

TITLE 17 – BANKING AND FINANCIAL INSTITUTIONS
CHAPTER 2 - CURRENCY DECLARATION



Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

CURRENCY DECLARATION ACT 2009

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CHAPTER 2 - CURRENCY DECLARATION



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CURRENCY DECLARATION ACT 2009

AN ACT to provide for the seizure, detention or forfeiture of currency which is derived from, or intended to be used in criminal conduct.

<i>Commencement:</i>	<i>May 11, 2009</i>
<i>Source:</i>	<i>P.L. 2009-29</i>
<i>P.L. 2019-101 P.L. 2020-25</i>	

PART I - PRELIMINARY

§201. Short Title.

This Chapter shall be known as the Currency Declaration Act, 2009.

§202. Interpretation.

- (1) In this Chapter, unless the context otherwise requires:
- (a) “**Authorised Officer**” means;
 - (i) a customs officer;
 - (ii) an immigration officer;
 - (iii) a police officer;
 - (iv) a quarantine officer;
 - (v) an official from the Banking Commission; or
 - (vi) an official from the Postal Services Authority.

duly appointed under the applicable laws of the Republic of the Marshall Islands:

- (b) **“Craft”** means any vehicle or vessel that is used for transportation on land, the sea, or in the air;
- (c) **“Currency”** includes;
 - (i) the coin or paper money of the Republic of the Marshall Islands or of a foreign country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue;
 - (ii) monetary instruments that may be exchanged for money, including cheques, travellers cheques, money orders, and negotiable instruments in a form in which title passes on delivery;
 - (iii) precious metals and precious stones;
 - (iv) any kind of monetary instrument which is found at any place in the Republic of the Marshall Islands, if the instrument is specified by the Minister of Finance by Order, subject to annulment by the Nitijela; or
 - (v) currency in electronic form.
- (d) **“Republic of the Marshall Islands”** means any land territory within the territorial limits of the Republic of the Marshall Islands, and includes the internal waters and territorial sea of the Republic of the Marshall Islands, and **“the Republic”** shall have corresponding meaning;
- (e) **“Recoverable currency”** means currency that is obtained through unlawful conduct;
- (f) **“Currency obtained through unlawful conduct”** means currency obtained by or in return for the unlawful conduct;
- (g) **“Unlawful conduct”** means;
 - (i) conduct that is unlawful under the criminal law of the Republic of the Marshall Islands; or
 - (ii) conduct that is unlawful under the criminal law of another country or territory, and if it occurred in the Republic, would be unlawful under the criminal law of the Republic.

- (h) **“Minimum amount”** means the amount set by the Minister of Finance by Order, subject to annulment by the Nitijela, as being the minimum sum which can be seized pursuant to powers of seizure as set out in this Chapter ;
- (i) **“Mixed currency”** means recoverable currency which is mixed with any other currency.
- (j) **“person”** means any individual, entity, corporation, partnership or anybody incorporate or unincorporated and includes every director, manager, agent or secretary of such person.[para (a) increase the composition of authorized Officers, and para (j) inserted by P.L.2019-101].

PART II - DECLARATION OF CURRENCY

§203. Obligation to declare.

- (1) A person who enters or leaves the Republic of the Marshall Islands with currency amounting to \$10,000 or more, or its equivalent in any other currency, shall make a declaration to an authorised officer in the form prescribed in Schedule 1 of this Chapter.
- (2) A person who transmit out of or receives into the Republic of the Marshall Islands currency amounting to \$10,000 or more by any means, including but not limited to postal services, courier services, or transshipment by any craft must make a declaration to an authorised officer in the form prescribed in Schedule 1 of this Chapter.
- (3) Any person failing to declare currency in the prescribed sum to an authorised officer, and any person making a false declaration to an authorized officer, shall commit an offence under this Chapter and shall be liable on conviction to a fine not exceeding \$50,000 and or forfeiture of the currency under section 210.[subsection 3 is inserted by P.L.2019-101.][Amended by P.L.2020-25.]

PART III - POWER TO QUESTION, SEARCH, SEIZED AND DETAIN

§204. Power of an authorised officer to question.

- (1) An authorized officer may question a person entering into or departing from the Republic of the Marshall Islands or transmitting currency out of or receiving currency into the Republic under section 203(2) on the source, ownership, acquisition, use, or intended destination of any currency in that person's possession or custody that is in excess of \$10,000 or more.
- (2) A person who, without reasonable excuse on being questioned by an authorised officer, fails or refuses to answer any question put to that person by the authorised officer, or who knowingly makes false or misleading statements to the authorized officer, commits an offence and shall be liable on conviction to a fine not exceeding \$5,000. [Amended by P.L.2020-25.]

§205. Power of an authorised officer to search.

