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NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
39TH CONSTITUTION REGULAR SESSION, 2018



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Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

UNIFORM VOIDABLE TRANSACTIONS ACT 2018.

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39TH CONSTITUTION REGULAR SESSION, 2018



Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

UNIFORM VOIDABLE TRANSACTIONS ACT 2018.

AN ACT to enact the Uniform Voidable Transactions Act.

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

§101. Short Title.

This Act may be cited as the Uniform Voidable Transactions Act 2018.

§102. Definitions.

As used in this Act:

(1) "Affiliate" means:

- (i) a person that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person that holds the securities:
 - (A) as a fiduciary or agent without sole discretionary power to vote the securities; or
 - (B) solely to secure a debt, if the person has not in fact exercised the power to vote;
- (ii) a corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person that directly or indirectly owns, controls, or holds, with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person that holds the securities:

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- (A) as a fiduciary or agent without sole discretionary power to vote the securities; or
 - (B) solely to secure a debt, if the person has not in fact exercised the power to vote;
 - (iii) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or
 - (iv) a person that operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.
- (2) "Asset" means property of a debtor, but the term does not include:
- (i) property to the extent it is encumbered by a valid lien;
 - (ii) property to the extent it is generally exempt under nonbankruptcy law; or
 - (iii) an interest in property held in tenancy by the entirety to the extent it is not subject to process by a creditor holding a claim against only one tenant.
- (3) "Claim," except as used in "claim for relief," means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.
- (4) "Creditor" means a person that has a claim.
- (5) "Debt" means liability on a claim.
- (6) "Debtor" means a person that is liable on a claim.
- (7) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (8) "Insider" includes:
- (i) if the debtor is an individual:
 - (A) a relative of the debtor or of a general partner of the debtor;
 - (B) a partnership in which the debtor is a general partner;
 - (C) a general partner in a partnership described in clause (B); or

- 1 (D) a corporation of which the debtor is a director, officer,
2 or person in control;
- 3 (ii) if the debtor is a corporation:

 - 4 (A) a director of the debtor;
 - 5 (B) an officer of the debtor;
 - 6 (C) a person in control of the debtor;
 - 7 (D) a partnership in which the debtor is a general partner;
 - 8 (E) a general partner in a partnership described in clause
9 (D); or
 - 10 (F) a relative of a general partner, director, officer, or
11 person in control of the debtor;
- 12 (iii) if the debtor is a partnership:

 - 13 (A) a general partner in the debtor;
 - 14 (B) a relative of a general partner in, a general partner of, or
15 a person in control of the debtor;
 - 16 (C) another partnership in which the debtor is a general
17 partner;
 - 18 (D) a general partner in a partnership described in clause
19 (C); or
 - 20 (E) a person in control of the debtor;
- 21 (iv) an affiliate, or an insider of an affiliate as if the affiliate were
22 the debtor; and
- 23 (v) a managing agent of the debtor.
- 24 (9) "Lien" means a charge against or an interest in property to secure
25 payment of a debt or performance of an obligation, and includes a
26 security interest created by agreement, a judicial lien obtained by
27 legal or equitable process or proceedings, a common-law lien, or a
28 statutory lien.
- 29 (10) "Organization" means a person other than an individual.
- 30 (11) "Person" means an individual, estate, partnership, association, trust,
31 business or nonprofit entity, public corporation, government or
32 governmental subdivision, agency, or instrumentality, or other legal
33 or commercial entity.
- 34 (12) "Property" means anything that may be the subject of ownership.

- 1 (13) "Record" means information that is inscribed on a tangible medium
2 or that is stored in an electronic or other medium and is retrievable in
3 perceivable form.
- 4 (14) "Relative" means an individual related by consanguinity within the
5 third degree as determined by the common law, a spouse, or an
6 individual related to a spouse within the third degree as so
7 determined, and includes an individual in an adoptive relationship
8 within the third degree.
- 9 (15) "Sign" means, with present intent to authenticate or adopt a record:
10 (i) to execute or adopt a tangible symbol; or
11 (ii) to attach to or logically associate with the record an
12 electronic symbol, sound, or process.
- 13 (16) "Transfer" means every mode, direct or indirect, absolute or
14 conditional, voluntary or involuntary, of disposing of or parting with
15 an asset or an interest in an asset, and includes payment of money,
16 release, lease, license, and creation of a lien or other encumbrance.
- 17 (17) "Valid lien" means a lien that is effective against the holder of a
18 judicial lien subsequently obtained by legal or equitable process or
19 proceedings.

