

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



Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

UNITED NATIONS SANCTIONS ACT, 2020.

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UNITED NATIONS SANCTIONS ACT, 2020.

AN ACT to implement United Nations targeted financial sanctions regimes, including those related to terrorism and proliferation of weapons of mass destruction, as Chapter 2 of Title 15 of the Marshall Islands Revised Code.

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

§201. Short title.

This Act may be cited as the United Nations Sanctions Act, 2020..

§202. Purpose.

The principal purposes of this Chapter are to enable the Republic to meet its obligations under Article 41 of the Charter of the United Nations by implementing United Nations Security Council resolutions not involving the use of armed force for the purpose of maintaining international peace and security.

§203. Definitions.

For purposes of this Chapter, the following terms have the following meanings unless the context otherwise requires:

- (a) "asset" means funds, property, financial assets, and economic resources of every kind, whether tangible or intangible, corporeal or incorporeal, moveable or immovable, actual or potential, however acquired, including:
 - (i) currency, including virtual or digital currency;

- (ii) precious metals and precious stones;
 - (iii) real property and chattels;
 - (iv) vehicles, including vessels, aircraft, and motor vehicles;
 - (v) oil and other natural resources;
 - (vi) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, or right to claim an asset, including bank credits, traveller's cheques, bank cheques, money orders, shares, securities, bonds, debt instruments, drafts and letters of credit;
 - (vii) any other asset which may potentially be used to obtain funds, goods or services; and
 - (viii) any interest, dividend, income or value accruing from, generated by, or derived from an asset;
- (b) "Attorney-General" means the Attorney-General of the Republic of the Marshall Islands;
 - (c) "de-list" means to revoke the designation of a person or entity so that targeted financial sanctions no longer apply to that person or entity;
 - (d) "designated person" or "designated entity" means a person or entity designated under §207 or §208 of this Chapter to whom targeted financial sanctions apply;
 - (e) "frozen asset" or "freezable asset" means an asset that cannot be dealt with as a result of targeted financial sanctions;
 - (f) "Minister" means the Minister of Justice, Immigration and Labor of the Republic of the Marshall Islands;
 - (g) "Republic" means the Republic of the Marshall Islands;
 - (h) "resolution" means a United Nations Security Council resolution adopted pursuant to Article 41 of the Charter of the United Nations;
 - (i) "successor resolution" means a resolution that clarifies, amends, adds to or rescinds matters contained in a preceding resolution dealing with the same subject matter;
 - (j) "supervisory agency" means a government agency responsible for supervising compliance with regulations under this

Chapter pursuant to §218 and includes a government agency that has been prescribed as a supervisory agency by regulations;

- (k) “targeted financial sanctions” means measures that restrict dealing in assets, the making available of assets or financial or related services, or other restrictions related to designated persons and entities prescribed by regulations.

PART II – ADMINISTRATION

§204. Powers of the Minister.

- (1) The Minister is responsible for the administration of this Chapter.
- (2) The Minister may make regulations in accordance with §206 of this Chapter prohibiting conduct that would contravene, or imposing obligations for complying with, United Nations Security Council resolutions.

§205. National Coordination.

- (1) The functions of the National AML/CFT Council established under the *Banking Act 1987* shall include coordinating the effective implementation of this Chapter and any regulations made hereunder.
- (2) The National AML/CFT Council must meet on a regular basis.

§206. Power to Make Regulations.

- (1) The Minister may make regulations as are necessary or expedient to give effect to this Chapter.
- (2) Without limiting subsection (1), regulations may give effect to this Chapter by any of the following means:
 - (a) designating persons, entities or assets;
 - (b) prohibiting dealings with assets or the making available of assets;
 - (c) prohibiting the supply, sale, procurement or transfer of goods or services;

- (d) prohibiting commercial or other activities related to certain persons or entities;
 - (e) authorising access to assets, goods or services;
 - (f) imposing obligations for complying with United Nations Security Council resolutions; or
 - (g) providing administrative procedures.
- (3) To avoid doubt, the validity or operation of another Act, or regulations made under another Act, is not affected merely because the Act or regulations give effect to a resolution under Article 41 or any other Article of the Charter of the United Nations.

PART III – TARGETED FINANCIAL SANCTIONS

§207. United Nations Security Council Designation and De-Listing.

