from being

convicted of an offense of money laundering in respect of those proceeds of crime;

(d4) a A person who attempts, facilitates, conspires, or aids and abets any other person to commit an ~~offence~~ offense of money laundering commits an offense and is liable on conviction to the penalties specified under this section;

(e5) ~~f~~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;

(f6) ~~f~~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.

(27) 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 ~~financial institutions or cash dealers~~ 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.

...

1 (4) Banks, DNFBPs, and financial services providers, and its their
2 employees, officers ~~or~~ and directors, shall not notify any person or
3 entity, other than the Commissioner or Attorney-General, a court of
4 competent jurisdiction upon process issued, or other person as may
5 be authorized by law, ~~of the information, record, or report that has~~
6 ~~been prepared, or otherwise referred or furnished to the~~
7 ~~Commissioner, Attorney General or court of competent jurisdiction,~~
8 ~~or other lawfully authorized person~~ that a suspicion has been formed
9 or that a suspicious transaction report or related information is being
10 or has been provided in accordance with this section. Any person, ~~or~~
11 bank, DNFBP, or financial services provider who improperly
12 discloses such information commits an offense, punishable by a fine
13 of not more than \$2,000,000.00 or imprisonment for not more ~~that~~
14 than 20 years, or both.

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

17 **§184. Power to Examine.**

18 The Banking Commissioner or any person authorized in writing by the
19 Commissioner may examine the records and inquire into the business and
20 affairs of any bank, DNFBP, or financial services provider for the purposes
21 of ensuring compliance with Sections 168, 169, 170, 170A, and 180 of Part
22 XIII of this Chapter.

23 **§103. Effective Date.**

24 This Bill, and all Acts contained herein, shall take effect in accordance with
25 the Constitution and the Rules of Procedures of the Nitijela.

1 NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
2 38TH CONSTITUTION REGULAR SESSION, 2018

3 **BANKING (AMENDMENT) ACT, 2020**

4 **BILL SUMMARY**

5 The Republic of the Marshall Islands (RMI) is a member of the Asia/Pacific Group on
6 Money Laundering (APG), and as a member of the APG, the RMI has an obligation
7 to ensure its anti-money laundering and countering the financing of terrorism
8 (AML/CFT) regime meets the international standard. The RMI's AML/CFT regime
9 will be evaluated against the international standard by the APG in October 2020. A
10 successful evaluation is of key importance to the RMI's international standing and
its access to the international financial system.

11 In advance of the APG evaluation, a gap analysis was performed, and it identified
12 clarifications and improvements to the RMI's AML/CFT laws that will aid in
13 ensuring the RMI has a successful evaluation. Under the Banking Act 1987, these
14 include clarification related to (i) the definition of "financial services provider,"
15 (ii) penalties regarding financial services providers licensing requirements,
16 (iii) disqualification of convicted criminals from managing financial services
17 providers, (iv) the money laundering offense, (v) Banking Commissioner and DFIU
18 powers, and (vi) anti-tipping-off provisions. By swiftly enacting these amendments,
19 the RMI will improve its position within the international community and continue
20 meeting its obligations to the APG.

21

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

BANKING (AMENDMENT) ACT, 2020

SIGNATURES

DATE: 3-3-20 INTRODUCED BY Alfred Alfred, Sr A. Alfred
Print Name *Signature*

DATE: _____ INTRODUCED BY _____
Print Name *Signature*

DATE: _____ INTRODUCED BY _____
Print Name *Signature*

DATE: _____ INTRODUCED BY _____
Print Name *Signature*

DATE: _____ INTRODUCED BY _____
Print Name *Signature*