20 **§103. Insolvency.**

- 21 (a) A debtor is insolvent if, at a fair valuation, the sum of the
22 debtor's debts is greater than the sum of the debtor's assets.
- 23 (b) A debtor that is generally not paying the debtor's debts as they
24 become due other than as a result of a bona fide dispute is
25 presumed to be insolvent. The presumption imposes on the
26 party against which the presumption is directed the burden of
27 proving that the nonexistence of insolvency is more probable
28 than its existence.
- 29 (c) Assets under this section do not include property that has been
30 transferred, concealed, or removed with intent to hinder,
31 delay, or defraud creditors or that has been transferred in a
32 manner making the transfer voidable under this Act.
- 33 (d) Debts under this section do not include an obligation to the
34 extent it is secured by a valid lien on property of the debtor not
35 included as an asset.

1 **§104. Value.**

- 2 (a) Value is given for a transfer or an obligation if, in exchange for
3 the transfer or obligation, property is transferred or an
4 antecedent debt is secured or satisfied, but value does not
5 include an unperformed promise made otherwise than in the
6 ordinary course of the promisor's business to furnish support
7 to the debtor or another person.
- 8 (b) For the purposes of Section 4(a)(2) and Section 5, a person
9 gives a reasonably equivalent value if the person acquires an
10 interest of the debtor in an asset pursuant to a regularly
11 conducted, noncollusive foreclosure sale or execution of a
12 power of sale for the acquisition or disposition of the interest
13 of the debtor upon default under a mortgage, deed of trust, or
14 security agreement.
- 15 (c) A transfer is made for present value if the exchange between
16 the debtor and the transferee is intended by them to be
17 contemporaneous and is in fact substantially
18 contemporaneous.

19 **§105. Transfer or Obligation Voidable as to Present or Future Creditor.**

- 20 (a) A transfer made or obligation incurred by a debtor is voidable as to a
21 creditor, whether the creditor's claim arose before or after the transfer
22 was made or the obligation was incurred, if the debtor made the
23 transfer or incurred the obligation:
- 24 (1) with actual intent to hinder, delay, or defraud any creditor of
25 the debtor; or
- 26 (2) without receiving a reasonably equivalent value in exchange
27 for the transfer or obligation, and the debtor:
- 28 (i) was engaged or was about to engage in a business or a
29 transaction for which the remaining assets of the debtor
30 were unreasonably small in relation to the business or
31 transaction; or
- 32 (ii) intended to incur, or believed or reasonably should
33 have believed that the debtor would incur, debts
34 beyond the debtor's ability to pay as they became due.

- 1 (b) In determining actual intent under subsection (a)(1), consideration
2 may be given, among other factors, to whether:
- 3 (1) the transfer or obligation was to an insider;
 - 4 (2) the debtor retained possession or control of the property
5 transferred after the transfer;
 - 6 (3) the transfer or obligation was disclosed or concealed;
 - 7 (4) before the transfer was made or obligation was incurred, the
8 debtor had been sued or threatened with suit;
 - 9 (5) the transfer was of substantially all the debtor's assets;
 - 10 (6) the debtor absconded;
 - 11 (7) the debtor removed or concealed assets;
 - 12 (8) the value of the consideration received by the debtor was
13 reasonably equivalent to the value of the asset transferred or
14 the amount of the obligation incurred;
 - 15 (9) the debtor was insolvent or became insolvent shortly after the
16 transfer was made or the obligation was incurred;
 - 17 (10) the transfer occurred shortly before or shortly after a
18 substantial debt was incurred; and
 - 19 (11) the debtor transferred the essential assets of the business to a
20 lienor that transferred the assets to an insider of the debtor.
- 21 (c) A creditor making a claim for relief under subsection (a) has the
22 burden of proving the elements of the claim for relief by a
23 preponderance of the evidence.