- (1) The designation of a person or entity for targeted financial sanctions by the United Nations Security Council or its Committees has immediate effect.
- (2) The de-listing of a person or entity by the United Nations Security Council or its Committees has immediate effect.

§208. Designation by the Minister.

- (1) The Minister must designate a person or entity for targeted financial sanctions if the Minister has reasonable grounds to believe that the criteria for designation prescribed by regulations has been met.
- (2) The designation of a person or entity by the Minister has immediate effect.

§209. Appeal of Designation Made by Minister.

- (1) A person or entity designated by the Minister may apply to the Minister to be de-listed.
- (2) The application must be in writing and provide all necessary information in support of the application.
- (3) The Minister is not required to consider an application (the current application) by a designated person or entity if the person or entity

has made a prior application under this section within one year of the current application.

- (4) A person entity, having exhausted administrative remedies may seek Judicial Review of the Minister's decision in the High Court pursuant to section 117 of the Marshall Islands Administrative Procedure Act (1979) 6 MIRC Chapter 1.

§210. Review of Designation by Minister.

The Minister must review the grounds for a designation made by the Minister every 3 years after the date the designation was made.

§211. De-Listing by the Minister.

- (1) The Minister must de-list a person or entity if, after consideration of an application under §209 or a review under §210 of this Chapter, or at any other time, the Minister finds:
 - (a) that there are no longer reasonable grounds for a designation;
 - (b) the designated person is deceased; or
 - (c) the designated entity no longer exists.
- (2) The de-listing of a person or entity by the Minister has immediate effect.

§212. Proposal for Designation to the United Nations Security Council.

- (1) The Minister may submit a proposal to the United Nations Security Council or its Committee to designate a person or entity for targeted financial sanctions if the Minister has reasonable grounds to believe that the criteria for designation has been met.
- (2) The Minister may submit a proposal for designation whether or not the Minister has designated the person or entity under §208 of this Chapter.

§213. Material on which Designations May Be Based.

- (1) In considering whether to designate or de-list a person or entity, or to propose a designation to the United Nations Security Council or its Committees, the Minister may take into account any relevant information from any relevant source, either foreign or domestic,

including information held by law enforcement authorities and other government agencies.

- (2) Law enforcement authorities and other government agencies may provide information, including material subject to secrecy provisions or other restrictions on disclosure, to the Minister for the purpose of enabling the Minister to carry out his or her functions under this Part.

§214. Notice of Rights to a Designated Person or Entity.

- (1) The Minister must use its best endeavours to provide written notice to a person or entity designated by:
 - (a) the Minister under §208 of this Chapter; or
 - (b) by the United Nations Security Council or its Committees if the person or entity is located in the Republic.
- (2) The notice must be provided within a reasonable time after the date of the designation and after sufficient time has been allowed for targeted financial sanctions to be applied.
- (3) The notice must contain information necessary to inform the designated person or entity of their rights, including:
 - (a) the grounds for the designation as can be made publicly available;
 - (b) the consequences of the designation;
 - (c) avenues and procedures for appealing the designation; and
 - (d) avenues for seeking access to an asset or financial or related service.

§215. Power to Seize Assets.

- (1) The High Court of the Marshall Islands may grant an warrant for an authorised law enforcement officer or other authorized official to search for and seize a frozen asset if there is a reasonable risk that the asset will dissipate.
- (2) The High Court may grant the warrant only on application by the Attorney-General or other law enforcement authority.

§216. Management of Seized Assets.

- (1) The Minister must use its best endeavours to maintain the value of an asset seized under §215 of this Chapter, and for this purpose may appoint an administrator to manage a seized asset.
- (2) An administrator appointed under subsection (1) has all the powers necessary to diligently, and in good faith, manage a seized asset.
- (3) An asset seized under §215 of this Chapter must only be retained by the Minister or the administrator for as long as the asset remains a frozen asset, or until such time as required by the administrator to complete his or her functions in relation to the asset.

§217. Destruction or Disposal of Specified Assets.

- (1) The Minister may destroy or dispose of an asset seized under §215 of this Chapter if:
 - (a) the asset is a specified asset;
 - (b) maintenance of the asset is not reasonably feasible; and
 - (c) the United Nations Security Council or its Committees has approved the destruction or disposal of the asset.
- (2) A specified asset is a:
 - (a) vessel seized pursuant to resolution 1718 or a successor resolution; or
 - (b) an asset prescribed as a specified asset by regulations.