- (1) If authorised officer has reasonable ground for suspecting that a person is carrying currency:
 - (a) which is recoverable currency or is intended by any person for use in unlawful conduct and the amount of which is not less than the minimum amount; or
 - (b) that such person has failed to declare, the amount of which is not less than the minimum amount in the prescribed form - the authorized officer may exercise the powers in subsection (3) of this section.
- (2) If an authorised officer who is lawfully on any premise, place, or craft at a Port of Entry has reasonable grounds for suspecting that there is on the premise, place or craft, currency:
 - (a) which is recoverable currency or is intended by any person for use in unlawful conduct; and
 - (b) the amount of which is \$10,000 or more, the authorised officer may, subject to Subsection (6), search the premise, place, or craft for such currency.

- (3) Subject to subsection (6), the authorised officer may, so far as he or she thinks that there are reasonable grounds for suspecting that there is recoverable currency being carried by any person, or is intended for use in unlawful conduct, the amount of which is \$10,000 or more, and it is necessary or expedient, require the person to submit to:
 - (a) a search of any goods that a person has in his or her possession; or
 - (b) a search of his or her person.
- (4) An authorised officer exercising a power under subsection (3)(b) may detain a person for so long as it is necessary for the officer exercise the search.
- (5) A search of a person under subsection 3(b) must be carried out by an authorised officer of the same gender as the person to be searched.
- (6) An authorised officer exercising a power to search under this section must:
 - (a) obtain a search warrant prior to conducting the search, if there is adequate time to obtain one; and
 - (b) exercise such powers so far as it is reasonable required for the purposes of this Chapter .

§206. Seizure of currency.

- (1) An authorised officer may seize currency where there is a false declaration or where he or she has reasonable ground for suspecting that the currency is, in whole or in a part:
 - (a) recoverable currency;
 - (b) intended for use by a person in unlawful conduct; or
 - (c) undeclared currency, intended for use in unlawful conduct.
- (2) In the event that currency is found on one person, or more than one person who are together, the total sum of currency found must be more than the minimum amount before a seizure is authorised by this Chapter .
- (3) In the event that the currency found is in a car or other vehicle, or aircraft, or watercraft, or any other transport by any mean, in any fixed place, albeit in different parts of the location where the currency

is found then the total sum of currency found must be \$10,000 or more before a seizure is authorised by this Chapter.

- (4) An authorised officer exercising the power of seizure under this section must:
 - (a) obtain a search warrant prior to seizure of currency, if there is adequate time to obtain one; and
 - (b) exercise such powers so far as it is reasonable required for the purposes of this Chapter. [Amended by P.L. 2020-25.]

§207. Detention of seized currency.

- (1) If an authorised officer continues to have reasonable grounds for his or her suspicion, or for the purposes of investigation, currency seized under section 6 may be detained for a period of 72 hours.
- (2) The period for which any currency, or part of it, may be detained may be extended by an order of the High Court, upon application by an authorised officer. Such order may authorize the detention of any currency:
 - (a) for a period of up to three months from the date of the order;
 - (b) in the case of any further order under this section, beyond the end of the period of the period to two years from the date of the first order.
- (3) Upon receipt of an application for an order under subsection (2), a Judge of the High Court may make an order if satisfied, that one of the following conditions is met:
 - (a) that there are reasonable grounds for suspecting that the currency is recoverable currency and that either:
 - (i) its continued detention is justified, while its source, ownership, use or destination is further investigated or consideration is given to bringing proceedings against any person for an offence with which the currency is connected; or
 - (ii) proceedings against a person for an offence with which the currency is connected has been started and has not been concluded.

- (4) An application for an order may also be made in respect of any currency seized under section 6, and a Judge of the High Court may make the order if satisfied that:
 - (a) the condition in subsection (3)(a) or subsection (3)(b) is met in respect of part of the currency; and
 - (b) it is not reasonably practicable to detain only that part.
- (5) An order under subsection (2) must provide for notice to be given to any persons affected by it.

PART IV - INTEREST AND RELEASE OF CURRENCY

§208. Interest.

If currency is detained under Section 207 for more than 48 hours, it is at the first opportunity to be paid into a sub-account of the General Fund (pre-designated by the Banking Commissioner and Secretary of Finance) and held there; and the interest accruing on it is to be added to it on its forfeiture.

§209. Release of detained currency.

- (1) This section applies while any currency is detained under Section 207.
- (2) A Judge of the High Court may direct the release of the whole or any part of the currency if satisfied, on an application by the person from whom the currency was seized, that the conditions in section 207 for the detention of the currency are no longer met in relation to the currency to be released.
- (3) An authorised officer may, after notifying the High Court under whose order currency is being detained, release the whole or any part of it if satisfied that the detention of the currency to be released is no longer justified.

PART V - FORFEITURE AND APPEAL

§210. Forfeiture.