24 **§106. Transfer or Obligation Voidable as to Present Creditor.**

- 25 (a) A transfer made or obligation incurred by a debtor is voidable
26 as to a creditor whose claim arose before the transfer was
27 made or the obligation was incurred if the debtor made the
28 transfer or incurred the obligation without receiving a
29 reasonably equivalent value in exchange for the transfer or
30 obligation and the debtor was insolvent at that time or the
31 debtor became insolvent as a result of the transfer or
32 obligation.
- 33 (b) A transfer made by a debtor is voidable as to a creditor whose
34 claim arose before the transfer was made if the transfer was

1. made to an insider for an antecedent debt, the debtor was
2. insolvent at that time, and the insider had reasonable cause to
3. believe that the debtor was insolvent.

4. (c) Subject to Section 2(b), a creditor making a claim for relief
5. under subsection (a) or (b) has the burden of proving the
6. elements of the claim for relief by a preponderance of the
7. evidence.

8. **§107. When Transfer Is Made or Obligation Is Incurred.**

9. For the purposes of this Act:

10. (1) a transfer is made:

11. (i) with respect to an asset that is real property other than a
12. fixture, but including the interest of a seller or
13. purchaser under a contract for the sale of the asset,
14. when the transfer is so far perfected that a good-faith
15. purchaser of the asset from the debtor against which
16. applicable law permits the transfer to be perfected
17. cannot acquire an interest in the asset that is superior to
18. the interest of the transferee; and

19. (ii) with respect to an asset that is not real property or that
20. is a fixture, when the transfer is so far perfected that a
21. creditor on a simple contract cannot acquire a judicial
22. lien otherwise than under this Act that is superior to the
23. interest of the transferee;

24. (2) if applicable law permits the transfer to be perfected as provided in
25. paragraph (1) and the transfer is not so perfected before the
26. commencement of an action for relief under this Act, the transfer is
27. deemed made immediately before the commencement of the action;

28. (3) if applicable law does not permit the transfer to be perfected as
29. provided in paragraph (1), the transfer is made when it becomes
30. effective between the debtor and the transferee;

31. (4) a transfer is not made until the debtor has acquired rights in the asset
32. transferred; and

33. (5) an obligation is incurred:

34. (i) if oral, when it becomes effective between the parties; or

- 1 (ii) if evidenced by a record, when the record signed by the
2 obligor is delivered to or for the benefit of the obligee.

3 **§108. Remedies of Creditor.**

- 4 (a) In an action for relief against a transfer or obligation under this Act, a
5 creditor, subject to the limitations in Section 8, may obtain:
- 6 (1) avoidance of the transfer or obligation to the extent necessary
7 to satisfy the creditor's claim;
- 8 (2) an attachment or other provisional remedy against the asset
9 transferred or other property of the transferee if available
10 under applicable law; and
- 11 (3) subject to applicable principles of equity and in accordance
12 with applicable rules of civil procedure:
- 13 (i) an injunction against further disposition by the debtor
14 or a transferee, or both, of the asset transferred or of
15 other property;
- 16 (ii) appointment of a receiver to take charge of the asset
17 transferred or of other property of the transferee; or
- 18 (iii) any other relief the circumstances may require.
- 19 (b) If a creditor has obtained a judgment on a claim against the debtor,
20 the creditor, if the court so orders, may levy execution on the asset
21 transferred or its proceeds.

22 **§109. Defenses, Liability, and Protection of Transferee or Obligee.**

- 23 (a) A transfer or obligation is not voidable under Section 4(a)(1) against a
24 person that took in good faith and for a reasonably equivalent value
25 given the debtor or against any subsequent transferee or obligee.
- 26 (b) To the extent a transfer is avoidable in an action by a creditor under
27 Section 7(a)(1), the following rules apply:
- 28 (1) Except as otherwise provided in this section, the creditor may
29 recover judgment for the value of the asset transferred, as
30 adjusted under subsection (c), or the amount necessary to
31 satisfy the creditor's claim, whichever is less. The judgment
32 may be entered against:

- 1 (i) the first transferee of the asset or the person for whose
2 benefit the transfer was made; or
- 3 (ii) an immediate or mediate transferee of the first
4 transferee, other than:
 - 5 (A) a good-faith transferee that took for value; or
 - 6 (B) an immediate or mediate good-faith transferee of
7 a person described in clause (A).
- 8 (2) Recovery pursuant to Section 7(a)(1) or (b) of or from the asset
9 transferred or its proceeds, by levy or otherwise, is available
10 only against a person described in paragraph (1)(i) or (ii).
- 11 (c) If the judgment under subsection (b) is based upon the value of the
12 asset transferred, the judgment must be for an amount equal to the
13 value of the asset at the time of the transfer, subject to adjustment as
14 the equities may require.
- 15 (d) Notwithstanding voidability of a transfer or an obligation under this
16 Act, a good-faith transferee or obligee is entitled, to the extent of the
17 value given the debtor for the transfer or obligation, to:
 - 18 (1) a lien on or a right to retain an interest in the asset transferred;
 - 19 (2) enforcement of an obligation incurred; or
 - 20 (3) a reduction in the amount of the liability on the judgment.
- 21 (e) A transfer is not voidable under Section 4(a)(2) or Section 5 if the
22 transfer results from:
 - 23 (1) termination of a lease upon default by the debtor when the
24 termination is pursuant to the lease and applicable law; or
 - 25 (2) enforcement of a security interest in compliance with the
26 Secured Transaction Act of 2007, other than acceptance of
27 collateral in full or partial satisfaction of the obligation it
28 secures.
- 29 (f) A transfer is not voidable under Section 5(b):
 - 30 (1) to the extent the insider gave new value to or for the benefit of
31 the debtor after the transfer was made, except to the extent the
32 new value was secured by a valid lien;
 - 33 (2) if made in the ordinary course of business or financial affairs
34 of the debtor and the insider; or

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- (3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.
- (g) The following rules determine the burden of proving matters referred to in this section:
 - (1) A party that seeks to invoke subsection (a), (d), (e), or (f) has the burden of proving the applicability of that subsection.
 - (2) Except as otherwise provided in paragraphs (3) and (4), the creditor has the burden of proving each applicable element of subsection (b) or (c).
 - (3) The transferee has the burden of proving the applicability to the transferee of subsection (b)(1)(ii)(A) or (B).
 - (4) A party that seeks adjustment under subsection (c) has the burden of proving the adjustment.
 - (h) The standard of proof required to establish matters referred to in this section is preponderance of the evidence.

§110. Extinguishment of Claim for Relief.

A claim for relief with respect to a transfer or obligation under this Act is extinguished unless action is brought:

- (a) under Section 4(a)(1), not later than four years after the transfer was made or the obligation was incurred or, if later, not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant;
- (b) under Section 4(a)(2) or 5(a), not later than four years after the transfer was made or the obligation was incurred; or
- (c) under Section 5(b), not later than one year after the transfer was made.

§111. Governing Law.

- (a) In this section, the following rules determine a debtor’s location:
 - (1) A debtor who is an individual is located at the individual’s principal residence.
 - (2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(b) A claim for relief in the nature of a claim for relief under this Act is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

§112. Application to Series Organization.

(a) In this section:

(1) "Protected series" means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in paragraph (2).

(2) "Series organization" means an organization that, pursuant to the law under which it is organized, has the following characteristics:

(i) The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of or associated with the protected series.

(ii) Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only, and not against the property of or associated with the organization or other protected series of the organization.

(iii) Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.

(b) A series organization and each protected series of the organization is a separate person for purposes of this Act, even if for other purposes

1 a protected series is not a person separate from the organization or
2 other protected series of the organization.

3 **§113. Supplementary Provisions.**

4 Unless displaced by the provisions of this Act, the principles of law and
5 equity, including the law merchant and the law relating to principal and
6 agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake,
7 insolvency, or other validating or invalidating cause, supplement its
8 provisions.

9 **§114. Uniformity of Application and Construction.**

10 This Act shall be applied and construed to effectuate its general purpose to
11 make uniform the law with respect to the subject of this Act among states
12 enacting it.

13 **§115. Reserved.**

14 **§116. Effective Date.**

15 This Act shall take effect on the date of certification in accordance with
16 Article IV, Section 21 of the Constitution, and shall apply prospectively to
17 causes of action accruing on or after the effective date.

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CERTIFICATE

I hereby certify:

1. That Nitijela Bill No: 133 was passed by the Nitijela of the Republic of the Marshall Islands on the 5th day of October 2018; and

2. That I am satisfied that Nitijela Bill No: 133 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 October 2018.



Hon. Kenneth A. Kedi
Speaker
Nitijela of the Marshall Islands

Attest:



Morean S. Watak
Clerk
Nitijela of the Marshall Islands