PART IV – SUPERVISION**§218. Supervisory Responsibility.**

- (1) Unless otherwise prescribed by regulations, the Office of the Attorney-General is responsible for supervising compliance with regulations under this Chapter.
- (2) Supervisory agencies have the following supervisory functions in relation to regulations under this Chapter:
 - (a) to monitor and enforce compliance, including by referring matters for criminal investigation where appropriate;

- (b) to specify such forms or notices as are necessary to monitor and enforce compliance; and
- (c) to provide publicly available guidance to promote compliance.
- (3) Supervisory agencies:
 - (a) must coordinate as appropriate on supervising compliance with regulations under this Chapter; and
 - (b) may conduct joint supervision of one or more persons or entities.
- (4) Supervisory agencies have all necessary powers to carry out their functions under this section.

§219. Functions and Powers to Be Conferred.

The functions and powers of a supervisory agency shall be conferred on the highest official of the supervisory agency.

§220. Power to Require Information or Documents to Be Given.

- (1) A supervisory agency may, for the purpose of supervising compliance with regulations under this Chapter, issue a written notice requiring a person to provide information or documents of the kind, by the time and in the manner, specified in the notice.
- (2) A person may, before the time specified in the notice, request the supervisory agency to vary a notice by extending the time specified or in any other manner.
- (3) The supervisory agency may vary the notice if it considers appropriate to do so.
- (4) A person must comply with a notice despite any other law or contractual obligation, other than a law governing legal professional privilege.

§221. Power to Conduct On-Site Inspection.

- (1) A supervisory agency may, with or without prior notice, request entry into real property used for a commercial purpose, for the purpose of conducting an on-site inspection to monitor compliance with regulations under this Chapter.

- (2) The supervisory agency must produce official identification and a written notice of the on-site inspection no later than at the time that the request for entry is made.
- (3) During an on-site inspection, the supervisory agency may require information or documents to be provided for inspection.
- (4) A person must comply with a request for information or documents despite any other law or contractual obligation, other than a law governing legal professional privilege.

§222. Supervisory Agency May Copy Documents.

If a person provides a document to a supervisory agency under §220 or §221 of this Chapter, the supervisory agency:

- (a) may keep a copy of the document; and
- (b) must return the original document to the person within a reasonable time.

§223. Offense for Failure to Comply with a Requirement to Provide Information or Documents.

- (1) A person who has been required to provide information or documents under this part commits an offense if that person:
 - (a) fails to provide the information or documents;
 - (b) provides false or misleading information or documents; or
 - (c) destroys, defaces, or conceals a document with the intention of evading a requirement under this part to provide documents.
- (2) An offense under subsection (1) is punishable on conviction by:
 - (a) in the case of a natural person, a fine not exceeding \$100,000 or imprisonment for a term not exceeding 3 years, or both; or
 - (b) in the case of a body corporate, a fine not exceeding \$700,000 or, if the contravention involved one or more transactions, an amount equivalent to the value of the transactions, whichever is greater.

PART V – ENFORCEMENT

§224. Offense.

- (1) A person who engages in conduct that contravenes a regulation under this Chapter commits an offense and is punishable on conviction by:
 - (a) in the case of a natural person, a fine not exceeding \$300,000 or imprisonment for a term not exceeding 15 years, or both; or
 - (b) in the case of a body corporate, a fine not exceeding \$2,000,000 or, if the contravention involved one or more transactions, an amount equivalent to the value of the transactions, whichever is greater.
- (2) A person who attempts, facilitates, conspires, or aids and abets any other person to engage in conduct that contravenes a regulation under this Chapter commits an offense and is punishable on conviction by:
 - (a) in the case of a natural person, a fine not exceeding \$200,000 or imprisonment for a term not exceeding 10 years, or both; or
 - (b) in the case of a body corporate, a fine not exceeding \$1,500,000 or, if the contravention involved one or more transactions, an amount equivalent to the value of the transactions, whichever is greater.

§225. Publication of Non-Criminal Enforcement Measure.

A supervisory agency may publish a notice of a non-criminal enforcement measure taken against a person or entity and any remedial action specified under that measure.

§226. Formal Warning.

- (1) A supervisory agency may issue a formal warning to a person or entity if the supervisory agency has reasonable grounds to believe that the person or entity has engaged in conduct that contravenes a regulation under this Chapter.
- (2) A formal warning may specify any remedial action that the supervisory agency believes the person or entity must take.