- (1) While currency is detained under section 207, an application for the forfeiture of the whole or any part of it may be made to the High Court by an authorised officer.
- (2) The Court may order the forfeiture of the currency or any part of it if satisfied that the currency or part:
 - (a) is recoverable currency; or
 - (b) is intended by any person for use in unlawful conduct.
- (3) In the case of recoverable currency which belongs to joint tenants, one of whom is an excepted joint owner, the order may not apply to so much of it as the Court thinks is attributable to the excepted joint owner's share.
- (4) Where an application for the forfeiture of any currency is made under this section, the currency is to be detained (and may not be released under any power conferred by this Chapter) until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded.
- (5) Where currency has been seized and detained under Sections 206 and 207, and no notice of appeal has been received by either the seizing authority or the High Court within a period of 60 calendar days from the time of detention or seizure, then the currency will be automatically forfeited to the Republic.

§211. Appeal against forfeiture.

- (1) Any party to proceedings in which an order is made under Section 210 for the forfeiture of currency who is aggrieved by the order, may appeal to the High Court.
- (2) An appeal under subsection (1) must be made within the period of 60 calendar days beginning with the date on which the order is made.
- (3) The appeal is to be by way of a rehearing.
- (4) The Court hearing the appeal may make any order it thinks appropriate.

- (5) If the Court upholds the appeal, it may order the release of the currency.

§212. Application of forfeited currency.

- (1) Currency forfeited under this Chapter, and any accrued interest on it is to be paid into the General Fund, provided that it must not to be paid:
 - (a) before the end of the period within which an appeal under section 211 may be made; or
 - (b) if a person appeals under that section, before the appeal is determined or otherwise disposed of.

PART VI - DETERMINATIONS BY COURT

§213. Victims and other owner.

- (1) A person who is the owner of any currency or any part of it detained under this Chapter, may apply to the High Court for an order for the currency to be released.
- (2) An application for an order under subsection (1) may be made in the course of detention or forfeiture proceeding, or at any other time.
- (3) If it appears to the Court concerned that:
 - (a) the applicant was deprived of the currency to which the application relates, or of currency which it represents, by unlawful conduct;
 - (b) the currency was not, immediately before the owner was deprived of it, recoverable currency, and
 - (c) that the currency belongs to the person claiming ownership - the Court may order the currency to which the application relates to be released to the applicant.
- (4) If:
 - (a) the applicant is not the person from whom the currency to which the application relates was seized;
 - (b) it appears to the Court that, that currency belongs to the applicant;

- (c) the Court is satisfied that the conditions in section 207 for the detention of that currency are no longer met or, if an application has been made under section 9, the Court decides not to make an order under that section in relation to that currency; and
- (d) no objection to the making of an order under this subsection has been made by the person from whom that currency was seized; the Court may order the currency to which the application relates to be released to the applicant or to the person from whom it was seized.

§214. Determination of unlawful conduct.

- (1) In determining whether or not conduct has been unlawful, the Court before which the issue is to be determined must decide on a balance of probabilities whether it has been proved:
 - (i) that any matters alleged to constitute unlawful conduct have occurred; or
 - (ii) that any person intended to use any currency in unlawful conduct.
- (2) In deciding whether any currency was obtained through unlawful conduct:
 - (i) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct, (ii) it is not necessary to show that the conduct was of a particular kind if it is shown that the currency was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.
- (3) The portion of the mixed currency which is attributable to the recoverable currency represents the currency obtained through unlawful conduct.

PART VII – RECOVERABLE CURRENCY & IMMUNITY

§215. Recoverable currency.

- (1) Currency is recoverable currency if it is obtained through unlawful conduct.
- (2) Where currency obtained through unlawful conduct (“the original currency”) is or has been recoverable, currency which represents the original currency is also recoverable currency.
- (3) If a person deals in any manner whatsoever by which:
 - (i) he or she disposes of recoverable currency, whether the original currency of currency which represents the original currency; and
 - (ii) he or she obtains other currency in place of it, the other currency represents the original currency and is recoverable.
- (4) If a person disposes of recoverable currency which represents the original currency, the currency may be followed into the hands of the person who obtains it, and it continues to represent the original recoverable currency.

§216. Immunity.

Any authorized officer, employer or agent or person authorized to act on behalf of an authorized officer, is not liable for any acts or omissions made in the discharge of his or her duties under this Act unless it is proved beyond a reasonable doubt that the act or omission was not made in good faith. [this Section is inserted by P.L.2019-101].

§217. Retention of Records.

- (1) The Chief of the Customs Division shall cause to be maintained and retained for a period of at least five (5) years, any and all records or other information required to be kept, including but not limited to:
 - (a) declarations of currency amounting to \$10,000 or more, as referred to under section 203 of this Act;
 - (b) the amount of currency otherwise detected; and
 - (c) the identification data of the currency holder(s).

- (2) Information shall be retained where:
- (a) a declaration is made of currency amounting to \$10,000 or more under section 203 of this Act;
 - (b) there is a false declaration; or
 - (c) there is a suspicion of money laundering or terrorist financing.[Inserted by P.L. 2020-25.]