

Banking (Amendment) Act , 2009

NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS

30th CONSTITUTIONAL REGULAR SESSION, 2009

BILL NO.: 38
P.L. 2009-20

BANKING (AMENDMENT) ACT, 2009

AN ACT

to amend Section 167 of the Banking Act, in order to enable the Banking Commissioner to report to the relevant authorities, transactions that may involve "financing of terrorism", (in addition to transactions involving proceeds of crimes) and for related matters; to amend Section 170 of the Banking Act to require financial institutions to report suspicious transactions related to terrorist financing.

ENACTED BY THE NITIJELA OF THE REPUBLIC OF THE MARSRALL ISLANDS:

Section 1. **Short Title.**

This Act may be cited as the Banking (Amendment) Act, 2009.

Section 2. **Amendments.**

(1) Section 167 of the Banking Act is hereby amended to read as follows:

§167. Commissioner's authority in prohibiting money laundering activity

(1) The Commissioner:

- (a) shall receive, analyze, and disseminate reports of transactions issued by financial institutions or cash dealers pursuant to Section 170 and Section 170A of this Act;
- (b) shall send any such report to the appropriate law enforcement authorities, if there are reasonable grounds to suspect that the transaction is suspicious;
- (c) may enter the premises of any financial institution or cash dealer during ordinary business hours to inspect any record and ask any question relating to such record, make notes and take copies of the whole or any part of the record;
- (d) shall send to the appropriate law enforcement authorities, any information derived from an inspection carried out pursuant to Subsection (1) (c) of this Section, if it gives the Commissioner reasonable grounds to suspect that a transaction involves money laundering, proceeds of a crime, and or the financing of terrorism;
- (e) may instruct any financial institution or cash dealer to take such steps as may be appropriate to facilitate any investigation anticipated by the Commissioner;
- (f) may compile statistics and records, disseminate information within the Republic of the Marshall Islands or elsewhere, make recommendations arising out of any information received; issue guidelines to financial institutions and advise the appropriate officials;
- (g) shall create training requirements and provide such training for any financial institution with respect to transaction record-keeping and reporting obligations provided for in this Act;
- (h) may consult with any relevant person, institution or organization for the purpose of exercising its powers or duties under Subsections (1) (e), (f), (g) or (1) of this Section;
- (i) shall have the authority to request additional information from financial institutions and cash dealers where the Commissioner has reasonable grounds to believe that such information is essential in discovering money laundering activity, proceeds of crime, and or the financing of terrorism;
- (j) shall have the authority and ability to exchange information between international administrative authorities;
- (k) shall have the authority and ability to facilitate and assist international administrative authorities in conducting proceeds of crime, money laundering, and or the financing of terrorism investigations;
- (l) shall have the authority and ability to apply for a warrant to enter any premises belonging to or in the possession or control of a financial institution, cash dealer or any officer or employee thereof, and to search the premises and remove any documents, materials, or other things therein for the purposes of preventing money laundering activity, the financing of terrorism, or tracing the proceeds of crime, as so ordered by the High Court and specified in the warrant other than as authorized in Subsection (c) and (i) above;
- (m) shall have the authority and ability to obtain information under this Section notwithstanding any secrecy or other restrictions on disclosure of information imposed by this Act; and
- (n) shall conduct, in association with law enforcement authorities, investigations into the proceeds of crime, money laundering, and or the financing of terrorism, only where the Commissioner has reasonable grounds to suspect the proceeds of crime, money laundering activity, and or the financing of terrorism, is occurring.

(2) Section 170 of the Banking Act is hereby amended by inserting the following after Section 170(4)

§170A Reporting of suspicious transactions and activities related to terrorist financing

(1) Financial institutions and cash dealers must report any transaction, attempted transaction or other activity where they suspect or have reasonable grounds to suspect that the transaction, attempted transaction or other activity may be related to terrorism, terrorist acts, a terrorist organization, an

individual terrorist, terrorist property or financing of terrorism.

(2) All suspicious transactions, attempted transactions and other activities that may be related to terrorism, terrorist acts, a terrorist organization, an individual terrorist, terrorist property or financing of terrorism must be reported regardless of the amount involved in the transaction, attempted transaction or activity.

(3) Such suspicion must be reported in writing to the Commissioner as soon as reasonably practicable and, in any event, within three days of the forming of such suspicion.

(4) A financial institution or cash dealer, its employees, officers or directors who willfully violates the requirements of this section commits an offence punishable by a fine of not more than \$2,000,000 or imprisonment for not more than twenty (20) years, or both.

(5) Where a person is employed by a financial institution or cash dealer and his or her employer has an established procedure for the reporting of suspicious, transactions, attempted transactions, or other activities, it is a defense for him to prove that he reported his suspicion in accordance with that procedure.

(6) For the purposes of this section the "financing of terrorism" shall have the same meaning as "financing of terrorism" in §120 Title 15 -Anti-Terrorism Laws 2002.

Section 3. Effective Date.

This Act shall take effect on the date of certification in accordance with the Constitution of the Republic of the Marshall Islands and Rules of Procedures of the Nitijela.

CERTIFICATE

I hereby certify:

(1) That Nitijela Bill No.:38 was passed by the Nitijela of the Republic of the Marshall Islands on the 13th day of May, 2009; and

(2) That I am satisfied that Nitijela Bill No.:38 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 5th day of June, 2009.

Attest:

Hon. Jurelang Zedkaia
Speaker
Nitijela of the Marshall Islands

Joe E. Riklon
Clerk
Nitijela of the Marshall Islands