§227. Fine.

- (1) A supervisory agency may serve a fine on a person if the supervisory agency has reasonable grounds to believe that the person has engaged in conduct that contravenes a regulation under this Chapter.
- (2) A fine shall require the person to pay within 30 days after the date the notice was served, an amount not exceeding:
 - (a) in the case of a natural person, \$10,000; or
 - (b) in the case of a body corporate, \$100,000.
- (3) In determining an appropriate amount of fine, the supervisory agency must have regard to all relevant matters, including:
 - (a) the nature and extent of the conduct;
 - (b) the likelihood, nature and extent of any damage to the integrity or reputation of the Republic's financial system as a result of the conduct;
 - (c) the circumstances in which the conduct occurred; and
 - (d) whether the person has previously been found to have engaged in similar conduct.

§228. Injunction.

- (1) If a person has engaged, is engaging, or proposes to engage, in conduct that contravenes a regulation under this Chapter, the High Court of the Marshall Islands may by order grant an injunction restraining the person from engaging in conduct specified in the order.
- (2) An injunction may only be granted on application by the supervisory agency.
- (3) The High Court may by order grant an interim injunction pending its determination of an application if the High Court considers the circumstances warrant such an order.
- (4) The High Court is not to require the supervisory agency to give an undertaking as to damages as a condition of granting an interim injunction.
- (5) An injunction or interim injunction may relate to one or more officers, employees or agents of the person.

- (6) The High Court may discharge or vary an injunction or interim injunction.

§229. Relationship between offenses and non-criminal enforcement measures

- (1) Criminal proceedings for an offense under this part may be commenced against a person in relation to particular conduct whether or not an action to impose a non-criminal enforcement measure under this part has been commenced against the person in relation to the same or substantially the same conduct.
- (2) Despite subsection (1), if a criminal proceeding is brought against a person and a fine is served on the same person in relation to the same or substantially the same conduct, a court must take into account the amount of the fine when imposing a penalty in respect of the offense to ensure that only one penalty is imposed.
- (3) Payment of a fine served under §227 of this Chapter is not to be regarded as an admission of guilt for the purpose of, nor in any way affect or prejudice, any criminal proceedings arising out of the same or substantially the same conduct.

PART VI – DISCLOSURE OF INFORMATION

§230. Disclosure of Information.

The Minister or a supervisory agency may only disclose information obtained under this Chapter, for the purpose of administering this Chapter or for a law enforcement purpose to any of the following:

- (a) a minister;
- (b) a government agency;
- (c) a foreign government agency;
- (d) a public international organisation to which the Republic is a party;
- (e) the United Nations Security Council or its Committees;
- (f) bodies operating under the authority of the United Nations Security Council as specified in a resolution, including the Focal Point and the Office of the Ombudsman.

PART VII – MISCELLANEOUS

§231. Protection from Liability.

- (1) No civil, criminal or disciplinary proceedings lie against a person if the person has, in good faith and with reasonable care, engaged in conduct in compliance, or in purported compliance, with this Chapter or regulations under this Chapter.
- (2) No civil, criminal or disciplinary proceedings lie against the Minister or a supervisory agency for anything done or omitted to be done, in good faith, in the performance of its functions or the exercise of its powers under this Chapter or regulations under this Chapter.

§232. Delegation of authority

- (1) The Minister may, by written instrument, delegate any of his or her powers or functions under this Chapter to the Attorney-General or to another senior government employee other than the power to:
 - (a) designate a person or entity under §208 of this Chapter;
 - (b) de-list a person or entity under §211 of this Chapter;
 - (c) submit a proposal for designation to the United Nations Security Council or its Committees under §212 of this Chapter.
- (2) The highest official of a supervisory agency may, by written instrument, delegate any of his or her powers or functions under this Chapter to a senior government employee or other officer of the agency.

§233. 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: 8ND1 was passed by the Nitijela of the Republic of the Marshall Islands on the 21st day of May 2020; and
2. That I am satisfied that Nitijela Bill No: 8ND1 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 4th day of June 2020.

Attest:



Hon. Kenneth A. Kedi

Speaker

Nitijela of the Marshall Islands



Morean S. Watak

Clerk

Nitijela of the Marshall Islands